

# table of contents

|                                                                                           |           |
|-------------------------------------------------------------------------------------------|-----------|
| Foreword .....                                                                            | 5         |
| Bibliography .....                                                                        | 23        |
| <br>                                                                                      |           |
| <b>§ 1 From Directive to Regulation – European Data Protection Law de lege lata .....</b> | <b>35</b> |
| A. Preliminary Remarks .....                                                              | 35        |
| B. General Data Protection Law of the European Union .....                                | 36        |
| I. Starting Point .....                                                                   | 36        |
| II. Charter of Fundamental Rights .....                                                   | 37        |
| III. The data protection principle as a general principle of EU law .....                 | 43        |
| IV. Special Protection Against the Action of the European Union .....                     | 45        |
| 1. Scope of Protection .....                                                              | 45        |
| 2. Impairments and Justification .....                                                    | 46        |
| C. Directive 95/46/EC .....                                                               | 46        |
| D. Deficits of the Policy Concept .....                                                   | 49        |
| E. The Directive Goes, the Regulation Comes .....                                         | 50        |
| I. Legal Nature of a Regulation at EU Level .....                                         | 50        |
| II. Objectives of the GDPR .....                                                          | 50        |
| III. Structure of the GDPR .....                                                          | 53        |
| <br>                                                                                      |           |
| <b>§ 2 Key Terms .....</b>                                                                | <b>55</b> |
| A. Preliminary Note .....                                                                 | 55        |
| B. The Protagonists of Data Protection Law .....                                          | 55        |
| I. Controller .....                                                                       | 55        |
| II. Data Subjects .....                                                                   | 57        |
| III. Third Party .....                                                                    | 60        |
| IV. Recipient .....                                                                       | 61        |
| V. Processor .....                                                                        | 61        |
| VI. Representatives .....                                                                 | 62        |
| VII. Company and Group of Undertakings .....                                              | 62        |
| VIII. Supervisory Authority .....                                                         | 63        |
| C. Subject Matter of Data Protection Law .....                                            | 63        |
| I. Personal Data .....                                                                    | 63        |
| II. Special categories of Personal Data – “Sensitive Data” .....                          | 68        |
| 1. General Provisions .....                                                               | 68        |
| 2. Genetic Data .....                                                                     | 70        |
| 3. Biometric Data .....                                                                   | 70        |
| 4. Health Data .....                                                                      | 70        |
| D. Handling of Data .....                                                                 | 71        |
| I. Processing .....                                                                       | 71        |
| 1. Collection .....                                                                       | 72        |
| 2. Recording .....                                                                        | 73        |
| 3. Organization .....                                                                     | 73        |
| 4. Structuring .....                                                                      | 74        |

|                                                                   |           |
|-------------------------------------------------------------------|-----------|
| 5. Storage .....                                                  | 75        |
| 6. Adaptation .....                                               | 75        |
| 7. Alteration .....                                               | 76        |
| 8. Retrieval .....                                                | 76        |
| 9. Consultation .....                                             | 76        |
| 10. Use .....                                                     | 76        |
| 11. Disclosure [by Transmission & Processing] .....               | 77        |
| 12. Alignment or Combination .....                                | 78        |
| 13. Restriction .....                                             | 78        |
| 14. Erasure or Destruction .....                                  | 79        |
| 15. Pseudonymization .....                                        | 79        |
| 16. Anonymization .....                                           | 81        |
| II. Automated Processing .....                                    | 81        |
| III. Processing Other Than by Automated Means .....               | 82        |
| E. Further legal definitions .....                                | 82        |
| <b>§ 3 General Principles of Processing .....</b>                 | <b>83</b> |
| A. Preliminary Note .....                                         | 83        |
| B. Lawfulness, Fairness and Transparency .....                    | 83        |
| I. Lawfulness of Data Processing .....                            | 83        |
| II. Processing in Accordance with Fairness .....                  | 84        |
| III. Transparency .....                                           | 86        |
| C. Principle on Purpose Limitation .....                          | 88        |
| I. Specified Purpose .....                                        | 89        |
| II. Explicit and Clear Purpose .....                              | 89        |
| III. Legitimate Purpose .....                                     | 90        |
| IV. Further Processing .....                                      | 90        |
| D. Data Minimization .....                                        | 92        |
| E. Accuracy .....                                                 | 93        |
| F. Storage Limitation .....                                       | 94        |
| G. Integrity and Confidentiality .....                            | 94        |
| H. Accountability .....                                           | 95        |
| <b>§ 4 Legal Basis of Processing .....</b>                        | <b>99</b> |
| A. Data Processing Based on a Consent, Art. 6 (1) (a) GDPR .....  | 99        |
| I. Content Requirements for the Consent of the Data Subject ..... | 99        |
| 1. Free Decision .....                                            | 100       |
| a) Free Decision in Employment Relationship .....                 | 100       |
| b) Free Decision When Awarding Financial Incentives .....         | 102       |
| c) Free Decision within Negotiation Imbalance .....               | 105       |
| d) Forced Consent .....                                           | 105       |
| 2. Concrete Purpose Limitation “for the Special Case” .....       | 106       |
| 3. Informed .....                                                 | 106       |
| 4. Unambiguous .....                                              | 108       |
| II. Formal Requirements , “Clear Affirmative Action” .....        | 108       |
| III. Pre-formulated Declarations .....                            | 109       |

