



### Latest decision: 1.3 million Euro fine for violation of customer data acquisition rules

An administrative fine of 1.3 million Euros in the so called "informant affair" raised the awareness of companies at the end of 2014:

Civil servants supposedly sold names, addresses and further data of new employees to the health insurance company Debeka. Debeka used the data to contact and acquire the respective employees as new customers. In numerous cases the necessary consent (required by data protection laws and unfair competition law) from the data subjects had not been requested or obtained.

Due to these violations the responsible data protection authority (DPA) of the state of Rhineland-Palatine imposed a fine of 1.3 million Euros on Debeka.

The fact that this behaviour of informants of the civil service has been common for many years was regarded irrelevant. Moreover the DPA reprimanded the company's top management because of compliance violations with regard to the organization of internal data protection structures.

With termination of proceedings and payment of the fine the reproaches regarding data protection violations are concluded. Nevertheless there are ongoing criminal investigations against Debeka employees regarding criminal offences such as bribery and the disclosure of official secrets.

The imposition of such a sensitive penalty is not likely to remain an isolated example. There has been an increasing examination of companies' marketing activities by the responsible DPAs. The Bavarian DPA stated in a press announcement that their efforts to control the use of customer data especially in cases of newsletter and email marketing activities are being raised ([https://www.lida.bayern.de/lda/datenschutzaufsicht/p\\_archiv/2014/pm014.html](https://www.lida.bayern.de/lda/datenschutzaufsicht/p_archiv/2014/pm014.html)).



It can be expected that the DPA will not wait for customer complaints against marketing activities but will increasingly use automatic and active tools to search for violations (like it happened in the past re the use of web analysis tools).

### Important tips to avoid administrative fines

It is urgently advised to check the legality of marketing activities and the use of (target) customer data regarding the following questions:

- Has there been a clear decision whether an opt-in or an opt-out procedure will be used (the latter will only be legal with existing customers)?
- Does the CRM database inform about the origin of the right to use the data?
- If target customer data was acquired from third parties: Has there been a contractual regulation to prevent the company from damages due to possible violations of data protection laws?
- Have all necessary preconditions been obeyed when using the opt-out procedure (esp. information on the opt-out-option, use of the data only for marketing regarding similar products and services)?
- If the opt-in option was used: Has there been a compliance with the regulations of the Tele Media Act and the double-opt-in procedure?

If you have any questions do not hesitate to contact us.



### Impressum

#### avocado rechtsanwälte

schillerstraße 20

60313 **frankfurt**

t +49 [0]69.9133010

f +49 [0]69.91330119

frankfurt@avocado.de

www.avocado.de

www.brak.de

ust-id-nr. de 814 17 29 76

steuer nr. 13/225/62722

fa berlin-charlottenburg

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Responsible Editors:

Jan Peter Voß

Dr. Jörg Michael Voß

Prof. Dr. Thomas Wilmer