



## 1. Changes in legislation

### **+++ NEW RULES FOR CONSENT TO TELEPHONE ADVERTISING +++**

The Federal Parliament has passed an amendment to the German Unfair Competition Act (*Gesetz über den unlauteren Wettbewerb, UWG*). With the newly introduced Section 7a UWG, advertisers will in future be required to document consent to telephone advertising in an appropriate form and to retain it "for five years from the time consent was obtained and after each use". While a corresponding documentation obligation already ensued from the GDPR, the five-year retention obligation is new and should be urgently complied with. A violation is subject to a fine according to the new version of Section 20 (1) UWG. The new regulations come into force on 1 October 2021.

[To the Federal Law Gazette \(\*Bundesgesetzblatt\*\) \(dated 17 August 2021, German\)](#)

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### **+++ PEOPLE'S REPUBLIC OF CHINA PASSES DATA PROTECTION LAW +++**

On 20 August 2021, the People's Republic of China has passed the Personal Information Protection Law (PIPL), a law on the protection of personal data. The law is based on many of the principles of the GDPR (such as lawfulness, purpose limitation, data minimization, storage limitation and accountability) and grants citizens various

data subject rights. It primarily addresses private companies and is also applicable to foreign companies with business activities in China. Under the PIPL, Western companies may also be required to appoint data protection officers, fulfil reporting obligations to supervisory authorities or refrain from certain data transfers abroad. This Law shall enter into force on 1 November 2021.

[To the report on Reuters \(dated 20 August 2021\)](#)

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## 2. Case Law

### **+++ HIGHER REGIONAL COURT OF DUESSELDORF: PUBLICATION OF CHILDREN'S PHOTOGRAPHS IN SOCIAL MEDIA REQUIRES CONSENT OF BOTH PARENTS +++**

The Higher Regional Court of Duesseldorf has ruled that the publication of children's photos in social media requires the consent of both custodial parents. In the case at issue, the operator of a hairdressing salon had published photos of two children (born in 2010) on Facebook and Instagram with the father's consent. The mother, however, did not consent to the publication, took legal action against it and won the case in court. The court stated that effective consent within the meaning of Article 6 (1) lit. a) GDPR and Sec. 22 German Art Copyright Act (*Kunsturhebergesetz, KUG*) requires the consent of both custodial parents (as holders of parental responsibility); consent of only the father is not sufficient. The reason for this is that children (under the age of 16) cannot give consent to the processing of their data themselves.

[To the decision of the Higher Regional Court Duesseldorf at Beck-online \(dated 20 July 2021, 1 UF 74/21, German\)](#)

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### **+++ HIGHER REGIONAL COURT OF BREMEN: GDPR COMPENSATION ONLY IN THE EVENT OF ACTUAL DAMAGE +++**

The Higher Regional Court of Bremen has ruled that not every breach of the GDPR automatically leads to a claim for damages under Article 82 GDPR on the part of the data subject. Rather, the claim requires that the data subject has suffered material or immaterial damage. In the proceedings to be decided, the data subject had only argued that there had been a breach of the GDPR, but not to what extent she had suffered damage as a result.

[To the decision of the Higher Regional Court Bremen \(dated 16 July 2021, 1 W 18/21, German\)](#)

## **+++ REGIONAL LABOUR COURT OF HAMM: EUR 1,000 GDPR COMPENSATION FOR INCOMPLETE INFORMATION PROVIDED BY THE EMPLOYER +++**

The Regional Labour Court of Hamm ruled that a dismissed employee was entitled to damages in the amount of EUR 1,000 against her former employer, who had not provided complete information under Article 15 GDPR. The claim under Article 82 GDPR does neither require that the person concerned has suffered substantial non-material damage nor just a subjective feeling of "loss of control". The GDPR does not provide for a so-called "materiality threshold" for the question of "whether" liability applies. This very question has been disputed since the introduction of the GDPR and will probably have to be ultimately decided by the European Court of Justice (see, among others, [BB Privacy Ticker February 2021](#)). The court has granted leave to appeal.

[To the judgement of the Regional Labour Court Hamm \(dated 5 May 2021, 6 Sa 1260/20, German\)](#)

[To the blog post "GDPR pain and suffering compensation in future also for minor damages?" dated 24 February 2021 \(German\)](#)

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

### **+++ LUXEMBOURG DATA PROTECTION AUTHORITY: RECORD FINE OF EUR 746 MILLION IMPOSED ON AMAZON +++**

The Luxembourg data protection authority Commission Nationale pour la Protection des Données (CNPD) has imposed a fine of EUR 746 million on Amazon for GDPR violations. The fine had been expected beforehand (see [BB Privacy Ticker June 2021](#)), though not in this amount. To date, it is the highest GDPR fine ever imposed. It is as yet unknown which individual violations Amazon has been charged with. According to unconfirmed press reports, the fine could be related to the unauthorised (i.e. without consent) display of personalised advertising or targeted advertising. Amazon has announced its intention to defend itself against the fine.

