

P r e s s e release

April 3, 2020

711.414.5

Annual Report 2019

The Berlin Commissioner for Data Protection and Freedom of Information (BInBDI), Maja Smoltczyk, publishes its annual report for 2019 today. Due to the current pandemic

Development, unfortunately, the annual press conference has to be cancelled. Questions about the annual report and

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General developments from the office

The workload in the Berlin authority for data protection and freedom of information has leveled off at an unchanged, high level in 2019. So has after

Coming into effect of the General Data Protection Regulation (GDPR) in 2018 the advent of complaints received by the authority has tripled. On average reached the authorities almost 400 complaints a month. Thematically, these particularly often concerned the Disregard of data subject rights, in particular the right to information or deletion.

A large proportion of the complaints received were directed at companies from the digital economy, such as B. online shops, delivery services or social networks. Besides shaped topics from the areas of the housing industry, health, the Financial services and employee data protection the work of the authority in special measure.

Hardly in any other area has the workload increased as much as in the so-called data breaches. A total of 1017 such breakdowns were reported in 2019, which means that the volume has even increased seventeenfold since the GDPR came into effect. Whether from a Kita stolen digital cameras, lost mail or malware attacks - the

Case constellations in the area of data breaches are diverse and often require a

immediate action (Chapter 15, p. 206).

In addition, the employees of the BlnBDI were in the past year

again with complex consultation processes in the public sector, with numerous

Press inquiries and tips from the press, with anonymous ads and reviews of

officially dealt with, as far as their completely insufficient capacities allowed.

The introduction of the GDPR has required numerous adjustments to state law

made, which the Berlin legislature would actually have already issued on May 25, 2018

have to. Almost two years after this deadline, Berlin is now on the home stretch.

In mid-2020, around 80 Berlin laws and ordinances are to be passed to the

be adapted to the new legal situation. Unfortunately, important criticisms of the BlnBDI from the

lead Senate Department for the Interior and Sport has not yet been taken into account. Emotional

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If the legislature does not take action on these points, it will in some cases lead to violations of European law

Regulations in state law come (chapter 14.1, p. 194).

Annual report topics

Data protection is an issue that affects every conceivable area of life. Corresponding

The work of the Berlin data protection authority was varied in 2019.

A key objective of the General Data Protection Regulation is to improve the practice of imposing

Equalize fines for violations of data protection law across the EU. On European

Level will be the specific methodology by which the data protection authorities will impose of fines should proceed, is currently still under discussion. To at least Germany-wide immediately a uniform, transparent and comprehensible fine practice guarantee, the German supervisory authorities have in the managed by the BlnBDI "Working Group Sanctions" of the Conference of Independent Germans data protection supervisory authorities of the federal and state governments (DSK) a fine concept drafted, which can now be applied until appropriate European guidelines are adopted. In its annual report, the BlnBDI explains this with the economy concept awaited with great interest (Chapter 1.4, p. 35).

The cooperation of the EU data protection authorities gain momentum. The GDPR stipulates that between the European supervisory authorities always have a so-called cooperation procedure is carried out and intended measures are coordinated if the objected data processing has a cross-border dimension. In the 2019 annual report, the BlnBDI shows what this cooperation procedure looks like in practice. Based on Practical examples are used to show the challenges of working together and Instruments are presented that the General Data Protection Regulation provides for this (Chapter 1.5, p. 40 and chapter 14.3, p. 199).

The annual report dedicates a focus to the topic of artificial intelligence. The report shows what opportunities lie in technology and what risks it poses to data protection are connected and what urgently needs to be considered in relation to the topic. Special will be in this connection to the aspects of transparency and fully automated decisions received (Chapter 1.2, p. 24).

Transparency was also part of the intensive consultations on the implementation of the Online Access Act (OZG) at state level is an important topic. The OZG stipulates that all administrative services will also be available digitally by the end of 2020. the

Digitization of administrative services, however, can only be successful  
take place if the users are willing to take advantage of the digital offers. Around  
To promote broad acceptance, the BlnBDI therefore campaigned among other things successful for one  
adequate transparency regulation (Chapter 2.1, p. 47).

