

# Privacy Ticker

May 2025



**+++ HIGHER REGIONAL COURT OF COLOGNE: META MAY USE DATA FROM FACEBOOK AND INSTAGRAM FOR AI TRAINING +++  
BELGIAN MARKET COURT: TC-FRAMEWORK VIOLATES GDPR +++  
ADMINISTRATIVE COURT OF HANNOVER: COOKIE-BANNER MUST PROVIDE "REJECT ALL" BUTTON +++ IRELAND: FINE OF EUR 530 MILLION AGAINST TIKTOK FOR TRANSFERRING DATA TO CHINA  
+++ DATA PROTECTION AUTHORITY HAMBURG PUBLISHES PAPER ON THE DATA ACT +++**

## 1. Case Law

**+++ HIGHER REGIONAL COURT OF COLOGNE: META MAY USE DATA FROM FACEBOOK AND INSTAGRAM FOR AI TRAINING +++**

In a summary proceeding, the Higher Regional Court of Cologne has ruled that Meta may use personal data from publicly accessible user profiles for the training of artificial intelligence (AI). This applies specifically to content that is publicly viewable, such as posts, photos, videos and stories on Facebook, Instagram and WhatsApp. The Consumer Association of North Rhine-Westphalia attempted to prevent this but was unsuccessful in court. The court did not consider the action to be a violation of the GDPR or the Digital Markets Act. According to the ruling, Meta may rely on legitimate interests to use the data for AI training even without the consent of the data subjects. Users could prevent the processing of their data until 26 May 2025 by changing their profile setting to "not public" or by objecting ([see Privacy Ticker April 2025](#)). The parties may continue to pursue their rights in main proceedings. The full text of the judgment has not yet been published.

[To the press release of the Higher Regional Court of Cologne \(dated 23 May 2025, 15 UKI 2/25, in German\)](#)

### **+++ BELGIAN MARKET COURT: TC-FRAMEWORK VIOLATES GDPR +++**

The Belgian Market Court *hof van bereop Brussel* has ruled that the Transparency & Consent Framework (TCF) is not compliant with the GDPR. The TCF facilitates profiling for online advertising, by transmitting user consent preferences across the TCF partner network via a generated TC string. It was developed by IAB Europe, the industry association representing the online advertising sector in Europe. The Belgian Data Protection Authority found the procedure to be unlawful and imposed a fine on IAB Europe ([see Privacy Ticker February 2022](#)). The European Court of Justice confirmed that the TC string is personal data ([see Privacy Ticker April 2024](#)). The Belgian Market Court has now ruled that there was no valid consent for the processing of the TC string. Users were not sufficiently informed about who uses their data and for what purposes.

[To the report on heise.de \(dated 15 May 2025, in German\)](#)

[To the judgment of the Belgian Market Court \(dated 14 May 2025, 2022/AR/292, in Dutch\)](#)

### **+++ ADMINISTRATIVE COURT OF HANNOVER: COOKIE BANNER MUST PROVIDE "REJECT ALL" BUTTON +++**

The Administrative Court of Hanover has ruled that a clearly visible "Reject all" button must be provided at the first level of a cookie banner if an "Accept all" option is also offered. The case originated from a decision by the State Commissioner for Data Protection of Lower Saxony against the *Neue Osnabrücker Zeitung*, whose cookie banner used on the website was criticized for not offering a genuine choice. The court found the cookie banner to be unlawful because rejecting cookies was more difficult than accepting them. Additionally, the term "consent" was completely missing from the cookie banner's wording. The court further criticized the lack of transparency regarding the number of partners and third-party services, and the fact that the information to the right to withdraw and third-country transfers were only visible after scrolling. Consequently, the court concluded that users could not give informed, voluntary and unambiguous consent via the cookie banner.

