



**+++ SETTLEMENT ON THE WHISTLEBLOWER PROTECTION ACT
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GDPR INFRINGEMENT DOES NOT AUTOMATICALLY LEAD TO
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1. Changes in Legislation

+++ SETTLEMENT ON THE WHISTLEBLOWER PROTECTION ACT+++

In the second attempt, the Federal Parliament (Bundestag) and the Federal Council (Bundesrat) have agreed on the Whistleblower Protection Act to implement the EU Whistleblower Directive. The Federal Parliament had already passed a first draft in December 2022 (see [AB Privacy Ticker January 2023](#)). However, since the Federal Council blocked the law, the mediation committee was called upon. There, the federal and state governments were able to agree on a softer version of the law. The compromise provides that the obligation to set up anonymous reporting channels will be abolished. The right of the data subjects to non-material damages was also deleted. In addition, the fines for companies for violations of the law were reduced by half from EUR 100,000 to EUR 50,000. The new Act is expected to come into force as early as mid-June 2023.

[To the ADVANT Beiten blog post \(in German\)](#)

[To the ADVANT Beiten special newsletter \(in German\)](#)

[To the press release of the Federal Government \(dated 12 May 2023, in German\)](#)

2. Case Law

+++ ECJ: A MERE BREACH OF DATA PROTECTION IS NOT SUFFICIENT FOR NON-MATERIAL DAMAGES +++

The European Court of Justice (ECJ) has ruled on the requirements for non-material damages in the event of a breach of the GDPR and made some important fundamental decisions in the process. A mere breach of data protection is not sufficient to justify a claim for damages. Many German labour courts had previously taken this view. Furthermore, the ECJ states that the existence of non-material damage does not depend on a certain degree of materiality. So far, there has been a great deal of controversy among German courts as to whether it is necessary to exceed a so-called de minimis threshold. Finally, the ECJ clarifies that the GDPR does not set any requirements regarding the assessment of the specific damages. The ECJ thus leaves it up to the national courts to independently assess and determine the amount of damages. The case was based on the legal dispute of a data subject against the Austrian Post. The latter had collected information on the political affinities of the data subject with the help of an algorithm. The data subject claimed that he had suffered a loss of confidence and exposure as a result and claimed damages of EUR 1,000. Although the Austrian courts considered the possibility of a data protection breach, they required that a materiality threshold be exceeded for damages to exist, which they did not find to be fulfilled in this case.

[To the ADVANT Beiten blog post \(in German\)](#)

[To the ECJ ruling \(dated 4 May 2023, C-300/21\)](#)

+++ ECJ STRENGTHENS RIGHT TO SURRENDER DATA COPIES+++

The ECJ has strengthened the right of access and transfer of a copy under Art. 15 (3) GDPR and adopted a broad interpretation of the term "copy". In the original case, an Austrian plaintiff demanded information about his personal data and a copy of his data from a credit agency. The agency only provided a list of the data, but not a copy of the data itself, such as emails and letters. The Austrian Federal Administrative Court finally referred the case to the ECJ, which was to decide on the scope of the claim. In its decision, the ECJ emphasised that the data subject had the right to a faithful and intelligible reproduction of all his or her data. This includes the disclosure of entire documents if this is indispensable for transparent information and a comprehensible presentation of the data. If

the rights of third parties were affected by the disclosure of the copy, the interests had to be considered and balanced, but this should not lead to the data subject being denied any claim.

[To the ECJ ruling \(dated 4 May 2023, C-487/21\)](#)

+++ ECJ: GDPR INFRINGEMENT DOES NOT AUTOMATICALLY LEAD TO UNLAWFUL DATA PROCESSING +++

Furthermore, the ECJ dealt with the question of whether a breach of the GDPR automatically leads to unlawful processing of personal data. In the underlying case, the Administrative Court of Wiesbaden had to decide whether a missing joint controller agreement (Art. 26 GDPR) or an incomplete register of processing activities (Art. 30 GDPR) causes the related data processing to be unlawful. The ECJ denies this for the two provisions and emphasises the difference between provisions of the GDPR that affect the lawfulness of data processing and those that do not. According to the ECJ, only the provisions of Chapter II of the GDPR, i.e. Articles 5 to 11, are relevant for data processing. It is thus clear that a breach of Articles 26 and 30 of the GDPR is not sufficient to constitute unlawful data processing. The same will therefore apply to missing data protection notices or faulty data processing agreements, although such violations will of course still be subject to fines.