The BlnBDI was also consulted in the case of reappraisal of the role of the responsible  
Senate administration in the accommodation of young people with pedophile men in the  
as part of the so-called "Kentler Experiment". The question of whether and under which  
Conditions Social data released from youth welfare files for research purposes  
must be assessed on a case-by-case basis. The BlnBDI was with such  
repeatedly entrusted with questions in the past and was also able to do so in this one  
If necessary, provide assistance (Chapter 5.5, p. 95).

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After a somewhat bumpy start, the Berlin data protection officer was appointed in October  
just in time from the Senate Department for Integration, Labor and Social Affairs  
added to the data protection aspects of the so-called Night of Solidarity  
discuss. When counting and especially when interviewing homeless people,  
the right to informational self-determination is preserved. In particular, one  
such questioning is voluntary and requires subsequent identification of individuals  
interviewed persons be excluded. To take care of that, the  
data protection authority will also accompany the project during follow-up counts. (Chapter 7.2, p. 114)

One case in which the BlnBDI was not called in in good time concerned the Berliners  
Verkehrsbetriebe (BVG) and their new mobility app Jelbi. With the help of this app  
various means of transport linked together in a meaningful way and the booking and  
payment to be simplified. However, since doing so involves a large amount of personal data  
accrues such as B. transaction and payment data of customers, is one  
data protection-compliant design is essential. Unfortunately, the BVG had this in the project

development and failed to inform the data protection authority in a timely manner about the to inform projects. Only after the project had received a great deal of media attention had been presented to the public, the supervisory authority could subsequently carry out an examination initiate, which led to the identification of numerous shortcomings. As is so often the case in such cases various data protection problems have been avoidable if data protection from the beginning would have been taken into account (Chapter 4.1, p. 79).

Media attention also prompted the BlnBDI to examine the rental bike provider Mobike. She found that the company with the amount of the

The data collected from the users had overshoot the mark. The processing of

However, data by the Chinese parent company is formal according to the current legal situation

Not objectionable as contracts provided for by the General Data Protection Regulation

between the two companies have been concluded. The contracts

however, the standard contractual clauses on which they are based and which are currently still permissible

just reviewed by the European Court of Justice (Chapter 4.3, p. 83).

A particularly serious event that the supervisory authority last year

employed, the Emotet attack was at the Berlin Superior Court. The BlnBDI monitored

the security measures taken to deal with the problems and accompanied

continue this process. In her annual report, she explains how this came about

Malware infestation can come and what lessons authorities and public bodies can learn from

this incident (chapter 2.4, p. 56).

However, there is a lack of sufficient data security measures not only in

public area. Also in the development of health apps that

Health industry in Berlin is intensively busy, data security must be the top priority

to have. Such apps are used for counseling and therapeutic purposes and

require the processing of highly sensitive data. The BlnBDI has one

cloud-based providers under the microscope and found that the

security measures applied did not offer an adequate level of protection. In

In its annual report, it sets out where the dangers are and what is involved in the development of such offers must be observed (Chapter 6.1, p. 99).

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In the health sector, the data protection authority was z. B. often by insecure people

Doctors who wanted to know whether they would like the copy of a

be able to invoice patient records as before. The BlnBDI had to deny this.

Within the framework of their data protection law, patients have

right to information, the right to receive a copy of their file free of charge. One

different regulation in the Civil Code has been since the introduction of the

General Data Protection Regulation no longer compatible with European law (Chapter 6.5, p. 107).

After it became known in 2018 that from circles of the Berlin police

threatening letters to people from the left-wing scene were written, the BlnBDI introduced a

Review of data processing in the police information system POLIKS. Included

she found serious violations of the law, which led to a formal complaint.

Among other things, personal data has not been deleted since June 2013

restricted in access. Also the necessary control procedures with which unauthorized

Access to the database should be revealed, as well as the technical settings for

Data retrievals from the system showed serious deficiencies (Chapter 3.2, p. 62).

