

Ius Laboris Webinar

Data privacy: fines for data breaches in the workplace

Thursday 9 September 2021

15:00 CEST



CASES IN GERMANY

HM

- At least since 2014, some employees had been recording and storing extensive private life data of other staff.
- After vacation and sick leave, supervisors conducted a "welcome back talk"; among other things, not only were vacation experiences noted, but also symptoms of illness and diagnoses.
- Through random one-on-one and hallway conversations, supervisors collected information about employees' personal lives, such as family problems, religious beliefs, etc.
- Some of this information was recorded, stored digitally, and was readable by up to 50 other managers.
- Fine of Euro 35 Mio handed out by Hamburg DPA (1.10.2020)

CASES IN THE NETHERLANDS

- Data breach reporting obligation (+ fines in case of noncompliance) as per Jan 2016 (>2 years before GDPR)
- However: no fines until 2018
- Number of fines imposed:
 - 2018 : 1
 - 2019 : 1
 - 2020 : 3
 - 2021 : 7 and counting..
- Two employment related fines so far:
 - 15k (processing health data): employer CP&A
 - 725k (use of biometric data for entrance & time registration): decision kept anonymous (by court order)
- (No employment case): July 2021 fine against TikTok of 750k; claims for damages: 6 billion...



THE VIEW FROM ITALY

FINES IN IRELAND

DPC WhatsApp Fine

- Case: WhatsApp
- Region: Ireland
- Fine: €225m plus corrective actions
- Issue: transparency on information shared with Facebook
- Fine of €30m proposed, increased to €225m following EDPB process

FINES IN IRELAND

DPC Twitter Fine

- Case: Twitter
- Region: Ireland
- Fine: €450,000
- Issue: Users' protected tweets became publicly available
 - Based on response to data breach that occurred in 2018 and only notified to DPC in 2019
 - Failure to notify within 72 hours
 - Failure to adequately document breach
- First cross border fine issued under Article 65 Dispute Resolution Process

TRENDS IN IRELAND

- 8 fines issued by Irish DPC (highest is €225m – other 7 total €875k)
- Mostly public sector/government agencies but big tech on the agenda
- Main themes:
 - Security measures
 - Failure to comply with data breach notification obligations
 - Insufficient legal basis for processing
 - Failure to provide
- DPC public stakeholder engagement on 5 year strategy just closed
- Includes: *Working with peer DPAs to introduce consolidated and consistent enforcement across Europe, which would harmonise enforcement approaches and agree the criteria for regulatory success*
- DPC pressure from other DPAs on fine level and speed of inquiries
- DSARs still the main workplace issue in Ireland

FINES IN FRANCE

- In 2020, the French DPA (CNIL) investigated 247 companies and imposed 11 fines of a total of €138m
- In France, there are no examples of significant fines for workplace matters
- However, a few fines have been imposed for several violations, some of which were related to the processing of employee data:
 - Spartoo (online sale of footwear) - July 2020:
 - Fine: €250k
 - Issues: full and permanent recording of customer service employees' telephone conversations with clients and prospects (considered disproportionate in relation to the purposes for which data are processed, i.e. employee training) and no information was provided to the employees according under Article 13 of the GDPR; excessive storage of customer banking data; excessive retention periods (client data); insufficient level of security
 - Company x (anonymised after 1 year) - June 2019:
 - Fine: €20k (small company with only 10 employees)
 - Issues: disproportionate video-surveillance (employees were filmed continuously at the workplace) and no information was provided to the employees according under Article 13 of the GDPR; non compliance with data security requirements; lack of diligence when the French DPA sent injunctions
- A similar case occurred in September 2018 (biometric time control system) but the fine was only €10k (GDPR was not applicable when the facts occurred and maximum fines were lower)

