

# Privacy Ticker

July 2024



**+++ DIGITALISATION IN THE HEALTHCARE SECTOR:  
INNOVATIONS FOR CLOUD COMPUTING IN FORCE +++ ECJ:  
CLAIM BY CONSUMER ASSOCIATIONS IN CASE OF GDPR  
INFRINGEMENTS CONFIRMED +++ FEDERAL LABOR COURT:  
PROCESSING OF HEALTH DATA IN AN EMPLOYMENT  
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LARGE LANGUAGE MODELS DO NOT STORE PERSONAL DATA +++**

## 1. Changes in Legislation

**+++ DIGITALISATION IN THE HEALTHCARE SECTOR:  
INNOVATIONS FOR CLOUD COMPUTING IN FORCE +++**

In December 2023, the Bundestag passed the "Act to Accelerate Digitalization in the Healthcare Sector" (German Digital Act - DigiG) and the "Act on the Improved Use of Health Data" (German Health Data Use Act - GDNG) (see [AB Privacy Ticker December 2023](#)). Both laws came into force on 26 March 2024, although some regulations that were amended by the DigiG have now been in effect since 1 July 2024. Among other things, this concerns the cybersecurity requirements of the German Social Security Code V (SGB V) for cloud-based information systems used to process health and social data. Such information systems must now comply with the "Criteria Catalogue C5" of the Federal Office for Information Security (BSI) or at least have a certificate with a comparable level of security. In addition, strict requirements are placed

on the location of data processing and the data processing body must have a branch in Germany. This establishes minimum requirements for the IT security of cloud use in the healthcare sector.

[To the wording of the DigiG \(dated 1 November 2023, in German\)](#)

[Questions and answers on the DigiG of the Federal Ministry of Health \(dated 25 June 2024, in German\)](#)

## 2. Case Law

### **+++ ECJ: CLAIM BY CONSUMER ASSOCIATIONS IN CASE OF GDPR INFRINGEMENTS CONFIRMED +++**

The European Court of Justice (ECJ) has again ruled that consumer associations may take legal action in the event of violations of the GDPR. The Federal Court of Justice doubted the admissibility of the action brought by the Federation of German Consumer Organizations (vzvb) against Meta Platforms Ireland and referred the question to the ECJ as to whether the vzvb was entitled to bring an action. The ECJ confirmed this with reference to its judgment of 28 April 2022 (case C-319/20), in which it interpreted the requirements for a right of action by associations (see [AB Privacy Ticker May 2022](#)). In the current decision, the ECJ clarifies whether a breach of the obligation to provide information already constitutes an infringement "as a result of the processing" and affirms this. The obligation to provide information pursuant to Art. 13 GDPR does not in itself constitute processing. However, the provision of information in accordance with the GDPR is part of the data subject's right to information and thus a prerequisite for lawful processing in accordance with Art. 6 GDPR. This means that the rights of data subjects are violated "as a result of processing" if there is a deficit in the provision of information and, for instance, consent cannot be effectively given as a result.

[To the vzvb press release \(dated 11 July 2024, in German\)](#)

[To the ECJ ruling \(dated 11 July 2024, C-757/22\)](#)

### **+++ FEDERAL LABOR COURT: PROCESSING OF HEALTH DATA IN AN EMPLOYMENT RELATIONSHIP +++**

The Federal Labor Court has dealt with the question of whether the processing of health data in the employment relationship is GDPR-compliant if this serves to clarify the incapacity to work. In the case at hand, a Medical Service was commissioned by a statutory health insurance company to prepare an expert opinion on the incapacity to work of an insured person who was also an employee of the Medical Service. The company had implemented a strict access concept for health data. The company medical officer, who was authorized to access the health data, obtained additional information about the employee's state of health from the employee's attending physician to be able to prepare the expert opinion on this basis. The employee took legal action against this on the grounds that the processing of his health data by his employer was inadmissible. The court ruled that there was no violation, as the processing of the health data could be based on Art. 9 (2) lit. h GDPR and satisfied the guarantees of Art. 9 (3) GDPR. The court justified this by stating, among other things, that employees of the employer who are authorized to access the data are subject to a professional duty of confidentiality and social data secrecy anyway. Furthermore, there is no provision stating that the employer may not also act as a Medical Service.

