

Privacy Ticker

February 2025



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1. Changes in Legislation

+++ EU COMMISSION WITHDRAWS PLANS FOR E-PRIVACY REGULATION AND AI LIABILITY+++

In its work programme for 2025, the European Commission has announced that it will suspend the legislative processes for two important projects. The first is the long-awaited ePrivacy Regulation, which was designed to govern the use of electronic communication services within the EU. This decision comes due to the lack of agreement with the European Parliament and the fact that the draft has become outdated. The second issue is the AI Liability Directive, a planned special regulation aimed at addressing liability in the use and development of artificial intelligence. Here, too, the Commission was unable to reach a consensus with the Parliament.

[To the press release of the European Commission \(dated 12 February 2025\)](#)

[To the work programme of the EU Commission \(dated 11 February 2025\)](#)

2. Case Law

+++ ECJ: DISCRETION OF THE AUTHORITY IN THE CASE OF EXCESSIVE COMPLAINTS +++

The European Court of Justice (ECJ) recently addressed the issue of when complaints from consumers to data protection authorities can be considered excessive and what actions the authorities can take in such cases. In the case in question, the Austrian data protection authority had refused to handle a consumer's complaint, based on its excessive nature. The complainant had submitted 77 similar complaints against various data controllers over a period of 20 months. The ECJ ruled that complaints cannot be classified as excessive based solely on their number. Instead, the authority must demonstrate an intention to abuse the process on the part of the complainant. In the case of excessive complaints, the authority may impose a fee or refuse to take action. However, both must be proportionate and well justified.

[To the judgment of the ECJ \(dated 9 January 2025, C-416/23\)](#)

+++ ECJ: FINE AMOUNT DEPENDS ON WORLDWIDE GROUP TURNOVER +++

The European Court of Justice (ECJ) has ruled that the concept of an undertaking, which is decisive for determining the upper limit for fines under the GDPR, is to be understood under antitrust law. This means that the total worldwide turnover of a group must be considered when imposing a fine. To calculate the specific amount of a fine, the ECJ outlined several criteria that must be taken into account, including the nature, gravity and duration of the infringement, the number of individuals affected by the processing and the extent of the damage caused. The ECJ also emphasized that any fine imposed must be effective, proportionate and dissuasive.

[To the judgment of the ECJ \(dated 13 February 2025, C-383/23\)](#)

+++ HIGHER REGIONAL COURT OF SCHLESWIG: TRANSPORT ENCRYPTION INSUFFICIENT WHEN SENDING INVOICES BY E-MAIL +++

The Higher Regional Court of Schleswig has ruled that companies in the B2C sector sending invoices by e-mail must implement end-to-end encryption, as transport encryption alone is not sufficient under the GDPR. The case involved a company that sent an invoice via e-mail to a customer, but unknown third parties manipulated the invoice, providing a different bank account, to which the customer transferred the invoice amount of EUR 15,000. When the customer refused to pay the invoice again, the company took legal action. The court determined that the payment to the fraudsters did not lead to the fulfilment of the claim. However, the customer was entitled to damages in the amount of the claim under the GDPR, which he could offset against the company's claim. The court ruled that the company should have used end-to-end encryption to prevent such manipulation.

[To the judgment of the Higher Regional Court of Schleswig dated 18 December 2024, 12 U 9/24, in German\)](#)

+++ FEDERAL COURT OF JUSTICE: COMPENSATION OF EUR 500 DUE TO UNAUTHORIZED SCHUFA ENTRY +++

The Federal Court of Justice has ruled that compensation in the amount of EUR 500 is appropriate due to an unauthorized SCHUFA entry. The case involved a company that made an unauthorized SCHUFA entry related to a telecommunications contract. The affected customer sought on non-material compensation of EUR 6,000 for a data protection violation, citing consequences such as being denied a loan due to the entry. However, the court of lower instance, the Higher Regional Court of Koblenz, awarded the affected customer only EUR 500. The Federal Court of Justice upheld this decision, rejecting the customer's appeal. It ruled that the non-material compensation was both appropriate and proportionate in this case. A higher amount could not be justified, as the customer had not provided any specific evidence of damage. Furthermore, compensation under the GDPR only serves a compensatory purpose and is not intended to provide satisfaction or general prevention.

