C.08 Communication Regulation

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Information and communication processes always presuppose a creator/sender and a recipient/receiver. Information that is not perceived is not information. Communication via the internet is based on automated data processing, which is why the GDPR applies.

However, when applying the GDPR, an exchanged piece of information is always also a personal data of both the sender and the recipient. Data protection is therefore "communication regulation on the internet" (*Masing*).

Communication is also a prerequisite of social life. It is protected by freedom of opinion **[Tile CO.09]**, freedom of information **[Tile CO.10]** and freedom of the media **[Tile CO.11]**. However, data protection threatens to give precedence to data protection/personal privacy over freedom of expression:

> *? The ECJ holds (at least in cases of delisting of search engine results) that the rights to private life and the right to data protection "override, as a general rule, that interest of internet user" **[Judgment of 13 May 2014 - C-131/12 -, para. 81]**.*

> *? The GDPR does not recognise the category of "generally accessible data", the processing of which was still permissible under facilitated conditions under the old German data protection law.*

> *? Every internet publication is in itself also a transfer to a third country. However, it is impossible to comply with Art. 44 et seq. GDPR **[Tile O.05]**.*

> *? The household exemption (processing personal data “by a natural person in the course of a purely personal or household activity”) is too narrowly defined, since according to the case law of the ECJ, publication on the internet cannot constitute a purely personal/family activity. **[Tile CO.32]***

? The numerous information and communicaton obligations ***[Tile O.07]*** *and the numerous documentation and proof obligations* ***[Tile O.09]*** *of the GDPR - if applied as prescribed - would have a stifling effect on the use of communication freedoms. In fact, it is difficult if not impossible to comply with these obligations in a communication process.*

? It is true that the national legislature may reconcile the fundamental rights concerned (Art. 85 I) and provide for exceptions in favour of the freedoms of communication (Art. 85 II). However, at least the German federal and state legislatures have made insufficient use of this possibility. By and large, only the traditional press is privileged. Data processing by bloggers, citizen journalists, amateur photographers, public relations and other natural persons takes place in the legal grey area.