



1. Changes in legislation

+++ EU COMMISSION CLASSIFIES UK AS SAFE THIRD COUNTRY +++

The European Commission has issued the adequacy decision (Art. 45 GDPR) for the United Kingdom (UK), thus certifying that the country provides an adequate level of data protection. This simplifies the data transfer to the UK, which has been considered a "third country" since Brexit. This is because data transfers to third countries are only permitted if appropriate safeguards (Art. 44 et seq. GDPR) ensure an adequate level of data protection in that country. A data transfer to the UK can now be made on the basis of the adequacy decision; further measures to protect the data (Art. 46 GDPR), such as the conclusion of standard data protection clauses, need not be taken.

[On the EU Commission's adequacy decision \(dated 28 June 2021\)](#)

2. Case Law

+++ FEDERAL SUPREME COURT: GDPR RIGHT TO INFORMATION INCLUDES INTERNAL MEMOS AND COMMUNICATIONS +++

The German Federal Supreme Court has ruled that the scope of the right to information under Art. 15 (1) GDPR must be interpreted extensively. In principle, the right to information encompasses both internal notes and internal communications of the controller as well as correspondence with third parties, provided that information on the data subject can be found in these communications. The right to information even exists if the data subject already knows the data, such as the content of a letter being sent to him/her. Only legal assessments based on personal data can be excluded from the scope of the right to information. The court expressly left open the conditions under which the right to information is limited, for instance due to disproportionate effort or conflicting interests in confidentiality.

[On the ruling of the Federal Supreme Court \(dated 15 June 2021, VI ZR 576/19, German\)](#)

+++ HIGHER ADMINISTRATIVE COURT OF NORTH RHINE-WESTPHALIA: GDPR CLAIM TO COPY INCLUDES EXAMINATIONS AND EXAMINERS' REPORTS +++

The Higher Administrative Court of North Rhine-Westphalia has ruled that a former law student is entitled to a copy of his own examination papers, including the examiners' reports, free of charge from the State Judicial Examination Office. The scope of the so-called right to data copy (Art. 15 (3) GDPR) is currently subject to fierce controversy; most recently, a ruling by the Federal Labour Court did not bring any clarity ([BB Privacy Ticker May 2021](#)). The court now states that there is no need for a restrictive interpretation of this right to certain personal data and that the provision of copies in the specific case does not require a disproportionate effort. The court has allowed an appeal to the Federal Supreme Court.

[On the judgement of the Higher Administrative Court \(dated 8 June 2021, 16 A 1582/20, German\)](#)

+++ BONN REGIONAL COURT: NO DAMAGES UNDER THE GDPR DUE TO DELAY IN PROVIDING INFORMATION +++

The Regional Court of Bonn has ruled that the data subject is not entitled to damages under the GDPR if the controller does not comply with its duty to provide information under Art. 15 GDPR within the time stipulated by law. A liability of the controller

according to Art. 82 GDPR only arises for damages that are based on an unlawful processing of personal data, but not on a mere violation of information obligations as set forth in the GDPR. The controller had provided the information only about 9 months after receipt of the request for information, instead of within one month as required by Art. 12 (3) GDPR.

[On the judgement of the Bonn Regional Court \(dated 1 July 2021, 15 O 372/20, German\)](#)

+++HIGHER ADMINISTRATIVE COURT OF SCHLESWIG: ON THE RIGHT TO REFUSE INFORMATION IN ENFORCEMENT PROCEEDINGS +++

The Higher Administrative Court of Schleswig has ruled in interim legal protection proceedings that a company also has the right to refuse to provide information in enforcement proceedings, i.e. against a decision of an authority that has already become final, if the company is facing criminal or administrative offence proceedings when it provides the information. In this case, the data protection authority demanded information from an online mail order company about the technical and organisational measures taken as well as the records of processing activities under threat of a penalty payment. The company initially did not react at all and finally refused to provide the information, but only after the deadline set had expired. The administrative fine imposed by the authority was partially annulled by the court.