|                                                                                                                                                    |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| IV. Conditions Applicable to Child's Consent, Art. 8 GDPR .....                                                                                    | 110 |
| 1. Information Society Services .....                                                                                                              | 110 |
| 2. Consent and Information Society Services .....                                                                                                  | 110 |
| a) At Least 13, at the Most 16 Years .....                                                                                                         | 111 |
| b) Direct Offer to Children .....                                                                                                                  | 111 |
| c) Necessity of Consent by the Holder of Parental Responsibility .....                                                                             | 113 |
| aa) Holder of Parental Responsibility – One Parent Sufficient? .....                                                                               | 113 |
| bb) Demonstration of Parental Consent .....                                                                                                        | 116 |
| cc) No Impact on Contract Law .....                                                                                                                | 117 |
| 3. Requirements Outside the Services of the Information Society .....                                                                              | 117 |
| V. Consent to the Processing of Special Categories of Personal Data .....                                                                          | 118 |
| VI. Facilitation of the Granting of Consent in Research and Science .....                                                                          | 119 |
| VII. Consent for Cookies, Web Bugs and Co. ....                                                                                                    | 119 |
| 1. Cookies .....                                                                                                                                   | 119 |
| a) Conceptuality and Function .....                                                                                                                | 119 |
| b) Legal Assessment .....                                                                                                                          | 120 |
| aa) Consent Based on the Browser Settings of the Respective User .....                                                                             | 121 |
| bb) No Application of the Provisions in §§ 14, 15 German Telemedia Act (TMG) .....                                                                 | 121 |
| cc) Session Cookies .....                                                                                                                          | 122 |
| dd) Permanent Cookies .....                                                                                                                        | 122 |
| ee) Flash Cookies .....                                                                                                                            | 122 |
| 2. Web Bugs .....                                                                                                                                  | 123 |
| 3. Use of So-Called Web Logs .....                                                                                                                 | 123 |
| 4. Behavioral Targeting and Online Advertising .....                                                                                               | 124 |
| 5. Control Considerations from Directive 2002/58/EC .....                                                                                          | 125 |
| 6. Requirements for Consent .....                                                                                                                  | 127 |
| 7. Future Revision – the ePrivacy Regulation .....                                                                                                 | 127 |
| VIII. The Consent's Period of Validity .....                                                                                                       | 128 |
| IX. Revocation of Consent .....                                                                                                                    | 129 |
| X. No Representation .....                                                                                                                         | 129 |
| XI. Special Issue: Consent Despite Other Existent Allowance .....                                                                                  | 129 |
| XII. Continuation of Old Consents .....                                                                                                            | 129 |
| B. Data Processing as a Contractual Obligation, Art. 6 (1) (b) GDPR .....                                                                          | 130 |
| I. Contract .....                                                                                                                                  | 130 |
| II. Implementation/Fulfillment .....                                                                                                               | 132 |
| III. Necessity of the Processing .....                                                                                                             | 133 |
| C. Data Processing in Compliance With a Legal Obligation, Art. 6 (1) (c) GDPR .....                                                                | 136 |
| D. Data Processing for Protection of Vital Interests, Art. 6 (1) (d) GDPR .....                                                                    | 138 |
| E. Data Processing for the Performance of a Task Carried Out in the Public Interest, Art. 6 (1) (e) GDPR .....                                     | 138 |
| F. Data Processing Necessary for the Purposes of the Legitimate Interests Pursued by the Controller or by a Third Party, Art. 6 (1) (f) GDPR ..... | 139 |
| I. General Details and Background .....                                                                                                            | 139 |
| II. The Concept of the "Legitimate Interest" .....                                                                                                 | 144 |
| III. Interests of the Data Subject .....                                                                                                           | 146 |
| IV. Balancing of Interests .....                                                                                                                   | 146 |
| 1. General Requirements .....                                                                                                                      | 146 |

|                                                                                                                                                |     |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 2. Criteria to Be Considered in the Balancing Process .....                                                                                    | 147 |
| a) Importance, Nature and Source of the Legitimate Interest .....                                                                              | 147 |
| aa) Asserting One's Own Fundamental Right Positions or Fundamental<br>Freedoms .....                                                           | 148 |
| bb) Public Interests .....                                                                                                                     | 148 |
| (1) Information Transmission by Consumer Centers .....                                                                                         | 149 |
| (2) Press Information by Competitors .....                                                                                                     | 149 |
| (3) Identifying Press Releases .....                                                                                                           | 150 |
| (4) Political Dispute .....                                                                                                                    | 151 |
| cc) Processing Within a Group of Undertakings (Group Data Processing) .                                                                        | 151 |
| dd) Further Specifications .....                                                                                                               | 152 |
| b) Importance, Nature and Source of the Data Subject's Interest .....                                                                          | 153 |
| aa) Children .....                                                                                                                             | 153 |
| bb) Sick and Otherwise "Vulnerable" Persons .....                                                                                              | 153 |
| cc) Public Function and Reputation of the Data Subject .....                                                                                   | 154 |
| dd) Social Sphere vs. Privacy .....                                                                                                            | 154 |
| c) Data Affected by Processing – Categorization and Default Privacy Model .                                                                    | 155 |
| aa) Normal Protection Requirements .....                                                                                                       | 155 |
| bb) High Protection Requirements .....                                                                                                         | 155 |
| cc) Very High Protection Requirements .....                                                                                                    | 156 |
| dd) "Public Data" .....                                                                                                                        | 157 |
| d) Form of Intended Processing .....                                                                                                           | 159 |
| e) Established Precautionary Measures – Safeguards .....                                                                                       | 159 |
| f) Possible Consequences of Processing for the Data Subject .....                                                                              | 159 |
| g) Instructions by the Article 29 Data Protection Working Party .....                                                                          | 160 |
| h) Scoring Outside of a Concrete Decision-Making Process .....                                                                                 | 160 |
| i) Rights to Information Within an Association .....                                                                                           | 161 |
| G. Schematic Illustration of Processing .....                                                                                                  | 164 |
| H. Purpose-Changing Further Processing .....                                                                                                   | 165 |
| I. Art. 6 (4) GDPR .....                                                                                                                       | 165 |
| II. Further Processing Powers in the BDSG-new .....                                                                                            | 165 |
| 1. Further Processing by Public Authorities, § 23 BDSG-new .....                                                                               | 166 |
| a) Obviously "Presumed" Consent to Further Processing, § 23 (1) (1) BDSG-<br>new .....                                                         | 166 |
| b) Verification of the Data Subject's Data, § 23 (1) (2) BDSG-new .....                                                                        | 166 |
| c) Protection Against Considerable Disadvantages for the Common Good or<br>Danger to Public Safety, § 23 (1) (3) BDSG-new .....                | 167 |
| d) Prosecution of Criminal Offenses, Misdemeanors, Enforcement or Exe-<br>cution of Sentences, § 23 (1) (4) BDSG-new .....                     | 167 |
| e) Averting Serious Impairment of the Rights of Another Person .....                                                                           | 167 |
| f) Exercise of Supervisory and Control Powers, etc., § 23 (1) (6) .....                                                                        | 167 |
| g) Special Requirements for Further Processing of Special Categories of Per-<br>sonal Data, § 23 (2) BDSG-new .....                            | 167 |
| 2. § 24 BDSG-new .....                                                                                                                         | 168 |
| a) Further Processing to Avert Threats to State or Public Security or for the<br>Prosecution of Criminal Offenses, § 24 (1) (1) BDSG-new ..... | 168 |
| b) Assertion, Exercise or Defense of Civil Law Claims, § 24 (1) (2) BDSG-<br>new .....                                                         | 169 |

