

# Privacy Ticker

January 2024



**+++ NEW BSI KRITIS REGULATION IN EFFECT SINCE 1 JANUARY 2024 +++ ECJ: HEALTH DATA REQUIRES ITS OWN LEGAL BASIS +++ SUHL LABOUR COURT: DATA DISCLOSURE BY UNENCRYPTED E-MAIL IS ILLEGAL +++ FINE OF EUR 32 MILLION AGAINST AMAZON DUE TO EMPLOYEE MONITORING +++ FINE OF EURO 10 MILLION AGAINST YAHOO FOR COOKIES +++ GOOGLE CHROME ELIMINATES THIRD-PARTY COOKIES +++**

## 1. Changes in Legislation

### **+++ NEW BSI KRITIS REGULATION IN EFFECT SINCE 1 JANUARY 2024 +++**

The fourth and latest amendment to the BSI KRITIS Regulation came into force on 1 January 2024. The KRITIS Regulation specifies the requirements of the BSI Act and defines the critical systems and threshold values that fall within the scope of application. The BSI Act and the KRITIS Regulation oblige operators of critical infrastructures in Germany to take appropriate organisational and technical precautions to prevent disruptions or attacks on their IT systems. At the same time, "municipal waste disposal" has now also been categorised as critical infrastructure. In addition, the threshold level for the "administration and payment system of statutory health and long-term care insurance" has been reduced from 3 million to 500,000 insured persons. Irrespective of this, the EU's NIS-2 Directive is to be transposed into German law this year. This will significantly intensify the regulation of KRITIS facilities and expand the scope of application.

[To the Federal Law Gazette \(dated 6 December 2023, in German\)](#)

## 2. Case Law

### +++ ECJ: HEALTH DATA REQUIRES ITS OWN LEGAL BASIS +++

The ECJ has answered several fundamental questions regarding the processing of sensitive data and compensation for damages. In the case at issue, the plaintiff objected to the processing of his health data by his employer. The particularity of the case was that the employer was the Medical Service of the North Rhine Health Insurance Fund, a corporation under public law. The Medical Service has the statutory task of drawing up medical reports to dispel doubts about the incapacity to work of insured persons, even if these reports concern its own employees. The plaintiff considered this to be a breach of data protection and demanded non-material damages of EUR 20,000. The ECJ has now ruled that, in addition to the requirements of Art. 9 GDPR, the processing of health data must imperatively also have a legal basis in accordance with Art. 6 GDPR. Furthermore, the ECJ has stated that compensation for damages under Art. 82 GDPR does not fulfil a deterrent or punitive function but is only intended to compensate for damage. Finally, the court clarifies that fault is presumed in the event of a data protection breach and that the controller must prove that it is not at fault.

[To the Judgment of the ECJ \(dated 21 December 2023, C-667/21, in German\)](#)

### +++ FEDERAL COURT OF JUSTICE AFFIRMS CLAIM FOR INFORMATION VIS-À-VIS CO-SHAREHOLDERS IN INVESTMENT COMPANY +++

The Federal Court of Justice has ruled that a shareholder of an investment company is entitled to the details of the co-shareholders so as to submit purchase offers for their shares. The plaintiff was a co-shareholder of the investment company in the form of a limited partnership, while the defendant kept a register on behalf of the fund company with the personal data and the amount of the shareholding of all trustors. The plaintiff requested information on personal data and the amounts of the holdings of the trustor limited partners participating in the investment company. According to the plaintiff, the data was required to prepare a shareholders' meeting and to submit a purchase offer to the co-shareholders. The court affirmed the claim. There were no reasons under

data protection law to prevent the disclosure. Anyone who participates in a partnership or commercial partnership must expect that their data will be disclosed to the co-shareholders. Based on the contractual relationship established by the partnership agreement, every shareholder has the right to know the amount of the shareholding as well as the names and addresses of its co-shareholders.

[To the ruling of the Federal Court of Justice \(dated 24 October 2023, II ZB 3/23, in German\)](#)

### **+++ FEDERAL FISCAL COURT: INSOLVENCY ADMINISTRATOR HAS NO RIGHT TO INFORMATION FROM THE TAX OFFICE +++**

The Federal Fiscal Court has confirmed the case law according to which insolvency administrators cannot assert a claim for information against the tax office if the provision of information would impair the tax office in the assertion, exercise or defence of civil law claims or in the defence of civil law claims asserted against the tax office. The plaintiff was an insolvency administrator who requested information from the competent tax office in accordance with Art. 15 GDPR about the data relating to the insolvency debtor. The court pointed out that a claim for access to files cannot be based on Art. 15 GDPR, since the insolvency administrator is not a data subject within the meaning of Art. 4 No. 1, Art. 15 (1) GDPR with regard to the insolvency debtor's tax data. Thus, the insolvency debtor's right to information is not transferred to the insolvency administrator's power of administration and disposal.

[To the ruling of the Federal Fiscal Court \(dated 5 December 2023, IX B 108/22, in German\)](#)

### **+++ SUHL LABOUR COURT: DATA DISCLOSURE BY UNENCRYPTED E-MAIL IS ILLEGAL +++**

The Suhl Labour Court has ruled that information pursuant to Art. 15 GDPR that is provided via an unencrypted e-mail constitutes a breach of data protection. In the underlying case, an employee requested information from his employer about his personal data arising from the employment relationship. The employer sent the information in an unencrypted e-mail, which the employee considered to be a breach of data protection. The Thuringian data protection authority also deemed the transmission by unencrypted e-mail to be a breach of Art. 5 GDPR. In the

legal dispute, the plaintiff demanded non-material damages of EUR 10,000 because of this breach. The labour court followed the opinion of the data protection authority and also found that providing information by means of an unencrypted e-mail was a breach of data protection. However, the court nevertheless denied the claim for damages, as the plaintiff had not demonstrated any specific damage. The mere allegation of a loss of control is not sufficient in the court's opinion.

