

High-value address solutions that are compliant with data protection regulations

1. European Union General Data Protection Regulation (GDPR), effective 25 May 2018 at a glance

The EU General Data Protection Regulation (GDPR) governs the collection, processing and use of personal data. With the application of the GDPR in all EU member states, effective 25 May 2018, the *Bundesdatenschutzgesetz* (BDSG old version- German data protection act) that was hitherto valid in Germany is being completely replaced.

The exceptions and restrictions provided for in sections 28 and 29 of the amended BDSG in 2009 (e.g., use of data for advertising purposes differentiated between consumer advertising, business advertising and advertising to solicit donations; restriction to so-called list data in the case of consumer advertising) will no longer exist under the GDPR. However, direct mail advertising will also continue to be privileged under the GDPR.

Since 25 May 2018, Article 6, Paragraph 1, Letter f of the GDPR, on the basis of balancing of interests, has formed the central legal basis for the commercial use of data and other forms of dialogue marketing forms, subject to the provisions of the *Gesetz gegen den unlauteren Wettbewerb* (UWG - German law against unfair competition) and the upcoming EU Regulation regarding Privacy and Electronic Communications (e-privacy regulation). Under this provision, the processing of data will be deemed lawful if processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.

Recital 47 of the GDPR states that the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

As was the case under the BDSG, data subjects will also have the right to object to any use of their data for advertising purposes under the GDPR. It must be assessed whether the data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for advertising purposes may take place. Under the GDPR, the duties to provide information to data subjects have been substantially expanded in order to uphold the principle of transparency.



2. Impact of the GDPR on Deutsche Post Direkt products and services

The use of address solutions enables and/or optimises direct advertising. Deutsche Post Direkt offers the entire range of professional address management services – from address cleansing to enrichment and analysis all the way to address rental services. Deutsche Post Direkt markets personal data in accordance with the provisions of Article 6 (1) f) GDPR. Among these are data such as name and address. In addition to personal data, Deutsche Post Direkt offers target group attributes for enrichment, analysis and selection purposes; these attributes are based on statistical data and aggregated at the microcell level. Deutsche Post Direkt's newly developed data hub allows the targeted selection of new customer addresses on the basis of additional real information. The data hub is a data management platform where data from various sources are combined but anonymised and/or pseudonymised depending on their status. Due to the encryption technologies used and segregated databases, the data cannot be attributed to a specific person and no data is exchanged between participating data partners and Deutsche Post Direkt. This ensures that the use of personal data is secure and compliant with data protection regulations. It also ensures systematic compliance with the requirement to apply pseudonymisation in accordance with Article 25 and recitals 28 and 29.

2.1 Impact of the GDPR on address cleansing

Maintaining and updating existing/prospective customer addresses remains lawful. Subject to the requirements of Article 6 (1) f) GDPR, companies may use their existing/prospective customer data to advertise their own products and services and, pursuant to Article 6 (1) b), for the performance of a contract. The basis for this is a correct address list. Article 5 (1) d) GDPR provides that personal data must be accurate and, where necessary, kept up to date.

Other companies' private customer data is cleansed on the basis of Deutsche Post Direkt's postal reference database. Containing around 220 million current and former private addresses, this database is unique in Germany in terms of its size, completeness and currency of data. Deutsche Post's address verification service is one of the services used to keep the address information current on an ongoing basis. For this, Deutsche Post's mail carriers check and confirm whether addresses are written correctly and are deliverable. In addition, changes in postal codes and thousands of relocation notifications a day are incorporated into the postal reference database, insofar as the data subject has consented to the disclosure of the new address. There is no central file containing the address information of deceased persons. Nor may such information be obtained from civil registries for data protection reasons. For this reason, Deutsche Post Direkt utilises cooperation partner information regarding deceased persons in order to update companies' private customer data. Despite extensive efforts to keep address data up to date, mail items may still be returned because they are undeliverable.



2.2 Impact of the GDPR on address enrichment

Deutsche Post Direkt offers statistical information and additional personal information for address enrichment purposes. Enrichment is a prerequisite for the analysis and segmentation of customer addresses and/or the exact target-group-based selection of rental data, the lawfulness of which is also governed by Article 6 (1) f) GDPR.

2.2.1 Statistical data

In addition to geo-coordinates, statistical data includes first and foremost microgeographical information from the microdialogue database. This database contains socio-demographic, consumer and structural data plus information regarding area and region, certain industries and lifestyle. The data is aggregated at the microcell level with an average of 6.6 households. Probability statements are used to determine which target group attributes are represented in the microcell. It is not known whether these statistical approximate values, e.g., in relation to a certain purchasing habits, actually apply to persons in the microcell. The microdialogue database contains no data which would allow the identification of the data subject and is not subject to the GDPR. Microgeographic information is kept strictly separate from rental data. Accordingly, statistical probability statements are not stored together with personal address data. For each individual customer order, a one-time selection is made solely at the microcell level and the result is then populated with the available address data. This process ultimately produces a file that contains only addresses and no additional information. The selection at the microcell level is then deleted. In the process, personal data and statistical data – not only from Deutsche Post Direkt but also from other advertisers – must always be stored separately from one another. In other words, a data record containing personal data may not simultaneously contain statistical features as well. Enriching address lists of existing/prospective customers and rental data with statistical information remains lawful.

2.2.2 Additional personal information

Deutsche Post Direkt continues to offer additional personal information such as telephone numbers. Enriching existing/prospective customer addresses with personal information is lawful if the company has a legitimate interest (e.g., advertising) that overrides the rights of data subjects pursuant to Article 6 (1) f) GDPR. As before, the use of additional information such as telephone numbers and e-mail addresses for advertising purposes is still contingent on the other requirements of the German Unfair Competition Act or, in future, the E-Privacy Regulation being met.

