



Federal Data Protection Act (BDSG)

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BDSG

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"Bundesdatenschutzgesetz, as amended by the notice of 14 January 2003 (Federal Law Gazette I, p. 66), which was last amended by Article 7 of the Act of 30 June 2017 (Federal Law Gazette I, p. 2097)

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Note: Amendment by Art. 1 G v. 28.4.2017 I 968 (No. 23) has been taken into account

Amendment by Art. 7 Gv. 30.6.2017 I 2097 (no. 44) textually proven, documentary not yet finalized

For details on the status, see the menu under [Notes](#)

footnote

(+++ proof of text from: 1.6.1991 +++)

The G was designated as Art. 1 of the Gv. 20.12.1990 I 2954 by the Bundestag with the approval of the Federal Council; § 10 (4) sentences 3 and 4 shall be made on the first day of the twenty-fourth calendar month following the promulgation, and on the first day of the sixth calendar month following the promulgation. Article 6 (2), first sentence, 2 Gv. 20 December 1990 I 2954 came into force. The G was announced on 29.12.1990.

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§ 1 Purpose and Scope of the Act

(1) The purpose of this Act is to protect individuals from the fact that they are affected by their personal data through the handling of their personal data.

(2) This Act applies to the collection, processing and use of personal data

1. Public authorities of the Confederation,

Second Public authorities of the Länder, insofar as the data protection is not regulated by the Land Law and as far as it is concerned

- a) Execute federal law or
- b) As administrative bodies, and are not administrative matters,

Third Non-public bodies, in so far as they process, use or collect the data using data processing facilities or process the data in or from non-automated files, unless the collection, processing or use of the data is exclusively for Personal or family activities.

(3) Insofar as other legal provisions of the Confederation apply to personal data including their publication, they shall comply with the provisions of this Act. The obligation to maintain legal secrecy obligations or professional or special secrecy which is not based on statutory provisions remains unaffected.

(4) The provisions of this Act shall be in accordance with the provisions of the Administrative Procedure Act, insofar as personal data are processed when the facts are ascertained.

(5) This Act shall not apply where a responsible authority in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area collects, processes or uses personal data within the territory of the country, Branch office in Germany. This Act shall apply if a responsible authority which is not in a Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area collects, processes or uses personal data within the country. If the responsible body is to be named in accordance with this Act, it is also necessary to provide information on representatives residing in Germany. The sentences 2 and 3 do not apply, Provided that data carriers are used only for the purpose of transit through the country. Section 38 (1) sentence 1 shall remain unaffected.

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§ 2 Public and non-public bodies

(1) Public authorities of the Federation shall be the authorities, the organs of the administration of justice, and other public bodies of the Federation, the federal bodies, institutions and foundations of public law and their associations, regardless of their legal form. As public bodies, the companies resulting from the special fund Deutsche Bundespost by law are valid as long as they are entitled to an exclusive right under the postal service.

(2) Public bodies of the Länder are the authorities, the organs of legal administration and other bodies organized under public law of a country, a municipality, a municipal association and other legal entities under public law who are under the supervision of the country and their associations irrespective of their legal form.

(3) Associations of private law from public authorities of the Confederation and of the Länder performing public administration tasks shall be considered public authorities of the Confederation, irrespective of the participation of non - public bodies, if

1. They operate beyond the territory of a country; or

Second The absolute majority of the shares or the absolute majority of the votes.

Otherwise, they are regarded as public bodies of the Länder.

(4) Non-public entities are natural and legal persons, companies and other private partnerships, in so far as they are not covered by paragraphs 1 to 3. If a non-public authority performs sovereign tasks of the public administration, it is a public authority for the purposes of this Act.

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§ 3 Other Definitions

- (1) Personal data are individual details of personal or factual circumstances of a particular or identifiable natural person (affected person).
- (2) Automated processing is the collection, processing or use of personal data using data processing equipment. A non-automated file is any non-automated collection of personal data that has the same structure and is accessible and evaluated according to specific characteristics.
- (3) Collection is the obtaining of data about the person concerned.
- (4) Processing is the storage, modification, transfer, blocking and deletion of personal data. Specifically, irrespective of the methods used,
1. Storing the collection, recording or storage of personal data on a data carrier for the purpose of its further processing or use,
- Second Altering the content-related reorganization of stored personal data,
- Third Transfer the publication of personal data obtained from personal data or processed by data processing to a third party in such a way that:
- a) The data are passed on to the third party or
 - b) The third sees or retrieves data retrieved for viewing or retrieving,
- 4th Block the identification of stored personal data to restrict its further processing or use,
- 5th Delete the unrecognized personal data.
- (5) The use of any personal data, as far as it is not processing, is used.
- (6) Anonymizing is the modification of personal data in such a way that the individual details can no longer be attributed to personal or factual circumstances, or can only be allocated to a specific or identifiable natural person with a disproportionate amount of time, costs and labor power.
- (6a) Pseudonymization is the replacement of the name and other identification features with a mark for the purpose of excluding or substantially hindering the determination of the person concerned.
- (7) The responsible agency is any person or entity that collects, processes or uses personal data for itself, or carries out this in the order by others.
- (8) The recipient is any person or entity that receives data. Third is any person or body outside the responsible body. Third parties are not the persons concerned or persons and entities who collect, use or use personal data on behalf of the European Economic Area, in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area.
- (9) Specific types of personal data are information on racial and ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual life.
- (10) Mobile personal storage and processing media are data carriers,
1. Which are issued to the affected parties,
- Second On which personal data beyond the storage can be processed automatically by the issuing or another body; and
- Third In which the person concerned can influence this processing only by the use of the medium.
- (11) Employees are:
1. Employees,
- Second To their vocational training employees,
- Third Participants in services for participation in working life, as well as for clarification of professional qualifications or work trials (rehabilitants),
- 4th In recognized workshops for disabled people Employees,
- 5th According to the Youth Voluntary Service Act,
- 6th Persons who, because of their economic dependence, are to be regarded as workers-like persons; These include those employed in homework and those who are equal to them,
- 7th Applicants for an employment relationship and persons whose employment relationship has ended,
- 8th. Civil servants, civil servants, judges of the federation, soldiers and civil servants.

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§ 3a Data Avoidance and Data Parsity

The collection, processing and use of personal data and the selection and design of data processing systems must be geared to the goal of collecting, processing or using as little personal data as possible. In particular, personal data are to be anonymised or pseudonymized, insofar as this is possible according to the intended use and does not require disproportionate expenditure in relation to the intended protection purpose.

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§ 4 Permissibility of data collection, processing and use

- (1) The collection, processing and use of personal data is only permitted insofar as this law or any other legal provision permits or orders this or the person concerned has given his consent.
- (2) Personal data must be collected with the data subject. Without his co - operation they may be raised only if
1. A legal requirement provides for or compulsory; or
- Second a)
- a) The administrative task to be performed by its nature or the purpose of the business requires a survey with other persons or bodies;
 - b) The survey would require a disproportionate effort
- And there are no indications that the interests of the person concerned are prejudiced.
- (3) If personal data are collected by the person concerned, he / she is, unless he / she has already acquired knowledge in a different way, transferred by the responsible body
1. The identity of the responsible body,
- Second The purpose of collection, processing or use; and
- Third The categories of recipients only, insofar as the person concerned does not have to reckon with the transfer to the latter in the circumstances of the individual case,

to teach. If personal data are collected by the party concerned on the basis of a legal requirement which is obliged to provide information, or if the provision for providing information is a prerequisite for the granting of legal advantages, the data subject shall refer to this, otherwise the voluntary nature of his information. Insofar as required by the circumstances of the individual case or upon request, he shall be informed of the legal provisions and the consequences of the refusal to provide information.

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§ 4a Consent

(1) Consent is only effective if it is based on the free decision of the person concerned. It is intended to indicate the intended purpose of collection, processing or use as well as, insofar as required by the circumstances of the individual case or upon request, the consequences of the refusal of consent. Consent is required in writing, unless a different form is appropriate due to special circumstances. If consent is to be given in writing together with other declarations, it must be emphasized.

(2) In the field of scientific research, a special circumstance within the meaning of the first sentence of paragraph 1 also applies if the written form of the particular research purpose is significantly impaired. In this case, the reference pursuant to para. 1 sentence 2 and the grounds for the considerable impairment of the particular research purpose shall be recorded in writing.

(3) Insofar as special types of personal data (§ 3 para. 9) are collected, processed or used, consent must also expressly refer to these data.

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§ 4b Transmission of personal data abroad, as well as to over- or inter-governmental agencies

(1) For the transmission of personal data to bodies

1. In other Member States of the European Union,

Second In other Contracting States to the Agreement on the European Economic Area, or

Third The institutions and bodies of the European Communities

§ 15 (1), § 16 (1) and §§ 28 to 30a shall apply, in accordance with the laws and agreements applicable to this communication, provided that the transmission takes place within the scope of activities wholly or partly within the scope of the law of the European Communities fall.

2. Paragraph 1 shall apply mutatis mutandis to the transmission of personal data to bodies referred to in paragraph 1 which are not part of activities falling within the scope of the law of the European Communities in whole or in part, or to other foreign or inter-state or intergovernmental bodies, The transmission shall be omitted if the data subject has a legitimate interest in the exclusion of the transmission, in particular if an adequate level of data protection is not ensured in the bodies mentioned in the first sentence. Sentence 2 does not apply,

3. The adequacy of the level of protection shall be assessed in the light of all the circumstances relevant to the transmission of data or a category of data transmissions; In particular, the nature of the data, the purpose, the duration of the intended processing, the country of origin and destination, the legal norms applicable to the beneficiary concerned, as well as the standards and safety measures applicable to him.

(4) In the cases referred to in Section 16 (1) (2), the transmitting agency shall inform the parties concerned of the transmission of its data. This does not apply if it is to be expected that it is otherwise aware of it, or if the disclosure would jeopardize public security or would otherwise be detrimental to the welfare of the Confederation or a country.

(5) Responsibility for the admissibility of the transmission shall be borne by the transmitting body.

(6) The body to which the data is transmitted shall indicate the purpose for which the data are transmitted.

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§ 4c Exceptions

(1) Within the scope of activities wholly or partly within the scope of the law of the European Communities, the transmission of personal data to bodies other than those referred to in Article 4b (1), even if they do not provide an adequate level of data protection, Provided that:

1. The person concerned has given his consent,

Second The transmission is necessary for the performance of a contract between the data subject and the responsible authority or for the implementation of pre-contractual measures taken at the request of the data subject,

Third The transmission is necessary for the conclusion or performance of a contract which has been concluded or concluded with a third party in the interest of the data subject by the responsible body,

4th The transmission is necessary to safeguard an important public interest or to assert, exercise or defend legal claims before the court,

5th The transmission is necessary for the preservation of the vital interests of the data subject; or

6th The transmission is from a register which is intended to inform the public and is open to inspection by the general public or by all persons who can prove a legitimate interest insofar as the legal requirements are met in a particular case.

The body to which the data is transmitted must be pointed out that the transmitted data may only be processed or used for the purpose for which it is transmitted.

(2) Without prejudice to paragraph 1, sentence 1, the competent regulatory authority approve individual transmissions or certain types of transfers of personal data to other than the in § 4b para. 1 said locations, if the controller adequate safeguards with respect to the protection of personal privacy and exercising Of the rights attached thereto; The guarantees may arise in particular from contractual clauses or binding company rules. For postal and telecommunication companies, the Federal Commissioner is responsible for data protection and freedom of information. If the transmission is to be carried out by public authorities, they shall carry out the test pursuant to sentence 1.

(3) The Länder shall notify the Confederation of the decisions taken pursuant to the first sentence of paragraph (2).

