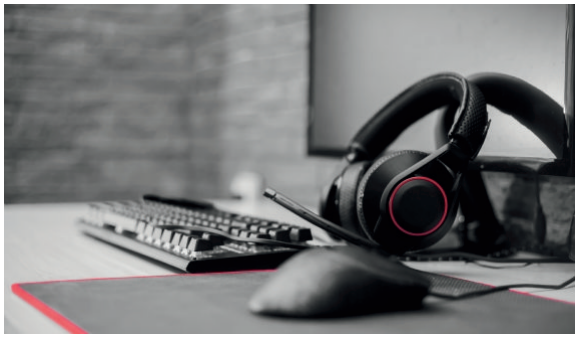
ADVANT Beiten

# Privacy Ticker

December 2024



**+++ CYBER RESILIENCE ACT AND AMENDMENT OF PRODUCT LIABILITY DIRECTIVE IN FORCE +++ LABOUR COURT OF DUISBURG: COMPENSATION OF EUR 10,000 FOR DISCLOSURE OF HEALTH DATA +++ AUSTRIAN FEDERAL ADMINISTRATIVE COURT: CONSENT FOR GOOGLE RECAPTCHA +++ FRANCE: FINE OF EUR 50 MILLION AGAINST TELECOMMUNICATIONS SERVICE PROVIDER FOR UNLAWFUL ADVERTISING +++**

# 1. Changes in Legislation

### +++ CYBER RESILIENCE ACT AND AMENDMENT OF PRODUCT LIABILITY DIRECTIVE IN FORCE +++

The Cyber Resilience Act (CRA) came into force on 10 December 2024. However, the main obligations introduced by the CRA will not apply until 11 December 2027. The CRA is designed to protect consumers and companies that purchase software or hardware products with a digital component (see Privacy Ticker October 2024). In addition, the European legislator adopted the amendment to the Product Liability Directive, which entered into force on 8 December 2024. The revised directive modernises and tightens the rules on compensation for personal injury, damage to property or loss of data caused by unsafe products. In substance, strict liability remains, but the product definition has been significantly extended to include software. Member States now have two years to transpose the provisions of the directive into national law.

To the wording of the Cyber Resilience Act (dated 25 September 2024)

To the wording of the Product Liability Directive (dated 18 November 2024)

To the press release of the Representation of the European Commission in Germany on the Product Liability Directive (dated 6 December 2024, in German)

# 2. Case Law

**+++ ECJ: EXEMPTIONS FROM INFORMATION OBLIGATIONS ALSO FOR SELF-GENERATED PERSONAL DATA +++**

The European Court of Justice (ECJ) has ruled that the exemptions from the obligation to provide information under Art. 14 para. 5 GDPR apply even if the personal data were generated by the data controller itself. The case concerned official immunity certificates, which contained personal data self-generated by the data controller. A complainant challenged to the issuing authority for failing to provide information about the self-generated data. In the subsequent court proceedings, the national court took the view that the exceptions to the obligation to provide information under Art. 14 para. 5 GDPR only apply to data of third parties and not to data generated by the data controller. The ECJ rejected this view and clarified that the exemptions of Art. 14 para. 5 GDPR also apply to self-generated personal data.

To the ECJ ruling (dated 28 November 2024, C-169/23)

**+++ FEDERAL SOCIAL COURT: DELAYED INFORMATION DOES NOT LEAD TO LOSS OF CONTROL OVER DATA +++**

The Federal Social Court has ruled that the mere delay between the data subject's right of access and the provision of information does not lead to a loss of control over the data and therefore does not give reason to the right of compensation under data protection law. The plaintiff had argued that the loss of control had occurred because he did not know what was happening to his data during the delay in providing the information. The court based its decision, among other things, on the case law of the ECJ, according to which a purely hypothetical risk is not sufficient to justify the right of compensation under data protection law (see Privacy Ticker February 2024). The plaintiff had only proved the time delay, but not the concrete risk of misuse of his data by third parties, as the data was still held by the data controller.

To the ruling of the Federal Social Court (dated 24 September 2024, B 7 AS 15/23 R, in German)

**+++ AUSTRIAN FEDERAL ADMINISTRATIVE COURT: CONSENT FOR GOOGLE RECAPTCHA +++**

The Austrian Federal Administrative Court has ruled that the setting of the Google reCAPTCHA cookie is not absolutely necessary for the functionality of a website and therefore requires consent. reCAPTCHA is used by a website operator to protect the website from fraudulent activities, spam and misuse. According to the court, the tool is merely useful, but not technically necessary for the operation of the website, as it does not affect the functionality of the website. Therefore, there is no legitimate interest in integrating the service and consent must be obtained.