[To the press release of the State Commissioner for Data Protection of Lower Saxony \(dated 20 May 2025, in German\)](#)

### **+++ HIGHER LABOUR COURT OF HESSE: FORWARDING OF EMPLOYEE DATA TO PRIVATE E-MAIL ACCOUNT LEADS TO EXCLUSION FROM WORKS COUNCIL +++**

The Higher Labour Court of Hesse has ruled that forwarding emails containing employee data to a private email account constitutes a serious breach of data protection obligations under the Works Constitution Act (Betriebsverfassungsgesetz). In the case at hand, the chairman of the works council had forwarded work-related emails to his private email account, citing the larger screen at home as justification. The emails in question included a complete list of all employees, along with sensitive information such as salary details, position in the company and pay scale classifications. The court emphasized that the works council chairman had forwarded the data without a legal basis and had therefore violated data protection regulations. It also noted that forwarding of the emails was unnecessary, as the data processing could also have been carried out on the work computer. The employer was therefore entitled to exclude the works council member from the works council.

[To the decision of the Higher Labour Court of Hesse \(dated 10 March 2025, 16 TaBV 109/24, in German\)](#)

### **+++ HIGHER ADMINISTRATIVE COURT OF BERLIN-BRANDENBURG: NO RIGHT TO ACCESS S-BAHN VIDEO RECORDINGS +++**

The Higher Administrative Court of Berlin-Brandenburg has ruled that the operator of the Berlin S-Bahn is not required to provide passengers with copies of video recordings from their S-Bahn journeys in response to their right of access ([see Privacy Ticker November 2023](#)). The court accepted the S-Bahn operator's arguments, which referred to its data protection concept developed in consultation with the Berlin data protection authority. According to this concept, the operator itself does not have access to the video recordings. The footage is only made available to law enforcement authorities. The recordings are automatically deleted after 48 hours. In the court's view, this data protection concept complies with the GDPR's values and the right to privacy. Additionally, the data subject had been informed about the nature and duration of data storage as part of the access request. The judgement has not yet been published.

[To the press release of the Higher Administrative Court of Berlin-Brandenburg \(dated 13 May 2025, OVG 12 B 14/23, in German\)](#)

### **+++ FEDERAL LABOUR COURT: EMPLOYEE RECEIVES COMPENSATION FROM EMPLOYER FOR LOSS OF CONTROL +++**

The Federal Labour Court awarded an employee compensation of EUR 200 after his personal data was transferred to a group company during the test phase of the HR tool "Workday" without a sufficient legal basis. The underlying works agreement only permitted the processing of certain data, such as personnel number or name, but not the additional information transmitted, such as tax ID or salary amount. According to the court, neither the works agreement nor the employer's legitimate interest justified the disclosure of the additional data. The court deemed the non-material damage suffered by the plaintiff in the loss of control caused by the transfer of personal data to the group company.

[To the press release of the Federal Labour Court \(dated 8 May 2025, 8 AZR 209/21, in German\)](#)

### **+++ REGIONAL COURT OF BERLIN: GOOGLE ACCOUNT REGISTRATION VIOLATED GDPR +++**

The Regional Court of Berlin has ruled that the declaration of consent required when registering for a Google account in 2022 was not compliant with the GDPR. The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V.) challenged the consent process, which was part of Google's express personalisation procedure. This process included the storage of web and app activity data across more than 70 Google services. The court ruled that the consent was not voluntary, as users either had to agree or cancel the registration process entirely. Furthermore, the court criticised the lack of transparency in information provided, meaning that informed consent was not possible. Google had not clarified for which specific Google services the data was to be used. In addition, Google had significantly overstretched the scope of the consent.

[To the press release of the Federation of German Consumer Organisations \(dated 16 May 2025, in German\)](#)

[To the judgment of the Regional Court of Berlin \(dated 25 March 2025, 15 O 472/22, in German\)](#)

## 2. Regulatory Investigations and Enforcement Actions

### **+++ IRELAND: FINE OF EUR 530 MILLION AGAINST TIKTOK FOR TRANSFERRING DATA TO CHINA +++**

The Irish data protection authority Data Protection Commission (DPC) has ordered TikTok Technology Limited (TikTok) to pay a fine of EUR 530 million and to implement remedial measures. The DPC based its decision on the unlawful transfer of personal data of EU citizens to China. TikTok had not sufficiently ensured the effectiveness of the standard contractual clauses and the additional measures to safeguard an adequate level of protection for the rights and freedoms of data subjects. The DPC also identified a breach of the transparency requirements. TikTok's privacy policy did not provide any information about data recipients or transfers to third countries. In addition to paying the fine, TikTok was required to bring its processes into compliance with the GDPR within six months. Otherwise, the data transfer to China must be suspended.