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§ 4d Notification requirement

(1) Processes of automated processing shall be reported to the responsible supervisory authority and to the public authorities of the Federal Government, as well as by the postal and telecommunication companies of the Federal Data Protection Supervisor or the Federal Commissioner for Data Protection and Information Freedom in accordance with § 4e,

(2) The obligation to notify shall cease to apply if the responsible authority has appointed a data protection officer.

(3) The obligation to notify shall also cease to apply if the responsible body collects, processes or uses personal data for its own purposes, as a rule a maximum of nine persons are constantly engaged in the collection, processing or use of personal data; Collection, processing or use for the justification, execution or termination of a legal relationship or legal transaction with the person concerned.

4. Paragraphs 2 and 3 shall not apply where the processing is automated, in which personal data are submitted by the relevant body

1. For the purpose of transmission,

Second For the purpose of anonymised transmission;

Third For purposes of market or opinion research

get saved.

(5) Where automated processing presents particular risks to the rights and freedoms of the persons concerned, they are subject to the examination before the start of processing (pre-control). A prior check shall be carried out in particular if:

1. Specific types of personal data (Section 3 (9)) or

Second The processing of personal data is intended to assess the personality of the data subject, including his or her abilities, performance or conduct,

Except where there is a legal obligation or consent of the data subject or the collection, processing or use is necessary for the establishment, execution or termination of a legal relationship or legal transaction with the person concerned.

(6) The person responsible for data protection is responsible for prior checking. The latter shall carry out the preliminary check-up after receipt of the overview pursuant to § 4g (2) sentence 1. In case of doubt, he or she has to contact the supervisory authority or the postal and telecommunication companies to the Federal Commissioner or the Federal Commissioner for data protection and freedom of information.

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§ 4e Content of the notification obligation

If procedures for automated processing are to be reported, the following information shall be provided:

1. Name or company of the responsible body,

Second Owners, directors, directors or other legal or managerial directors and persons responsible for managing the data processing,

Third Address of the responsible body,

4th Purpose of data collection, processing or use,

5th A description of the persons concerned and the related data or data categories,

6th Recipients or categories of recipients to whom the data may be communicated,

7th Periods for the deletion of the data,

8th. A planned transfer of data to third countries,

9th A general description which makes it possible to provisionally assess whether the measures referred to in Article 9 are appropriate to ensure the safety of the processing.

Section 4d (1) and (4) shall apply mutatis mutandis to the amendment of the information communicated pursuant to sentence 1 as well as to the date of commencement and termination of the notifiable activity.

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§ 4f Commissioner for Data Protection

(1) Public and non-public bodies which process personal data in an automated manner shall appoint a data protection officer in writing. Non-public bodies are obliged to do so no later than one month after commencement of their activities. The same applies if personal data are collected, processed or used in a different way and as a rule at least 20 persons are employed. Sentences 1 and 2 shall not apply to the non-public bodies, which are generally employed by a maximum of nine persons with the automated processing of personal data. Where required by the structure of a public body, the appointment of a data protection officer is sufficient for several areas.

(2) The Data Protection Officer may only be appointed as to who has the expertise and reliability required to fulfill his duties. The degree of the necessary specialist knowledge is determined in particular by the extent of the data processing of the responsible body and the protection requirement of the personal data that the responsible body collects or uses. A data protection officer may also be appointed outside the responsible office; Control shall also cover personal data which is subject to a professional or special secrecy, in particular tax secrecy pursuant to Article 30 of the Tax Regulations.

(3) The data protection officer shall be directly attributed to the head of the public or non-public authority. He is free of instructions in the exercise of his professional knowledge in the area of data protection. He may not be disadvantaged because of the performance of his duties. The appointment to the data protection officer may be revoked in accordance with § 626 of the German Civil Code, or in the case of non-public bodies, at the request of the supervisory authority. If, pursuant to paragraph 1, a data protection officer is to be appointed, the dismissal of the employment relationship is inadmissible, unless there are facts which entitle the responsible body to terminate the contract for important reasons without observance of a notice period. After termination of the contract as data protection representative, the termination shall be inadmissible within one year after the termination of the order, unless the responsible authority is entitled to terminate the contract for important reasons without observance of a notice period. In order to maintain the expertise required to carry out its tasks, the responsible body shall allow the data protection officer to participate in further training and further training events and to bear their costs.

(4) The Data Protection Officer shall be obliged to maintain confidentiality as to the identity of the data subject, as well as circumstances which allow conclusions to be drawn on the data subject, unless he is released from the data subject.

(4a) Insofar as the data protection officer is aware of the data for which the head or a person employed by the public or non-public body is entitled for professional secrecy in the case of a certificate refusal, this right also applies to the Data Protection Officer and his assistant staff to. The person to whom the right to refuse to give a certificate for professional reasons shall decide on the exercise of that right, unless this decision can not be made in the foreseeable future. As far as the refusal of the data protection authority of the data protection officer is concerned, his files and other documents are subject to a prohibition of confiscation.

5. Public and non-governmental bodies shall assist the data protection officer in the performance of his duties and, in particular, to provide him / her with assistance, rooms, facilities, equipment and means to the extent necessary to fulfill his duties. Those affected can contact the data protection officer at any time.

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§ 4g Tasks of the data protection officer

(1) The data protection officer shall ensure compliance with this law and other data protection provisions. To this end, the Data Protection Officer may, in case of doubt, contact the authority responsible for data protection control at the responsible office. He may avail himself of the advice pursuant to section 38 (1) sentence 2. He has in particular

1. Ensure the proper use of the data processing programs used to process personal data; For this purpose, he shall be informed in good time of any plans for the automated processing of personal data,

Second

The persons involved in the processing of personal data must take appropriate measures to familiarize themselves with the provisions of this Act, as well as other rules on data protection and with the particular special requirements of data protection.

(2) The data protection officer shall provide the responsible authority with an overview of the information referred to in section 4e sentence 1 as well as persons entitled to access. The data protection officer makes the information according to § 4e sentence 1 no. 1 to 8 available on request to everyone in a suitable manner.

(2a) Unless a non-public authority is required to appoint a data protection officer, the head of the non-public body shall ensure the fulfillment of the tasks referred to in paragraphs 1 and 2 in a different manner.

(3) The sentence 2 sentence 2 shall not apply to the authorities named in section 6 (2) sentence 4. The first sentence of paragraph 1 shall apply with the proviso that the official data protection officer is responsible for the conduct with the head of the administration; In the case of inconsistencies between the official data protection officer and the authorities authority, the supreme federal authority decides.

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§ 5 Data Privacy

Data processing personnel are prohibited from collecting, processing or using unauthorized personal data (data secrecy). These persons, in so far as they are employed in the case of non-public bodies, are required to undertake data secrecy when taking up their duties. Data secrecy continues even after the end of their activities.

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§ 6 Rights of the person concerned

(1) The rights of the person concerned for information (§§ 19, 34) and for correction, cancellation or blocking (§§ 20, 35) can not be excluded or restricted by legal transaction.

(2) If the data of the data subject is stored in an automated manner in such a way that several digits are storable, and if the data subject is unable to ascertain which point the data has been stored, he may contact each of these sites. The latter is obliged to forward the person's claims to the place where the data has been stored. The person concerned must be informed of the transfer and the place. The authorities referred to in Section 19 (3), the authorities of the public prosecutor's office and the police, as well as public authorities of the financial administration, insofar as they store personal data for the purpose of monitoring and testing, Can inform the Federal Commissioner or the Federal Commissioner for data protection and the freedom of information. In this case, the further procedure according to § 19 (6) is directed.

(3) Personal data concerning the exercise of the right of the data subject arising from this law or from another rule on data protection may only be used to fulfill the duties of the responsible authority arising from the exercise of the law.

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§ 6a Automated individual decision

(1) Decisions which result in a legal consequence for the person concerned or which significantly affect him / her may not be exclusively based on the automated processing of personal data which serve the purpose of evaluating individual personality traits. A decision based solely on automated processing is in particular where no substantive assessment and a decision based thereon have been carried out by a natural person.

(2) This shall not apply if:

1. The decision has been taken within the framework of the conclusion or performance of a contractual relationship or other legal relationship and has been granted to the interested party;

Second The safeguarding of the legitimate interests of the data subject is ensured by appropriate measures and the responsible body communicates the fact of the existence of a decision within the meaning of paragraph 1 to the person concerned and, on request, the essential grounds of this decision are communicated and explained.

(3) The right of the person concerned to information pursuant to Sections 19 and 34 also covers the logical structure of the automated processing of the data concerning him.

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§ 6b Observation of publicly accessible rooms with optoelectronic devices

(1) The observation of publicly accessible premises with optical-electronic facilities (video surveillance) is only permissible as far as they are concerned

1. To the task of filling public authorities,

Second For the exercise of the right to house or

Third To exercise legitimate interests for specific purposes

And there are no grounds for believing that the interests of the affected parties are worthy of protection. When monitoring video from

1. Publicly accessible large-scale facilities such as, in particular, sports, assembly and amusement parks, shopping centers or parking lots, or

Second Vehicles and publicly accessible large-scale public rail, ship and bus services

The protection of life, health or freedom of persons residing there is considered a particularly important interest.

(2) The circumstances of the observation and the responsible body shall be identified by appropriate measures.

3. The processing or use of data collected pursuant to paragraph 1 shall be permitted if it is necessary to achieve the objective pursued and there are no indications that the interests of the persons concerned are worthy of protection. Paragraph 1 sentence 2 shall apply mutatis mutandis. For a different purpose, they may only be processed or used to the extent that this is necessary to ward off dangers for state and public security as well as for the prosecution of criminal offenses.

(4) If data collected by video surveillance are assigned to a specific person, the latter shall be notified of processing or use in accordance with §§ 19a and 33.

(5) The data shall be immediately deleted if they are no longer necessary to achieve the purpose or the legitimate interests of the persons concerned are opposed to further storage.

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§ 6c Mobile personal storage and processing media

(1) The body which publishes a mobile personal storage and processing medium or a method for the automated processing of personal data which is or is carried out in whole or in part on such a medium is applied to the medium,

1. Their identity and address,

Second In a generally comprehensible form, on the functioning of the medium, including the nature of the personal data to be processed,

Third How to exercise his rights under Sections 19, 20, 34 and 35, and

4th On the measures to be taken in case of loss or destruction of the medium

Provided that the person concerned has not already been informed.

2. The body required under paragraph 1 shall ensure that the equipment or facilities required for the exercise of the right of access are available to an appropriate extent for free use.

(3) Communication processes which trigger data processing on the medium must be clearly identifiable for the data subject.

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§ 7 Compensation for damages

If a responsible authority damages the data subject by means of an illegal or incorrect collection, processing or use of his personal data, which is illegal or incorrect in accordance with this law or in other respects, he or her institution is obliged to pay damages to the person concerned. The obligation to provide compensation shall be waived, as long as the responsible body has taken due care in accordance with the circumstances of the case.

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§ 8 Compensation for automated data processing by public authorities

(1) If a responsible public authority damages the data subject by means of an automated collection, processing or use of his personal data that is unlawful or inaccurate under this Act or other regulations on data protection, the institution is obliged to pay damages to the person concerned irrespective of any fault ,

(2) In the case of a serious infringement of the right to personality, the person concerned shall be compensated appropriately for money which is not a property damage.

(3) The claims pursuant to paragraphs 1 and 2 shall be limited to a total of EUR 130,000. If, on the basis of the same event, a number of persons are liable for damages exceeding a maximum amount of EUR 130,000, the individual compensation payments shall be reduced in the ratio of their total amount to the maximum amount.

(4) Where, in the case of automated processing, a number of places are authorized to store data and the injured party is not in a position to establish the storage location, each of these sites shall be liable.

(5) If the fault has been caused by the fault of the person concerned, § 254 of the German Civil Code applies.

(6) The statute of limitations of the Civil Code applicable to unauthorized acts shall apply mutatis mutandis to the statute of limitations.