TRENDS IN FRANCE

- Fines are getting higher:
 - Brico Privé - online sales of DIY products - June 2021 - issues regarding client data: excessive retention periods, insufficient information, non-compliance with the right to erasure, insufficient data security): **€500k**
 - AG2R La Mondiale - insurance company - July 2021 - issues regarding client data: excessive retention periods, insufficient information, lack of control of processors): **€1,750k**
 - Carrefour (supermarkets) – November 2020 – numerous issues regarding client data and prospection, and non-compliance with data subject rights: **€2,250k**
 - Amazon - December 2020 - issues relating to cookies without customer consent or provision of information: **€35m** + injunction to comply with within 3 months and a daily late penalty of €100k
 - Google – December 2020 - issues relating to cookies without customer consent or provision of information: **€60m** imposed on Google LLC and **€40m** on Google Ireland + injunction to comply with within 3 months and a daily late penalty of €100k
- Responsiveness and cooperation with the DPA are key elements underlined in all French DPA decisions
- In March, the French DPA announced that the 3 main topics it would investigate in 2021 would be the following: cybersecurity, health data and cookies


CASES IN GERMANY

Notebooksbilliger

- The company had been video-monitoring its employees for at least two years without any legal basis. The unauthorized cameras covered workplaces, sales rooms, warehouses and common areas, among other things.
- The aim of the installed video cameras was allegedly to prevent and solve crimes and to track the flow of goods in the warehouses. However, to prevent theft, a company must first consider milder means (e.g. random bag checks when leaving the premises). Moreover, video surveillance to detect criminal acts is only lawful if there is reasonable suspicion against specific individuals. If this is the case, it may be permissible to monitor them with cameras for a limited period of time.
- In the case of the company, however, the video surveillance was neither limited to a specific period of time nor to specific employees. The recordings were also stored for 60 days in many cases (longer than required).
- Customers of notebooksbilliger.de were also affected by the unlawful video surveillance, as some cameras were directed at seating areas in the sales area.
- Fine of Euro 10 Mio handed out by Niedersachsen DPA (8.1.2021)

MORE ON DATA PRIVACY




Insights: <https://iuslaboris.com/topic/data-privacy/>



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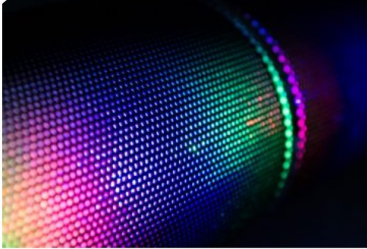
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Data Privacy

We look at data privacy from an employment perspective and consider how to navigate this increasingly complex area of law.





Video surveillance of employees in Germany: get ready for compliance checks!

 GERMANY | 11.03.21 5'




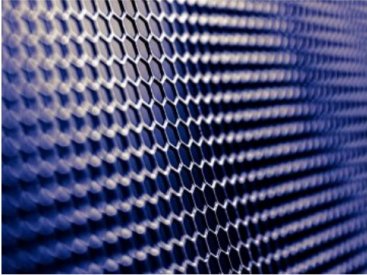
Data and diversity - what kind of data can employers collect? A guide from Belgium

 BELGIUM | 16.02.21 4'




The Brexit Agreement and data flows: a view from Finland

 FINLAND | 20.01.21 4'