|                                                                                                                                                |     |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| c) Special Requirement for Further Processing of Special Categories of Personal Data, § 24 (2) BDSG-new .....                                  | 169 |
| I. Processing of Special Categories of Personal Data, Art. 9 GDPR .....                                                                        | 169 |
| I. Processing on the Basis of Consent .....                                                                                                    | 170 |
| II. Processing Related to Labor Law, Social Security Law and Social Protection ....                                                            | 170 |
| III. Processing for the Protection of Vital Interests of the Data Subject or Another Natural Person .....                                      | 171 |
| IV. Processing by a Political, Ideological, Religious or Union-Oriented Foundation, Association or Other Organization .....                    | 171 |
| V. Processing of Data Obviously Made Public by the Data Subject .....                                                                          | 171 |
| VI. Processing for the Assertion, Exercise or Defense of Legal Claims or for Acts of the Courts .....                                          | 172 |
| VII. Processing Based on a Significant Public Interest .....                                                                                   | 172 |
| VIII. Processing in the Field of Health Care and Occupational Medicine .....                                                                   | 173 |
| IX. Processing for Public Health Purposes or to Avert Serious Health Risks .....                                                               | 174 |
| X. Processing for Archival Purposes of Public Interest, for Scientific or Historical Research Purposes or Statistical Purposes .....           | 175 |
| XI. Processing Powers in § 22 BDSG-new .....                                                                                                   | 175 |
| 1. General Provisions .....                                                                                                                    | 175 |
| 2. Exceptions in Favor of Public and Non-Public Bodies, § 22 (1) (1) BDSG-new .....                                                            | 176 |
| a) Exercise of Rights and Fulfillment of Obligations in Connection with Social Security and Social Protection, § 22 (1) (1) (a) BDSG-new ..... | 176 |
| b) Health Care, Assessment of Work Ability, Medical Diagnosis and Treatment, § 22 (1) (1) (b) BDSG-new .....                                   | 176 |
| c) Processing for Reasons of Public Interest in the Area of Public Health, § 22 (1) (1) (c) BDSG-new .....                                     | 177 |
| 3. Exceptions in Favor of Public Authorities, § 22 (1) (2) BDSG-new .....                                                                      | 177 |
| 4. Special Safeguards in the Context of the Processing of Special Categories of Personal Data, § 22 (2) BDSG-new .....                         | 177 |
| J. Processing of Personal Data Relating to Criminal Convictions and Offenses, Art. 10 GDPR .....                                               | 180 |
| K. Profiling and Automated Individual Decision-Making .....                                                                                    | 181 |
| I. Profiling .....                                                                                                                             | 181 |
| 1. Legal Definition, Art. 4 (4) GDPR, and Scope of Application .....                                                                           | 181 |
| 2. Application Examples .....                                                                                                                  | 182 |
| a) Big Data, Data Mining .....                                                                                                                 | 182 |
| b) Scoring .....                                                                                                                               | 183 |
| c) User Profiles on the Internet .....                                                                                                         | 184 |
| II. Automated Individual Decision-Making .....                                                                                                 | 185 |
| III. Exceptions to the Prohibition of Profiling and Automated Individual Decision-Making .....                                                 | 186 |
| 1. Conclusion or Fulfillment of a Contract .....                                                                                               | 186 |
| 2. Explicit Consent of the Data Subject .....                                                                                                  | 186 |
| 3. Admissibility in the Context of Providing Services Pursuant to an Insurance Contract, § 37 BDSG-new .....                                   | 186 |
| a) Fully Sustaining Decision on a Claim for Benefits by the Data Subject, § 37 (1) (1) BDSG-new .....                                          | 187 |

|                                                                                                                                                           |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| b) Decision-Making Based on Binding Rules of Remuneration for Therapeutic Treatment .....                                                                 | 187 |
| c) No Restriction to Certain Data Categories .....                                                                                                        | 188 |
| 4. Limitation of Processing Powers in Relation to Scoring and Credit Reports, § 31 BDSG-new .....                                                         | 188 |
| a) Subject Matter and Regulatory Authority .....                                                                                                          | 188 |
| b) Use of Probability Values for the Purpose of Deciding on the Creation, Execution or Termination of a Contractual Relationship, § 31 (1) BDSG-new ..... | 190 |
| c) Use of a Probability Value Calculated by Credit Reporting Agencies to Determine a Natural Person's Ability and Willingness to Pay .....                | 191 |
| IV. Safeguarding the Data Subject's Interests, Art. 22 (3) GDPR .....                                                                                     | 192 |

## **§ 5 Information and Notification Obligations of the Controller** ..... 193

|                                                                                                             |     |
|-------------------------------------------------------------------------------------------------------------|-----|
| A. Structure .....                                                                                          | 193 |
| B. Nature of the New Information Obligations When Collecting Data – Why and How? .....                      | 193 |
| I. Objective and Purpose – Why? .....                                                                       | 193 |
| II. Formal Requirements of the Obligation to Inform – How? .....                                            | 194 |
| 1. Concise, Transparent, Easy to Understand and Easily Accessible .....                                     | 194 |
| a) General Requirements .....                                                                               | 194 |
| b) Icons .....                                                                                              | 197 |
| c) Increased Requirements for Information Towards Children .....                                            | 198 |
| 2. Formal Requirements .....                                                                                | 198 |
| 3. Costs .....                                                                                              | 199 |
| C. Information To Be Provided Where Personal Data Are Collected From The Data Subject (Direct Survey) ..... | 199 |
| I. Structure of the Standard .....                                                                          | 199 |
| 1. Relationship Between Information Referred to in Paragraph 1 and Paragraph 2 .....                        | 200 |
| 2. Information Only at the Time of First Collection or at Each Collection .....                             | 201 |
| II. Information Obligations Pursuant to Art. 13 (1) GDPR .....                                              | 202 |
| 1. Name and Contact Details .....                                                                           | 202 |
| 2. Contact Details of the Data Protection Officer .....                                                     | 203 |
| 3. Purposes and Legal Basis of Processing .....                                                             | 203 |
| 4. Legitimate Interests .....                                                                               | 203 |
| 5. Recipients or Categories of Recipients .....                                                             | 204 |
| 6. Transmission to Third Countries or to International Organizations .....                                  | 204 |
| III. Obligation to Provide Information pursuant to Art. 13 (2) GDPR (“Information for Retrieval”) .....     | 204 |
| 1. Duration of Storage or Criteria for Determining the Storage Duration .....                               | 204 |
| 2. Rights of the Data Subject .....                                                                         | 205 |
| a) Right of Access .....                                                                                    | 205 |
| b) Right to Rectification .....                                                                             | 205 |
| c) Right to Erasure .....                                                                                   | 205 |
| d) Right to Restriction of Processing .....                                                                 | 206 |
| e) Right to Object .....                                                                                    | 206 |
| f) Right to Data Portability .....                                                                          | 206 |