To the judgment of the Austrian Court (dated 13 September 2024, W298 2274626-1, in German)

**+++ LABOUR COURT OF DUISBURG: COMPENSATION OF EUR 10,000 FOR DISCLOSURE OF HEALTH DATA +++**

The Labour Court of Duisburg has ordered an employer to pay compensation in the amount of EUR 10,000 for disclosing an employee's health data to third parties. Due to internal differences, the employer, an air sports club, had sent an email to around 10,000 members of the club informing them of the employee's intended dismissal. The email also reported on the employee's sick leave. The court ruled in favour of the plaintiff employee and confirmed that the employer had breached data protection law. The employer had passed on the plaintiff's health data to third parties without his consent. The plaintiff suffered non-material damage as a result of the widespread dissemination of his health data, which significantly damaged his reputation and standing.

To the judgment of the Labour Court of Duisburg (dated 26 September 2024, 3 Ca 77/24, in German)

# 3. Regulatory Investigations and Enforcement Actions

**+++ FRANCE: FINE OF EUR 50 MILLION AGAINST TELECOMMUNICATIONS SERVICE PROVIDER FOR UNLAWFUL ADVERTISING +++**

The French data protection authority Commission Nationale de l'Informatique et des Libertés (CNIL) has fined the telecommunications

service provider ORANGE EUR 50 million. ORANGE offers its users a mail service. Between the actual mails in the inbox, users were shown advertisements in the form of incoming mail, even though they had not given the necessary consent. Furthermore, cookies continued to be read even after consent had been withdrawn. According to the CNIL, this constitutes a violation of Art. 82 of the French Data Protection Act (corresponds to section 25 TDDDG in Germany), even if the information read out from the cookies is not used any further.

To the CNIL press release (dated 10 December 2024, in French)

To the administrative fine notice of the CNIL (dated 14 November 2024, in French)

**+++ ITALY: FINE OF EUR 5 MILLION AGAINST DELIVERY SERVICE FOR UNAUTHORIZED TRACKING +++**

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP) has imposed a fine of EUR 5 million on the delivery service Foodinho. Foodinho used an app to organize delivery trips, which tracked the real-time location, available working hours and delivery performance of the respective suppliers. Based on this data, the app created profiles and automatically assigned preferred shifts to individual drivers. Real-time geolocation was also partially active outside working hours and when the app was not open. In addition, a facial recognition function was provided, whereby employees were asked to post selfies at random intervals in order to verify their identity. The Italian data protection authority considered these functions to be unlawful processing of biometric data and profiling followed by automated decision-making. Furthermore, the drivers were not sufficiently informed about the data processing.

To the administrative fine notice of the GPDP (dated 13 November 2024, in Italian)

To the summary at GDPRhub

**+++ SPAIN: FINE OF EUR 1.3 MILLION AGAINST TELECOMMUNICATION SERVICE PROVIDER AFTER CYBER ATTACK +++**

The Spanish data protection authority Agencia Española de Protección de Datos (AEPD) has imposed a fine of EUR 1.3 million in total on the telecommunication service provider TELEFONICA DE ESPAÑA. The background was a security incident reported in 2022 in which cybercriminals used an employee's username and password to access the company's internal systems. The cybercriminals were able to use this access to thumb the data of more than 1 million customers. The fine consists of EUR 500,000 for violating the principles of integrity and confidentiality of data processing and of EUR 800,000 for violating the security of data processing.

To the AEPD's fine notice (dated 5 December 2024, in Spanish)

# 4. Opinions

**+++ EDPB GUIDELINES ON ART. 48 GDPR +++**

The European Data Protection Board (EDPB) has issued guidelines on Art. 48 GDPR, providing guidance to data controllers and data processors on how to respond to requests from foreign courts or administrative authorities for the transfer and disclosure of personal data. The EDPB takes up the basic idea and objectives of Art. 48 GDPR and provides data controllers and data processors with practical recommendations in the event of a request from third country authorities. The public consultation on the guidelines is open until 27 January 2025.

To the EDPB guidelines (dated 2 December 2024)

The entire **ADVANT Beiten data protection team** wishes you happy holidays and a good start into 2025!

# Your Contacts

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