

Information Sheet on the Declaration of Commitment

Translations of these materials into languages other than German are intended solely as a convenience to the non-German-reading public. Any discrepancies or differences that may arise in translations of the official German versions of these materials are not binding and have no legal effect for compliance or enforcement purposes. You may find most of the original translations under: https://www.gesetze-im-internet.de/Teilliste_translations.html

§53 BSDG - Confidentiality

Persons employed in data processing shall not process personal data without authorization (confidentiality). They shall be obligated when taking up their duties to maintain confidentiality. The obligation of confidentiality shall continue after their employment ends.

Art. 83, 4-6 GDPR - General conditions for imposing administrative fines

4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
- (b) the obligations of the certification body pursuant to Articles 42 and 43;
- (c) the obligations of the monitoring body pursuant to Article 41(4).

5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
- (b) the data subjects' rights pursuant to Articles 12 to 22;
- (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
- (d) any obligations pursuant to Member State law adopted under Chapter IX;
- (e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).

6. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

§42 BSDG - Penal provisions

(1) The following actions done deliberately and without authorization with regard to the personal data of a large number of people which are not publicly accessible shall be punishable with imprisonment of up to three years or a fine:

1. transferring the data to a third party or
2. otherwise making them accessible

for commercial purposes.

(2) The following actions done with regard to personal data which are not publicly accessible shall be punishable with imprisonment of up to two years or a fine:

1. processing without authorization, or
2. fraudulently acquiring

and doing so in return for payment or with the intention of enriching oneself or someone else or harming someone.

(3) Such offences shall be prosecuted only if a complaint is filed. The data subject, the controller, the Federal Commissioner and the supervisory authority shall be entitled to file complaints.

(4) A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34 (1) of Regulation (EU) 2016/679 may be used in criminal proceedings against the person required to provide a notification or a communication or relatives as referred to in Section 52 (1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

§43 BSDG - Provisions on administrative fines

(1) Intentionally or negligently engaging in the following shall be deemed an administrative offence:

1. in violation of Section 30 (1) failing to treat a request for information properly, or
2. in violation of Section 30 (2), first sentence, failing to inform a consumer or doing so incorrectly, incompletely or too late.

(2) An administrative offence may be punished by a fine of up to fifty thousand euros.

(3) Authorities and other public bodies as referred to in Section 2 (1) shall not be subject to any administrative fines.

(4) A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34 (1) of Regulation (EU) 2016/679 may be used in proceedings pursuant to the Administrative Offences Act against the person required to provide a notification or a communication or relatives as referred to in Section 52 (1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

§3 TTDSG - Privacy of Telecommunications

(Further comments on the privacy of telecommunications cf. Leaflet on Telecommunications Secrecy)

(1) The secrecy of telecommunications applies to the content of the telecommunications and its detailed circumstances, in particular the fact whether someone is or was involved in a

telecommunications process. The secrecy of telecommunications also extends to the details of unsuccessful attempts to establish a connection.

(2) The following are obliged to maintain the secrecy of telecommunications

1.
 - a. Providers of publicly available telecommunications services as well as natural and legal persons involved in the provision of such services,
 - b. providers of telecommunications services offered wholly or partly on a commercial basis and natural and legal persons involved in the provision of such services,
 - c. operators of public telecommunications networks, and
 - d. operators of telecommunications equipment with which telecommunications services are provided on a business basis.

The obligation to maintain secrecy shall continue to exist after the end of the activity by which it was established.

(3) Those obliged in accordance with paragraph 2, sentence 1 shall be prohibited from obtaining knowledge of the content or of the detailed circumstances of telecommunications for themselves or others beyond what is necessary for the provision of telecommunications services or for the operation of their telecommunications networks or their telecommunications installations, including the protection of their technical systems. They may use knowledge of facts subject to telecommunications secrecy only for the purpose stated in sentence 1. Use of this knowledge for other purposes, in particular disclosure to others, shall only be permissible if this Act or another statutory provision so provides and expressly refers to telecommunications operations. The duty to report under section 138 of the Criminal Code shall take precedence.

