

Privacy Ticker

December 2025



+++ ECJ: HOSTING PROVIDERS CAN BE RESPONSIBLE FOR USER CONTENT +++ FEDERAL COURT OF JUSTICE: DAMAGES FOR FAILURE TO DELETE DATA BY PROCESSOR +++ CNIL: EUR 1.5 MILLION FINE AGAINST AMERICAN EXPRESS FOR COOKIE VIOLATIONS +++ EDPB: RECOMMENDATIONS ON THE ADMISSIBILITY OF MANDATORY USER ACCOUNTS IN E-COMMERCE +++

1. Case Law

+++ ECJ: HOSTING PROVIDERS CAN BE RESPONSIBLE FOR USER CONTENT +++

The European Court of Justice has ruled that operators of online platforms can be responsible under certain circumstances for content posted by users that violates data protection laws. The specific case concerned an advertisement for sexual services published on a Romanian online marketplace without the consent or even knowledge of the data subject, which contained photos and her telephone number. The ECJ clarifies that a hosting provider is considered a data controller if it reserves the right in its terms of use to commercially use, modify, or distribute the content. The liability privileges of the Digital Services Act (DSA) do not exclude liability under the GDPR. In addition, platforms should check content for sensitive data within the meaning of Art. 9 (1) GDPR before publication and verify the identity of the person publishing the content or ensure that the data subject has given their consent.

[To the ruling of the ECJ \(dated 2 December 2025, C-492/23\).](#)

+++ FEDERAL COURT OF JUSTICE: DAMAGES FOR FAILURE TO DELETE DATA BY THE PROCESSOR +++

The Federal Court of Justice has ruled that compensable non-material damage pursuant to Art. 82 (1) GDPR can be granted if personal data remains with the processor after the end of a contractual relationship, is accessed there, and is then offered for sale on the darknet. In the court's view, such damage is not excluded solely on the grounds that the data had already been obtained without authorization. In the case in question, a customer's personal data remained with a processor after the end of the contractual relationship. The court clarified that the mere loss of control over one's own data can constitute non-material damage. Additional emotional damage, such as worry or annoyance, which must be proven separately, is not necessarily required for this.

[To the ruling of the Federal Court of Justice \(dated 11 November 2025, VI ZR 396/24, in German\)](#)

+++ BERLIN ADMINISTRATIVE COURT: PURPOSE OF THE REQUEST FOR INFORMATION IRRELEVANT FOR ASSERTION +++

The Berlin Administrative Court has ruled that a request for information under Article 15 GDPR cannot be rejected on the grounds that the applicant is pursuing purposes unrelated to data protection, such as preparing civil or criminal proceedings. Since a request under Article 15 GDPR does not need to be justified, the applicant's motives for asserting the right are irrelevant. The court also clarified that data relating to several persons is not generally excluded from the right to information. The data subject suspected identity fraud and wanted to obtain information about the relevant data because amounts had been debited from his account for an online subscription, even though he had never taken out such a subscription. The court dismissed the action brought by the company that was required to provide the information and had therefore been warned by the competent data protection authority, as there was no need to protect the perpetrator. This was because the perpetrator had deliberately misused the data of the data subject.

[To the ruling of the Administrative Court of Berlin \(dated 9 October 2025, Ref. 1 K 463/22, in German\)](#)

+++ LÜBECK REGIONAL COURT: DAMAGES OF EUR 5,000 FOR META BUSINESS TOOLS +++

The Regional Court of Lübeck ordered Meta (Facebook, Instagram) to pay damages of EUR 5,000 to an Instagram user and prohibited the company from continuing to process certain data of the plaintiff. The subject of the proceedings was the use of so-called "Meta Business Tools" on third-party sites, through which the plaintiff's personal data had been transmitted to Meta without his effective consent or any other legal basis. The court considers the collection of data via these tracking tools to be unlawful and sees this as a violation of the GDPR, which gives rise to a claim for non-material damages under Art. 82 GDPR. In addition to financial compensation, Meta was ordered to refrain from collecting the plaintiff's personal data via these business tools in the future.

[To the ruling of the Regional Court of Lübeck \(dated 27 November 2025, 15 O 15/24, in German\)](#)

2. Regulatory Investigations and Enforcement Actions

+++ CNIL: EUR 1.5 MILLION FINE AGAINST AMERICAN EXPRESS FOR COOKIE VIOLATIONS +++

The French data protection authority Commission nationale de l'informatique et des libertés (CNIL) has imposed a fine of EUR 1.5 million on American Express Carte France. The background to this is violations of the requirements for the use of cookies and other trackers on the company's website. The authority found that cookies that were not strictly necessary for the operation of the site were placed on users' devices as soon as they accessed the website ("landing page"), even before they could make a selection. In addition, advertising cookies were sometimes set even when users had expressly rejected them. Another point of criticism was that cookies that had already been set continued to transmit data even after users had revoked their original consent. The fact that American Express remedied the deficiencies during the ongoing proceedings had a mitigating effect.

[To the CNIL press release \(dated 3 December 2025, in French\)](#)

[To the CNIL's fine notice \(dated 27 November 2025, in French\)](#)

+++ CNIL: EUR 750,000 FINE ON PUBLISHER FOR COOKIES WITHOUT CONSENT AND INEFFECTIVE REFUSAL +++

The CNIL also imposed a fine of EUR 750,000 on a publisher. The subject of the proceedings was again violations of the legal requirements for the use of cookies on a website. The authority found that advertising cookies were placed on users' devices as soon as they accessed the website, even before they had the opportunity to give their consent in the cookie banner. In addition, cookies that actually required consent were incorrectly classified as "technically necessary" without their exact purpose being explained. Another serious shortcoming was the non-functioning cookie rejection feature: even when users clicked on "Reject all," certain tracking cookies continued to be set and read. The situation was exacerbated by the fact that the company had already been warned in 2021 for similar practices, but the shortcomings still existed when renewed inspections were carried out in 2023 and 2025.

[To the CNIL press release \(dated 27 November 2025, in French\)](#)

[To the CNIL's fine notice \(dated 20 November 2025, in French\)](#)

3. Opinions

+++ EDPB: RECOMMENDATIONS ON THE ADMISSIBILITY OF MANDATORY USER ACCOUNTS IN E-COMMERCE +++

The European Data Protection Board (EDPB) has published recommendations addressing the legality of mandatory user accounts in e-commerce. The aim of the paper is to establish uniform criteria for when online retailers may make the creation of an account a prerequisite for concluding a contract. In the opinion of the EDPB, website operators must always offer their customers the option of placing an order without permanent registration ("guest order"). An obligation to set up a user account is only permissible under data protection law in narrow exceptional cases, for example, if this is absolutely necessary for the performance of the contract, such as in the case of subscription services or access to digital content. If the conclusion of a purchase is made dependent on registration without objective reason, this violates the principle of data minimization and the requirements for voluntary consent. The recommendations are currently undergoing public consultation.

[To the EDSA recommendations \(dated 3 December 2025\)](#)

The entire **ADVANT Beiten** data protection team wishes you happy holidays and a good start into 2026!



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