|                                                                                                                                                                                  |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| g) Right to Withdraw His or Her Consent .....                                                                                                                                    | 206 |
| h) Right to Lodge a Complaint .....                                                                                                                                              | 206 |
| 3. Obligation to Making Available of Data .....                                                                                                                                  | 206 |
| a) Provision of Information due to Legal Obligation .....                                                                                                                        | 207 |
| b) Provision of Information due to Contractual Obligations .....                                                                                                                 | 209 |
| c) Provision of Information Required for the Conclusion of a Contract .....                                                                                                      | 209 |
| d) Obligation of the Data Subject to Provide Information and Consequences<br>of Non-Provision .....                                                                              | 210 |
| 4. Automated Decision-Making including Profiling .....                                                                                                                           | 211 |
| IV. Obligation to Provide Information When Further Processing Data .....                                                                                                         | 212 |
| V. Inapplicability of the Obligation to Provide Information .....                                                                                                                | 212 |
| 1. Knowledge of the Data Subject, Art. 13 (4) GDPR .....                                                                                                                         | 212 |
| 2. Exception When Further Processing in the Form of Disclosure or Transmis-<br>sion to Persons Subject to a Legal Obligation of Professional Secrecy, § 29 (2)<br>BDSG-new ..... | 213 |
| 3. Further Exceptions to the Obligation to Provide Information When Further<br>Processing, § 32 Abs. 1 BDSG-new .....                                                            | 214 |
| a) Disproportionate Effort in Further Processing of “Analog Stored Data”,<br>§ 32 (1) No. 1 BDSG-new .....                                                                       | 214 |
| aa) Data Stored in Analog Form .....                                                                                                                                             | 214 |
| bb) Further Processing is Aimed Directly at the Data Subject .....                                                                                                               | 215 |
| cc) Further Processing is Compatible with the Original Purpose of The<br>Data Collection .....                                                                                   | 215 |
| dd) No Digital Communication .....                                                                                                                                               | 215 |
| ee) Low Interest of the Data Subject in Information .....                                                                                                                        | 215 |
| ff) Case Study .....                                                                                                                                                             | 215 |
| b) Endangerment of the Proper Performance of Tasks as Referred to in Art. 23<br>(1) (a) to (e) GDPR, pursuant to § 32 (1) (2) BDSG-new .....                                     | 216 |
| c) Endangerment of Public Security or Order, § 32 (1) No. 3 BDSG-new .....                                                                                                       | 216 |
| d) Interference with the Establishment, Exercise or Defense of Legal Claims,<br>§ 32 (1) (4) BDSG-new .....                                                                      | 217 |
| e) Endangerment of Confidential Transfer of Data to Public Bodies, § 32 (1)<br>(5) BDSG-new .....                                                                                | 217 |
| 4. Measures to Protect the Legitimate Interests of the Data Subject When Infor-<br>mation is Not Provided, § 32 (2) and (3) BDSG-new .....                                       | 218 |
| a) Setting Down in Writing the Reasons for the Non-Provision of Information<br>to the Data Subject, § 32 (3) p. 3 BDSG-new .....                                                 | 218 |
| b) Special Precautionary Measures for Cases acc. § 32 (1) (1–3) BDSG-new ..                                                                                                      | 218 |
| c) Providing Information within an Appropriate Period after a Temporary<br>Obstacle, § 32 (3) BDSG-new .....                                                                     | 219 |
| D. Obligation to Provide Information in the Context of Data Collection from Third Parties<br>(Data Collection with Third Parties) .....                                          | 219 |
| I. Structure of the Standard .....                                                                                                                                               | 219 |
| 1. Relationship Between Information Referred to in Paragraph 1 and<br>Paragraph 2 .....                                                                                          | 219 |
| 2. Information Only at the Time of First Collection or at Each Collection .....                                                                                                  | 220 |
| II. Time of the Arising of the Information Obligations pursuant to Art. 14 (1) and<br>(2) GDPR, Art. 14 (3) GDPR .....                                                           | 220 |
| 1. Within One Month after Obtaining the Personal Data, Art. 14 (3) (a) GDPR ..                                                                                                   | 220 |

|                                                                                                                                                 |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 2. Time of First Notification to the Data Subject, Art. 14 (3) (b) GDPR .....                                                                   | 221 |
| 3. At the Time of the Disclosure, Art. 14 (3) (c) GDPR .....                                                                                    | 221 |
| III. Information Obligations Pursuant to Art. 14 (1) GDPR .....                                                                                 | 222 |
| 1. Identity and Contact Details, Art. 14 (1) (a) GDPR .....                                                                                     | 222 |
| 2. Data Protection Officer, Art. 14 (1) (b) GDPR .....                                                                                          | 222 |
| 3. Purposes and Legal Basis, Art. 14 (1) (c) GDPR .....                                                                                         | 222 |
| 4. Data Categories, Art. 14 (1) (d) GDPR .....                                                                                                  | 222 |
| 5. Recipients or Categories of Recipients, Art. 14 (1) (e) GDPR .....                                                                           | 223 |
| 6. Transmission to Third Countries, Art. 14 (1) (f) GDPR .....                                                                                  | 223 |
| IV. Information Obligations Pursuant to Art. 14 (2) GDPR .....                                                                                  | 223 |
| 1. Period of Storage, Art. 14 (2) (a) GDPR .....                                                                                                | 223 |
| 2. Legitimate Interests, Art. 14 (2) (b) GDPR .....                                                                                             | 224 |
| 3. Rights of the Data Subject .....                                                                                                             | 224 |
| a) Right of Access .....                                                                                                                        | 224 |
| b) Right to Rectification .....                                                                                                                 | 224 |
| c) Right to Erasure .....                                                                                                                       | 224 |
| d) Right to Restriction of Processing .....                                                                                                     | 224 |
| e) Right to Object .....                                                                                                                        | 224 |
| f) Right to Data Portability .....                                                                                                              | 225 |
| g) Right to Withdraw His or Her Consent .....                                                                                                   | 225 |
| h) Right to Lodge a Complaint .....                                                                                                             | 225 |
| 4. Origin of Data – Data Source, Art. 14 (2) (f) GDPR .....                                                                                     | 225 |
| 5. Information on the Data Origin .....                                                                                                         | 225 |
| 6. Automated Decision-Making, including Profiling, Art. 14 (2) (g) GDPR .....                                                                   | 226 |
| V. Obligation to Provide Information when Further Processing Data, Art. 14 (4) GDPR .....                                                       | 226 |
| VI. General Non-Applicability of the Obligation to Provide Information .....                                                                    | 226 |
| 1. Knowledge of the Data Subject, Art. 14 (5) (a) GDPR .....                                                                                    | 226 |
| 2. Impossibility or Disproportionate Effort, Art. 14 (5) (b) GDPR .....                                                                         | 226 |
| a) The provision of information proves impossible .....                                                                                         | 226 |
| b) The provision of information involves a disproportionate effort .....                                                                        | 228 |
| c) Protective Measures Provided for by the Controller .....                                                                                     | 229 |
| 3. Obtaining or Disclosure Expressly Laid Down by Union or Member State Law, Art. 14 (5) (c) GDPR .....                                         | 229 |
| 4. Professional Secrecy, Art. 14 (5) (d) GDPR .....                                                                                             | 230 |
| 5. Legitimate Secrecy Interests of a Third Party, § 29 (1) p. 1 BDSG-new .....                                                                  | 230 |
| VII. Exemptions pursuant to § 33 BDSG-new .....                                                                                                 | 231 |
| 1. Non-Applicability of Information Obligations When Further Processing in the Case of a Public Body, § 33 (1) (1) BDSG-new .....               | 231 |
| a) Endangerment of the Proper Performance of Tasks, § 33 (1) (1a) BDSG-new .....                                                                | 231 |
| b) Threat of the Public Security or Order or Otherwise Detrimental Circumstance to the Federation or a Land, § 33 (1) (1b) BDSG-new .....       | 231 |
| 2. Non-Applicability of Information Obligations When Further Processing in the Case of a Non-Public (Private) Body, § 33 (1) (2) BDSG-new ..... | 232 |
| a) Interference with the Establishment, Exercise or Defense of Legal Claims under Private Law, § 33 (1) (2a) BDSG-new .....                     | 232 |
| b) Endangerment of a Confidential Transmission of Data to a Public Body, § 33 (1) (2b) BDSG-new .....                                           | 232 |

