

Privacy Ticker

October 2022



+++ OLD SCCS EXPIRE +++ BIDEN RESTRICTS DATA ACCESS BY US INTELLIGENCE SERVICES +++ WAVE OF WARNINGS DUE TO THE USE OF GOOGLE FONTS +++

1. Changes in Legislation

+++ DATA TRANSFER TO THIRD COUNTRIES: "OLD" STANDARD DATA PROTECTION CLAUSES EXPIRE +++

Those who still transfer personal data to third countries (e.g. to the USA) on the basis of the "old" (as of 2010) standard data protection clauses (so-called "SCCs") should urgently update them - by 26 December 2022 at the latest - to the new status of 2021. Because on 27 December 2022, the "old" SCCs will be no longer effective and can no longer be used to secure data transfers to third countries. As a result, such data transfers will automatically become unlawful. The EU Commission had adopted "new" standard data protection clauses in June 2021 (see [Privacy Ticker June 2021](#)), which can still be used to secure data transfers. For existing old contracts, there is a transitional period to convert the contracts, which is now expiring. Enterprises should thus urgently verify whether all SCCs are up to date.

[To the new standard data protection clauses](#) (dated 4 June 2021)

+++ USA: BIDEN SIGNS DECREE FOR EU-US DATA PROTECTION AGREEMENT +++

US President Joe Biden has issued an executive order to impose stricter data access requirements on US intelligence agencies. For instance, access with discriminatory intent will henceforth be unlawful. In addition, EU data subjects will have new legal remedies to have their data exploited by the intelligence services reviewed by an independent data protection review court. The protective measures are intended to prepare for the adoption of the new EU-US data protection agreement (the so-

called "Trans-Atlantic Data Privacy Framework" or "TADPF"), the cornerstones of which were already negotiated in March of this year. The agreement is intended to make transatlantic data transfers uncomplicated and legally secure again in the future. Yet data protection activists are already expressing doubts as to whether the agreement can actually guarantee an adequate level of protection in the USA.

[To the Fact Sheet of the White House on the President's Executive Order](#)
(dated 7 October 2022)

+++ DIGITAL SERVICES ACT AND DIGITAL MARKETS ACT CLEAR FINAL HURDLE +++

The European Council has approved the Digital Services Act (DSA). Among other things, the DSA is intended to better protect consumers from illegal content and to subject online platforms in particular to new liability and transparency regulations (see [Privacy Ticker January 2022](#)). With the approval of the European Council, the legislative process is now complete, and the law will soon be published in the Official Journal of the EU. The DSA is expected to apply to particularly large platforms as early as mid-2023, and to the rest as of February 2024. Meanwhile, the Digital Markets Act (DMA), which among other things brings new competition rules for particularly large platforms (so-called "gatekeepers") (see [Privacy Ticker November 2021](#)), was published in the Official Journal of the EU in October. The DMA shall be in force as of 2 May 2023.

[To the report on heise.de](#) (dated 4 October 2022, in German)

[To the Digital Markets Act](#)

2. Case Law

+++ ECJ ON THE STORAGE OF CUSTOMER DATA IN AN EXTERNAL DATABASE +++

The European Court of Justice has ruled that customer data may be temporarily stored on external servers or databases in the event of a technical server malfunction until the errors in the existing database have been rectified. However, it is a prerequisite that the further processing on the external server is compatible with the original purposes for which the personal data were collected (Art. 6 (4) GDPR) and that the data are not stored for longer than is necessary to rectify the error (principle of storage limitation according to Art. 5 (1) (e) GDPR). The context is a case from Hungary in which an internet and TV provider is defending itself against a fine imposed by the Hungarian data protection authority. The

company had moved private customer data to a new database for testing and troubleshooting after a server malfunction but did not delete it after the malfunction was fixed.

[To the ECJ ruling](#) (dated 20 October 2022, C-77/21)

3. Regulatory Investigations and Enforcement Actions

+++ CRITERIA FOR DATA PROTECTION CERTIFICATION APPROVED BY COMPANIES FOR THE FIRST TIME +++

The State Commissioner for Data Protection and Freedom of Information of North Rhine-Westphalia approves EU-wide criteria for the certification of processors by a company for the first time. The "European Privacy Seal" certificate from EuroPriSe GmbH is intended to certify to processors that their data processing complies with the requirements of the GDPR. Companies applying for the certificate will be assessed by independent experts using a "compliance assessment programme". A prerequisite for the recognition of the certificate is that the criteria laid down in the programme are approved by a data protection authority, which has now happened. In the next step, the provider of the certificate can be accredited as a certification body (Art. 43 GDPR). For data controllers and processors, the certificate can facilitate the proof that specific requirements of the GDPR are being met (e.g. regarding the implementation of appropriate technical and organisational measures, Art. 24 (3) GDPR). It is valid for three years and can be renewed hereafter (Art. 42 (7) GDPR).