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§ 9 Technical and organizational measures

Public and non-public bodies which collect, process or use personal data on their own account or on behalf of the contracting authority shall take the technical and organizational measures necessary to comply with the provisions of this Act, in particular those set out in the Annex to this Act Requirements. Action is required only if its effort is proportionate to the intended protection.

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§ 9a Privacy Audit

In order to improve data protection and data security providers of data processing systems and programs as well as data processing bodies can examine their data protection concept as well as their technical facilities by independent and authorized experts, and publish the results of the examination. The specific requirements for the examination and evaluation, the procedure as well as the selection and approval of the experts are regulated by special law.

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§ 10 Establishment of automated retrieval procedures

1. The establishment of an automated procedure enabling the transmission of personal data by call-up shall be permitted insofar as this procedure is appropriate taking account of the legitimate interests of the persons concerned and of the tasks or business interests of the authorities concerned. The rules on the admissibility of the individual call-off remain unaffected.

(2) The parties concerned must ensure that the admissibility of the retrieval procedure can be controlled. They shall specify in writing:

1. The purpose and purpose of the retrieval procedure,

Second Third, to which is transmitted,

Third Type of data to be transmitted,

4th According to § 9 technical and organizational measures.

In the public sector, the necessary regulations can also be taken by the specialized supervisory authorities.

(3) In cases where the bodies referred to in Section 12 (1) are involved, the Federal Data Protection Officer (Bundesdatenschutzamt) shall be informed of the establishment of call-off procedures for data protection and freedom of information, informing him of the provisions of paragraph 2. The establishment of call-off procedures in which the bodies referred to in § 6 (2) and § 19 (3) are involved is only permissible if the Federal or Land Ministry responsible for the storing and retrieving authorities has consented.

(4) The responsibility for the admissibility of the individual retrieval shall be borne by the third party to whom the transfer is made. The storing body checks the admissibility of the call-offs only if there is reason to do so. The storage facility shall ensure that the transmission of personal data is at least possible by means of appropriate sampling procedures and can be checked. If a complete stock of personal data is retrieved or transmitted (batch processing), the guarantee of the ascertainment and verification refers only to the admissibility of the retrieval or transmission of the total stock.

5. Paragraphs 1 to 4 shall not apply to the retrieval of generally accessible data. Generally accessible are data, which can be used by anyone, be it without or after prior registration, approval or payment of a fee.

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§ 11 Collection, processing or use of personal data by order

(1) If personal data is collected, processed or used by other agencies, the customer is responsible for compliance with the provisions of this Act and other regulations on data protection. The rights set out in Sections 6, 7 and 8 shall be asserted against him.

(2) The Contractor shall be carefully selected with particular regard to the suitability of the technical and organizational measures it has taken. The contract shall be awarded in writing, specifying in particular:

1. The subject matter and duration of the contract,

Second The scope, nature and purpose of the intended collection, processing or use of data, the nature of the data and the circle of affected parties,

Third The technical and organizational measures to be taken pursuant to § 9,

4th The correction, deletion and blocking of data,

5th The obligations of the Contractor under paragraph 4, in particular the checks to be carried out by the Contractor,

6th The possible entitlement to the establishment of subcontractors,

7th The control rights of the client and the corresponding tolerances of toleration and cooperation of the contractor,

8th. Any violations of the Contractor or the persons employed by him against provisions for the protection of personal data or against the stipulations made in the order,

9th The scope of the powers conferred on the client by the contractor,

10th The return of the data carrier and the deletion at the contractor of stored data after completion of the order.

It can also be issued by the public authorities in the case of public authorities. The customer has to convince himself before the start of the data processing and then regularly on compliance with the technical and organizational measures taken by the contractor. The result must be documented.

(3) The contractor may only collect, process or use the data within the framework of the instructions of the customer. If he considers that an instruction from the client violates this law or other regulations on data protection, he shall immediately notify the client thereof.

(4) In addition to §§ 5, 9, 43, para. 1 no. 2, 10 and 11, para. 2 no. 1 to 3 and para. 3 and § 44, the Contractor shall only apply the provisions on data protection control or the Oversight, for

1. a) Public authorities,

b) Non-public bodies in which the majority of the shares are owned by the public authority or the majority of the votes are due and the contracting authority is a public body,

The provisions of Sections 18, 24 to 26 or the corresponding provisions of the data protection laws of the Länder,

Second The other non-public bodies, in so far as they process, use or use personal data on behalf of the service business as per §§ 4f, 4g and 38.

5. Paragraphs 1 to 4 shall apply mutatis mutandis where the verification or maintenance of automated procedures or of data processing facilities is carried out by other bodies in the contract and access to personal data can not be excluded.

Second section **Data processing of public bodies**

First subsection **Legal basis of data processing**

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§ 12 Scope of application

(1) The provisions of this section apply to public bodies of the Federation, insofar as they do not participate as public companies in the competition.

(2) Insofar as data protection is not regulated by Land Law, §§ 12 to 16, 19 to 20 shall also apply to the public authorities of the Länder,

1. And do not participate in the competition as a public-law undertaking or

Second As legal and administrative bodies, and are not administrative matters.

(3) Section 23 para 4 shall apply mutatis mutandis to the Data Protection Supervisor.

(4) If personal data are collected, processed or used for past, existing or future employment relationships, § 28 (2) 2 and § 32 to 35 shall apply instead of § 13 to 16 and 19 to 20.

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§ 13 Data Collection

(1) The collection of personal data is permitted if their knowledge is necessary to fulfill the tasks of the responsible body.

(1a) If personal data are collected from a non-public body instead of the data subject, the body shall be informed of the voluntary nature of its information.

(2) The collection of special types of personal data (§ 3 paragraph 9) is only permissible insofar as

1. A legal provision provides for this or, for reasons of an important public interest,

Second The person concerned has given his consent in accordance with section 4a (3)

Third To protect the life-long interests of the data subject or a third party, provided that the person concerned is unable to give his consent for physical or legal reasons,

4th It is data which the person concerned has manifestly made public,

5th This is necessary to avert a significant threat to public security,

6th This is imperative for the defense of considerable disadvantages for the common good or for the protection of considerable interests of the common good,

7th

For the purpose of health care, medical diagnostics, health care or treatment or the management of health services, and the processing of such data by medical personnel or by other persons subject to a corresponding obligation of secrecy,

- 8th. The scientific interest in carrying out the research project is of great importance to the interest of the person concerned in the exclusion of the survey and the purpose of the research can not be achieved otherwise or only at a disproportionate cost
- 9th For compelling reasons of defense or the fulfillment of over- or inter-state obligations of a federal government in the field of crisis management or conflict prevention or for humanitarian measures.

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§ 14 Data storage, modification and use

(1) The storage, alteration or use of personal data is permissible if it is necessary for the fulfillment of the tasks within the competence of the responsible body and for the purposes for which the data were collected. If no survey has been carried out, the data may only be modified or used for the purposes for which it has been stored.

(2) Saving, altering or using for other purposes is permitted only if

1. A legal provision provides for or presupposes,

Second The person concerned has consented,

Third It is obvious that it is in the interests of the person concerned and there is no reason to believe that he would refuse his consent in the knowledge of the other purpose,

4th Information on the person concerned must be verified because there are actual grounds for their

5th The data are generally accessible or the responsible authority is likely to publish them, unless the legitimate interest of the data subject appears to prevail over the exclusion of the purpose,

6th It is necessary to prevent significant disadvantages for the public welfare or a threat to public security or to safeguard significant interests of the public good,

7th It is necessary for the prosecution of offenses or administrative offenses, for the execution or enforcement of penalties or measures within the meaning of Section 11 (1) No. 8 of the Criminal Code or of educational measures or breeders under the Juvenile Courts Act or for the execution of fine decisions,

8th. It is necessary to prevent a serious impairment of the rights of another person or

9th It is necessary for scientific research to be carried out, the scientific interest in the implementation of the research project is significantly outweighed by the interest of the person concerned in the exclusion of the purpose and the purpose of research can not be achieved otherwise or only with disproportionate effort.

(3) Processing or use for other purposes shall not be exercised if it serves the exercise of supervision and control powers, auditing or carrying out organizational investigations for the responsible body. This shall also apply to the processing or use for training and examination purposes by the responsible body, insofar as the overwhelming legitimate interests of the person concerned do not conflict.

(4) Personal data which is stored exclusively for the purpose of data protection control, data storage or to ensure the proper operation of a data processing system may only be used for these purposes.

(5) The storage, modification or use of special types of personal data (§ 3 paragraph 9) for other purposes is only permissible if

1. The conditions are met which would allow a survey pursuant to Article 13 (2) (1) to (6) or (9);

Second The public interest in the implementation of the research project is of great importance to the interest of the person concerned in the exclusion of the purpose of the research and the purpose of the research can not be achieved otherwise or only with disproportionate effort.

In the balancing according to sentence 1 no. 2, the scientific interest in the research project must be taken into account in the public interest.

(6) The storage, modification or use of special types of personal data (§ 3 paragraph 9) with regard to the purposes mentioned in § 13, para. 2, no. 7, shall be governed by the provisions of § 13 para Persons.

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§ 15 Data transmission to public authorities

(1) The transmission of personal data to public authorities is permissible if

1. It is necessary to perform the tasks within the competence of the transferring body or of the third party to whom the data are transferred; and

Second The conditions are met which would allow use according to § 14.

(2) The transferring authority shall bear responsibility for the admissibility of the transmission. If the transfer is made at the request of the third party to whom the data are transmitted, the latter is responsible. In this case, the transferring body shall only examine whether the transfer request is within the scope of the tasks of the third party to whom the data are transmitted, unless there is a particular reason for verifying the admissibility of the transmission. Section 10 (4) shall remain unaffected.

(3) The third party to whom the data is transmitted may process or use them for the purpose for which they are communicated to him. Processing or use for other purposes is only permitted under the conditions of § 14 para. 2.

4. Paragraphs 1 to 3 shall apply mutatis mutandis to the transmission of personal data to bodies of public-law religious societies insofar as it is ensured that adequate data protection measures are taken with them.

(5) If other personal data of the person concerned or of a third party are connected with personal data which may be transmitted pursuant to Paragraph 1 in such a way that a separation is not possible or is only possible with unacceptable expenses, the transmission of these data is permissible, if not Legitimate interests of the person concerned or of a third party in their secrecy; Use of this data is prohibited.

(6) Paragraph 5 shall apply mutatis mutandis where personal data are passed on within a public body.

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§ 16 Data transmission to non-public bodies

(1) The transmission of personal data to non - public bodies is permitted if

1. It is necessary to fulfill the tasks within the competence of the transferring body and the conditions are fulfilled which would allow use according to § 14, or

Second

The third party to whom the data are transmitted is credible in showing a legitimate interest in the knowledge of the data to be transmitted and the data subject does not have a legitimate interest in the exclusion of the transmission. The transfer of special types of personal data (§ 3 para. 9) is only permissible in deviation from sentence 1 no. 2 if the conditions are fulfilled which would allow use according to § 14 paragraphs 5 and 6 or insofar as this is to assert, exercise Or defense of legal claims is required.

(2) The transferring authority shall bear responsibility for the admissibility of the transmission.

3. In the cases of transmission referred to in paragraph 1 (2), the transmitting body shall notify the data subject of the transmission of its data. This does not apply if it is to be expected that it is aware of it in a different way, or if disclosure would jeopardize public security or otherwise be detrimental to the welfare of the Confederation or a country.

(4) The third party to whom the data is transmitted may only process or use it for the purpose for which it is transmitted to it. The transferring body has to point it out. Any processing or use for other purposes shall be permitted where a transfer pursuant to paragraph 1 would be permitted and the transferring body consented.