|                                                                                                                                                          |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 3. Special Safeguards, § 33 (2) and (3) BDSG-new .....                                                                                                   | 233        |
| VIII. Relationship between Art. 13 and Art. 14 GDPR .....                                                                                                | 233        |
| E. Special Obligations to Provide Information in Connection with Processing acc. Art. 6 (1) (e) or (f) GDPR and Direct Marketing, Art. 21 (4) GDPR ..... | 233        |
| F. Communication Of a Personal Data Breach to the Data Subject, Art. 34 GDPR .....                                                                       | 234        |
| I. Prerequisite – Potentially High Risk .....                                                                                                            | 235        |
| II. Consequences, Form and Content .....                                                                                                                 | 236        |
| III. Exceptions to the Obligation to Notify .....                                                                                                        | 237        |
| 1. Appropriate Technical and Organizational Protection Measures, Art. 34 (3) (a) GDPR .....                                                              | 237        |
| 2. Subsequent Measures by the Controller, Art. 34 (3) (b) GDPR .....                                                                                     | 238        |
| 3. Disproportionate Effort, Art. 34 (3) (c) GDPR .....                                                                                                   | 238        |
| 4. Secrecy Interests, § 29 (1) S. 3 BDSG-new .....                                                                                                       | 238        |
| IV. Prohibition of Use in Criminal Proceedings, § 42 (4) BDSG-new .....                                                                                  | 239        |
| G. Notification of a Personal Data Breach to the Supervisory Authority, Art. 33 GDPR .....                                                               | 239        |
| I. Prerequisite – Expected Risk .....                                                                                                                    | 239        |
| II. Content of the Information to Be Transmitted .....                                                                                                   | 239        |
| 1. Nature of the Personal Data Breach .....                                                                                                              | 239        |
| 2. Categories and Approximate Number of Data Subjects Concerned .....                                                                                    | 240        |
| 3. Name and Contact Details of the Data Protection Officer or Other Contact Point where More Information Can Be Obtained .....                           | 240        |
| 4. Description of the Probable Consequences of the Personal Data Breach .....                                                                            | 240        |
| 5. Measures Taken or Proposed to Be Taken by the Controller to Address the Personal Data Breach .....                                                    | 240        |
| III. Form and Deadline of the Communication .....                                                                                                        | 240        |
| IV. Prohibition of Use in Criminal Proceedings, § 42 (4) BDSG-new .....                                                                                  | 241        |
| <b>§ 6 Rights of the Data Subject .....</b>                                                                                                              | <b>243</b> |
| A. Preliminary Note .....                                                                                                                                | 243        |
| B. Right of Access, Art. 15 GDPR .....                                                                                                                   | 243        |
| I. Investigation Claim – Is Data About Me Processed at All? .....                                                                                        | 243        |
| II. Right of Access – What Data is Processed by Whom, for Whom, and What Can I Do About It? .....                                                        | 244        |
| 1. General Part of the Claim for Access .....                                                                                                            | 244        |
| a) Purposes of the Processing .....                                                                                                                      | 245        |
| b) Categories of Personal Data Being Processed .....                                                                                                     | 245        |
| c) Recipients or Categories of Recipient .....                                                                                                           | 245        |
| d) Envisaged Period For Which The Personal Data Will Be Stored Or The Criteria Used To Determine That Period .....                                       | 246        |
| e) Rights of the Data Subject .....                                                                                                                      | 246        |
| aa) Right to Rectification .....                                                                                                                         | 247        |
| bb) Right to Erasure .....                                                                                                                               | 247        |
| cc) Right to Restriction of Processing .....                                                                                                             | 247        |
| dd) Right to Object .....                                                                                                                                | 247        |
| ee) Right to Lodge a Complaint .....                                                                                                                     | 247        |
| f) All Available Information about the Origin of the Data .....                                                                                          | 247        |
| g) Automated Decision-Making including Profiling .....                                                                                                   | 248        |
| h) Transmission to Third Countries .....                                                                                                                 | 248        |

|                                                                                                                                       |     |
|---------------------------------------------------------------------------------------------------------------------------------------|-----|
| 2. Special Part of the Claim for Access .....                                                                                         | 248 |
| a) All Processed Personal Data .....                                                                                                  | 248 |
| b) Right to Free Copy of the Data .....                                                                                               | 248 |
| aa) Scale – What does “copy of personal data” mean? .....                                                                             | 248 |
| bb) In General Free of Charge .....                                                                                                   | 249 |
| cc) Special Problem: Information about the Content of Patient Files .....                                                             | 251 |
| 3. Formal Requirements concerning the Provision of Information .....                                                                  | 252 |
| a) In a Concise, Transparent, Intelligible and Easily Accessible Form .....                                                           | 252 |
| b) Without Undue Delay .....                                                                                                          | 252 |
| c) In Paper Form, on Request Also Electronically .....                                                                                | 253 |
| d) Provision to the Correct Data Subject .....                                                                                        | 253 |
| III. Limitations on the Right of Access .....                                                                                         | 253 |
| 1. Limitations Necessary for the Fulfillment of the Research or Statistical Purposes, § 27 (2) BDSG-new .....                         | 254 |
| 2. Restriction in Favor of Public Interest Archives, § 28 (2) BDSG-new .....                                                          | 254 |
| 3. Interest in Maintaining Confidentiality/Secrecy, § 29 (1) S. 2 BDSG-new .....                                                      | 254 |
| 4. Restrictions under § 34 BDSG-new .....                                                                                             | 254 |
| a) No Obligation to Provide Information under § 33 BDSG-new, § 34 (1) No. 1 BDSG-new .....                                            | 254 |
| b) Data Only Available due to Storage Obligations, § 34 (1) No. 2a) BDSG-new .....                                                    | 255 |
| c) Data Only Serve Purposes of Monitoring Data Protection or Safeguarding Data, § 34 (1) (2)(b) BDSG-new .....                        | 256 |
| d) Special Documentation Obligations and Purpose Limitation, § 34 (2) BDSG-new .....                                                  | 256 |
| e) Special Regulations in the Event of Refusal of Information by Public Authorities, § 34 (3) and (4) BDSG-new .....                  | 256 |
| IV. Right of Access towards Credit Bureaus in the Context of Consumer Loans, § 30 BDSG-new .....                                      | 257 |
| C. Right to Rectification .....                                                                                                       | 257 |
| I. Art. 16 GDPR .....                                                                                                                 | 257 |
| II. Restriction of Processing for Archiving Purposes in the Public Interest, § 28 (3) BDSG-new .....                                  | 258 |
| III. Notification Obligation of the Controller towards Recipients, Art. 19 GDPR .....                                                 | 258 |
| D. Right to Erasure (“Right to be Forgotten”), Art. 17 GDPR .....                                                                     | 259 |
| I. Grounds for Erasure .....                                                                                                          | 259 |
| 1. Frustration of Purpose, Art. 17 (1) (a) GDPR .....                                                                                 | 259 |
| 2. Consent Revocation, Art. 17 (1) (b) GDPR .....                                                                                     | 262 |
| 3. Objection to the Processing, Art. 17 (1) (c) GDPR .....                                                                            | 262 |
| a) Objection to Processing in the Context of Performing a Task in the Public Interest or Legitimate Interests of the Controller ..... | 262 |
| b) Objection to Processing for Direct Marketing Purposes .....                                                                        | 263 |
| 4. Unlawful Processing .....                                                                                                          | 264 |
| 5. Erasure is Required to Fulfill a Legal Obligation .....                                                                            | 264 |
| 6. Data Collected in Relation to Information Society Services Offered Pursuant to Art. 8 (1) GDPR, Art. 17 (1) (f) GDPR .....         | 264 |
| II. Non-Applicability of the Right/Obligation to Erasure .....                                                                        | 265 |
| 1. Exercise of the Right to Freedom of Expression and Information, Art. 17 (3) (a) GDPR .....                                         | 265 |

