



## 1. Changes in Legislation

### +++ AGREEMENT ON DATA GOVERNANCE ACT +++

The European Council and the EU Parliament have agreed on a common position on the Data Governance Act (DGA). The DGA is intended to facilitate access to and further use of data for companies, private individuals and public bodies. Among other things, data communications services are to increase the free availability of anonymous data in the market and facilitate the exchange of data between different actors. This is intended to promote data-driven innovation in certain sectors (for instance in medicine or artificial intelligence) without weakening data protection or competition law. The Data Governance Act must now be formally confirmed.

[To the Draft Bill of the Data Governance Act \(dated 25 November 2020\)](#)

## 2. Case Law

### **+++ EUROPEAN COURT OF JUSTICE: INBOX ADVERTISING ONLY PERMISSIBLE WITH CONSENT +++**

The European Court of Justice has ruled that so-called "inbox advertising" by e-mail providers is only permissible with the consent of the user. Inbox advertising refers to advertisements that are displayed in the e-mail inbox and often look like e-mails. Technically, however, no e-mails are sent. Nevertheless, according to the Court, they are "messages for the purposes of direct advertising" for which consent is required. In principle, e-mail providers would have to obtain such consent before sending out such advertising.

[To the ECJ ruling \(dated 25 November 2021, C-102/20\)](#)

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### **+++ ADMINISTRATIVE COURT OF WIESBADEN: USE OF "COOKIEBOT" ON WEBSITE IS ILLEGAL +++**

The Administrative Court of Wiesbaden has ruled that the integration of the "Cookiebot" service on the website of a university violates the GDPR. Many website operators use the Cookiebot service as a cookie banner solution. The use of the service is actually intended to establish data protection compliance. However, the Court criticised the fact that the user's IP address was transmitted to servers used by Cookiebot, whose operator is located in the USA. The university had not concluded standard data protection clauses for data transfers to the USA. According to the Court, the US transfer is not "necessary" for the operation of the website and users do not consent to it. The data transfer to the USA was therefore unlawful (Article 44 et seq. GDPR). Although the university did not transfer the data to the USA itself, it was responsible for the data transfer. This is because it decides on the "purposes of the processing" (the data transfer) by using the Cookiebot service in the knowledge of the data transfer. If this view of the Court is upheld, it is likely to have far-reaching consequences for all services (including plug-ins, video players, map services, other tools) that use US servers.

[To the decision of the Wiesbaden Administrative Court \(dated 1 December 2021, 6 L 738/21.WI, German\)](#)

### **+++ REGIONAL LABOUR COURT LOWER SAXONY: EUR 1,250 GDPR COMPENSATION FOR INCOMPLETE INFORMATION +++**

The Regional Labour Court of Lower Saxony ruled that the plaintiff, a former employee of the defendant, was entitled to a claim for damages under Article 82 GDPR in the amount of EUR 1,250 due to the incomplete provision of information. The plaintiff had requested information (Article 15 (1) GDPR) about his personal data in connection with the so-called Dieselgate. According to the Court, the information provided did not contain all relevant information, as individual documents (e.g. evaluations in legal departments) were not specifically listed. The Court applies a broad concept of damage and rejects a materiality threshold for the occurrence of non-material damage. The latter is currently highly controversial (see for instance [BB Privacy Ticker August 2021](#)) because it means that even a minor violation of the GDPR can trigger a claim for damages.

[To the decision of the Higher Labour Court of Lower Saxony \(dated 22 October 2021, 16 Sa 761/20, German\)](#)

## **3. Regulatory Investigations and Enforcement Actions**

### **+++ NORWEGIAN DATA PROTECTION AUTHORITY IMPOSES MILLION DOLLAR FINE FOR DATA SHARING FOR ADVERTISING PURPOSES +++**

The Norwegian Data Protection Authority (Datatilsynet) has imposed a fine of some EUR 6.5 million against the operator of the dating app "Grindr". The company is accused of passing on personal data of users (including IP addresses, advertising ID, GPS location data, age, gender, sexual orientation) to third parties for the purpose of behavioural advertising. Though it is true that users "accepted" the app's data protection information when they registered, however, this did not constitute effective consent to the disclosure of data because users were forced to do so if they wanted to use the app. The originally planned fine was even supposed to amount to EUR 10 million (see [BB Privacy Ticker February 2021](#)). As a mitigating factor, though, the fact that Grindr quickly corrected the deficiencies was taken into account.

[To the press release of the authority \(dated 15 December 2021\)](#)

[To the report on Heise.de \(dated 15 December 2021, German\)](#)

## 4. Opinions

### +++ THE DATA PROTECTION AUTHORITY OF LOWER SAXONY: FAQ ON THE TTDSG +++

In an FAQ, the State Commissioner for Data Protection (LfD) of Lower Saxony provides guidance on the application of the newly introduced Telecommunications Telemedia Data Protection Act (*Telekommunikation-Telemedien-Datenschutz-Gesetz*, TTDSG). The authority answers questions relevant to practice, including which innovations the TTDSG brings, what will change in the use of cookies and what website operators should pay particular attention to. The focus is thus on the very practice-relevant Section 25 TTDSG, which regulates data storage and access on the user's end devices (e.g. through cookies). The FAQ also contains useful information for companies and website operators outside Lower Saxony.

[To the FAQs of the LfD Lower Saxony \(of 1 Dezember 2021, German\)](#)



**SEASON'S  
GREETINGS  
AND A HAPPY  
NEW YEAR!**

Even shortly before the Christmas holidays, there are numerous, sometimes surprising developments in data protection that should be kept in mind. Yet, these are certainly not the only surprises of the current month after all, as the pre-Christmas season has already begun.

So we wish you a peaceful and merry Christmas without any data protection complaints or other unpleasant surprises.

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