[On the decision of the Higher Administrative Court Schleswig \(dated 28 May 2021, 4 MB 14/21, German\)](#)

+++ LABOUR COURT MÜNSTER: DAMAGES UNDER THE GDPR DUE TO PUBLICATION OF EMPLOYEE'S PHOTO +++

The Labour Court of Münster found that the employee of a university was entitled to damages in the amount of EUR 5,000 (approximately one gross month's salary) after the university published a photograph of the employee in an ethnic context without her consent. The photo of the employee had been printed in a brochure in which the university advertised its international orientation and its worldwide partnerships. The staff member was pictured next to a student wearing a headscarf. The court found that this was discrimination against the employee because of her ethnicity and a breach of data protection, so that the claim for damages was based on several legal grounds, including Art. 82 GDPR.

[On the judgement of the Münster Labour Court \(25 March 2021, 3 Ca 391/20, German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ EDPB WAIVES EMERGENCY DECISION AGAINST FACEBOOK +++

The European Data Protection Board (*EDPB*) has decided not to prohibit Facebook from further processing WhatsApp user data in the so-called emergency procedure. The Hamburg Commissioner for Data Protection and Freedom of Information had issued a corresponding provisional order against Facebook in May of this year but could not take any final measures due to lack of jurisdiction - this lies with the Irish data protection authority (see [BB Privacy Ticker May 2021](#)). The EDPB has now also refrained from this, even though it assumed in principle that Facebook was in "high probability" of violating the GDPR. However, there was a lack of evidence and urgency to issue an emergency decision. It is now up to the Irish data protection authority to conduct further investigations.

[On the EDPB press release \(dated 15 July 2021\)](#)

+++ DUTCH DATA PROTECTION AUTHORITY IMPOSES FINE FOR PRIVACY POLICY IN ENGLISH LANGUAGE +++

The Dutch data protection authority (*Autoriteit Persoonsgegevens, AP*) has imposed a fine of EUR 750,000 on the TikTok platform. The platform had provided its Dutch users with a privacy policy in English only. According to the AP, TikTok thus violated the transparency obligations under Art. 12 (1) GDPR, according to which information on data processing must be provided in a transparent, comprehensible, and easily accessible form. In its decision, the AP pointed out that the platform was often used by young children.

[On the AP press release \(dated 22 July 2021\)](#)

[On the administrative fine notice of AP \(dated 9 April 2021\)](#)

+++ FRENCH DATA PROTECTION AUTHORITY IMPOSES MILLION-EURO FINE FOR EXCEEDING RETENTION PERIODS +++

The French data protection authority (*Commission Nationale de l'Informatique et des Libertés, CNIL*) has imposed a fine of EUR 1.75 million on an insurance company for, among other things, violating the storage limitation (Art. 5 (1) lit. e) GDPR). The company had defined retention periods for the data of millions of data subjects but had not implemented them in its IT systems. The actual retention of the data thus signifi-

cantly exceeded the retention periods provided for by law. The company was also accused of having violated information obligations (Art. 13, 14 GDPR).

[On the CNIL press release \(dated 22 July 2021, French\)](#)

4. Opinions

+++ FEDERAL COMMISSIONER FOR DATA PROTECTION: AUTHORITIES SHOULD SHUT DOWN FACEBOOK FAN PAGES +++

The German Federal Commissioner for Data Protection and Freedom of Information has sent a circular to federal ministries and authorities asking them to shut down all Facebook pages operated by public authorities (so-called Facebook fan pages). According to him, Facebook fan pages cannot currently be operated in conformity with data protection law, as Facebook only concludes an insufficient agreement with fan page operators in accordance with Art. 26 GDPR. The underlying fact is that Facebook and the respective fan page operator are jointly responsible for data processing on the fan page and the conclusion of such a contract is mandatory. The Federal Commissioner for Data Protection also pointed to the so-called "Schrems II ruling" of the ECJ (dated 16 July 2020, C 311-18), according to which the US do not provide an adequate level of data protection (see [BB Privacy Ticker July 2020](#)).

[On the BfDI circular \(dated 16 June 2021, German\)](#)

+++ DATA PROTECTION AUTHORITY OF BADEN-WUERTTEMBERG: LIMITS OF SUPERVISION IN ONLINE EXAMINATIONS +++

The State Commissioner for Data Protection and Freedom of Information Baden-Wuerttemberg has published a handout on online examinations at universities. In it, the authority sets narrow limits on online supervision via video, which are, however, likely to contradict common practice in some cases. In its view, there are prohibitions in particular regarding the recording of visual and audio material, room surveillance (this already includes a camera pan through the room), attention tracking as well as the control of the end device (e.g. through screen sharing).

[On the handout of the authority \(dated 17 July 2021, German\)](#)

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