[To the ruling of the Federal Court of Justice \(dated 28 January 2025, VI ZR 183/22, in German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ ITALY: DATA PROTECTION AUTHORITY BANS DEEPSEEK +++

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP) has banned the use of DeepSeek in Italy and initiated an investigation. The GPDP had requested the two Chinese operators of the AI-based chatbot to provide information on the lawfulness and scope of the processing of personal data. DeepSeek's response was limited to the fact that the software was not offered in Italy and that the GDPR therefore did not apply. The GPDP disagreed with this assessment, pointing out that at least the web-based version was accessible and being used by Italian users. Due to various data protection violations and a lack of cooperation with the authority, the GPDP immediately prohibited DeepSeek from processing the personal data of Italian users. At the same time, the authority launched an investigation against DeepSeek.

[To the GPDP press release \(dated 30 January 2025\)](#)

[To the decision of the GPDP \(dated 30 January 2025\)](#)

+++ GERMAN DATA PROTECTION AUTHORITIES INITIATE INVESTIGATION PROCEEDINGS AGAINST DEEPSEEK +++

In addition to the Italian data protection authority (see above), several German data protection supervisory authorities have also initiated coordinated investigation proceedings against the providers of the AI-chatbot DeepSeek. The first step in these proceedings is to clarify whether the two Chinese companies behind DeepSeek have designated a representative in the EU. Under the GDPR, any controller that provides services to individuals in the EU, but is not itself established in the EU, must designate a representative in the EU. This representative serves as a point of contact for data protection authorities and data subjects in all matters relating to data protection. Failure to this obligation can be punished with a fine.

[To the press release by the Hessian data protection authority \(dated 20 February 2025, in German\)](#)

+++ SPAIN: FINE OF EUR 4 MILLION AGAINST GENERALI DUE TO DATA BREACH +++

The Spanish data protection authority Agencia Española de Protección de Datos (AEPD) has imposed a fine of EUR 4 million on the insurance group Generali España after unauthorized third parties gained access to the data of former and current customers. The cyberattack led to the sale of around 25,000 data records containing copies of customers' ID cards and IBAN numbers, among other things. The AEPD justified the fine with inadequate technical and organizational measures, a breach of privacy by design and a failure to carry out a data protection impact assessment, which was necessary due to the extensive data processing in the IT system.

[To the AEPD's fine notice \(dated 27 January 2025, in Spanish\)](#)

[To the summary on GDPRhub \(from 27 January 2025\)](#)

4. Opinions

+++ EU COMMISSION GUIDELINES ON PROHIBITED AI PRACTICES +++

The European Commission has published guidelines on prohibited artificial intelligence (AI) practices within the meaning of the AI Act. The AI Act categorizes AI systems into different risk levels, including prohibited systems, high-risk systems and systems subject to transparency obligations. The guidelines focus on prohibited AI practices that are considered unacceptable due to their risk potential, such as harmful manipulation, social scoring and emotion recognition. They provide legal explanations and practical examples to help stakeholders understand and comply with the requirements of the AI Act, ensuring its consistent application across the EU. However, the European Commission itself points out that the guidelines are non-binding, and the final interpretation of the regulations will be determined by the European Court of Justice.

[To the press release of the European Commission and the guidelines \(dated 4 February 2025\)](#)

+++ EDPB ADOPTS STATEMENT ON AGE ASSURANCE +++

The European Data Protection Board (EDPB) has adopted a statement on age protection, outlining ten principles for the lawful processing of personal data when determining a person's age or age range. The aim is to establish a coherent European approach to age verification that protects minors while adhering to data protection principles. For example, the EDPB emphasizes that age verification should not lead to unnecessary data protection risks for natural persons and should not be used for purposes beyond verifying age, such as locating, profiling or tracking. Companies must follow strict principles of limitation and data minimization. Given that age verification can pose a high risk to the rights and freedoms of data subjects, a data protection impact assessment is often necessary.

[To the press release of the EDPB \(dated 12 February 2025\)](#)

[To the statement of the EDPB \(dated 11 February 2025\)](#)

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