|                                                                                                                                              |     |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 2. Fulfillment of a Legal Obligation, Art. 17 (3) (b) (1) GDPR-old .....                                                                     | 267 |
| 3. Performance of a Task Carried Out in the Public Interest, Art. 17 (3) (b) (2) GDPR - old .....                                            | 267 |
| 4. Processing Carried Out in the Exercise of Official Authority, Art. 17 (3) (b) – old (3) GDPR .....                                        | 267 |
| 5. Reasons of Public Interest in the Area of Public Health, Art. 17 (3) (c) GDPR ..                                                          | 268 |
| 6. Archiving Purposes in the Public Interest, Scientific or Historical Research Purposes or Statistical Purposes, Art. 17 (3) (d) GDPR ..... | 268 |
| 7. Establishment, Exercise or Defense of Legal Claims, Art. 17 (3) (e) GDPR ...                                                              | 269 |
| 8. Restrictions under § 35 BDSG-new .....                                                                                                    | 269 |
| a) Regulatory Power? .....                                                                                                                   | 269 |
| b) Disproportionate Effort in the Case of Non-Automated Data Processing, § 35 (1) BDSG-new .....                                             | 269 |
| c) Obligation to Restrict Processing and Obligation to Inform the Data Subject, § 35 (2) BDSG-new .....                                      | 270 |
| d) Conflict with Retention Periods set by Statute or Contract, § 35 (3) BDSG-new .....                                                       | 271 |
| III. Special Obligations for Making Data Publicly Accessible, Art. 17 (2) GDPR ....                                                          | 272 |
| IV. Notification Obligation of the Controller towards Recipients, Art. 19 GDPR ....                                                          | 272 |
| E. Right to Restriction of Processing, Art. 18 GDPR .....                                                                                    | 273 |
| I. Accuracy of the Personal Data is Contested, Art. 18 (1) (a) GDPR .....                                                                    | 273 |
| II. Unlawful Processing, Art. 18 (1) (b) GDPR .....                                                                                          | 273 |
| III. Frustration of Purpose by the Controller .....                                                                                          | 274 |
| IV. Objection to Processing in Accordance with Art. 21 (1) GDPR .....                                                                        | 275 |
| V. Legal Consequences of Processing, Art. 18 (2) GDPR .....                                                                                  | 275 |
| VI. Restriction of Rights under § 28 (4) BDSG-new .....                                                                                      | 275 |
| F. Right to Data Portability, Art. 20 GDPR .....                                                                                             | 275 |
| I. Affected Data .....                                                                                                                       | 276 |
| 1. Provided .....                                                                                                                            | 276 |
| 2. Personal Data Concerning the Data Subject .....                                                                                           | 277 |
| 3. Processing due to Consent or Contract .....                                                                                               | 277 |
| 4. Automated Processing .....                                                                                                                | 278 |
| II. Scope of the Right to Data Portability .....                                                                                             | 278 |
| 1. Structured, Common and Machine-Readable .....                                                                                             | 278 |
| 2. Transmission to the Data Subject .....                                                                                                    | 279 |
| 3. Direct Transmission to a New Controller .....                                                                                             | 279 |
| III. Restrictions .....                                                                                                                      | 280 |
| IV. Obligations of the “New” Controller .....                                                                                                | 280 |
| G. Right to Object, Art. 21 GDPR .....                                                                                                       | 281 |
| I. Overview of the Basic Content of the Right to Object .....                                                                                | 281 |
| II. Objection under Art. 21 (1) GDPR .....                                                                                                   | 281 |
| 1. Subject Matter .....                                                                                                                      | 281 |
| 2. Content Requirements .....                                                                                                                | 282 |
| 3. Formal Requirements/Time Limit .....                                                                                                      | 283 |
| 4. Legal Consequences .....                                                                                                                  | 283 |
| III. Objection to Processing with Marketing Purposes, Art. 21 (2) GDPR .....                                                                 | 284 |
| 1. Subject Matter, Content and Formal Requirements .....                                                                                     | 284 |
| 2. Legal Consequences .....                                                                                                                  | 286 |