The BlnBDI also had to intervene against a sports association responsible for communication

operates a website with its members. On this were in the public domain

Area the private phone numbers and e-mail addresses of athletes

published without their consent to publication. At the behest of

The supervisory authority removed the personal data from the public domain

removed from the website (chapter 3.9, p. 77).

A banking association was less insightful. The BlnBDI pointed out to him that in Consultations for lending is inadmissible, according to customers to ask their family planning, unless this is expressly stated as a voluntary statement is marked. However, the association did not want to follow this view and passed fails to respond accordingly to its recommendations to its member banks. banks that the Request family planning illegally, now have to take regulatory action calculate (chapter 10.2, p. 150).

In the banking sector, we were also concerned with a customer's complaint against one bank employee who suggested that she sell her property after her husband's death to sell a broker he knows. After the complainant no interest had shown at the contact, the bank clerk had tips to the broker friend on the property that is expected to be sold, so that they can identify the widow and could contact (chapter 10.4, p. 153).

Video technology is still an area of work that is constantly evolving and biometrics. In the second phase of the pilot project on video surveillance at the train station Südkreuz, Deutsche Bahn tested so-called "intelligent" video systems from various providers.

The annual report explains what will be tested in this phase of the project, how the Measures are to be evaluated in terms of data protection law and which criteria are to be used when answering the question whether live operation is permissible (Chapter 11.1, p. 155).

The supervisory authority was also repeatedly asked questions about biometric building access controls. A large publishing house has been testing such a system since August 2019. However, regular operation is particularly problematic because participation in the control system may only be made voluntarily (Chapter 11.2, p. 157).

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A large number of complaints related to the area of telemedia. A complainant contacted the BlnBDI, for example, after receiving an email from an online

platform operator, although he was not a user of this platform. How himself turns out, he previously had a multi-step registration process on this platform canceled prematurely and decided not to continue using the offer. the platform The operator had nevertheless saved and processed the data that had already been entered. That was not allowed (chapter 9.10, p. 144).

It turned out to be extremely problematic when dealing with visitor data the city portal Berlin.de. On the web portal, which is in public-private partnership between operated by the State of Berlin and a private provider, intensive tracking was carried out by third parties. The extensive examination is ongoing. The state of affairs is presented in the annual report shown (Chapter 13.8, p. 190).

Also the complex test procedures against offices of the state administration, political parties and companies because of the operation of so-called Facebook fan pages authority continues. These procedures were initiated after the European Court of Justice ruled in 2018 that operators of such Fanpages for the data processing that takes place together with Facebook are responsible. In the annual report, the problem, the current developments as well as the status of the proceedings explained in detail (chapter 13.6, p. 185).

The first in Germany after the General Data Protection Regulation attracted a great deal of attention imposed a fine in the millions on Deutsche Wohnen SE. In the annual report set out which data protection violations were punished and how supervisory authority has assessed the amount of the fine (Chapter 9.1, p. 126 and Chapter 12.3, p. 164). In addition to this and other fine proceedings that have already become known the BlnBDI also imposed on the online bank N26 and Delivery Hero Germany GmbH a fine of 6,000 euros against the national association of the NPD. This one already had in February 2018, i.e. before the GDPR came into effect, in an illegal manner on a website the names, telephone numbers and e-mail addresses of employees in refugee



institutions (Chapter 12.4, p. 165).

Since the end of 2016, the Berlin data protection officer has been developing offers with which Elementary school children are made aware of the protection of their data in the digitized world.

The redesigned and expanded media education offer [www.data-kids.de](http://www.data-kids.de)

was not only nominated for the German children's software award TOMMI in 2019,

but also in several project hours carried out at schools by children and

Teaching staff accepted with enthusiasm (Chapter 5.6, p. 97).

After the states of Bremen, Hamburg and Rhineland-Palatinate now also Thuringia

has a transparency law, there are also first steps towards one in Berlin

modern freedom of information law. In addition to a broad alliance

civil society organisations, which brought about the transparency Berlin referendum

called, brought the FDP parliamentary group in the Berlin House of Representatives

relevant draft law. The BlnBDI welcomes these initiatives and will

actively support corresponding legislative projects (Chapter 17.3, p. 217).