



PRIVACY TICKER

1. Legislative Changes

+++ SWITZERLAND ADJUSTS DATA PROTECTION LAW TO THE GDPR +++

The Swiss parliament has passed a major amendment to the national data protection act. The revisions mainly concern the alignment of the Swiss law with the GDPR. Still, the new data protection act also includes a few particularities, such as provisions facilitating data transfers within a group of companies as well as restrictions to credit ratings.

[To the amended law](#)

2. Case Law

+++ FEDERAL COURT: INSOLVENCE ADMINISTRATOR CANNOT ASSERT RIGHTS UNDER GDPR +++

The German Federal Administrative Court has ruled that an insolvency administrator in its role is not entitled to assert the data subject rights of the insolvency debtor. Thus, only the insolvency debtor themselves can request access under the GDPR to information e.g. on their tax account.

[To the press release on the ruling \(of 16 September 2020, file ref. 6 C 10.19\)](#)

+++ REGIONAL COURT DARMSTADT: DAMAGES FOR PAIN AND SUFFERING DUE TO DISCLOSURE OF APPLICANT DATA +++

The Regional Court of Darmstadt awarded damages in the amount EUR 1,000 to an applicant because the defendant company had sent an e-mail for the applicant on their salary expectations to the wrong addressee. The court reasoned that the applicant's loss of control over their data constitutes concrete as well as considerable (non-material) damage, since there is at least a risk for the applicant's reputation and professional progress if, for example, if the current employer learns of the application. Because of this risk of the data disclosure, the applicant is not required to detail any further concrete disadvantages or humiliation.

[To the press report on the ruling \(of 26 May 2020, file ref. 13 O 244/19\)](#)

+++ REGIONAL COURT FRANKFURT: NO DAMAGES FOR PAIN AND SUFFERING WITHOUT CAUSAL VIOLATION +++

The Regional Court of Frankfurt, on the other hand, rejected a claim for damages of a credit card customer for publication of their data, because the customer failed to specify any GDPR violation of their credit card provider which would have caused the publication. In fact, the data were leaked by unknown persons who copied the data from the credit card provider's database by unclear means.

[To the judgement \(of 18 September 2020, file ref. 2-27 O 100/20\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ DPA HAMBURG: RECORD FINE FOR DATABASE ON EMPLOYEE'S PRIVATE LIFE +++

The Data Protection Authority (DPA) of Hamburg has fined the clothing retailer Hennes & Mauritz (H&M) in the amount of EUR 35.3 million for secretly creating a comprehensive database with private details about its employees. In addition to the periods of illness including symptoms and diagnoses, the data included detailed notes on the employees' private lives, which were collected via individual and corridor interviews and continuously updated. For determining the exact amount of the fine, the authorities took into account as mitigating factor that the company took extensive measures to clear up and remedy the incident and paid the data subjects a substantial compensation without bureaucratic hurdles. Nonetheless, the fine is the highest imposed by a German DPA to date.

[To the press release of the DPA](#)

+++ ICO IMPOSES LARGELY REDUCED FINE ON BRITISH AIRWAYS +++

The ICO, UK's DPA, has imposed a high fine equivalent to EUR 22 million on British Airways for lacking data security. Initially, the ICO had announced a fine equivalent to more than EUR 200 million (see [BB Privacy Ticker from August 2019](#)). The ICO based the significant reduction of the fine on the company's extensive co-operation, the detailed safeguards implemented to prevent future violations and the economic burden of the ongoing corona pandemic.

[To the ICO's press release](#)

4. Opinions

+++ GERMAN DPAS DEEM OFFICE 365 NOT COMPLIANT WITH GDPR +++

The German DPAs have informed that they assessed Microsoft Office 365 and concluded that the software in its current state cannot be used in a privacy compliant manner. Basis for this is an examination of the terms and conditions and the data protection addendum for the software. According to the authorities these documents are too imprecise and also lack a clear legal basis for the collection of telemetry data on the software use. However, this assessment is rather controversial even among the authorities themselves: Only 9 out of 17 supervisory authorities agreed to this view, whereas the other 8 supervisory authorities, among them the DPAs of Bavaria, Hesse and Baden-Wuerttemberg, consider that this assessment was too sweeping and even potentially outdated, as Microsoft had already amended the terms in the meantime.

[To the opinion of the German DPAs](#)

+++ DPA BAVARIA PROVIDES CHECKLIST ON TECHNICAL AND ORGANISATIONAL MEASURES +++

The Bavarian supervisory authority has published a list of measures that companies should consider when ensuring data security. The list is primarily intended as guide for small and medium-sized companies and can provide a basis to establish best practices.

[To the checklist of the authority](#)

+++ US GOVERNMENT PUBLISHES WHITEPAPER ON US DATA TRANSFER AFTER ECJ'S DECISION "SCHREMS II" +++

The US Government has issued a statement detailing the powers of US authorities to access data held by US providers and the safeguards for data protection. The statement shall inform and assist companies in assessing data transfers to the US in order to comply with the requirements of the "Schrems II" decision of the European Court of Justice (on this decision see [BB Privacy Ticker from July 2020](#)).

[To the whitepaper of the US government](#)

+++ UPDATED GUIDE OF THE ICO ON ADDRESSING ACCESS REQUESTS +++

The ICO has updated its guidance on the right of access under Art. 15 GDPR and how to comply with this right. In particular, the authority has added comments on response deadlines in case of questions for clarification and unspecific requests and also criteria for assessing a request as "excessive".

[To the updated guide of the ICO](#)

+++ CNIL FINALISES COOKIE GUIDELINES +++

The French DPA, the CNIL, has finalised its recommendations on using cookies and cookie banners. Among other things, the authority has slightly softened the conditions for using cookies without consent for analysis purposes. Furthermore, the authority also no longer considers a "cookie wall" generally illicit, but instead assesses them on a case-by-case basis.

[To the amended guidelines of the CNIL \(in French\)](#)

If you have any questions, please address the BEITEN BURKHARDT lawyer of your choice or contact the BEITEN BURKHARDT Privacy Team directly:

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