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§ 17

(Deleted)

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§ 18 Implementation of data protection in the Federal Administration

(1) The Supreme Federal Authorities, the President of the Federal Railroad Fund, as well as the federal authorities, institutions and foundations of public law which are merely exercised by the Federal Government or a supreme federal authority shall have the execution of this Act and other legal provisions Data protection. The same shall apply to the members of the Executive Board of the companies resulting from the special fund Deutsche Bundespost by law, as long as the latter is entitled to exclusive rights under the Postal Act.

(2) The public authorities shall keep a list of the data processing facilities used. For their automated processing, they have to specify in writing the information according to § 4e as well as the legal basis of the processing. In the case of general administrative purposes, automated processing, in which the person's right of access is not restricted pursuant to Article 19 (3) or (4), can be dispensed with. The definitions can be summarized for automated processing, which are carried out in the same or similar manner in several ways.

Second sub-section rights of the person concerned

[Non-official table of contents](#)

§ 19 Information to the affected parties

(1) The person concerned is to be informed about the application

1. The data stored on his person, including as far as they relate to the origin of these data,

Second The recipients or categories of recipients to whom the data are passed; and

Third The purpose of storage.

The purpose of the application is to specify the nature of the personal data for which information is to be provided. If the personal data are neither stored in automated form nor stored in non - automated files, the information is provided only to the extent that the data subject makes it possible to find the data and the expenditure required to provide the information is not disproportionate to that claimed by the data subject Information interest. The responsible body shall determine the procedure, in particular the form of disclosure, at its discretion.

(2) The provisions of paragraph 1 shall not apply to personal data which are stored only because they can not be deleted pursuant to statutory, statutory or contractual provisions on storage, or serve solely for purposes of data backup or data protection control. Such disclosure would require disproportionate expenses.

(3) If the transfer of information relates to the transmission of personal data to the constitutional protection authorities, to the Federal Intelligence Agency, to the Military Detention Center and, as far as the security of the Federal Government is concerned, to other authorities of the Federal Ministry of Defense,

(4) The distribution of information shall be omitted, as far as

1. The information would jeopardize the proper fulfillment of the tasks within the competence of the responsible body,

Second The information would jeopardize public security or order or would otherwise be detrimental to the welfare of the Confederation or a country

Third The data or the fact of their storage must be kept secret by a legal provision or by its nature, in particular because of the predominant legitimate interests of a third party

And therefore the interest of the data subject must be withdrawn from the disclosure.

(5) Rejection of the disclosure must not be accompanied by a statement of reasons if the purpose of refusing to provide information is jeopardized by the communication of the factual and legal grounds on which the decision is based. In this case, the person concerned must be reminded that he can apply to the Federal Commissioner or the Federal Commissioner for data protection and freedom of information.

(6) If the person concerned is not given any information, he or she must be given the data protection and freedom of information at the request of the Federal Data Protection Supervisor or the Federal Supervisor, unless the relevant federal supreme authority determines in individual cases that the security of the Confederation or a country is endangered would. The notification of the Federal Commissioner (s) to the persons concerned shall not allow conclusions to be drawn as to the state of knowledge of the responsible authority, unless the latter consents to further information.

(7) The information is free of charge.

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§ 19a Notification

(1) If data are collected without the knowledge of the data subject, it shall be informed of the storage, the identity of the responsible body and the purpose of the collection, processing or use. The data subject is also to be informed of the recipients or categories of recipients of data, as long as he does not have to reckon with the transmission to them. Where a transfer is foreseen, the information shall be given at the latest on the first transmission.

(2) There is no obligation to notify if

1. The data subject has otherwise acquired knowledge of the storage or transmission,
 - Second The disclosure of the data subject requires a disproportionate effort or
 - Third The storage or transmission of the personal data is expressly provided for by law.
- The responsible body shall determine in writing the conditions under which notification pursuant to paragraph 2 or 3 shall be waived.
 (3) Section 19 (2) to (4) shall apply mutatis mutandis.
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§ 20 Correction, deletion and blocking of data; right to

- (1) Personal data shall be corrected if they are incorrect. If it is ascertained that personal data which is neither processed automatically nor stored in non-automated files are incorrect, or if their correctness is disputed by the person concerned, this must be stated in an appropriate manner.
- (2) Personal data that is processed automatically or stored in non - automated files shall be deleted if:
 1. Their storage is prohibited or
 - Second Their knowledge is no longer necessary for the responsible body to perform the tasks which lie within its competence.
- (3) A deletion shall be replaced by a deletion, as far as
 1. Deletion, legal, statutory or contractual retention periods,
 - Second There is reason to believe that the deprivation would jeopardize the interests of the data subject;
 - Third A deletion is not possible or is only possible with a disproportionate effort because of the special nature of the storage.
- (4) Personal data which is processed automatically or stored in non-automated files shall also be blocked, provided that the correctness of the data is not known to the person concerned and neither the correctness nor the incorrectness can be ascertained.
- (5) Personal data may not be collected, processed or used for automated processing or processing in non - automated files, as long as the person concerned is in breach of the responsibility of the responsible body and an examination reveals that the person concerned 's legitimate interest is due to his special personal situation Interest of the responsible authority in this survey, processing or use. Sentence 1 does not apply if a legal requirement for collection, processing or use.
- (6) Personal data which are neither processed automatically nor stored in a non-automated file shall be blocked if the authority ascertains in individual cases that the interests of the data subject are not affected without the blocking and the data for the task filling the authority no longer required are.
- (7) Blocked data may only be transmitted or used without the consent of the data subject, if
 1. It is indispensable for scientific purposes, to remedy an existing need for evidence or other reasons which are in the overwhelming interest of the responsible body or a third party; and
 - Second The data could be communicated or used for this purpose if they were not blocked.

The authorities responsible for the correction of incorrect data, the blocking of disputed data and the deletion or blocking of such data should be notified to the bodies which have been passed on to the storage facility for data transmission, where this does not require a disproportionate effort and the legitimate interests of the Concerned.
- (9) (canceled)

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§ 21 Invocation of the Federal Commissioner for Data Protection and Information Freedom

Anyone can contact the Federal Commissioner or the Federal Data Protection Commissioner for data protection and freedom of information if he considers that his rights have been infringed by the public authorities of the Confederation in collecting, processing or using his personal data. The collection, processing or use of personal data by the courts of the Federation is only valid if they are active in administrative matters.

Third subsection

The Federal Commissioner for Data Protection and Information Freedom

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§ 22 Election and independence of the Federal Data Protection Officer (Bundesbeauftragter) for data protection and freedom of information

- (1) Without prejudice to the proposal of the Federal Government, the German Bundestag shall elect the Federal Commissioner or the Federal Commissioner for data protection and freedom of information with more than half the statutory number of his members. The Federal or the Federal Commissioner must have reached the age of 35 at the time of his or her election. The elected president shall be appointed by the Federal President or the Federal President.
- (2) The Federal Ombudsman shall make the following oath before the Federal President or the Federal President:

"I swear that I will devote my power to the good of the German people, increase its utility, harm him, defend and defend the basic law and the laws of the covenant, fulfill my duties conscientiously, and exercise justice against everyone help. "

The oath can also be performed without religious affirmation.
- (3) The term of office of the Federal Commissioner shall be five years. One-time re-election is permitted.
- (4) In accordance with this Act, the Federal Commissioner or the Federal Commissioner shall be in a public-law relationship with the Confederation. He or she is independent in the performance of his or her duties and is subject only to the law.
- (5) The Federal or the Federal Commissioner is a federal supreme authority. The place of employment is Bonn. The officers of the Federal Commissioner are civil servants of the Federation.
- (5a) The Federal Commissioner or the Federal Commissioner may delegate tasks of personnel administration and personnel management to other bodies of the Federation, insofar as this does not affect the independence of the Federal Commissioner or the Federal Commissioner. Personal data of the employees may be communicated to these bodies, insofar as their knowledge is necessary to fulfill the tasks assigned.
- (6) The Senior Official or the Senior Official shall exercise the rights of the Federal Commissioner if the Federal Commissioner is prevented from exercising his or her duties or if his or his term of office ends and he or she does not undertake the continuation of the business is. Paragraph 4 sentence 2 shall be applied mutatis mutandis.

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§ 23 Legal position of the Federal Data Protection Supervisor (Bundesbeauftragter) for data protection and freedom of information

(1) The office of the Federal Commissioner for Data Protection and Information Freedom shall begin with the delivery of the certificate of appointment. It ends

1. With the expiry of the term,

Second With the dismissal.

The Federal President or the Federal President shall dismiss the Federal Commissioner or the Federal Commissioner if he or she so requests or on the proposal of the President if there are grounds for a dismissal from the service for a lifetime or a judge for lifetime. In the event of the termination of the office, the deputy shall receive a deed issued by the Federal President or the Federal President. A dismissal becomes effective with the handing over of the document. If the term of office terminates at the end of the term of office, the Federal Commissioner is obliged, at the request of the President of the Bundestag, to continue the business until the appointment of a successor or a successor.

(2) In addition to his office or office, the Federal Commissioner may not pursue any other salaried office, trade or profession and neither the management nor the supervisory board or board of directors of an enterprise or a government or federal body of the federal or state belong. You or he may not make extrajudicial reports against payment.

(3) The Federal Commissioner or the Federal Commissioner shall notify the President of the Bundestag of any gifts he or she receives in relation to the office. The President of the Bundestag decides on the use of gifts. He or she may adopt procedural rules.

(4) The Federal Commissioner or the Federal Commissioner shall be entitled to refuse the testimony of persons who have entrusted to him or her the facts in his or her capacity as a Federal Commissioner or to the Federal Commissioner. This also applies to the employees of the Federal Commissioner (Bundesbeauftragter), with the proviso that the exercise of this right is the responsibility of the Federal Commissioner. Insofar as the creditor's right to refuse to give evidence is not allowed, he or she may not demand the submission or extradition of files or other documents.

(5) The Federal Commissioner or the Federal Commissioner is obliged, even after his or her term of office has terminated, to keep secrecy on matters which have become officially known to him or her. This shall not apply to communications in the course of business or to facts which are manifest or which do not require any secrecy. The Federal Commissioner or the Federal Commissioner shall, in due diligence, decide whether and to what extent he or she shall make such or such statements in court or out-of-court or make statements; If he or she is no longer in office, the approval of the deputy chairman (s) is required. This is without prejudice to the statutory duty to report criminal offenses and to stand up for the preservation of the free democratic basic order for their preservation. § 93 (1), § 105 (1), § 111 (5) in conjunction with § 105 (1) and § 116 (1) of the Tax Regulations do not apply to the Federal Commissioner or the Federal Commissioner and his or her employees. Sentence 5 shall not apply insofar as the financial authorities need knowledge of the procedure for a tax offense and related tax proceedings which are subject to a compelling public interest, or in so far as they are intentional misrepresentation of the person or the person liable to pay or the taxpayer They or persons acting. If the Federal Ombudsman determines a data protection offense, he or she is authorized to notify the latter and inform the parties concerned.

(6) The Federal Commissioner or the Federal Commissioner may testify as a witness or witness, unless the statement were made

1. The interests of the Confederation or of a German country, in particular disadvantages for the security of the Federal Republic of Germany or its relations with other States, or

Second Violate fundamental rights.

If the statement refers to ongoing or completed transactions which are or could be attributable to the core area of executive responsibility of the Federal Government, the Federal Commissioner or the Federal Commissioner may only issue statements in consultation with the Federal Government. § 28 of the Federal Constitutional Court Act shall remain unaffected.

(7) From the beginning of the calendar month in which the term of office begins, until the end of the calendar month in which the term of office ends, in the case of paragraph 1, sentence 6, the Federal Commissioner shall receive until the end of the month in which the management ends, Amtsbezüge to the grade B 11 as well as the family supplement according to Annex V of the Federal Law on Salary. The Federal Travel Costs Act and the Federal Transit Costs Act shall be applied accordingly. Section 12 (6) as well as Sections 13 to 20 and 21a (5) of the Federal Ministerial Act shall be applied with the provisos that a term of office of five years shall be substituted for the four-year term of office in Section 15 (1) of the Federal Ministerial Act. Notwithstanding sentence 3 in conjunction with Sections 15 to 17 and 21a para.