[To the CNPD press release \(dated 6 August 2021\)](#)

[To the German report on Heise Online](#)

## **+++ BERLIN COMMISSIONER FOR DATA PROTECTION: ACTION AGAINST 50 WEBSITE OPERATORS USING UNLAWFUL TRACKING +++**

The Berlin Commissioner for Data Protection and Freedom of Information has contacted around 50 website operators about the unlawful use of tracking technologies and third-party services. The authority announced that informative notices were sent to companies "whose cookie banners have been found to be particularly deficient, who have a comparatively large number of users or who may be processing particularly sensitive data". In its press release, the authority emphasised that multi-layer cookie banners are also illegal if the rejection of tracking is only possible in a hidden way, or is more complicated for users than the acceptance of tracking. Investigation proceedings were to be initiated against the companies contacted if they did not remedy the situation in a timely manner.

[To the press release of the Berlin DPA \(dated 9 August 2021, German\)](#)

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## **+++ AUSTRIAN DATA PROTECTION AUTHORITY: EUR 2 MILLION FINE FOR FORMATTING ERRORS IN CONSENT +++**

The Austrian Data Protection Authority (DPA) has issued a fine of approximately EUR 2 million against the retail chain Rewe. Rewe had customer profiles on shopping behaviour generated via the customer loyalty programme "jō Bonus Club", which were also shared with partner companies. According to the DPA, customers were not sufficiently informed about the profiling when obtaining the consent required for this. It was criticised that information on profiling was only visible by scrolling down the declaration of consent, but consent could already be given further up in the registration form. After a corresponding notice from the DPA, the registration form was redesigned to be legally compliant, but the data of approximately 2.3 million users who had given their consent according to the defective form (and thus only ineffectively) were still further processed. Renewed consent was not obtained with the new form that was converted after the complaint. This would have been necessary, however, as the ineffective consent did not constitute a suitable legal basis (Article 6 (1)(a) GDPR) for profiling.

[To the German report on Heise Online](#)

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## **+++ ITALIAN DATA PROTECTION AUTHORITY: EUR 2.5 MILLION FINE AGAINST FOOD SUPPLIER +++**

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP) has imposed a fine of around EUR 2.5 million on the food delivery service Deliveroo Italy s.r.l. for deficiencies in the Deliveroo Driver App's driver management system. Deliveroo drivers have to log in to this app to place orders and book work shifts. Among other things, the app did not comply with the requirements of data minimization (e.g. because of the

extensive collection of location data) and storage limitation (e.g. because of the general storage period of 6 years). The company had also failed, for instance, to sufficiently inform the drivers and to carry out a data protection impact assessment.

[To the GPDP press release \(dated 22 July 2021, Italian\)](#)

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### **+++ THE DATA PROTECTION AUTHORITY OF LOWER SAXONY IMPOSES A FINE FOR OUTDATED WEBSITE SOFTWARE +++**

The State Commissioner for Data Protection of Lower Saxony has issued a fine of EUR 65,000 against a web shop operator who violated Articles 25 and 32 GDPR by failing to adequately protect customer passwords. After a reported data breach (Article 33 GDPR), the authority ordered a technical inspection of the website which revealed that the software used had not been supported with security updates since 2014. The authority mitigated the fine by taking into account that the web shop operator had already informed its customers before the fine proceedings that a change of password was necessary.

[To the 26th Activity Report of the DPA for 2020 \(p. 97 f., German\)](#)

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## **4. Opinions**

### **+++ EDPB: GUIDELINES ON CODES OF CONDUCT AS A TOOL FOR DATA TRANSFERS TO THIRD COUNTRIES +++**

The European Data Protection Board (EDPB) has published draft guidelines on codes of conduct as a tool for data transfers to third countries. The reason for this is that the GDPR opens up the possibility of complying with certain obligations under data protection law by complying with so-called "codes of conduct" (Article 40 GDPR). Compliance with the corresponding rules of conduct can, for instance, serve as a transfer mechanism within the meaning of Article 46 (2) (e) GDPR and thus ensure an adequate level of data protection in the third country. This gives companies an additional option (for instance, in addition to concluding standard data protection clauses) for the third-country transfer. The EDPB's guidelines, which have now been published, initially serve as an aid for the drafting of such codes of conduct. The guidelines are open for consultation until 1 October.

[To the EDPB Guidelines 04/2021 \(dated 15 July 2021\)](#)

## **Your contacts**

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