|                                                                                                                                     |            |
|-------------------------------------------------------------------------------------------------------------------------------------|------------|
| IV. Objection to the Use of Data for Scientific or Historical Research Purposes or for Statistical Purposes, Art. 21 (5) GDPR ..... | 286        |
| V. No Right to Object to Public Authorities, § 36 BDSG-new .....                                                                    | 286        |
| VI. Restrictions for Archival and Research Purposes, § 27 (2) BDSG-new and § 28 (4) BDSG-new .....                                  | 287        |
| <b>§ 7 Safeguards for Ensuring Compliance with the GDPR .....</b>                                                                   | <b>289</b> |
| A. Preliminary Notes .....                                                                                                          | 289        |
| B. Principles .....                                                                                                                 | 289        |
| C. Implementation of Technical and Organizational Measures, Art. 32 GDPR .....                                                      | 293        |
| I. Pseudonymization .....                                                                                                           | 294        |
| 1. Medical Research and Diagnostics .....                                                                                           | 294        |
| 2. Video Surveillance .....                                                                                                         | 295        |
| 3. Test, Demonstration or Training Systems .....                                                                                    | 295        |
| 4. Implementation Options for Pseudonymization .....                                                                                | 296        |
| II. Encryption .....                                                                                                                | 296        |
| III. Ensuring the Confidentiality, Integrity, Availability and Resilience of Systems and Services .....                             | 297        |
| 1. Confidentiality .....                                                                                                            | 297        |
| 2. Integrity .....                                                                                                                  | 297        |
| 3. Availability .....                                                                                                               | 298        |
| 4. Resilience .....                                                                                                                 | 298        |
| IV. Recoverability .....                                                                                                            | 298        |
| V. Organizational Measures .....                                                                                                    | 299        |
| VI. Regular Review, Assessment and Evaluation of the Effectiveness of Technical and Organizational Measures .....                   | 299        |
| D. Data Protection by Design and by Default, Art. 25 GDPR .....                                                                     | 300        |
| I. Central Concepts and Their Foundations .....                                                                                     | 300        |
| 1. Data Protection by (Technology) Design .....                                                                                     | 300        |
| a) Historical Development .....                                                                                                     | 300        |
| b) Conclusions for the Content Determination of PbD .....                                                                           | 303        |
| 2. Data Protection by Privacy-Friendly Default Settings – Data Protection by Default .....                                          | 303        |
| II. The Controller's Obligation to Implement .....                                                                                  | 305        |
| E. Documentation of Processing Activities .....                                                                                     | 305        |
| I. Records of Processing Activities of the Controller, Art. 30 GDPR .....                                                           | 305        |
| 1. Deviations from the Previous Law .....                                                                                           | 305        |
| 2. Formal and Content Requirements .....                                                                                            | 306        |
| 3. Exceptions to the Obligation to Maintain Records of Processing Activities ...                                                    | 307        |
| II. Records of Processing Activities of the Controller .....                                                                        | 308        |
| III. Documentation Obligations Derived from other Provisions .....                                                                  | 308        |
| F. Data Protection Impact Assessment (DPIA) .....                                                                                   | 310        |
| I. Subject Matter and Scope of Application .....                                                                                    | 310        |
| 1. Subject Matter – Target of Evaluation (ToE) .....                                                                                | 310        |
| 2. Potentially High Risk to the Rights and Freedoms of Natural Persons .....                                                        | 313        |
| a) High Risk .....                                                                                                                  | 313        |
| b) Likelihood and Time of Prediction of the High Risk .....                                                                         | 317        |

|                                                                                                                                                                                             |            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| II. Specifications of Implementation .....                                                                                                                                                  | 318        |
| 1. Consultation of the Data Protection Officer (DPO) .....                                                                                                                                  | 318        |
| 2. Form and Minimum Content .....                                                                                                                                                           | 318        |
| a) Systematic Description of Processing Operations and Purposes .....                                                                                                                       | 319        |
| b) Assessment of the Necessity and Proportionality of the Processing Operations concerning the Purpose .....                                                                                | 320        |
| c) Assessment of the Risks to the Rights and Freedoms of the Data Subject(s) .....                                                                                                          | 320        |
| d) Presentation of Corrective Measures .....                                                                                                                                                | 320        |
| e) Grouped Description .....                                                                                                                                                                | 321        |
| f) Reference to Existing Certification Processes and Guidelines .....                                                                                                                       | 322        |
| 3. Understanding the Point of View of the Data Subject .....                                                                                                                                | 323        |
| 4. Review Process .....                                                                                                                                                                     | 323        |
| 5. Group or Branch Impact Assessment? .....                                                                                                                                                 | 323        |
| III. Special Consultation Obligations .....                                                                                                                                                 | 323        |
| G. Data Protection Officer (DPO) .....                                                                                                                                                      | 324        |
| I. Obligation to Designate a Data Protection Officer (DPO) .....                                                                                                                            | 324        |
| 1. Provisions within the GDPR, Art. 37 (1) .....                                                                                                                                            | 324        |
| a) Processing Carried Out by a Public Authority or Body .....                                                                                                                               | 325        |
| b) The Core Activities Consist of Processing Operations which Require Regular and Systematic Monitoring of Data Subjects on a Large Scale .....                                             | 325        |
| c) The Core Activities Consist of Processing on a Large Scale of Special Categories of Data pursuant to Art. 9 GDPR or of Personal Data relating to Criminal Convictions and Offenses ..... | 326        |
| 2. Further Obligations in §§ 5–7 and 38 BDSG-new .....                                                                                                                                      | 326        |
| II. Requirements for Being a Data Protection Officer (DPO) .....                                                                                                                            | 327        |
| 1. Professional Qualities .....                                                                                                                                                             | 327        |
| 2. Independence .....                                                                                                                                                                       | 328        |
| 3. Obligation of Confidentiality .....                                                                                                                                                      | 329        |
| 4. Internal or External Company Data Protection Officer (DPO) .....                                                                                                                         | 329        |
| III. Tasks of the Data Protection Officer (DPO) .....                                                                                                                                       | 330        |
| IV. Special Obligations of the Controller or the Processor .....                                                                                                                            | 331        |
| H. Certification .....                                                                                                                                                                      | 331        |
| I. Code of Conduct .....                                                                                                                                                                    | 332        |
| I. General Provisions .....                                                                                                                                                                 | 332        |
| II. Requirements for Codes of Conduct .....                                                                                                                                                 | 333        |
| 1. Authorization to Create a Code of Conduct .....                                                                                                                                          | 333        |
| 2. Admissible Content .....                                                                                                                                                                 | 333        |
| 3. Monitoring .....                                                                                                                                                                         | 334        |
| III. Approval Procedure .....                                                                                                                                                               | 334        |
| IV. Legal Consequences .....                                                                                                                                                                | 334        |
| <b>§ 8 Processing .....</b>                                                                                                                                                                 | <b>335</b> |
| A. General Provisions .....                                                                                                                                                                 | 335        |
| B. Concept and Legal Basis of Processing .....                                                                                                                                              | 335        |
| I. Position of the Processor – Differentiation from the Controller .....                                                                                                                    | 335        |
| II. Differentiation from Joint Responsibility pursuant to Art. 26 GDPR .....                                                                                                                | 337        |
| 1. Necessity of Differentiation / Liability Aspects .....                                                                                                                                   | 337        |
| 2. When is there a Case of Joint Responsibility? .....                                                                                                                                      | 338        |