(8) Paragraph 5 sentences 5 to 7 shall apply mutatis mutandis to the public authorities responsible for monitoring compliance with the rules on data protection in the countries concerned.

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§ 24 Check by the Federal Commissioner or the Federal Commissioner for Data Protection and Information Freedom

(1) The Federal Data Protection Commissioner or the Federal Data Protection Commissioner shall ensure compliance with the provisions of this Act and other data protection provisions with the public authorities of the Confederation.

(2) The control of the Federal Supervisor shall also extend

1. Information collected by public authorities of the Confederation on the content and the detailed circumstances of the postal, postal and telecommunication traffic, and

Second Personal data which is subject to a professional or special secrecy, in particular the tax secrecy pursuant to Article 30 of the Tax Regulations.

The basic law of correspondence, posts and telecommunications in Article 10 of the constitution is so far limited. Personal data subject to scrutiny by the Commission pursuant to Article 15 of the Article 10 Act shall not be subject to control by the Federal Commissioner or the Federal Commission unless the Commission requests the Federal Commissioner or the Federal Commissioner to comply with the provisions on data protection in certain cases or in certain areas, and to report exclusively to it. The control by the Federal Commissioner or the Federal Commissioner are not subject to personal data in files on the security check,

(3) The Federal Courts shall be subject to the control of the Federal Commissioner or the Federal Commissioner only if they are active in administrative matters.

(4) The public authorities of the Federation shall be obliged to assist the Federal Commissioner or the Federal Commissioner and his or her agents in carrying out their tasks. They are in particular

1. To provide information on their questions as well as access to all documents, in particular the stored data and data processing programs, which are connected with the control referred to in paragraph 1,

Second To allow access to all offices at any time.

The authorities referred to in § 6 (2) and § 19 (3) grant the support only to the Federal Commissioner himself or to the persons specifically appointed by him or him in writing. Sentence 2 does not apply to these authorities, as far as the supreme federal authority in individual cases determines that the information or inspection would jeopardize the security of the federation or a country.

(5) The Federal Commissioner shall notify the results of his or her control to the public authority. In this way, he or she may combine proposals for the improvement of data protection, in particular for the removal of identified deficiencies in the processing or use of personal data. § 25 shall

remain unaffected.

(6) Paragraph 2 shall apply mutatis mutandis to the public authorities responsible for monitoring compliance with the rules on data protection in the countries concerned.

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§ 25 Complaints by the Federal Commissioner or the Federal Commissioner for Data Protection and Information Freedom

(1) If the Federal Data Protection Commissioner or the Federal Data Protection Commissioner violates the provisions of this Act or other regulations on data protection or other deficiencies in the processing or use of personal data, he or she is objected to

1. In the case of the Federal Administration against the competent supreme federal authority,

Second In the case of the Bundesenisenbahnvermögen opposite the President,

Third In the case of companies established under the Act by the German Federal Post Office as long as they are entitled to an exclusive right under the Postal Law,

4th In the case of federal bodies, institutions and foundations of public law, as well as associations of such bodies, institutions and foundations, against the executive committee or the otherwise authorized representative body

And calls for an opinion within a time limit to be determined by him. In the cases referred to in sentence 1 no. 4, the Federal Supervisor or the Federal Supervisor shall simultaneously inform the competent supervisory authority.

(2) The Federal Commissioner or the Federal Commissioner may refrain from making a complaint or dispense with an opinion of the affected authority, in particular if the deficiencies are irrelevant or have already been remedied.

(3) The opinion should also contain a description of the measures taken on the basis of the objection by the Federal Commissioner. The bodies referred to in paragraph 1, first sentence, point 4, shall at the same time forward a copy of their comments to the competent supervisory authority to the Federal Commissioner or the Federal Commissioner.

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§ 26 Other duties of the Federal Data Protection Supervisor (Bundesbeauftragter) and the freedom of information

(1) Every two years, the Federal Parliament or the Federal Commissioner for data protection and the freedom of information shall submit an activity report to the German Bundestag. She or he informs the German Bundestag and the general public of important developments in data protection.

(2) At the request of the German Bundestag or the Federal Government has to create the Federal Commissioner or the report and to report reports. At the request of the German Bundestag, the Petitions Committee, the Committee on Internal Affairs or the Federal Government or the Federal Commissioner goes further notices of affairs and operations of data protection in public bodies of the Federation. The Federal Commissioner can always turn to the German Bundestag.

(3) The Federal Commissioner or the Federal Commissioner may make recommendations to the Federal Government and the authorities of the Confederation referred to in section 12 (1) on the improvement of data protection and advise them on matters relating to data protection. The bodies referred to in Section 25 (1) Nos. 1 to 4 shall be informed by the Federal Commissioner or the Federal Commissioner if the recommendation or advice does not concern them directly.

(4) The Federal Commissioner or the Federal Commissioner shall cooperate with the public authorities responsible for monitoring compliance with the rules on data protection in the Länder as well as with the supervisory authorities pursuant to § 38. Section 38 para. 1 sentence 4 and 5 shall apply mutatis mutandis.

Third section

Data processing of non-public bodies and public-law competition companies

First subsection

Legal basis of data processing

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§ 27 Scope of application

(1) The provisions of this section shall apply insofar as personal data are processed, used or collected for the purpose of using data processing equipment, or the data are processed, used or collected in or from non - automated files

1. Non-public bodies,

Second a) Public authorities of the Federation, insofar as they participate in the competition as public-law entities,

b) Public bodies of the Länder, in so far as they participate in the competition as a public-law enterprise, are implementing federal law and the data protection is not regulated by the Land Law.

This does not apply if the collection, processing or use of the data is exclusively for personal or family activities. In the cases referred to in point 2 (a), Sections 18, 21 and 24 to 26 shall apply instead of Section 38.

(2) The provisions of this section do not apply to the processing and use of personal data outside of non-automated files, in so far as they are not personal data which are obviously taken from automated processing.

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§ 28 Data collection and storage for own business purposes

(1) The collection, storage, alteration or transmission of personal data or their use as a means for the fulfillment of own business purposes is permitted

1. If necessary for the establishment, execution or termination of a legal or similar transaction with the party concerned,

Second In so far as it is necessary to safeguard the legitimate interests of the responsible body and there is no reason to believe that the interested party 's legitimate interest in the exclusion of processing or use prevails;

Third Where the data are generally accessible or the responsible authority is likely to publish them, unless the interested party's legitimate interest in the exclusion of processing or use is obviously contrary to the legitimate interests of the responsible authority.

When collecting personal data, the purposes for which the data are to be processed or used shall be defined in concrete terms.

(2) Transmission or use for any other purpose is permitted

1. Under the conditions of paragraph 1 sentence 1 number 2 or number 3,

Second Where necessary,

- a) For the protection of legitimate interests of a third party or
- b) For the prevention of threats to state or public security or the prosecution of criminal offenses

And there is no reason to believe that the data subject has a legitimate interest in the exclusion of transmission or use, or

Third If it is necessary in the interest of a research institution to carry out scientific research, the scientific interest in the implementation of the research project will significantly outweigh the interested party's interest in the exclusion of the purpose and the purpose of the research can not be achieved otherwise or at a disproportionate cost.

(3) The processing or use of personal data for the purpose of addressing or advertising is permitted insofar as the person concerned has given his consent and, in the case of a consent not given in writing, the responsible body according to paragraph 3a. In addition, the processing or use of personal data is permissible as far as the information is cumulative or otherwise summarized by persons belonging to a group of persons, which is based on the affiliation of the person concerned to this group of persons, his professional, business or trade name, his name, title, Academic degree, address and year of birth, and processing or use is required

1. For the purpose of advertising the own offers of the responsible agency which collected such data, with the exception of the data on the group affiliation of the person concerned pursuant to subsection 1 sentence 1 number 1 or from generally accessible address, telephone number, branch or comparable directories,

Second For advertising purposes with regard to the professional activity of the data subject and under his professional address;

Third For the purpose of advertising donations which are tax-deductible according to § 10b Paragraph 1 and § 34g of the Income Tax Act.

For purposes pursuant to sentence 2, number 1, the responsible authority may store additional data on the data specified therein. Summarized personal data pursuant to sentence 2 may also be transmitted for the purposes of advertising if the transmission is stored in accordance with section 34 paragraph 1a sentence 1; In this case, the body which collected the data for the first time must be clearly evident from the advertisement. Irrespective of the prerequisites of the sentence 2, personal data may be used for the purpose of advertising for third-party offers if the person responsible for the use of the data is clearly identifiable for the person concerned when addressing the advertisement. Processing or use according to sentences 2 to 4 is only permissible insofar as the legitimate interests of the person concerned do not conflict.

(3a) If consent pursuant to section 4a (1) sentence 3 is issued in a different form from the written form, the responsible body shall confirm the content of the consent in writing to the person concerned, unless consent is provided electronically and the responsible body is responsible. That consent is recorded and that the data subject can retrieve their content at any time and revoke the consent at any time with effect for the future. If the consent is to be given in writing together with other declarations, it is to be emphasized in a clearly printed design.

(3b) The responsible body shall not make the conclusion of a contract conditional upon the consent of the data subject in accordance with the first sentence of paragraph 3 if the person concerned is not, or is not reasonably able to, access to equivalent contractual services without the consent of the person concerned. A consent given under such circumstances is invalid.

(4) If the person concerned objects to the processing or use of his data for the purpose of advertising or market or opinion research, processing or use for these purposes is prohibited. The person concerned is to be informed of the responsibility of the responsible body or of the right of objection under the first sentence in the case of the address for the purpose of advertising or market or opinion research and, in the cases of paragraph 1 sentence 1, in so far as the respondent uses personal data of the person concerned, who are stored at a place which is not known to him, he must also ensure that the data subject is informed of the origin of the data. If the person concerned objects to the third party, to whom the data have been transmitted for the purposes of paragraph 3, processing or use for purposes of advertising or market or opinion research, the latter shall block the data for such purposes. In the cases referred to in the first sentence of the first subparagraph of paragraph 1, no more stringent form may be required for the opposition than for the establishment of the legal or contractual relationship.

5. The third party to whom the data has been transmitted may only process or use it for the purpose for which it is transmitted to it. Any processing or use for other purposes shall only be permitted to non-public entities under the conditions set out in paragraphs 2 and 3 and public authorities under the conditions of section 14 (2). The transferring body has to point it out.

(6) The collection, processing and use of special types of personal data (§ 3 paragraph 9) for own business purposes is permissible unless the person concerned has given his consent in accordance with section 4a (3) if

1. To protect the life-long interests of the data subject or a third party, provided that the person concerned is unable to give his consent for physical or legal reasons,

Second It is data which the person concerned has manifestly made public,

Third The enforcement, exercise or defense of legal claims is necessary and there is no reason to believe that the person's legitimate interest in the exclusion of the collection, processing or use is predominant;

4th The scientific interest in the implementation of the research project is of great importance to the interests of the person concerned in the exclusion of the collection, processing and use, and the purpose of the research can not be achieved otherwise or only at a disproportionate cost.

(7) The collection of specific types of personal data (Section 3 (9)) shall also be permitted where this is necessary for the purpose of health care, medical diagnostics, health care or treatment or the administration of health services and the processing of such data by Medical personnel or other persons who are subject to a corresponding obligation of secrecy. The processing and use of data for the purposes specified in sentence 1 shall be subject to the confidentiality obligations applicable to the persons mentioned in sentence 1. If, for a purpose referred to in the first sentence, data on the health of persons by members of a profession other than those referred to in Section 203 (1) and (3) of the Criminal Code,

(8) For a different purpose, the special types of personal data (Section 3 (9)) may be transmitted or used only under the conditions of paragraph 6 (1) to (4) or (7) Transmission or use is also permitted if this is necessary to prevent considerable threats to public and public security as well as to the prosecution of criminal offenses of considerable importance.