[To the press release on the judgement of the Federal Labor Court \(dated 20 June 2024, 8 AZR 253/20, in German\)](#)

## **3. Regulatory Investigations and Enforcement Actions**

### **+++ ONLINE-PLATFORM VINTED FINED ALMOST EUR 2.4 MILLION +++**

The Lithuanian data protection supervisory authority Valstybinė duomenų apsaugos inspekcija (SDPI) has imposed a fine of almost EUR 2.4 million on the provider of the online platform Vinted, which enables the trade in second-hand clothing and other products. The administrative fine proceedings were conducted by the SDPI as the lead authority ("one-stop shop") in cooperation with data protection authorities from Poland, France, the Netherlands, Spain, and Germany following various user complaints. In this context, the authority found that the company had not

complied with requests to delete user data ("right to be forgotten"). In addition, the platform provider had engaged in unlawful "shadow blocking". Content from users who were suspected of violating the platform rules was therefore no longer displayed without them being informed. In addition, the company had not taken sufficient technical and organizational measures to ensure the implementation of accountability and to be able to prove that it had taken measures regarding insufficiently fulfilled information rights.

[To the authority's press release \(dated 2 July 2024\).](#)

### **+++ FINE OF EUR 6.4 MILLION AGAINST ITALIAN ENERGY COMPANY +++**

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP) has imposed a fine of some EUR 6.4 million on an energy company. The authority had received numerous complaints about unwanted telephone calls from the company. The authority found that the data subjects had not given their consent to be contacted by telephone. Some of those data subjects were even called despite having registered in a public register to avoid being contacted. The authority also imposed a ban on any further processing of the data obtained in an unauthorized manner.

[To the administrative fine notice of the authority \(dated 6 June 2024, in Italian\).](#)

### **+++ FINE OF SOME EUR 1.3 MILLION AGAINST SWEDISH BANK +++**

The Swedish data protection authority Integritetsskyddsmyndigheten (IMY) has imposed a fine in the equivalent of approx. EUR 1.3 million on a bank. The authority found that the bank used the Facebook Pixel (now Meta Pixel) analysis tool on its website and in its app in an inadmissible manner, whereas information about, for example, securities holdings and account numbers of customers was transmitted to Meta. Up to one million customers were affected. The administrative fine proceedings followed a voluntary disclosure by the bank. The authority accused the bank of

failing to take appropriate technical and organizational measures to ensure an adequate level of security for the personal data of website and app users.

[To the authority's press release \(dated 25 June 2024, in Swedish\)](#)

[To the administrative fine notice of the authority \(dated 24 June 2024, in Swedish\)](#)

## 4. Opinions

### **+++ AGREEMENT BETWEEN THE EU AND JAPAN ON DATA FLOWS IN FORCE +++**

The EU-Japan Economic Partnership Agreement (EPA), which has been in force since 2019, was expanded to include data traffic for digital trade on 1 July 2024. The aim is to simplify the transfer of data in the economic context of digital trade and ensure efficient data traffic between Japan and the EU. The extension has created a legal environment that enables the exchange of data for financial services or e-commerce without cumbersome administrative and storage requirements. The agreement promotes the concept of "data free flow with trust" which is the guiding principle for international cooperation in data traffic. The aim is to eliminate arbitrary restrictions on cross-border data traffic and to maintain and improve economic and social standards through the use of data.

[To the press release of the European Commission \(dated 1 July 2024\)](#)

### **+++ HAMBURG DATA PROTECTION AUTHORITY: LARGE LANGUAGE MODELS DO NOT STORE PERSONAL DATA +++**

The Hamburg Commissioner for Data Protection and Freedom of Information has published a discussion paper on "Large Language Models and personal data". In it, the authority states that the mere storage of a large language model (LLM) does not constitute processing within the meaning of Art. 4 No. 2 GDPR. This is because the so-called tokenization of the input splits all texts into small fragments, so that in most cases it is no longer possible to establish a personal reference, also because the LLM

does not contain any whole words. The authority also states that if personal data is processed during training and/or output, these processing operations must comply with the requirements of the GDPR. However, training the LLM in violation of data protection regulations should not affect the legality of the use of an LLM in an AI system. Due to the lack of storage of personal data in the LLM, the rights of data subjects under the GDPR could not apply to the model itself. Claims for information, erasure or rectification should rather be addressed to the entity responsible for input and output.

[To the discussion paper of the authority \(in German\)](#)

### **+++ BAFIN: IMPLEMENTATION INFORMATION ON DORA +++**

As of 17 January 2025, companies in the financial sector must comply with the Digital Operational Resilience Act (DORA). DORA is a European regulation that sets out IT compliance requirements and is intended to protect the financial market from cyber risks and IT security incidents. To this end, BaFin has now issued implementation guidelines for risk management in information and communication technology (ICT). The approximately forty pages of non-binding guidance highlight the banking and insurance supervisory requirements for information technology in a practical manner. One of the new features of the guidance is the introduction of an ICT business continuity guideline. This guideline is designed to provide a specific roadmap for ICT incidents, in particular for damage limitation combined with the resumption of activities. The recovery plans will also be more far-sighted, as the effects of climate change, insider attacks, political and social instability and large-scale power outages will now be considered.

[To the BaFin press release \(dated 8 July 2024, in German\)](#)

[To the wording of DORA](#)

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