

February 21, 2019

### **The protection of privacy as a challenge for the 21<sup>st</sup> century – digital development needs data protection**

**The Hamburg Commissioner for Data Protection and Freedom of Information presents his 27th activity report on data protection for the reporting year 2018**

After the first seven months under the General Data Protection Regulation (GDPR), which has been in force throughout Europe since 25 May 2018, there is reason for an interim summary. During this time the implementation of the new regulations has intensively occupied public administration, the companies and also the data protection supervisory authorities. The experience gained shows that the gap between what is in place and what should be is widening with regard to the claim to validity and legal practice. Unfortunately, the GDPR has brought with it many uncertainties and undesirable developments, including the danger of too much bureaucracy, not least with regard to cooperation between supervisory authorities in Europe. Last but not least, it should be noted that in view of the doubling of the number of complaints, the data protection authorities - especially in Hamburg - are not adequately staffed. On the positive side however, the GDPR can be certified as having brought about a significant change in data protection awareness among citizens, authorities and companies.

This activity report is again based on the concept of an output-oriented presentation of the work of the Hamburg data protection supervisory authority. Audits, reports, legally binding orders and fines proceedings, consultations and data protection communication as well as information on the activities of the authorities (e.g. statistics) form its main chapters.

Prof. Dr. Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information commented: "Data protection and privacy are among the top topics of this century. Apple CEO Tim Cook, who last year repeatedly publicly emphasised the high standard of the new European data protection law, also sees this. A look at the media coverage of recent months shows this positive view is not generally shared here in Germany. Instead, numerous stories and numerous scandals were linked to the entry into force of the GDPR: Among other things, there was talk here of banning landlords of apartments from using name plates with the names of the tenants printed on them, the end of public photography and the dumbing down of police intelligence by the mass deletion of police files. The supposed steam-rolling of society as well as state with a business-hostile and criminal-friendly prohibition culture through modern data protection, is a fantasy that creates a negative mood instead of information and enlightenment.

However, data protection is not an end in itself, but a human right. It demands not only the enforcement and monitoring of laws, but also advice, education and information as a prerequisite for a self-determined basic orientation of the individual in the digital world.

We are currently at the beginning of a development that will fundamentally change people's lives. In the age of artificial intelligence, targeting, biometric surveillance and social scoring, the most sensitive parts of human beings are their data. Digitalisation and data protection must therefore not be opposites, otherwise we will lose the opportunity for progress with a human face. In the process of digital change, we all have it in our hands to develop intelligent structures with care and a sense of proportion that do not play digitalisation and data protection off against each other, but understand them for what they are: Twin souls that must be firmly anchored in our world.

The electronic version of the 27th Activity Report on Data Protection 2018 can be downloaded from the HmbBfDI website in German language at [datenschutz-hamburg.de/taetigkeitsberichte/TB-D-2018](https://datenschutz-hamburg.de/taetigkeitsberichte/TB-D-2018).

**Press contact:**

Martin Schemm

Phone: +49 40 428 54-4044

E-Mail: [presse@datenschutz.hamburg.de](mailto:presse@datenschutz.hamburg.de)

**Below are some selected topics from the current activity report:**

Improving the enforcement culture on EU-level: It is true that there are indeed undesirable developments associated with the GDPR that should be corrected. These include the linear application of data protection regulations to all responsible bodies, regardless of whether they are small companies and non-profit associations or global corporations whose business purpose is the mass processing of data. Furthermore, the practice of supervisory enforcement in cross-border data processing has so far been insufficient. In future, the lead authorities and the European Data Protection Committee will have to process complaints about breaches of data protection by global data collectors swiftly. Otherwise, the impression arises that the big corporations are being let off the hook and the small ones are being punished. The GDPR does not favour the forum shopping of companies that switch to member states in which data protection is supposedly handled laxly. Rather, it provides for a procedure with final decision-making powers for all supervisory authorities represented in the European Data Protection Board. Here it is necessary to critically review the decisions of the responsible authorities.

Police: Facial Recognition Software / Videmo: The HmbBfDI has ordered the deletion of a police database from the Hamburg Police Department's Department of the Interior and Sport in a decision dated 18.12.2018. The database in question was set up by the Special Commission "Black Block" of the Hamburg Police for the criminal investigation of the events surrounding the G20 summit held in June 2017 with the help of so-called facial recognition software. More than 30,000 files of video and image material from police and private sources were processed by this software. The software localised human faces, calculated their characteristic features and stored these findings in a comparable and machine-readable form, the templates in the database. After extensive examination, the HmbBfDI came to the conclusion that the current legal situation does not provide a legal basis for the police for such a biometric database. Since the Ministry of the Interior and Sports, despite a previous complaint by the HmbBfDI, maintained the use of the database and also announced the use of the facial recognition software for future (major) events, a binding order was issued to delete the biometric profiles. The action filed by the Ministry of the Interior and Sports against the order at the Administrative Court has a suspensive effect, so that the order cannot be executed until the court has finally clarified the matter.

Intelligent Transport Systems Strategy - ITS: With the Intelligent Transport Systems Strategy (ITS), Hamburg aims to play a pioneering role in the field of intelligent mobility throughout Europe and is preparing in particular for the organisation of the ITS World Congress 2021 in Hamburg. The HmbBfDI also continued its consultations on this subject during this reporting period. In addition to its ongoing participation in the strategy committees, the Senate's progress report to the parliament clearly highlighted data protection as a cross-cutting issue. In addition, individual projects had to be discussed. The HmbBfDI provided information on the progress made in the international discussion on the main topic of "Automated and networked driving" and achieved increasing awareness among the authorities involved of the legal basis for carrying out tests with real data in normal road traffic, which had long been required.

Facebook and the data scandal surrounding Cambridge Analytica: About a year ago, numerous media reported that the British company Cambridge Analytica had obtained unlawfully personal data from millions of Facebook users via an app, in order to manipulate it purposefully with messages for political purposes. The app made use of the interface available on Facebook until the end of April 2015 (the so-called API), which enabled app developers to access data on both app users and their friends on Facebook. In March 2018, the HmbBfDI therefore reviewed the interface in order to clarify its technical and legal design. On the basis of these examination results, a fine procedure was initiated for mass data collection without legal grounds. The proceedings had a very tight timeframe, since the application of the General Data Protection Regulation on 25 May 2018

significantly changed the responsibilities of the supervisory authorities and from then on the Irish supervisory authority IDPC became responsible for Facebook Ireland Ltd. In addition, the majority of the cases were already statute-barred at the time of the investigations. The proceedings subsequently had to be discontinued for factual and legal reasons.

ECJ on Facebook Fanpages: The ECJ decision on Facebook Fanpages (ECJ, Ref. C-210/16 - "Wirtschaftsakademie") in June 2018 marks an important change in the data protection law structure of responsibility: The European Court of Justice has ruled that every operator of a Facebook fan page has joint data protection responsibility with Facebook for the personal data transmitted to the network via the fan page. The irresponsibility practiced by many fanpage operators until then is no longer tenable. Both the Data Protection Conference of the Independent Supervisory Authorities of the Federal and State Governments (DSK) and the European Data Protection Committee (EDSA) have dealt with the consequences of this decision. The subject of ongoing investigation is in particular the agreement presented by Facebook, which is intended to regulate joint responsibility. The supervisory authorities will demand further steps from the fanpage operators as well as from Facebook itself.