(4) Where the telecommunications system is located on board a ship or an aircraft, the obligation to maintain privacy does not apply in relation to the captain or his second in command.

§ 206 StGB - Violation of the postal and telecommunications secret

(1) Whosoever unlawfully discloses to another person facts which are subject to the postal or telecommunications secret and which became known to him as the owner or employee of an enterprise in the business of providing postal or telecommunications services, shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever, as an owner or employee of an enterprise indicated in subsection (1) above unlawfully

1. opens a piece of sealed mail which has been entrusted to such an enterprise for delivery or gains knowledge of its content without breaking the seal by using technical means;
2. suppresses a piece of mail entrusted to such an enterprise for delivery; or
3. permits or encourages one of the offences indicated in subsection (1) or in Nos 1 or 2 above,

shall incur the same penalty.

(3) Subsections (1) and (2) above shall apply to persons who

1. perform tasks of supervision over an enterprise indicated in subsection (1) above;

2. are entrusted by such an enterprise or with its authorisation, to provide postal or telecommunications services; or
3. are entrusted with the establishment of facilities serving the operation of such an enterprise or with performing work thereon.

(4) Whosoever unlawfully discloses to another person facts which became known to him as a public official outside the postal or telecommunications service on the basis of an authorised or unauthorised infringement of the postal or telecommunications secret shall be liable to imprisonment not exceeding two years or a fine.

(5) The immediate circumstances of the postal operations of particular persons as well as the content of pieces of mail are subject to the postal secret. The content of telecommunications and their immediate circumstances, especially the fact whether someone has participated in or is participating in a telecommunications event, are subject to the telecommunications secret. The telecommunications secret also extends to the immediate circumstances of unsuccessful attempts to make a connection.

§ 23 GeschGehG - Violation of Trade Secrets

(1) A prison sentence of up to three years or a fine shall be imposed on anyone who in order to promote their own or third-party competition, for their own benefit, in favor of a third party or with the intention of harming the owner of a company,

1. obtains a trade secret contrary to § 4 para. 1 no. 1,
2. uses or discloses a trade secret contrary to § 4 para. 2 no. 1a or
3. contrary to § 4 para. 2 no. 3, as an employee of a company, discloses a trade secret that has been entrusted to them or has become available to them within the scope of the employment relationship, during the period of validity of the employment relationship.

(2) The same penalty shall apply to anyone who uses or discloses a trade secret, which he or she obtained through the action of a third party in accordance with (1) no. 2 or 3, to promote their own or third-party competition, for their own benefit, for the benefit of a third party or with the intention of causing harm to the owner of a company.

(3) A prison sentence of up to two years or a fine shall be imposed on anyone who, in order to promote their own or third-party competition or for their own benefit, contravening § 4 para. 2 no. 2 or 3, uses or discloses a trade secret that contains a secret template or regulation of a technical nature entrusted to them in the course of a business relationship.

(4) A prison sentence of up to five years or a fine shall be imposed on anyone who

1. acts commercially in the cases of (1) or (2),
2. in the cases of (1) no. 2 or 3, or (2), when disclosing a trade secret knows it to be used abroad, or
3. uses the trade secret abroad in the cases of (1) no. 2, or (2).

(5) The attempt is punishable.

(6) Assistance by a person named in § 53 para. 1 no. 5 of the Code of Penal Procedure is not illegal if it is restricted to the acceptance, evaluation or publication of the trade secret.

(7) § 5 no. 7 of the Criminal Code applies accordingly. §§ 30 and 31 of the Criminal Code apply accordingly if the perpetrator acts to promote his or her own competition or for self-interest.

(8) The crime will only be prosecuted upon request, unless the criminal prosecution authority considers that it is advisable to intervene ex officio because of the special public interest in the criminal prosecution.