[To the press release of the authority](#) (dated 7 October 2022, in German)

+++ BERLIN DATA PROTECTION AUTHORITY IMPOSES FINE DUE TO CONFLICT OF INTEREST OF THE DATA PROTECTION OFFICER+++

The Berlin Commissioner for Data Protection and Freedom of Information has imposed a fine of EUR 525,000 on a Berlin e-commerce company. The company had appointed a company data protection officer who was also the managing director of two of the company's processors. The data protection officer thus had to monitor compliance with data protection law by the processors, which were managed by himself as managing director. In this context, the authority pointed out that data protection officers had an advisory and supervisory function that did not tolerate conflicts of interest. The task may not be taken over by persons who must control their own decisions, for instance due to a managerial function.

[To the press release of the authority](#) (dated 20 September 2022, in German)

+++ FRENCH DATA PROTECTION AUTHORITY IMPOSES EUR 20 MILLION FINE AGAINST CLEARVIEW +++

The French Supervisory Authority, Commission Nationale de l'Informatique et des Libertés (CNIL), imposed a EUR 20 million fine on the US company Clearview AI. The company maintains a database of billions of publicly available photos that are used, among other things, to create biometric profiles of the people concerned. Like the Greek and Italian data protection authorities, which had each imposed fines of the same amount earlier in the year (see [Privacy Ticker July 2022](#) and [March 2022](#)), the CNIL found, among other things, that there was no legal basis for the data processing carried out. The CNIL further ordered Clearview to stop collecting data on individuals in France and to delete facial images already stored within two months. In the event of a breach, the company faces a coercive penalty payment of EUR 100,000 for each day that the deadline is exceeded.

[To the EDPB press release](#) (dated 20 October 2022)

[To the administrative fine notice of CNIL](#) (dated 17 October 2022, in French)

4. Opinions

+++ DUE TO CURRENT EVENTS: WAVE OF WARNINGS DUE TO THE USE OF GOOGLE FONTS +++

At present, we are receiving numerous cases in which website operators are being warned about the use of Google Fonts and are being asked to pay between EUR 170 and 240. Most of the warnings come from a law firm in Berlin and/or Meerbusch. Such mass warnings can be abusive. Nevertheless, website operators should take the precaution of refraining from the "dynamic" integration of Google Fonts, in which IP addresses are transmitted to Google servers and possibly to the USA, and only store the fonts used locally. Insofar as companies are affected by warnings, these should be examined by a specialist lawyer. The Thuringian data protection authority, among others, had warned of this wave of warnings (see [Privacy Ticker August & September 2022](#)), which goes back to a ruling by the Munich Regional Court last January (see [Privacy Ticker February 2022](#)).

+++ OVERVIEW OF CAUSES OF DATA PROTECTION BREACHES AND DEFENCE MEASURES PUBLISHED +++

The Data Protection Commissioner of Saxony-Anhalt has published an overview of the most common causes of data breaches. These include the incorrect sending of letters by post, e-mail or fax, the improper disposal of documents or the recording of conversations. For each case, the authority also suggests concrete measures on how to immediately mitigate the impact of the data breach and how such data breaches can be prevented in the future. The overview is based on an evaluation of data breaches reported in the German state of Saxony-Anhalt. However, the immediate and preventive defence measures in particular should be helpful for companies throughout Germany.

[To the authority's overview](#)

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EDITOR IN CHARGE

Dr Andreas Lober | Rechtsanwalt
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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

[E-Mail](#)



Susanne Klein, LL.M.

+49 69 756095-582

[E-Mail](#)



Lennart Kriebel

+49 69 756095-582

[E-Mail](#)



Fabian Eckstein, LL.M.

+49 69 756095-582

[E-Mail](#)



Office Munich

Ganghoferstrasse 33 | 80339 Munich

Katharina Mayerbacher

+89 35065-1363

[E-Mail](#)



Office Dusseldorf

Cecilienallee 7 | 40474 Dusseldorf

Mathias Zimmer-Goertz

+49 211 518989-144

[E-Mail](#)



Christian Frederik Döpke, LL.M.

+49 211 518989-144

[E-Mail](#)





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