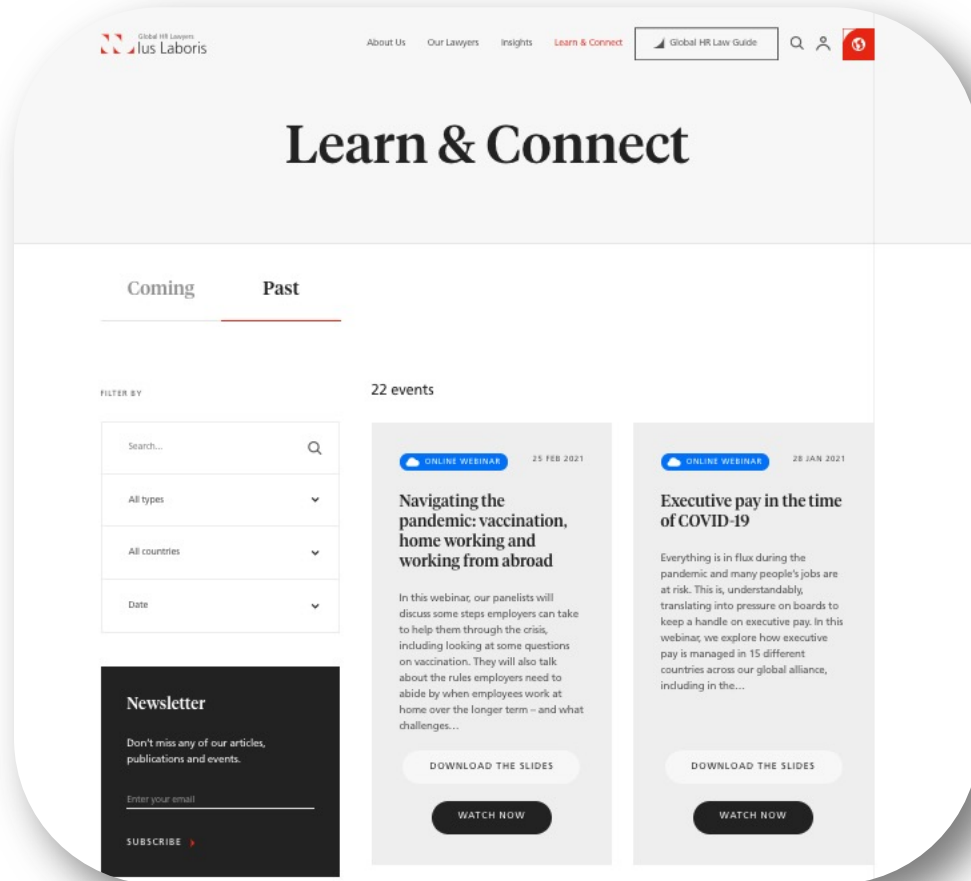


Brexit: what's the deal with data?

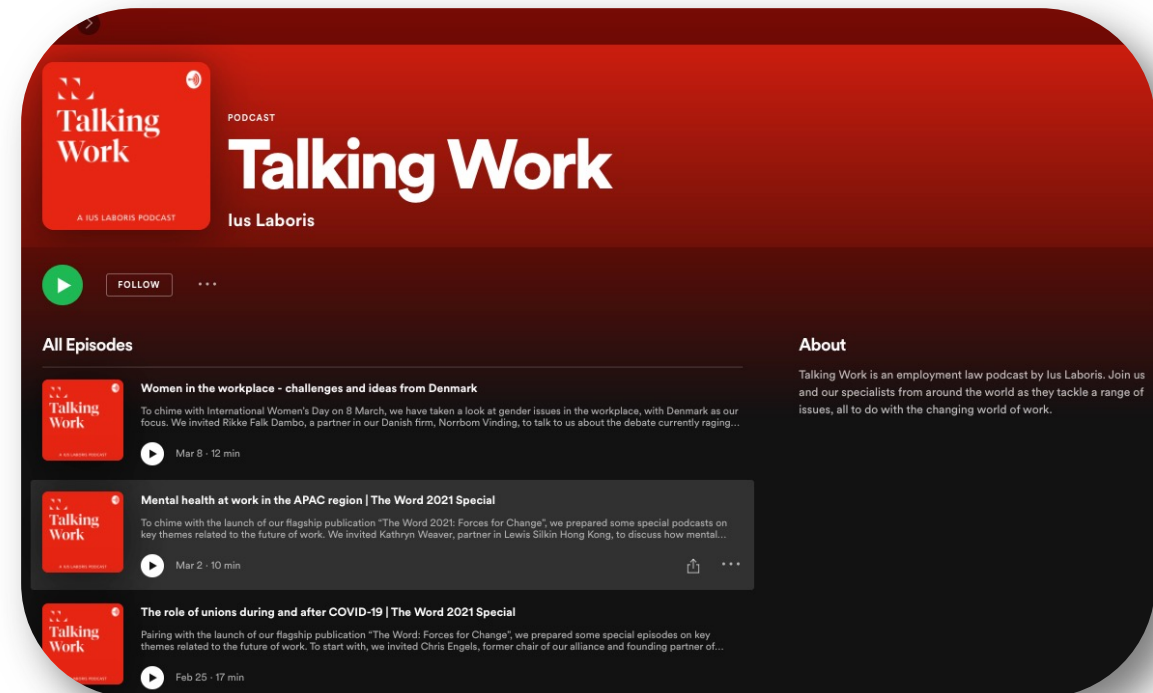
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