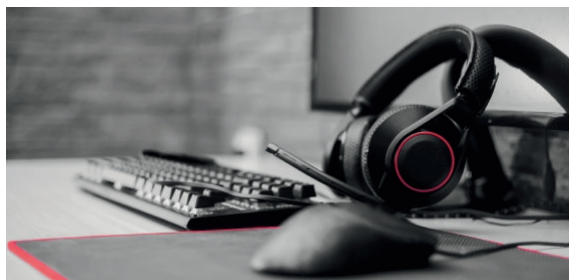


Privacy Ticker

July 2022



+++ Member States Can Adopt Stricter Legislation for Dismissal of Company Data Protection Officers +++ Greek Data Protection Authority Issues EUR 20m Fine +++ Data Protection Authorities Check Data Processing Contracts of Hosting Providers +++

1. Changes in Legislation

+++ EUROPOL REGULATION ENTERED INTO FORCE +++

On 28 June 2022, the so-called Europol Regulation entered into force. The Regulation expands considerably the mandate of the European police authority with regard to the processing of personal data. The investigators will be able to analyse complex datasets and Big Data to support the Member States in fighting against serious and organised crime and terrorism. However, the Regulation is disputed. In particular, the EU Data Protection Supervisor, Wojciech Wiewiórowski, criticises that the mass storage of data also bears the risk that victims and witnesses of crimes "are unlawfully linked to a criminal activity in the entire EU."

[To the report on heise.de \(dated 29 June 2022, in German\)](#)

2. Case Law

+++ ECJ: MEMBER STATES CAN ADOPT STRICTER LEGISLATION FOR DISMISSAL OF COMPANY DATA PROTECTION OFFICERS +++

The European Court of Justice had to decide on the question whether the German Federal Data Protection Act may contain stricter provisions for dismissal than the GDPR. The background to this was a legal dispute before the German Federal Labour Court which had doubts as to whether Section 38 (2) of the German Data Protection Act, in conjunction with Section 6 (4) sentence 2 German Data Protection Act, was compatible with European law. According to this provision, a company data protection officer may only be terminated without notice for good cause. The GDPR does not provide for such a strict provision. However, the ECJ ruled that the German provision is permissible because it serves to preserve the functional independence of the data protection officer and thus ensures that the provisions of the GDPR are effective.

[To the ECJ ruling \(dated 22 June 2022, C-534/20\)](#)

+++ ECJ: EU MEMBER STATES MUST SIGNIFICANTLY RESTRICT TRANSMISSION OF PASSENGER DATA +++

The Belgian Constitutional Court had referred several questions to the European Court of Justice regarding the Directive on the use of PNR data to fight terrorism and crime. PNR stands for "Passenger Name Record" and means airline passenger data. The Directive requires the systematic processing of a large volume of PNR data of passengers on flights between the EU and third countries when entering or leaving the EU to combat terrorist offences and serious crime. Member States may also apply the Directive to flights within the European Union. The Belgian Court criticised the scope of the data collection and the general nature of the processing, which in its view violates the right to respect for private life and to protection of personal data. The Court of Justice ruled that the Directive was valid in principle, but respect for fundamental rights required that the data collection and processing powers provided for in the Directive must be limited to what is absolutely necessary. If there is no real and present or foreseeable terrorist threat to a Member State, Union law is in conflict with national legislation providing for the transfer and processing of PNR data on flights as well as transport by other means within the EU.

[To the ECJ ruling \(dated 21 June 2022, C-817/19\)](#)

+++ ADMINISTRATIVE COURT OF WIESBADEN: INADMISSIBILITY OF GPS TRACKING BY LOGISTICS COMPANY +++

The Administrative Court of Wiesbaden had to decide on the claim of a freight forwarding company rejecting a measure of the Hessian Commissioner for Data Protection and Freedom of Information. The authority had prohibited the company from recording and storing the location details of its drivers using GPS technology. The Court upheld the authority's decision. The GPS tracking was already illegal because it was carried out without the knowledge or even consent of the employees. In addition, the freight forwarder had not been able to present any convincing reasons justifying the storage of location data. Route optimisation, and protection against theft, which were generally presented by the freight forwarder, could also be carried out by live monitoring the vehicles. However, this would of course also require that the concerned employees would be informed about this measure.

