

Data protection conference publishes new guidelines for providers of telemedia

The conference of the independent data protection supervisory authorities of the federal and state governments (DSK) has published a new version of the orientation guide for providers of telemedia. The paper offers operators of websites, apps or smart home applications specific assistance in implementing the new provisions of the Telecommunications Telemedia Data Protection Act (TTDSG). In addition, the orientation guide gives affected citizens a better picture of the legal framework. With the publication of the revised orientation guide, the supervisory authorities are reacting to the changed legal situation. Since December 1, 2021, the TTDSG has regulated the protection of privacy when using end devices in addition to data protection for telecommunications and telemedia services. This results in practice-relevant effects on the use of cookies and similar technologies. With the TTDSG, the federal legislator has now implemented the requirements of the European ePrivacy Directive into national law after a delay of more than a decade.

The TTDSG was formulated close to the wording of the European requirements and basically requires the consent of the users if information is stored on their end devices or accessed. Exceptions to this consent requirement for telemedia services are strictly limited to cases in which the storage and reading of the information is absolutely necessary so that a telemedia service expressly requested by the user can be made available. The orientation guide contains relevant criteria for identifying and then realizing the corresponding user request.

When examining whether consent is superfluous in exceptional cases, it should be noted that the requirements are essentially based on the criterion of legitimate interest specified in Art. 6 (1) lit. GDPR in the General Data Protection Regulation (GDPR) differentiate. Until November 30, 2021, a legitimate interest of the responsible website operator that outweighed user interests was considered by the supervisory authorities as a possible legal basis under strict conditions. However, a previous balancing of interests according to the GDPR does not automatically meet the narrow requirements of the exception rule in the TTDSG. In order to implement the new legal situation, it is therefore not sufficient, for example, if only the names of the legal bases are exchanged in a data protection declaration.

Since December 1, 2021, the stricter provisions of the TTDSG have applied to the storage and reading of information on and from end devices. The provisions of the GDPR continue to apply to the further processing of the personal data collected in this way. There are also some hints on this in the new orientation guide.

Operators of websites, apps and other telemedia should urgently review the use of cookies and other technologies. In

particular, the precise design of the technologies and their necessity must be revised. The time, type and duration of storage and the subsequent data processing must meet the requirements of the TTDSG and the DS-GVO. The present guide is intended to provide assistance in this regard.

The document largely replaces the previous version from 2019 and was published on the DSK homepage. It is planned to make an English version of the orientation guide available in the near future.

Furthermore, a public consultation process will be carried out on the new version of the guidance. Details regarding the timing and process will be announced in January 2022.

Guidance from the supervisory authorities for providers of telemedia (PDF)