

DABELSTEIN & PASSEHL

Hamburg  Leer



Shipping 4.0 – Law and Jurisdiction

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Two main areas of digital technology underlying every data transaction where breaches can occur and issues of law and jurisdiction become relevant:

➤ **Data protection**

confined to personal data; commonly defined as the law designed to protect your personal data which is collected, processed and stored by “automated” means or intended to be part of a filing system;

General Data Protection Regulation (GDPR)REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016

➤ **Data security**

Also known as Cyber security, refers to the technologies, processes and practices designed to protect networks, computers, programs and any data, digital and analog, i.e. presented in a physical way, from attack, damage or unauthorized access.

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- Cloud Jurisdiction – “location, location, location”!
- US-Style discovery?
- Disclosed evidence admissible in Germany?

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➤ GDPR – Scope of application

- Personal data
- Processing
- Filing system
- Controller
- Processor
- Territorial Scope “the long arm of the regulation”

➤ Lawful processing

The controller shall be responsible for, and be able to demonstrate compliance with the lawful processing, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

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➤ GDPR – Security

Controller and processor shall ensure the appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality'). (GDPR Art. 5)

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- GDPR – Breach notification
- GDPR – Transfers to third countries

Transfers to the United States of America

“Safe Harbour” is dead – long live the “Privacy Shield”

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➤ **Processor's obligations; Joint liability Controller – Processor**

GDPR also makes data controllers and processors jointly and severally liable where they are both responsible for the damage caused by their processing

Art. 82 GDPR (extract)

- Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

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- Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
- A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
- Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

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➤ Art. 79 GDPR

Rights to an effective judicial remedy against a controller or processor

“Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. **Alternatively**, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.”

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➤ GDPR Sanctions

The administrative fines that may be imposed by a supervisory authority in the event of non-compliance with the GDPR are split into two tiers:

Some contraventions will be subject to administrative fines of up to €10,000,000 or, in the case of undertakings, 2% of global turnover, whichever is the higher.

Others will be subject to administrative fines of up to €20,000,000 or, in the case of undertakings, 4% of global turnover, whichever is the higher.

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- Liability under GDPR contracts

GDPR, with its fines of up to 4% of annual worldwide turnover will raise issues

of managing liability under processing contracts.


Ultimately, liability caps might well increase in controller – processor contracts; the parties will have to assess the realistic level of their risks and insurance cover.

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- What does it mean for Arbitration?
Arbitration Data Protocol

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THANK YOU FOR YOUR ATTENTION!

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