(9) Organizations which are politically, philosophically, religious or trade union-oriented and which do not pursue a profit-making purpose may collect, process or use special types of personal data (§ 3 paragraph 9), as far as this is necessary for the activity of the organization. This only applies to the personal data of their members or of persons who regularly maintain contacts with them in connection with their activities. The transmission of these personal data to persons or entities outside the organization is only permissible under the prerequisites of § 4a (3).

Paragraph 2 (2) (b) shall apply mutatis mutandis.

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§ 28a Data transmission to credit bureaus

(1) The transfer of personal data on a demand to credit agencies is permitted only if the performance due spite of maturity has not been performed, the transmission to protect the legitimate interest of the responsible party or a third party is necessary, and

1. the call has been established by a final or only provisionally declared judgment or there is a debt according to § 794 of Civil Procedure,

Second it has been determined the claim under § 178 of the Insolvency Act and not disputed by the debtor in the examination date,

Third The person concerned expressly recognized the claim,

- 4th
- a) the person concerned has been warned after the due date of the claim in writing at least twice,
 - b) Be between the first warning and the transmission for at least four weeks,
 - c) The responsible body has informed the persons concerned in good time before the transmission of the data, but at the earliest at the first warning of the imminent transmission, and
 - d) The person concerned has not disputed the claim; or

5th The underlying contractual relationship can be terminated without notice by reason of payment arrears and the responsible body has informed the parties concerned of the imminent transmission.

Sentence 1 shall apply mutatis mutandis if the responsible body itself uses the data pursuant to § 29.

(2) For the purpose of future transmission pursuant to section 29 (2), credit institutions may collect personal data on the justification, proper execution and termination of a contractual relationship concerning a banking transaction pursuant to section 1 para 2 no. 2, 8 or no. 9 of the Creditwesengesetz to credit bureaus, unless the interested party's legitimate interest in the exclusion of the transmission against the interest of the credit agency is manifestly prejudicial to the knowledge of the data. The person concerned must be informed of this before the conclusion of the contract. Sentence 1 does not apply to giro contracts which concern the establishment of an account without possibility of overpayment. For future transmission pursuant to § 29 para. 2, the transmission of data on the behavior of the data subject,

(3) Subsequent changes to the facts underlying a transmission in accordance with paragraph 1 or paragraph 2 shall be communicated by the responsible agency of the credit agency within one month after knowledge has been obtained, as long as the data originally transmitted are stored with the credit agency. The credit agency shall inform the transmitting body of the deletion of the data originally transmitted.

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§ 28b Scoring

For the purposes of the decision on the justification, conduct or termination of a contract with the person concerned, a probability value for a particular future conduct of the person concerned may be levied or used where:

1. The data used to calculate the probability value are demonstrably significant for the calculation of the likelihood of the particular behavior, on the basis of a scientifically recognized mathematical-statistical method,

Second In the case of the calculation of the probability value by a credit agency, the prerequisites for the transmission of the data used pursuant to § 29 and, in all other cases, the prerequisites for the permissible use of the data pursuant to § 28,

Third For the calculation of the probability value, not exclusively address data is used,

4th In the case of the use of the address data of the data subject, has been informed of the intended use of this data before the probability value is calculated; The information shall be documented.

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§ 29 Business-related data collection and storage for the purpose of transmission

(1) The collection, storage, alteration or use of personal data for the purpose of transmission, in particular where the advertising, the activity of credit bureaus or the address trading serves, is permissible if

1. There is no reason to believe that the data subject has a legitimate interest in the exclusion of the collection, storage or modification,

Second The data may be taken from generally accessible sources, or the responsible authority may publish them, unless the interested party's legitimate interest in the exclusion of collection, storage or modification is manifestly prejudicial;

Third The requirements of Section 28a (1) or (2) are met; Data within the meaning of Section 28a (2) sentence 4 may not be collected or stored.

Section 28 (1) sentence 2 and paragraphs 3 to 3b shall apply.

(2) Transmission for the purposes of paragraph 1 shall be permitted if: (1)

1. The third party to whom the data is transmitted has demonstrated a legitimate interest in their knowledge;

Second There is no reason to believe that the data subject has a legitimate interest in the exclusion of the transmission.

Section 28 (3) to (3b) shall apply mutatis mutandis. In the case of transmission pursuant to sentence 1 no. 1, the reasons for the existence of a legitimate interest and the manner and manner of their convincing statement shall be recorded by the transmitting body. When transmitting in the automated retrieval process, the obligation to record is the responsibility of the third party to whom the data are transmitted. The transmitting agency shall carry out random sampling procedures pursuant to section 10 (4) sentence 3, and shall also determine and verify the existence of a legitimate interest on a case-by-case basis.

(3) The inclusion of personal data in electronic or printed address, telephone number, industry or comparable directories shall be omitted if the opposing intention of the person concerned is apparent from the underlying electronic or printed directory or register. The recipient of the data shall ensure that identifications from electronic or printed directories or registers are transferred to directories or registers when they are transferred.

(4) Section 28 (4) and (5) shall apply to the processing or use of the transmitted data.

(5) Section 28 (6) to (9) shall apply mutatis mutandis.

(6) A body which collects, stores or modifies personal data for the purposes of the transmission of personal data which may be used for the purpose of assessing the creditworthiness of consumers, has requested information from borrowers from other Member States of the European Union or from other States Parties to the Agreement on European Economic situation as well as information requests from domestic borrowers.

7. Any person refusing to conclude a consumer loan agreement or a contract for the provision of financial assistance with a consumer as a result of information provided by a body within the meaning of paragraph 6 shall inform the consumer immediately thereof and the information received. Information shall be omitted to the extent that public security or public order would be jeopardized. § 6a shall remain unaffected.

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§ 30 Business data collection and storage for the purpose of transmission in an anonymous form

(1) If personal data are collected and stored in an anonymous fashion, the characteristics shall be stored separately, which may be used to assign individual details of personal or factual circumstances to a particular or identifiable natural person. These characteristics may only be merged with the individual details insofar as this is necessary for the purpose of storage or for scientific purposes.

(2) The modification of personal data is permissible if

1. There is no reason to believe that the data subject has a legitimate interest in the exclusion of the change; or
- Second The data may be taken from generally accessible sources, or the responsible body may publish them, unless the interested party's legitimate interest in the exclusion of the change obviously prevails.
- (3) The personal data shall be deleted if its storage is not permitted.
- (4) Section 29 shall not apply.
- (5) Section 28 (6) to (9) shall apply mutatis mutandis.

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§ 30a Data collection and storage for purposes of market or opinion research

(1) Business collection, processing or use of personal data for purposes of market or opinion research is permitted if:

1. There is no reason to believe that the data subject has a legitimate interest in the exclusion of collection, processing or use; or
- Second The data may be taken from generally accessible sources or the responsible body is likely to publish them and the obvious interest of the person concerned in the exclusion of the collection, processing or use is not obviously outweighed by the interests of the responsible authority.

Specific types of personal data (§ 3 paragraph 9) may only be collected, processed or used for a particular research project.

- (2) Personal data collected or stored for purposes of market or opinion research may only be processed or used for these purposes. Data that has not been taken from generally accessible sources and which the responsible authority may not publish, may only be processed or used for the research project for which it was collected. For a different purpose, they may only be processed or used if they are previously anonymised in such a way that a personal reference can no longer be established.
- (3) The personal data shall be anonymised as soon as this is possible according to the purpose of the research project for which the data have been collected. Until then, the characteristics must be stored separately, with which individual details about personal or factual circumstances can be assigned to a specific or determinable person. These characteristics may only be merged with the individual details insofar as this is necessary according to the purpose of the research project.
- (4) Section 29 shall not apply.
- (5) Section 28 (4) and (6 to 9) shall apply mutatis mutandis.

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§ 31 Special purpose binding

Personal data that is stored solely for purposes of data protection, data protection or to ensure the proper operation of a data processing system may only be used for these purposes.

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§ 32 Data collection, processing and use for the purpose of the employment relationship

- (1) Personal data of an employee may be collected, processed or used for purposes of the employment relationship if this is necessary for the decision on the establishment of an employment relationship or on the grounds of the employment relationship for its implementation or termination. In order to detect offenses, personal data of an employee may only be collected, processed or used if actual evidence to be documented give rise to the suspicion that the person concerned has committed a criminal offense in the employment relationship, the collection, processing or use is necessary for the purpose of detection The interests of the employee in the exclusion of the collection, processing or use,
- (2) Paragraph 1 shall also apply if personal data are collected, processed or used without being processed automatically or processed into or from a non-automated file, used or collected for processing or use in such a file.
- (3) The rights of the employees' interest representatives shall remain unaffected.

Second sub-section **rights of the person concerned**

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§ 33 Notification of the affected party

(1) If for the first time personal data are stored for their own purposes without knowledge of the person concerned, the data subject shall be informed of the storage, the nature of the data, the purpose of the collection, processing or use and the identity of the responsible body. If personal data is stored commercially for the purpose of transmission without knowledge of the data subject, the data subject shall be notified of the first transmission and the type of data transmitted. In the cases of sentences 1 and 2, the person concerned must also be informed of the categories of recipients, insofar as, according to the circumstances of the individual case, he does not have to expect them to be transmitted to them.

(2) There is no obligation to notify if

1. The data subject has otherwise acquired knowledge of the storage or transmission,
- Second The data are stored only because they can not be deleted due to statutory, statutory or contractual retention regulations or serve exclusively for data backup or data protection control and notification would require a disproportionate effort,
- Third The data must be kept secret under a legal provision or by its nature, in particular because of the predominant legal interest of a third party,
- 4th The storage or transmission by law is expressly provided,
- 5th Storage or transmission is necessary for the purposes of scientific research and notification would require disproportionate effort,
- 6th The responsible public authority has determined against the responsible authority that the acquaintance of the data would endanger public security or order or would otherwise be detrimental to the welfare of the federal or a country,
- 7th The data are stored for their own purposes and
 - a) Are taken from generally accessible sources and notification is disproportionate because of the large number of cases concerned, or
 - b) The notification would significantly jeopardize the business activities of the responsible entity, unless the interest in notification prevails over the threat,

- 8th. The data are stored commercially for the purpose of transmission; and
- a) From generally accessible sources as far as they relate to those who have published such data, or
 - b) It is a list or a collection of data (section 29 (2) sentence 2)
- And notification is disproportionate due to the plurality of cases involved,
- 9th Data collected from generally accessible sources are stored commercially for purposes of market or opinion research, and notification is disproportionate because of the large number of cases involved.

The responsible body shall determine in writing the conditions under which notification pursuant to sentence 1 items 2 to 7 shall be waived.

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§ 34 Information to the affected parties

(1) The responsible body shall provide the person concerned with information upon request

1. The data stored on his person, including as far as they relate to the origin of these data,

Second The recipient or the categories of recipients to which data are passed; and

Third The purpose of storage.

The person concerned shall specify the nature of the personal data to be provided on which information is to be provided. If the personal data are stored for business purposes for the purpose of transmission, information about the origin and the recipients is to be given even if these data are not stored. Information on the origin and the recipients can be refused as long as the interest in the protection of business secrets prevails over the interest of the person concerned.

(1a) In the case of section 28 (3) sentence 4, the transferring agency shall store the source of the data and the recipient for a period of two years after the transmission and shall provide the person concerned with information on the origin of the data and the recipient upon request , Sentence 1 applies accordingly to the recipient.

(2) In the case of Section 28b, the body responsible for the decision shall provide the person concerned with information on request

1. The probability values, which have been collected or stored for the first six months prior to the receipt of the information request,

Second The data types used to calculate the probability values;

Third The condition and the significance of the probability values are individualized and understandable in a generally understandable form.