[To the DPC press release \(dated 2 May 2025\)](#)

### **+++ ITALY: FINE OF EUR 5 MILLION FOR DATA PROTECTION VIOLATIONS AT AI-CHATBOT REPLIKA +++**

The Italian data protection authority Garante per la Protezione dei Dati Personali (GPDP), has fined the US company Luka Inc., operator of the chatbot Replika, EUR 5 million and initiated further investigations into the processing of personal data. Replika is a chatbot that allows users to create a "virtual companion" through text and voice chat. This companion can act as a mentor, therapist, or romantic partner. According to the GPDP, the service's privacy policy was deficient in several respects, most notably failing to specify a legal basis for data processing until February 2023. Furthermore, despite Luka Inc. stating that the service was not intended for use by minors, the app lacked any effective age verification mechanisms.

[To the GPDP press release \(dated 19 May 2025\)](#)

### **+++ ITALY: FINE OF EUR 3 MILLION AGAINST ENERGY SUPPLIER FOR AGGRESSIVE TELEMARKETING +++**

The Italian data protection authority Garante per la Protezione die Dati Personali (GPDP), has fined the energy supplier Acea Energia Spa EUR 3 million and its affiliated partner agencies EUR 850,000. Acea Energia Spa had collaborated with several call center agencies that were part of a corporate network. Within this network, customer lists were sold without the consent of, or prior notice to, the data subjects. The call center agencies contacted customers who had recently switched energy providers and influenced them by citing alleged technical issues with the switching process. This tactic was used to persuade customers to sign new energy supply contracts, from which Acea Energia Spa directly benefited.

[To the GPDP press release \(dated 7 May 2025, in Italian\)](#)

## **3. Opinions**

### **+++ DATA PROTECTION AUTHORITY HAMBURG PUBLISHES PAPER ON THE DATA ACT +++**

The Hamburg Commissioner for Data Protection and Freedom of Information of the Free and Hanseatic City of Hamburg (HmbBfDI) has published a handout on the EU Data Act, which will come into effect from 12 September 2025 ([see blog post from November 2023](#)). In this paper, the Hamburg data protection authority first provides an overview of the Data Act's content, illustrated with practical examples. It then highlights the necessary actions and the existing conflicts between the GDPR and the Data Act. Of particular importance will be the determination of whether data has a personal reference, as the transfer of personal data under the Data Act will remain subject to GDPR regulations. Finally, the HmbBfDI addresses regulatory supervision and the role of data protection authorities.

[On the paper of the HmbBfDI \(dated 29 April 2025, in German\)](#)

**+++ BERLIN GROUP: WORKING PAPER ON NEUROTECHNOLOGIES  
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The International Working Group on Data Protection in Technology, known as the "Berlin Group", has published a working paper on data protection in the context of neurotechnologies. Responding to emerging developments beyond the medical field, the Berlin Group examines the processing of brainwave data from both a data protection and, in part, an ethical perspective. The paper provides definitions of neurotechnology and explores key data protection requirements, particularly with regard to the concept of consent and the protection of children and adolescents. Finally, the Berlin Group makes recommendations for legislators, supervisory authorities and developers regarding the processing of neurodata.

[To the working paper of the Berlin Group \(dated 15 May 2025\)](#)

[To the press release by the Federal Data Protection Commissioner for Data Protection and Freedom of Information \(dated 19 May 2025, in German\)](#)

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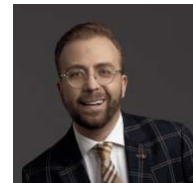
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