[To the judgment of the Wiesbaden Administrative Court \(dated 17 January 2022, 6 K 1164/21.WI, in German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ HELLENIC DATA PROTECTION AUTHORITY: EUR 20 MILLION FINE IMPOSED ON CLEARVIEW AI +++

The Hellenic DPA imposed a fine of EUR 20 million on the US company Clearview AI. The company offers a service which uses artificial intelligence to create biometric profiles of individuals. The data for this is obtained from publicly available photos of the persons concerned. Clearview AI maintains a database of several billion photos for this purpose. The authority found that there was no legal basis for processing the data. Beyond that, the data subjects had neither been informed nor had they given their consent to such processing. Therefore, the authority banned further processing of personal data of individuals in Greece. This is not the first fine imposed on Clearview AI. The Italian data protection authority had already imposed a fine of the same amount (see [AB's Privacy Ticker of March 2022](#)).

[To the DPA's administrative fine \(dated 13 July 2022, in Greek\)](#)

[To the press release of the European Data Protection Board \(dated 20 July 2022\)](#)

+++ ITALIAN DATA PROTECTION AUTHORITY FINES DATA DISCLOSURE TO UNAUTHORISED THIRD PARTIES +++

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP) has imposed a fine of EUR 100,000 on a bank. The customer in question has had an account with the bank since she was a child. Her father, who had been employed by the bank in the past, had been authorised to request information about the account. After reaching majority, the father had again requested and received information, as he was still known to the responsible bank employee as a former employee of the bank. The bank employee also knew that the father had been authorised to request information about the account in the past. However, once the customer had reached the age of majority, the bank did not check whether the authorisation continued to be valid, which was not the case. According to the authority, the bank would have had a duty to verify the authorisation after the person reached the age of 18, so the unverified disclosure of data was unlawful.

[To the administrative fine notice of the authority \(dated 26 May 2022, in Italian\)](#)

[To the article at Data Guidance \(dated 1 July 2022\)](#)

+++ FRENCH DATA PROTECTION AUTHORITY IMPOSES EUR 1 MILLION FINE FOR MISHANDLING DATA SUBJECT RIGHTS +++

The French supervisory authority, Commission Nationale de l'Informatique et des Libertés (CNIL), imposed a EUR 1million fine on an energy company. Firstly, the authority had received 18 complaints from individuals regarding failure to comply with their rights to access and objection. Secondly, the authority criticised that the company's website provided an online form to conclude energy contracts where data subjects had to consent to the use of their personal data for marketing purposes when concluding a contract. Finally, the authority found that individuals who were contacted for advertising measures by telephone were not sufficiently informed about the processing of their personal data and their rights.

[To the administrative fine of the authority \(dated 23 June 2022, in French\)](#)

[To the press release of the authority \(dated 30 June 2022\)](#)

4. Opinions

+++ GERMAN DATA PROTECTION AUTHORITIES CHECK DATA PROCESSING AGREEMENTS OF HOSTING PROVIDERS +++

The data protection authorities of a number of German federal states joined forces to check, in a coordinated effort, the so-called data processing agreements between providers of hosting services and their customers. The authorities of the states of Berlin, Bavaria, Lower Saxony, Rhineland-Palatinate, Saxony and Saxony-Anhalt participate in the initiative. In particular, the authorities intend to investigate whether the standard contracts offered by hosting providers sufficiently cover the processor's obligation to furnish evidence that respective data protection measures are observed. The Berlin Commissioner for Data Protection and Freedom of Information has published a check list to this end.

[To the check list of the Berlin Commissioner for Data Protection \(dated 30 June 2022, in German\)](#)

[To the press release of the Berlin Commissioner for Data Protection \(dated 19 July 2022, in German\)](#)

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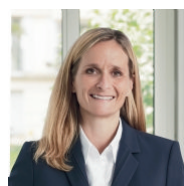
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