Sentence 1 shall apply mutatis mutandis if the body responsible for the decision

1. The data used for the calculation of the likelihood values are stored without reference to the persons concerned, but the reference is made during the calculation; or

Second At a different location.

Has a body other than the person responsible for the decision

1. The probability value or

Second A component of the probability value

, It shall transmit the information necessary to fulfill the claims in accordance with sentences 1 and 2 to the extent required to do so at the request of the authority responsible for the decision. In the case of sentence 3 (1), the body responsible for the decision must immediately notify the person concerned of his claims for information, stating the name and address of the other body and the particulars necessary for the designation of the individual case insofar as they do not provide the information themselves. In this case, the other body which has calculated the probability value has to fulfill the claim pursuant to sentences 1 and 2 against the person concerned free of charge. The obligation of the body responsible for the calculation of the probability value pursuant to sentence 3 shall cease to apply,

(3) A body which stores personal data for the purpose of transmission on a business basis shall provide the person concerned with information on the data stored on his / her personal data, even if they are neither processed automatically nor stored in a non-automated file. The data subject is also to be informed of the data that is available

1. At present not yet a personal reference, in which such a person is to be produced by the responsible body in connection with the disclosure,

Second The responsible body does not save, but for the purpose of the information distribution uses.

Information on the origin and the recipients can be refused as long as the interest in the protection of business secrets prevails over the interest of the person concerned.

(4) A body which collects, stores or modifies personal data for the purposes of transmission, shall provide the person concerned with information upon request

1. The likelihoods for a particular future conduct of the data subject transmitted within the last 12 months preceding the receipt of the request for information, as well as the names and last known addresses of the third parties to which the values have been transmitted,

Second The likelihoods which arise at the time of the request for information according to the procedures used by the body for the calculation,

Third The data types used to calculate the likelihood values according to points 1 and 2;

4th The condition and the significance of the probability values are individualized and understandable in a generally understandable form.

Sentence 1 applies accordingly if the responsible body

1. The data used for the calculation of the probability value without personal reference, the personal reference to the calculation, or;

Second At a different location.

5. The data stored in accordance with paragraphs 1a to 4 for the purposes of the distribution of information to the persons concerned shall be used only for this purpose and for purposes of data protection control; For other purposes they are to be blocked.

(6) The information must be provided in text form upon request, unless a different form of disclosure is appropriate due to the special circumstances.

(7) There is no obligation to provide information if the person concerned is not to be informed in accordance with section 33 (2) sentence 1 no. 2, 3 and 5 to 7.

(8) The information is free of charge. If the personal data are stored for business purposes for the purpose of the transmission, the data subject may request free-of-charge information in text form once per calendar year. For any further information a fee may be charged if the data subject can use the information for third parties for economic purposes. The remuneration may not exceed the costs directly attributable to the distribution of information. A fee can not be claimed if

1. Special circumstances justify the assumption that data are stored inaccurate or inadmissible, or

Second The information shows that the data are to be corrected in accordance with section 35 (1) or deleted pursuant to section 35 (2) sentence 2 no. 1.

(9) If the distribution of information is not free of charge, the data subject shall be given the opportunity to obtain personal information about the data concerning him in the context of his claim. He must point this out.

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§ 35 Correction, deletion and blocking of data

(1) Personal data shall be corrected if they are incorrect. Estimated data are to be clearly marked as such.

(2) Personal data may be deleted at any time except in the cases referred to in paragraph 3 no. 1 and 2. Personal data shall be deleted if:

1. Their storage is prohibited,

Second Data on racial or ethnic origin, political opinions, religious or philosophical convictions, trade union affiliation, health, sexual life, criminal acts or administrative offenses, and their correctness can not be proved by the responsible authority,

Third They are processed for their own purposes, as soon as their knowledge is no longer required for the purpose of storage, or

4th They are processed commercially for the purpose of the transmission and an examination is carried out at the end of the fourth, as far as data on the facts are concerned, and the data subject does not contradict the cancellation, at the end of the third calendar year beginning with the calendar year following the initial storage, Indicates that long-term storage is not required.

Personal data which is stored on the basis of § 28a (2) sentence 1 or § 29 (1) sentence 1 no. 3 shall be deleted after the termination of the contract if the person concerned so requests.

(3) A deletion shall be replaced by a deletion, as far as

1. In the case of paragraph 2 sentence 2 no. 3 of a deletion, statutory, statutory or contractual retention periods,

Second There is reason to believe that the deprivation would jeopardize the interests of the data subject;

Third A deletion is not possible or is only possible with a disproportionate effort because of the special nature of the storage.

(4) Personal data shall also be blocked where the correctness of the data is undoubted by the person concerned and neither the correctness nor the incorrectness can be ascertained.

(4a) The fact of the suspension may not be communicated.

(5) Personal data may not be collected, processed or used for automated processing or processing in non - automated files, as long as the person concerned is in breach of the responsibility of the responsible body and an examination reveals that the person concerned 's legitimate interest is due to his special personal situation Interest of the responsible authority in this survey, processing or use. Sentence 1 does not apply if a legal requirement for collection, processing or use.

(6) Personal data which are incorrect or whose accuracy is denied must not be corrected, blocked or deleted in the case of commercial data storage for the purpose of transmission except in the cases referred to in paragraph 2 (2) if they are taken from generally accessible sources and, For documentation purposes. At the request of the data subject, this data shall be accompanied by the data for the duration of the storage. The data may not be transmitted without this regional representation.

(7) Information concerning the correction of incorrect data, the blocking of disputed data and the deletion or blocking of the storage should be communicated to the bodies which have been transferred to the storage facility for data transmission where this does not involve a disproportionate effort and the legitimate interests of the Concerned.

(8) Blocked data may only be transmitted or used without the consent of the data subject, if

1. It is indispensable for scientific purposes, to remedy an existing need for evidence or other reasons which are in the overwhelming interest of the responsible body or a third party; and

Second The data could be communicated or used for this purpose if they were not blocked.

Third subsection, supervisory authority

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§§ 36 and 37 (omitted)

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§ 38 Supervisory authority

(1) The supervisory authority shall supervise the implementation of this Act as well as other regulations on data protection, as far as they regulate the automated processing of personal data or the processing or use of personal data in or from non - automated files, including the law of the Member States in the cases of § 1 para 5. It shall advise and assist the data protection officers and the responsible authorities with due regard for their typical needs. The supervisory authority may only process and use the data it has stored for purposes of supervision; Section 14 (2) Nos. 1 to 3, 6 and 7 shall apply mutatis mutandis. In particular, the supervisory authority may transmit data to other supervisory authorities for supervisory purposes. It provides the supervisory authorities of other Member States of the European Union, on request, with additional assistance (administrative assistance). If the supervisory authority establishes an infringement of this law or other rules on data protection, it is empowered to notify the parties concerned of the violation of the authorities responsible for prosecution or penalties, and, in the case of serious infringements, by the trade supervisory authority, to carry out commercial measures teaching. It publishes an activity report regularly, at the latest every two years. § 21 sentence 1 and § 23 paragraph 5 sentences 4 to 7 apply accordingly. To notify the persons concerned of the infringement to the authorities responsible for prosecution or penalties and, in the event of serious infringements, to inform the trade supervisory authority to carry out commercial measures. It publishes an activity report regularly, at the latest every two years. § 21 sentence 1 and § 23 paragraph 5 sentences 4 to 7 apply accordingly.

(2) The supervisory authority shall keep a register of the automated processings which are required to be reported in accordance with § 4d, with the details according to § 4e sentence 1. The register can be viewed by everyone. The right of access does not extend to the information according to § 4e clause 1 no. 9 as well as to the persons entitled to access.

(3) The bodies subject to inspection, as well as the persons responsible for their management, shall, without delay, provide the supervisory authority with the information necessary for the performance of their tasks. The person liable to provide information may refuse to provide such information which would be suspended by him or by one of the members of the Civil Procedure Code as referred to in Article 383 (1) (1) to (3) of the Code of Criminal Procedure or by a procedure under the Act on Administrative Offenses. The person obliged to provide information is to be pointed out.

(4) Persons authorized by the supervisory authority to carry out the inspection are empowered to enter the premises and business premises of the body during the business hours and to carry out inspections and inspections in order to fulfill the tasks entrusted to the supervisory authority. You can consult business documents, in particular the overview according to § 4g Abs. 2 Sentence 1 as well as the stored personal data and the data processing programs. Section 24 (6) shall apply mutatis mutandis. The person subject to the obligation has to tolerate these measures.

(5) In order to ensure compliance with this Act and other rules on data protection, the supervisory authority may order measures to remedy identified violations in the collection, processing or use of personal data or technical or organizational deficiencies. In the case of serious violations or deficiencies, in particular those which are associated with a particular threat to the personality right, it may prohibit the collection, processing or use or the use of individual procedures if the infringements or deficiencies are contrary to the order pursuant to sentence 1 and despite the imposition of a Not be disposed of in a timely manner. It may require the removal of the data protection officer,

6. The regional governments or the authorities empowered by them shall determine the supervisory authorities responsible for monitoring the implementation of the data protection within the scope of this section.

(7) The application of the trade regulation to the commercial enterprises subject to the provisions of this section shall remain unaffected.

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§ 38a Code of Conduct for the Promotion of the Implementation of Data Protection Regulations

(1) Professional associations and other associations representing certain groups of responsible bodies may submit draft rules of conduct to promote the implementation of data protection rules by the competent supervisory authority.

(2) The supervisory authority shall check the compatibility of the draft submitted to it with the applicable data protection law.

Section Four **Special Rules**

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§ 39 Use of personal data which is subject to professional or special secrecy

(1) Personal data which are subject to professional or special secrecy and which have been made available by the body obliged to maintain secrecy in the exercise of their professional or official duties may be processed or used by the responsible body only for the purpose of: Which she has received. The body obliged to maintain secrecy must agree to the transfer to a non-public body.

(2) For a different purpose, the data may only be processed or used if the modification of the purpose is permitted by special law.

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§ 40 Processing and use of personal data by research facilities

(1) Personal data collected or stored for scientific purposes may be processed or used only for the purpose of scientific research.

(2) The personal data shall be anonymised as soon as this is possible according to the purpose of the research. Until then, the characteristics must be stored separately, with which individual details about personal or factual circumstances can be assigned to a specific or determinable person. They may only be merged with the details provided the research objective so requires.

(3) Scientific research bodies may only publish personal data if:

1. The person concerned has given his consent; or

Second This is indispensable for the presentation of research results about contemporary events.

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§ 41 Collection, processing and use of personal data by the media

(1) In their legislation, the Länder shall provide that for the collection, processing and use of personal data of companies and relief companies of the press solely for their own journalistic, editorial or literary purposes, regulations corresponding to the provisions of Sections 5, 9 and 38a, including a Related liability clause according to § 7.

(2) If the journalistic-editorial collection, processing or use of personal data by Deutsche Welle is used to publish regional representations of the person concerned, these area representations shall be stored as stored data and kept for the same duration as the data itself.

(3) If someone is affected by his personality right through Deutsche Welle's reporting, he may request information about the data on which the data is based and which is stored on his / her personal data. The information may be refused after consideration of the legitimate interests of the parties, as far as

1. From the data can be closed to persons who have been journalistic in the preparation, production or dissemination of broad-

Second From the data can be inferred to the person of the sender or the contributor of contributions, documents and communications for the editorial part,

Third By the communication of the researched or otherwise obtained data, the journalistic task of the Deutsche Welle would be impaired by researching the information stock.

The person concerned may request the correction of incorrect data.

(4) In addition, the provisions of this Act shall be governed by Sections 5, 7, 9 and 38a for Deutsche Welle. Instead of §§ 24 to 26, § 42, also applies to administrative matters.

