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# Data Protection as fundamental right – big demand, long delivery time

**The Hamburg Commissioner for Data Protection and Freedom of Information presents his  
28th Annual Report on Data Protection for the Reporting Year 2019**

The activity report presented today by the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) on the 2019 reporting year provides both an opportunity to look back and to take stock in order to consider future goals. In May, the General Data Protection Regulation (GDPR) will be valid for two years. Enforcement and implementation of the new data protection regulations are gaining momentum in Hamburg and in Germany as a whole. At the same time, however, there are also negative effects of the limited resources of the authorities on the one hand and dramatic differences in European enforcement on the other.

### Data protection on site

Modern data protection is multifunctional. The public should be made aware of the risks and rights related to the processing of data. The necessity to effectively protect citizens' rights in the face of ever spreading digitization and the growing dependence of business and administration on the processing of data must be raised in state and society. At the same time, it is important to promote, especially among young people, the competence to protect one's own data and to respect the data of others. Here the HmbBfDI has launched an initiative on data protection in media education, which is currently starting with a project to promote the topic in schools.

In turn, with the help of enforcement instruments data protection authorities must ensure that the rights of data subjects are respected by the data processors. Since the GDPR came into force, there has been a dramatic increase in complaints by citizens. Last year alone, the number of complaints at the HmbBfDI grew by 25%, after the number of submissions had already doubled in the first year of the GDPR. The increase of the Hamburg DPA's staff by only two posts in the current budget falls well short of what is needed in view of this development.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "The new awareness of citizens about their data protection rights cannot be overestimated. Complaints also give us important indications of possible structural data protection problems. However, if the current resources do not manage to answer the requests within a reasonable time frame, a negative impression of data protection will remain with the data subjects. With additional, temporary staff, it has recently been possible to keep inputs and outputs roughly in balance. This additional staff must be made permanent. In addition, the steady increase in the number of cases and the considerable backlogs make further reinforcement necessary."

### Data protection of two speeds?

The extensive sanctioning powers to penalise data protection violations are crucial for the enforcement of rights and freedoms of data subjects in an ever faster spinning carousel of data capitalization. Unfortunately, the Europe-wide harmonised sanctioning instruments are implemented very unevenly.

Depending on the location of the data controller, different national authorities are competent for all their activities in cases of cross-border data processing (so-called One-Stop-Shop procedure). This involves coordination procedures among many European supervisors, including referrals to the European Data Protection Board, a body of all EU supervisory authorities. This is cumbersome, time-consuming and ineffective and often ends up in disappointment. Legally binding measures against globally operating Internet services are largely still being missed, even in complaints-related cases. Subsequent decisions on the interpretation of the GDPR are on ice.

The objectives of the GDPR are thus turned into their opposite. Instead of harmonised enforcement, a highly diverse and non-transparent milieu of enforcement cultures is emerging. Instead of establishing legal protection for data subjects, proceedings are postponed until they are almost forgotten. Instead of fair competition in the common market for digital services, national biotopes are becoming entrenched for digital companies that secure and expand their market position in Europe vis-à-vis other competitors. The impression that the large market participants in particular stand outside the regulations is fatal for the acceptance of the data protection rules.

Johannes Caspar: "The fact that no legally binding measures have been taken against the majority of the world's leading Internet service providers and platforms since the GDPR came into force, despite numerous reports of data protection violations in the last two years, and that no draft decisions have even been made, is a bad sign in the second year of the GDPR. Different legal and cultural traditions in enforcement, a lack of corrective action by inactive lead authorities, different national rules on the administrative procedure, and a concentration of companies in a few Member States, all show: As well as the concept of the one-stop shop may be intended, it is not practical.

The deficits are structural and, in my view, cannot be remedied on a cooperative basis between the supervisory authorities alone. A legal reorientation is needed. The hope that time will heal this situation is deceptive and only prolongs the current situation. Time is the scarcest resource in the process of digitisation. The ball is now in the EU Commission's playing field to present suitable proposals for legal changes in the context of the evaluation report to be submitted at the end of May. It would be fatal to wait until the next evaluation, because this evaluation will not take place until 2024."

The electronic version of the report can be found at "[https://datenschutz-hamburg.de/assets/pdf/28.\\_Taetigkeitsbericht\\_Datenschutz\\_2019\\_HmbBfDI.pdf](https://datenschutz-hamburg.de/assets/pdf/28._Taetigkeitsbericht_Datenschutz_2019_HmbBfDI.pdf)" (German only).

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