[To the ruling of the Suhl Labour Court \(dated 20 December 2023, 6 Ca 704/23, in German\)](#)

## 3. Regulatory Investigations and Enforcement Actions

### +++ FINE OF EUR 32 MILLION AGAINST AMAZON DUE TO EMPLOYEE MONITORING +++

The French supervisory authority, Commission Nationale de l'Informatique et des Libertés (CNIL), imposed a EUR 32 million fine on Amazon France Logistique due to excessive monitoring of its employees. The company operates the largest Amazon shipping warehouse in France. The employees working there use a scanner that enables Amazon to document the execution of certain tasks in real time. The recorded data provides information about the quality, productivity, and periods of inactivity of individual employees and is stored for 31 days. Although CNIL recognises Amazon's interests in using the scanner system, it considers the storage and analysis of the data to be disproportionate to this extent. The employees are under constant pressure due to the second-by-second monitoring. In addition, Amazon did not adequately inform employees before processing the data. CNIL also found a violation in the video surveillance of employees and external visitors to the warehouse without sufficient information and without adequate technical protection of the IT systems. The French data protection authority thus takes a different view to the Hanover Administrative Court, which ruled that the use of handheld scanners at Amazon in Germany was lawful in February 2023 (see [AB Privacy Ticker February 2023](#)).

[To the CNIL press release \(dated 23 January 2024\)](#)

[To the administrative fine notice of CNIL \(dated 27 December 2023, in French\)](#)

### **+++ FINE OF EURO 10 MILLION AGAINST YAHOO FOR COOKIES +++**

In yet another case, the French data protection authority Commission Nationale de l'Informatique et des Libertés (CNIL) has imposed a fine of EUR 10 million on the e-mail provider and search engine operator Yahoo Emea Limited for the unlawful use of cookies. Following several complaints, the authority carried out investigations and found that cookies had been used for advertising purposes on the Yahoo website without the consent of users. Although the website had an extensive cookie banner, it did not properly implement the users' settings. Furthermore, it was not possible for users to use the "Yahoo! Mail" e-mail service without functional cookies. Revocation was not possible or led to a loss of access to the service. CNIL concluded that voluntary consent for the use of these cookies was thus not possible. In addition, the lack of a revocation option constituted a data protection breach.

[To the CNIL press release \(dated 18 January 2024, in French\)](#)

[To the administrative fine notice of CNIL \(dated 29 December 2023, in French\)](#)

### **+++ FINE OF EUR 40,000 AGAINST AMAZON FOR LATE ACCESS TO INFORMATION +++**

The Italian Data Protection Authority Garante per la Protezione dei Dati Personali (GPDP) has imposed a fine of EUR 40,000 on Amazon Italia Transport S.r.l. for late access to information pursuant to Art. 15 GDPR. The company initially did not respond at all to an employee's request for information. Only after being requested to do so by the data protection authority and approximately six months after the request was made did Amazon finally provide the information, justifying the delay with the employee's very broad request. Amazon also claimed that due to the considerable and constantly increasing number of requests for data access, there were considerable internal difficulties in dealing with the requests. The authority saw the delayed information as a clear breach of data protection. Also, Amazon had not informed the applicant of the reasons for the delay or asked for the information to be specified due to the large amount of data.

[To the administrative fine notice of GPDP \(dated 16 November 2023, in Italian\)](#)

## **+++ FINE OF EUR 407,000 AGAINST THE BRITISH MINISTRY OF DEFENCE FOR DISCLOSING DATA ON AFGHAN LOCAL STAFF +++**

The British data protection authority, Information Commissioner's Office (ICO), has imposed a fine of GBP 350,000, the equivalent of EUR 407,000, on the British Ministry of Defence. A department of the Ministry sent an e-mail to 265 Afghan nationals who had worked for or supported the British military. The recipients were eligible for relocation to the UK. As the BCC function was inadvertently not used when the e-mail was sent, all e-mail addresses were recognisable to all other recipients. In addition, portraits of the recipients were also visible as thumbnails in 5 cases. The ICO stated in its press release that the disclosure of the data could pose a threat to the lives of the individuals concerned if the data fell into the hands of the Taliban. The data protection authority therefore criticised the lack of suitable technical and organisational measures to send sensitive information securely. Even the mere reliance on the BCC function posed a high risk.

[To the ICO press release \(dated 13 December 2023\)](#)

## **4. Opinions**

### **+++ GOOGLE CHROME ELIMINATES THIRD-PARTY COOKIES +++**

As announced some time ago, Google has started to eliminate third-party cookies in its Google Chrome browser from 4 January 2024. This will initially only affect 1 percent of all users worldwide, who will be selected at random. However, due to the widespread use of the browser, the campaign will cover around 30 million users. Third-party cookies will then be completely deactivated in the second half of 2024. Third-party cookies are used on websites by third-party providers and enable the tracking of users across different websites and platforms. A large amount of personal data is also collected in the process. The cookies are used in particular to place personalized advertising and advertisements. Well-known tools that also create extensive user profiles include Google Analytics and Google Ads. The phasing-out of third-party cookies is part of the Privacy Sandbox initiative, with which Google wants to use other technologies to anonymously display advertising to users. Browsers such as Apple's Safari or Mozilla Firefox already provide the option to block third-party cookies.

[To the blog post by Google \(dated 14 December 2023\)](#)

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