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§ 42 Data Protection Officer of Deutsche Welle

(1) Deutsche Welle shall appoint a data protection officer to replace the Federal Data Protection Supervisor (Bundesdatenschutzamt) and the freedom of information. The appointment shall be made by the Board of Directors for a period of four years at the suggestion of the Director, with reappointment permissible. The office of a data protection officer can be performed alongside other tasks within the broadcasting corporation.

(2) The Data Protection Officer shall supervise compliance with the provisions of this Act and other data protection provisions. He is independent in the exercise of this office and is subject only to the law. In addition, he is subject to the service and legal supervision of the Board of Directors.

(3) Anyone may, in accordance with § 21 sentence 1, contact the data protection officer.

(4) The Data Protection Officer shall submit an activity report to the Deutsche Welle Bodies every two years, for the first time on 1 January 1994. It also provides special reports on the order of an organ of Deutsche Welle. The commissioner also submits the activity reports to the Federal Data Protection Supervisor or the Federal Data Protection Commissioner.

(5) Deutsche Welle applies further regulations in accordance with Sections 23 to 26 for its area. Sections 4f and 4g shall remain unaffected.

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§ 42a Information obligation in case of unlawful knowledge of data

If a non - public body within the meaning of section 2 (4) or a public body pursuant to section 27 paragraph 1 sentence 1 no

1. Special types of personal data (Section 3 (9)),

Second Personal data subject to professional secrecy,

Third Personal data relating to criminal acts or administrative offenses or the suspicion of criminal acts or administrative offenses, or

4th Personal data on bank or credit card accounts

Unlawfully transmitted or otherwise unlawfully notified to third parties, and if there are serious impairments to the rights or legitimate interests of the persons concerned, the latter must immediately notify the competent supervisory authority and the persons concerned in accordance with sentences 2 to 5. The person concerned must be informed immediately as soon as appropriate measures have been taken to secure the data or have not been carried out without delay and the prosecution is no longer jeopardized. The notification of the affected parties must include a statement of the nature of the unlawful knowledge and recommendations for measures to reduce possible adverse effects. Notifying the competent supervisory authority shall also contain a statement of possible adverse effects of the unlawful acquisition of knowledge and the measures taken by the body. In so far as notification of the affected parties would require disproportionate expenditure, in particular due to the large number of cases involved, the information to the public by means of advertisements comprising at least half a page shall be replaced by at least two national newspapers appearing nationwide Effectiveness with regard to the information of the persons concerned. A notification, which the notifier has given,

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Section 42b Application by the supervisory authority for judicial decision in the event of the unlawfulness of a decision of the European Commission

(1) If a supervisory authority considers that a decision on the adequacy of the European Commission, a decision on the recognition of standard protection clauses or the validity of approved codes of conduct, which is valid for a decision of the supervisory authority, is unlawful, the supervisory authority shall suspend its procedure and establish a Request for judicial decision.

2. The administrative procedure shall be applicable to the procedures referred to in paragraph 1. The administrative court order shall be applied in accordance with paragraphs 3 to 6.

(3) The Federal Administrative Court shall decide on a request from the supervisory authority pursuant to paragraph 1 in the first and last legal proceedings.

4. The supervisory authority shall be eligible to participate in the proceedings referred to in paragraph 1. The supervisory authority shall be involved as an applicant in a proceeding pursuant to paragraph 1; Section 63 (3) and (4) of the Administrative Law shall remain unaffected. The Federal Administrative Court may give the European Commission the opportunity to submit its observations within a specified period.

5. If a procedure is pending before the Court of Justice of the European Union in order to verify the validity of a decision of the European Commission under paragraph 1, the Federal Administrative Court may order that the hearing be suspended before the Court of Justice of the European Union.

(6) Paragraph 47 (5), first sentence, and paragraph 6, of the Administrative Rules shall be applied mutatis mutandis in accordance with paragraph 1. If the Federal Administrative Court is of the opinion that the decision of the European Commission is valid under paragraph 1, it shall state this in its decision. Otherwise the question of the validity of the decision in accordance with Article 267 of the Treaty on the Functioning of the European Union shall be referred to the Court of Justice of the European Union for a decision.

Fifth section **Final provisions**

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Section 43 Fines

(1) Any act which is intentional or negligent

1. Contrary to § 4d para. 1, also in connection with § 4e sentence 2, does not make a notification, not correctly, not completely or not in time,

Second Contrary to § 4f para. 1 sentence 1 or 2, also in conjunction with sentences 3 and 6, not appoint a data protection officer, not in the prescribed manner or in time,

2a. Contrary to § 10 Paragraph 4 Sentence 3 does not ensure that the data transmission can be determined and checked,

2 B. In contravention of section 11 (2) sentence 2, fails to submit an order correctly, not completely or not in the prescribed manner, or contrary to § 11 paragraph 2 sentence 4, is not convinced by the technical and organizational measures taken by the contractor before the start of the data processing,

Third Contrary to Article 28 (4) sentence 2, does not inform the parties concerned, does not correctly or does not provide timely information or does not ensure that the person concerned is informed,

3a. Contrary to Article 28 (4), fourth sentence, requires a stricter form,

4th In contravention of Section 28 (5), second sentence, transmits or uses personal data,

4a. Contrary to § 28a (3) sentence 1, does not make a communication, not correctly, not completely or not in time,

5th Contrary to Article 29 para. 2 sentence 3 or 4, does not record the reasons stated therein or the manner and manner of its credible statement,

6th In contravention of Section 29 (3) sentence 1, records personal data in electronic or printed address, telephone number, branch or comparable directories,

7th Contrary to Article 29 (3), second sentence, does not ensure the taking over of markings,

- 7a. Contrary to Article 29 (6), a request for information is not dealt with correctly,
- 7b. Contrary to § 29 para. 7 sentence 1, a consumer is not informed, not correctly, not completely or not in time,
- 8th. Contrary to Article 33 (1), does not notify the parties concerned incorrectly or not completely,
- 8a. Contrary to § 34 Paragraph 1 Sentence 1, also in connection with sentence 3, contrary to § 34 paragraph 1a, contrary to § 34 paragraph 2 sentence 1, also in connection with sentence 2, or contrary to § 34 paragraph 2 sentence 5, paragraph 3 sentence 1 or Sentence 2 or paragraph 4 sentence 1, also in connection with sentence 2, does not provide information, incorrectly, not completely or not in time, or does not store data contrary to § 34 paragraph 1a,
- 8b. Contrary to Section 34 (2), third sentence, information is not provided, not correctly, not completely or not in due time,
- 8c. In contravention of section 34 (2) sentence 4, does not refer the affected parties to the other party,
- 9th. Contrary to § 35 (6) sentence 3, data are transmitted without a regional representation,
- 10th. Contrary to § 38 para. 3 sentence 1 or para. 4 sentence 1, does not provide information, incorrectly, not completely or not in due time or does not tolerate a measure or
- 11th. Of an enforceable order pursuant to Section 38 (5), first sentence.

(2) Unlawful acts, who are intentional or negligent

- 1. Unauthorized personal data which is not generally accessible, is collected or processed,
Second Unauthorized personal data, which is not generally accessible, for retrieval by means of automated procedures,
Third Unauthorized personal data which is not generally accessible, retrieves or obtains itself or another from automated processing or non-automated files,
- 4th. The transmission of personal data which is not generally accessible by means of incorrect information,
- 5th. In accordance with section 16 (4) sentence 1, section 28 (5) sentence 1, also in conjunction with section 29 (4), section 39 (1) sentence 1 or section 40 (1), uses the transmitted data for other purposes,
- 5a. Contrary to Article 28 (3b), makes the conclusion of a contract dependent on the consent of the person concerned,
- 5b. Contrary to § 28 Paragraph 4 Sentence 1, processes or uses data for purposes of advertising or market or opinion research,
- 6th. In contravention of section 30 (1) sentence 2, section 30a (3) sentence 3 or section 40 (2) sentence 3, merges a characteristic named there with a single specification;
- 7th. Contrary to § 42a sentence 1, does not make a communication, not correct, not complete or not in time.

(3) In the case of paragraph 1, the administrative offense may be punished with a fine of up to 50,000 euros, and in cases of paragraph 2 a fine of up to three hundred thousand euros. The fine is intended to exceed the economic advantage of the offender from the administrative offense. If the amounts specified in sentence 1 are not sufficient, they can be exceeded.

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§ 44 Criminal Provisions

- (1) A person who commits an intentional act referred to in Article 43 (2) for consideration or for the purpose of enriching himself or another or harming another person shall be punished with imprisonment for a term of up to two years or with a fine.
- (2) The act shall be prosecuted only on application. The person concerned, the responsible body, the Federal Commissioner for Data Protection and the Freedom of Information and the Supervisory Authority are entitled to submit proposals.

Seventh section **Transitional provisions**

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§ 45 Current Uses

Surveys, processing or use of personal data which have already begun on 23 May 2001 shall be brought into conformity with the provisions of this Act within three years after that date. To the extent that provisions of this Act apply to legislation outside the scope of Directive 95/46 / EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, surveys, Of personal data which have already begun on 23 May 2001 to be brought into conformity with the provisions of this Act within five years after that date.

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§ 46 Provision of Definitions

(1) File is used in special federal legislation

- 1. A collection of personal data that can be evaluated by automated procedures according to specific characteristics (automated file), or
Second Any other collection of personal data which has the same structure and can be ordered, sorted and evaluated according to certain characteristics (non-automated file).

This does not include files and records, unless they can be reorganized and evaluated by automated procedures.

(2) Where special provisions of the Confederation are used in the conceptual act, acts shall be accompanied by any official or official purpose which does not fall within the scope of paragraph 1; Including picture and sound recordings. This does not include preliminary drafts and notes that are not intended to be part of an operation.

(3) If the conceptual recipient is used in special federal legislation, the recipient is any person or body outside the responsible authority. The beneficiary is not the person concerned or any person or entity that processes or uses personal data on behalf of the European Economic Area in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area.

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Section 47 Transitional Arrangements

For the processing and use of data collected or stored before September 1, 2009, § 28 shall continue to be applied in the version valid until then

1. For purposes of market or opinion research by 31 August 2010,

Second For the purpose of advertising until 31 August 2012.

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§ 48 Report of the Federal Government

The Federal Government reports to the Bundestag

1. To 31 December 2012 on the effects of Sections 30a and 42a,

Second Until 31 December 2014 on the effects of the amendments to Sections 28 and 29.

If the Federal Government recommends legislative measures, the report should include a proposal.

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Annex (to § 9 sentence 1)

(Reference to the original text: Federal Law Gazette I 2003, 88,
for the individual amendments see footnote)

If personal data are processed or used in an automated manner, the internal or internal organization must be designed in such a way that it meets the special requirements of data protection. In particular, measures shall be taken which are appropriate according to the nature of the personal data or data categories to be protected,

1. To prohibit unauthorized persons from accessing data processing facilities with which personal data are processed or used (access control),

Second To prevent data processing systems from being used by unauthorized persons (access control),

Third To ensure that the persons entitled to use a data processing system can only access the data subject to their access authorization and that personal data can not be read, copied, modified or removed unauthorized (access control) during the processing,

4th To ensure that personal data can not be read, copied, modified or removed unauthorized unauthorized persons during the electronic transmission or during their transport or storage on data carriers, and that it can be checked and ascertained to which places a transmission of personal data by means of data transmission facilities (Transfer control),

5th To ensure that it can be subsequently verified and ascertained whether and by whom personal data have been entered, changed or removed in data processing systems (input control),

6th To ensure that personal data processed in the order can only be processed according to the instructions of the customer (order control),

7th Ensure that personal data are protected against accidental destruction or loss (availability control),

8th. To ensure that data collected for different purposes can be processed separately.

A measure according to sentence 2 number 2 to 4 is, in particular, the use of encryption methods corresponding to the prior art.

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