|                                                                                                                                         |            |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------|
| 3. Content Requirements for Joint Responsibility .....                                                                                  | 340        |
| a) Definition of the Respective Actual Functions and Relationships in an Agreement .....                                                | 340        |
| b) Provision of Information to the Data Subject .....                                                                                   | 342        |
| III. Essence of the Order Processing – Privilege Function .....                                                                         | 342        |
| C. Content Requirements for Processing .....                                                                                            | 343        |
| I. Justification by Contract or another Legal Instrument .....                                                                          | 343        |
| II. Content Requirements for Contracts .....                                                                                            | 344        |
| 1. General Requirements .....                                                                                                           | 344        |
| 2. Special Requirements .....                                                                                                           | 345        |
| a) Action in Accordance with Documented Instructions .....                                                                              | 345        |
| b) Confidentiality Obligation or Statutory Obligation of Secrecy .....                                                                  | 346        |
| c) Taking Technical-Organizational Measures Pursuant to Art. 32 GDPR .....                                                              | 346        |
| d) Conditions for Utilising Sub-Processors .....                                                                                        | 347        |
| e) Assistance Related to the Fulfillment of Rights of Data Subjects .....                                                               | 347        |
| f) Assistance in Fulfilling Obligations Placed on the Controller in Art. 32 to 35 GDPR .....                                            | 348        |
| g) Obligations to Erase and to Return .....                                                                                             | 348        |
| h) Supervision and Entry and Information Rights of the Controller and Accountability and Information Obligations of the Processor ..... | 349        |
| 3. Useful Contractual Supplements .....                                                                                                 | 349        |
| D. Other Obligations of the Processor .....                                                                                             | 349        |
| I. Obligation to Designate a Representative, Art. 27 GDPR .....                                                                         | 349        |
| II. Maintaining a Record of Processing Activities, Art. 30 (2) GDPR .....                                                               | 350        |
| III. Cooperation with the Supervisory Authority, Art. 31 GDPR .....                                                                     | 351        |
| IV. Obligation to Designate a Data Protection Officer, Art. 37 GDPR .....                                                               | 351        |
| V. Addressee of Powers of the Supervisory Authorities, Art. 58 GDPR .....                                                               | 351        |
| E. Obligations of the Client .....                                                                                                      | 351        |
| <b>§ 9 Employment Data Protection Law in the BDSG-new .....</b>                                                                         | <b>353</b> |
| A. Introduction .....                                                                                                                   | 353        |
| B. Legal Basis .....                                                                                                                    | 354        |
| I. Current Regulations on Employees Data Protection in the BDSG .....                                                                   | 354        |
| II. Structure of § 26 BDSG-new .....                                                                                                    | 355        |
| C. Data Protection in the Application Procedure .....                                                                                   | 358        |
| I. Introduction .....                                                                                                                   | 358        |
| II. Applicant Profile Creation with the Aid of Publicly Accessible Sources .....                                                        | 359        |
| III. Data Collection in Job Interviews .....                                                                                            | 363        |
| 1. Limitation of the Right to Ask Questions .....                                                                                       | 363        |
| 2. Behavioral Analyses, Personality Tests, Medical Examinations .....                                                                   | 363        |
| IV. Unsuccessful Applicants .....                                                                                                       | 364        |
| D. Data Protection within the Framework of Existing Employment Relationships .....                                                      | 365        |
| I. Introduction .....                                                                                                                   | 365        |
| II. Internet, Email, Telephone and Mobile Telephone Use in the Workplace .....                                                          | 365        |
| III. Employee Data in the Enterprise's Internet Presence .....                                                                          | 366        |
| 1. Requirement to Obtain Consent .....                                                                                                  | 366        |
| 2. Images of Former Employees on the Internet .....                                                                                     | 367        |
| 3. Admissible Content of Information on the Internet .....                                                                              | 367        |

|                                                                                       |            |
|---------------------------------------------------------------------------------------|------------|
| IV. Establishing Electronic Information Databases .....                               | 368        |
| V. Maintaining so-called Skills Databases .....                                       | 368        |
| E. Data Protection after Termination of the Employment Relationship .....             | 369        |
| <b>§ 10 Exporting Data to Third Countries .....</b>                                   | <b>371</b> |
| A. Preliminary Note .....                                                             | 371        |
| B. Adequacy Decision, Art. 45 GDPR .....                                              | 371        |
| C. Provision of Appropriate Safeguards, Art. 46 GDPR .....                            | 372        |
| I. Binding Corporate Rules .....                                                      | 372        |
| 1. Previous Legal Status .....                                                        | 372        |
| 2. New Legal Situation .....                                                          | 374        |
| II. Standard Data Protection Clauses .....                                            | 375        |
| III. Authorized Codes of Conduct and Certification .....                              | 376        |
| D. Other Derogations .....                                                            | 376        |
| <b>§ 11 Remedies, Liability, Administrative Fines and Penalties .....</b>             | <b>377</b> |
| A. Supervisory Powers and Measures .....                                              | 377        |
| I. Supervisory Authorities .....                                                      | 377        |
| 1. Independence Requirements .....                                                    | 377        |
| 2. Determination of Local Competence .....                                            | 378        |
| II. Tasks of the Supervisory Authority .....                                          | 379        |
| III. Powers of the Supervisory Authorities .....                                      | 379        |
| IV. Legal Remedies of the Controller and the Processor .....                          | 380        |
| B. Legal Position of the Data Subject .....                                           | 381        |
| I. Right to Lodge a Complaint .....                                                   | 381        |
| 1. Content .....                                                                      | 381        |
| 2. Legal Remedies .....                                                               | 381        |
| II. Right to Compensation .....                                                       | 381        |
| 1. Content .....                                                                      | 381        |
| 2. Legal Remedies .....                                                               | 382        |
| C. Administrative Fines .....                                                         | 382        |
| I. Basis of Calculation .....                                                         | 382        |
| II. Administrative Fine Structure .....                                               | 383        |
| III. Legal Remedies .....                                                             | 383        |
| IV. Addressees – Liability of Executive Bodies? .....                                 | 384        |
| D. Provisions on Penalties .....                                                      | 385        |
| <b>§ 12 Austria .....</b>                                                             | <b>387</b> |
| A. Preliminary Note .....                                                             | 387        |
| B. Structure of the DSG 2018 .....                                                    | 387        |
| C. Regulations In Detail .....                                                        | 387        |
| I. Rectification and Erasure of Personal Data, § 4 (2) DSG 2018 .....                 | 387        |
| II. Processing of Data about Judicial or Administrative Offenses, § 4 (3) DSG 2018 .. | 388        |
| III. Specification in relation to Art. 8 GDPR .....                                   | 389        |
| IV. Data Protection Officer (DPO), § 5 DSG 2018 .....                                 | 389        |
| V. Data Confidentiality, § 6 DSG 2018 .....                                           | 389        |

VI. Transmission of Address Data for the Purpose of Notification and Questioning, § 8 DSG 2018 ..... 390

VII. Media Privilege, § 9 DSG 2018 ..... 391

VIII. Image Processing and Video Surveillance for Private Purposes, §§ 12, 13 DSG 2018 ..... 391

IX. Data Protection Supervisory, §§ 14 – 23 DSG 2018 ..... 392

X. Further Details on Legal Remedies, Liability and Sanctions, §§ 24-30 DSG 2018 . 392

1. Right to Lodge a Complaint, § 24 DSG 2018 ..... 392

2. Compensatory Damages – Administrative Responsibility ..... 393

3. Administrative Fines ..... 393

Index ..... 395