

BC.10 State of the Art

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Last update: 2021-05-19 13:51:56 | By: Winfried Veil

Created at: 2021-05-12 21:19:50

In some GDPR provisions, the applicability of the provision or measures of the controller depend on the state of the art or available technology:

Art. 17 II: “Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of **available technology** [...], shall take reasonable steps [...].”

Art. 25 I: “Taking into account the **state of the art** [...] the controller shall [...] implement appropriate technical and organisational measures [...].”

Art. 32 I: “Taking into account the **state of the art** [...] the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk [...].” [see Rec. 83 (2)]

Rec. 26 (4): On the question of whether a person is identifiable “the **available technology** at the time of the processing and technological developments” have to be taken into consideration.

Rec. 78 (4): “When developing, designing, selecting and using applications, services and products [...] producers of the products, services and applications should be encouraged to take into account the right to data protection [...] and with due regard to the **state of the art** , to make sure that controllers and processors are able to fulfil their data protection obligations.”

Rec. 84 (3): “Where a data-protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of **available technology** and costs of implementation, a consultation of the supervisory authority should take place prior to the processing.” [see also Rec. 94 (1)]

In German national law, the state of the art may be taken into account according to §§ 22 II 2 BDSG (German Data Protection Act).