

Extended skills for the HmbBfDI

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Expanded competencies for the HmbBfDI - sanctioning options for telemedia providers in Hamburg

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In yesterday's meeting, the citizenship extended the competences of the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) in the application of the Telecommunications Telemedia Data Protection Act (TTDSG). This enables the HmbBfDI to issue remedial measures and fines to telemedia providers in Hamburg if they use cookies in an illegal manner, for example.

When visiting a website or using an app, users should be able to assume that, without being asked, only data that is actually required to provide the requested service will be processed. If service providers want to collect and process further data, they must first ask the users for their voluntary consent in an informed manner.

These requirements are now generally implemented by many operators by means of upstream "consent banners". However, this is not always done in accordance with the law.

This is exactly where the law on data protection and the protection of privacy in telecommunications and telemedia (TTDSG for short), which came into force nationwide on December 1, 2021, comes into play. It implements the European requirements of the so-called cookie directive from 2009 into German law. Because the European legislator recognized back then which technologies (such as cookies, but also other tracking technologies) are used to understand user behavior, and because the information in cookies does not always have a personal reference, this includes TTDSG also such information that has no personal reference and thus goes further than the General Data Protection Regulation (GDPR). Accordingly, the TTDSG protects the integrity of end devices by applying the principle that prior consent is required before information can be stored on end devices or read from them, unless the narrow and final exceptions of the law apply.

So far, the exercise of the corresponding powers from the TTDSG, which provides for fines of up to €300,000 for violations, has not been regulated by law in Hamburg.

In its meeting on January 18, 2023, the Hamburg Parliament closed this gap and enacted Section 19 (7) HmbDSG. This declares the HmbBfDI to be the competent supervisory authority for telemedia in Hamburg, assigns the HmbBfDI the power to

impose fines under the TTDSG and gives the HmbBfDI the investigative and remedial powers from Art. 58 of the GDPR.

Thomas Fuchs, the Hamburg Commissioner for Data Protection and Freedom of Information: "With the implementation in state law, the HmbBfDI can also use the instruments that the GDPR has given it for the scope of the TTDSG. In the event of violations, warnings or orders can now be issued and fines can be imposed. In the first quarter of 2023, we will start examining the compatibility of telemedia offerings from Hamburg companies with the requirements of the TTDSG."

press contact

rot13("Nyvan Fpuözt", "yizwduqvgkraohjx");gimöhcS anilA

Phone:

+49 40 428 54-4708

Email: rot13("cerffr@qnggrafpuhgm.unzohet.qr", "scftklorahmdgxuj");ed.grubmah.ztuhcsnetad@esserp