

Press release from the State Commissioner for Data Protection and Freedom of Information Mecklenburg-West Pomerania

State Commissioner for Data Protection and Freedom of Information Mecklenburg-Western Pomerania presents activity report
for 2020

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The State Commissioner for Data Protection and Freedom of Information Mecklenburg-Western Pomerania (LfDI MV) presented its activity report for 2020 today. Last year, the corona pandemic had a massive impact on the structure and volume of the tasks to be performed by the authority. On the one hand, this involved the admissibility of measures to combat the pandemic under data protection law, such as tracing contacts, and on the other hand, the evaluation of technical innovations that were used more frequently as a result of the pandemic, such as video conferencing systems.

The number of submissions and complaints rose from 533 in 2019 to 790 in 2020. 173 data breaches were reported to the LfDI MV by those responsible in accordance with Article 33 GDPR. In the previous year there were 108. The number of European procedures rose from 1069 in 2019 to 1350.

While the number of measures pursuant to Article 58 (2) GDPR was 82 in 2019, it was already 105 in 2020. In a whole series of cases, measures were merely threatened but ultimately not implemented because the threat already had the desired effect. The 105 cases include five cases in which the LfDI MV imposed fines. In addition, fines were imposed in two cases and fines were imposed on another legal basis in two cases.

The number of event-related audits based on inquiries, reports, complaints and the like rose from 67 in 2019 to 134 in 2020.

The number of inspections that are independent of cause and where the LfDI MV determines where an inspection is to be carried out remains at an extremely low level of five, although it is precisely here that there is a good opportunity to strengthen data protection in the long term.

While 175 events took place in 2019, there were only 27 in 2020. The measures to contain the pandemic, which included a drastic reduction in direct contacts, meant that many events had to be cancelled. LfDI MV is responsible for the implementation of fine procedures for data protection violations by police officers. So far, the authority has initiated a total of 35 such procedures. The vast majority of these were unauthorized queries in the police IT systems for personal purposes.

Overall, the official statistics show very clearly that the tasks have changed somewhat in terms of their structure, but their volume has become significantly larger rather than smaller. The belief in a "task bubble" caused by the GDPR has again been proven to be a capital error in 2020.

The authority had to cope with the growing volume of tasks with an unchanged number of positions. The additional posts already provided for in the state budget were not unblocked; rather, the state parliament remained in its blocking stance.

"According to our state constitution, everyone has the right to the protection of their personal data," says Heinz Müller, State Commissioner for Data Protection and Freedom of Information for Mecklenburg-Western Pomerania. "The task of my authority is to enforce this fundamental right. If we don't have enough staff, the fundamental rights guarantee of Article 6 of our national constitution is in jeopardy."

The LfDI MV was able to assert itself in the legal dispute over the information portal "Neutrale Schule" of the state association of the party "Alternative für Deutschland" (AfD). The authority had already prohibited data collection via the portal in September 2019. The AfD initially complied with the ban, but filed an action for annulment of the corresponding order and, by way of summary legal protection, also took action against the order for immediate enforcement. In November 2020, the administrative court in Schwerin dismissed the action in the main proceedings and confirmed the legality of the ban. Pupils and parents in particular were asked via the portal to report AfD teachers who had made critical statements about the AfD in school lessons. It happens again and again that women contact the LfDI MV and complain that the ex-partner does not delete intimate photos of them. The persons depicted may be entitled to such a claim for deletion due to the associated violation of their personal rights and must be enforced before the civil courts. A violation of data protection law only arises when the processing leaves the private and family sphere, i.e. the photos are made accessible to third parties or published. The LfDI MV points out that in this case the existence of a data protection violation and therefore also the imposition of a fine can be considered.

Once again, the LfDI MV had to deal with numerous complaints about video surveillance. Complaints about video surveillance systems in the neighborhood had a particularly high proportion. The GDPR is also generally applicable here. The operators of

a video surveillance system should therefore familiarize themselves with the applicable legal situation before installing it and check whether the requirements of the GDPR are fulfilled.

As a result of the pandemic, communication via video conferencing systems found its way into all areas of life. A large amount of personal data is processed as part of a video conference. The person responsible for the video conference needs a legal basis for this. In order to support companies, authorities or other organizations in fulfilling the sometimes quite complex data protection requirements for conducting video conferences, the DSK published the "Guide to video conference systems" last year. This includes a checklist that can be used to work through the legal and technical requirements one after the other.

For many years, the LfDI MV has been involved with Microsoft products within the framework of DSK working groups. In 2020, the focus was on the contractual provisions for the provision of a cloud service for the Office 365 office software with applications such as Word, Excel or PowerPoint. Since the data processing does not take place on the technical equipment of the person responsible for data protection, but on those of Microsoft, a contract according to Article 28 Paragraph 3 DS-GVO is required. In the opinion of the LfDI MV, however, the contractual regulations specified by Microsoft do not meet the requirements of the GDPR. The LfDI MV therefore recommends that those responsible for data protection examine the use of alternative products, especially from the open source area.

According to the GDPR, those responsible for processing must ensure compliance with the principles applicable to the processing of personal data. However, the digital sovereignty of public administration, i.e. the ability of public administration to exercise its role in the digital world in a self-determined manner, is significantly impaired by business relationships with external IT providers such as Microsoft. The LfDI MV recommends that the state government develop a modern, comprehensive IT strategy in order to free itself from dependence on individual providers in the medium term.

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[Back to overview](#)