[To the ECJ ruling \(dated 4 May 2023, C-60/22\)](#)

+++ FRANKFURT HIGHER REGIONAL COURT: NO INJUNCTIVE RELIEF FOR DATA TRANSFER TO THE USA +++

The Frankfurt Higher Regional Court has ruled that a private individual is not entitled to injunctive relief against a company for transferring data to third parties. The plaintiff demanded that an online shop operator refrain from transmitting his personal data (including his IP address) to third parties based in the USA. The online shop used 17 third-party services on its site, including Google Tag Manager, Google Analytics, Google Fonts and Google ReCaptcha. The court stated that a claim for injunctive relief against the storage of data could be derived from Art. 17 GDPR. The transfer of data to third parties, however, is not covered by Art. 17 GDPR. Claims for injunctive relief under national law, in particular under Sections 1004 and 823 of the German Civil Code, were also excluded due to the primacy of the GDPR.

[To the Court's decision \(dated 30 March 2023, 16 U 22/22, in German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ RECORD FINE OF EUR 1.2 BILLION AGAINST META +++

The Irish Data Protection Commission (DPC) has imposed a fine of EUR 1.2 billion on Meta Platforms Ireland Limited, the parent company of Facebook. This is the highest fine ever imposed for a breach of the GDPR. According to the authority, Facebook has unlawfully transferred data of European users to the USA since 2020. The standard contractual clauses concluded by Facebook could not eliminate the risk for the data subjects. Following a consultation process and binding requirements from the European Data Protection Board (EDPB), Meta was also ordered to suspend any future transfers of personal data to the US within five months. Meta was also ordered to bring its processing operations into compliance with the GDPR within six months and to stop or reverse the storage of data transferred to the US. Meta has already announced that it will file an appeal against the decision.

[To the DPC press release \(dated 22 May 2023\)](#)

[To the EDPB press release \(dated 22 May 2023\)](#)

+++ FINE OF EUR 2.26 MILLION AGAINST DEBT COLLECTION COMPANY +++

The Croatian Personal Data Protection Agency (AZOP) has imposed a fine of EUR 2.26 million on the debt collection agency B2 Kapital d.o.o. Based on an anonymous report, the authority identified several serious data protection violations. In at least 130,000 cases, data subjects had not been sufficiently informed about the data processing and incorrect legal bases had been stated. Furthermore, contrary to Art. 28 GDPR, the debt collection company had not concluded a data processing agreement with a service provider for monitoring consumer insolvency, which affected over 890,000 individuals. Last, B2 Kapital had not taken appropriate technical and organisational measures to protect the processing of personal data, which led to a data leak that has existed since 2019. Making matters even worse, the AZOP reprimanded the company for inadequate cooperation, which was factored into the size of the fine.

[To the press release of AZOP \(dated 4 May 2023\)](#)

+++ NORWEGIAN DATA PROTECTION AUTHORITY IMPOSES FINE OF EUR 900,000 ON FITNESS CENTRE CHAIN +++

The Norwegian data protection authority Datatilsynet has imposed a fine of EUR 900,000 on the fitness centre chain SATS in a cross-border cooperation procedure with the supervisory authorities of Denmark and Finland. SATS is the largest chain of fitness centres in Scandinavia. Between 2018 and 2021, the Norwegian supervisory authority received several complaints from customers for non-compliance with data subject rights. Requests for review or deletion of data were delayed or not implemented at all. The authority also complained that SATS had not correctly defined the processing of training history data of fitness centre members and that the information in the data protection information was misleading in this respect.

[To the press release of Datatilsynet \(dated 25 April 2023, in Norwegian\)](#)

[To the decision of Datatilsynet \(dated 6 February 2023\)](#)

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EDITOR IN CHARGE

Dr Andreas Lober | Rechtsanwalt

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Rechtsanwaltsgesellschaft mbH

BB-Datenschutz-Ticker@advant-beiten.com

www.advant-beiten.com

Your Contacts

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

Office Frankfurt

Mainzer Landstrasse 36 | 60325 Frankfurt am Main

Dr Andreas Lober

+49 69 756095-582

[vCard](#)



Susanne Klein, LL.M.

+49 69 756095-582

[vCard](#)



Lennart Kriebel

+49 69 756095-582

[vCard](#)



Fabian Eckstein, LL.M.

+49 69 756095-582

[vCard](#)



Jason Komninos, LL.M.

+49 69 756095-582

[vCard](#)



Office Berlin

Luetzowplatz 10 | 10785 Berlin

Dr Ariane Loof

+49 30 26471-282

[vCard](#)



Office Dusseldorf

Cecilienallee 7 | 40474 Dusseldorf

Mathias Zimmer-Goertz

+49 211 518989-144

[vCard](#)



Christian Frederik Döpke, LL.M.

+49 211 518989-144

[vCard](#)



Office Freiburg

Heinrich-von-Stephan-Straße 25 | 79100 Freiburg

Dr Birgit Münchbach

+49 761 150984-22

[vCard](#)



Office Munich

Ganghoferstrasse 33 | 80339 Munich

Katharina Mayerbacher

+89 35065-1363

[vCard](#)





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