CO.11 Freedom of the Media

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The right to protection of personal data is not an absolute right, but must be balanced against other fundamental rights, in accordance with the principle of proportionality [see Tile …]. The right to informational self-determination “must be balanced against the freedom to gather, process and use information for one’s own purposes, including for changing purposes” **[BVerfG, Order of 6 November 2019 - 1 BvR 16/13 -, para. 87]**.

This multidimensionality of fundamental rights is insufficiently recognised by the GDPR as a whole. Among the rights and freedoms of natural persons that the GDPR seeks to protect, the fundamental rights of the controller are hardly explicitly taken into account.

Therefore, the fundamental rights of the Charter of Fundamental Rights must be used for the interpretation of the term "rights and freedoms". Insofar as the controller makes use of the freedom of the media through data processing, he can base this on Art. 11 II CFR:

> *“The freedom and pluralism of the media shall be respected.”*

In Germany, freedom of the press is guaranteed by Art. 5 I 2 and 3 GG:

> *“Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorsphip.”*

The freedom of the media naturally also includes research and reporting on other persons. This creates a tension with data protection law, because if this is done by means of automated data processing, the GDPR would apply "per se". However, only a few provisions of the GDPR cover this tension:

> ***Articles:*** *9 II e, 17 III a and 85 GDPR*

Recital: *153 GDPR.*

Art. 85 GDPR leaves the balance between data protection and data processing "for journalistic purposes" largely to the law of the member states. The German data protection laws and the State Treaty on Media accordingly provide for a so-called media privilege, which largely exempts classic journalistic-editorial work from the obligations of data protection law **[see Tile GL.09]**. However, it is questionable whether and to what extent bloggers, for example, can benefit from these regulations.

In order to balance the rights of the data subject and the freedom of the media of the controller (see Practical Concordance, **Tile P.04**), the principle of proportionality (Art. 52 I CFR) must be applied in addition to the provisions of the GDPR. Cf. furthermore **Art. 1 II GDPR** and especially Rec. 4 (2) GDPR:

> *"The right to the protection of personal data is not an absolute right; it must be […] balanced against other fundamental rights, in accordance with the principle of proportionality."* **[see also Tile CO.01].**