

A turning point in data protection

New data protection law: be careful, but don't panic!

From May 25, 2018, the European General Data Protection Regulation will apply. With it, the new Federal Data Protection Act and also the new Lower Saxony Data Protection Act come into force.

“Overall, the General Data Protection Regulation (GDPR) will lead to better transparency for consumers when handling their data. The information requirements that already exist are being expanded once again. At the same time, those affected must be informed at the time of storage as to who is collecting, processing or storing data about them, when and how,” explains State Data Protection Officer Barbara Thiel.

In addition, the GDPR gives the data subjects a far-reaching right to information: they may first ask the responsible company whether personal data is being processed. If this is the case, the person concerned has the right to detailed information about all details of the data processing in the second step. In principle, the companies must comply with the request for information free of charge and at the latest within one month.

The new ordinance also provides the supervisory authorities with numerous innovations: “Not only reactive advice, but above all proactive information and awareness-raising are given high priority. Affected persons should be informed more about their rights in the future, data processing companies should be made more aware of their obligations and overall the topic of data protection should be given more public attention,” said Thiel.

“I was happy to accept this order from the GDPR in advance. In the last two years I have been in contact with a large number of companies. In many lectures at the information events of chambers, associations and unions, the employees of my company and I pointed out the new requirements and offered help.

In November last year, my authority published a checklist for small and medium-sized companies on how to implement the new data protection law. This allows companies to identify the areas in which they are already well prepared and the areas in which there is still a need for action by May 25, 2018. In the past few weeks, my authority has been overwhelmed by a large number of questions, which the staff in my office have meticulously answered. Our approach was and is to contribute to clarification and reassurance.

The new data protection law should lead to caution but not panic, because the European General Data Protection Regulation is an evolution, not a revolution. I therefore do not share the current criticism of the new data protection law.”

With the law passed last week for the reorganization of Lower Saxony's data protection law, the administrations in Lower Saxony are now on the home straight as far as possible with legal certainty in the application of data protection regulations. "Since the beginning of the year, my employees have been preparing the authorities in Lower Saxony for the new legal situation with numerous information and training events," summarizes Thiel.

Unfortunately, the introduction of the GDPR is increasingly being accompanied by reference to the risks of warnings, in addition to the constant reference to the very high fines that are imminent from May 25th, 2018. The state data protection officer: "The warning is not a legal enforcement instrument of data protection law and in particular not an enforcement tool of the data protection supervisory authorities. The warning is an instrument of competition law. It gives associations and chambers, but also competitors, the opportunity to assert claims for injunctive relief and removal."

The prerequisite is a violation of so-called market conduct rules. Whether and to what extent data protection regulations should be included in this has been a matter of debate in Germany and has at best been affirmed for individual data protection regulations, such as the information obligations. With regard to the provisions of the GDPR, this discussion will have to be repeated.

In addition, the GDPR has not brought any change with regard to the potential risk of warnings and has not changed the legal situation. The risk of a warning is therefore not affected by the GDPR.

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