2.3 Impact of the GDPR on address analysis

The lawfulness of using an analysis or "scoring" in the selection of addresses for advertising purposes also has its legal basis in Article. 6 (1) f) GDPR. As under the BDSG, the special rules on scoring, e.g. by credit agencies pursuant to Article. 22 GDPR do not apply to the selection of addresses for advertising purposes when the advertising contains no directly binding contractual offer. Advertising usually represents an invitation to submit an offer; for example, when a catalogue with an order form is mailed. For this reason, the analysis of address databases for existing/prospective customers is lawful, as long as any mailing generated therefrom does not contain any directly binding contractual offer. Under these conditions, conducting an analysis for the purpose of selecting rental data is also lawful.



2.4 Impact of the GDPR on address leasing

The postal use of data for advertising purposes remains permissible.

Deutsche Post Direkt offers advertisers a broad range of target group addresses which may be used for customer acquisition purposes. No differentiation of the use of data for advertising purposes between consumer and business advertising and advertising to solicit donations, as is still the case under the BDSG, will be made under the GDPR. Under the GDPR, use of data for advertising purposes is no longer restricted to so-called list data. In the area of advertising to solicit donations and the public interests pursued by it (e.g., humanitarian aid), the GDPR indicates, among other things in recital 46, an additional privilege.

2.4.1 Renting of consumer address from the rental database

Since 2009, Deutsche Post Direkt has been using consumer addresses from the rental database as part of the proven Lettershop principle in the context of data economy, i.e., the data are not passed to the advertiser but exclusively to a Lettershop for sending the advertising letter, and then deleted again. This has the advantage for the advertiser that no additional documentation or information obligations arise under the GDPR because there is no transfer of data. The legal basis for the use of the data for advertising purposes is Article 6 (1) f) GDPR, as this provision covers the legitimate interests of the controller and of third parties.

The weighing of interests must also take into account the general principles under Article 5 (1) GDPR, in particular:

- personal data must be processed fairly;
- limited to what is necessary in relation to the purposes for which they are processed;
- carried out in a transparent manner for the data subject (in particular naming the source of the data).

In addition to the new information requirements (see Number 2.5), the GDPR already applies proven methods:

- Data transfer in the Lettershop process: Deutsche Post Direkt does not transfer the address data directly to the advertiser but rather makes it available to the contracted lettershop which is in charge of printing and mailing and subsequently deletes the address data.
- Data protection information: the recipient of the mailing must be informed of the option to object to the use of personal data for advertising purposes. It must also be clear from the advertising that Deutsche Post Direkt is the controller responsible for the use of the data.



2.4.2 Leasing of business addresses

Under the GDPR, no distinction is made between consumer and business addresses used for advertising purposes. Article 6 (1) f) GDPR, in compliance with the general principles laid down in Article 5 (1) GDPR, also serves as the legal basis for the use of business addresses for advertising purposes. Therefore, in this respect as well, using address data for advertising third-party products and services is lawful provided the advertising indicates the controller that is responsible for the use of the addresses

- Data transfer: Deutsche Post Direkt continues to transfer the address data to advertisers.
- Data protection information: the recipient of the mailing must be informed of the option to object to the use of personal data for advertising purposes. It must also be clear from the advertising that the advertiser is the controller responsible for the use of the data.
- In accordance with Article 21 (2) of the General Data Protection Regulation (GDPR), each time a data subject is contacted by the customer for marketing purposes, the data subject must be notified of the right to object to the use of personal data for promotional purposes. This obligation also applies to business addresses.
- The customer must also observe the notification obligations towards the customer set out in Article 12 ff. of the GDPR. These obligations are applicable to promotional mail-shots involving business addresses with personal data leased from Deutsche Post Direkt GmbH.
- Where personal data have not been obtained directly from the data subject (as is the case with this business model), the notification obligations under Article 14 of the GDPR apply. Article 14 (2) (f) of the GDPR states that the data subject shall be notified of the source from which the personal data originated. The following wording can be used for this: 'The addresses for this promotional mail-shot were made available to us by Deutsche Post Direkt GmbH, Junkersring 57, 53844 Troisdorf, Germany'.

2.5 Data protection information contained in advertising material and new obligations to provide information

The above-mentioned data protection instructions are to be placed in a 'prominent' position in the advertising material, e.g., at the foot of the mail-shot, on order forms and in catalogues on the inside cover pages.

2.5.1 Reference to the controller for consumer addresses

- "Notice of the right to object and data protection information: If you do not wish to obtain marketing material from the company advertising here in future, please contact directly. The Controller pursuant to the GDPR is Deutsche Post Direkt GmbH, Junkersring 57, 53844 Troisdorf, Germany. Deutsche Post Direkt processes your address data in accordance with Art. 6 (1) (f) GDPR for the purpose of direct marketing campaigns by other companies. If you generally wish to object to the processing of your data by Deutsche Post Direkt for marketing purposes, please contact Deutsche Post Direkt. Further information regarding your rights to information, the correction of data and lodging an objection is available at www.postdirekt.de/datenschutz."



This represents initial draft wording. The current discussion to implement the obligations to provide information and transparency obligations is still in progress. The data subject's legal right to object at any time to the use or transfer of personal data by a controller is ensured by Deutsche Post Direkt's use of an internal blocking list. In addition, whenever there is an order, Deutsche Post Direkt undertakes to compare the data with the "Robinson list" of the German direct marketing association Deutscher Dialogmarketing Verband (DDV). Blocking notices are put in place and inquiries about the origin of data answered without delay.

In order to ensure that objections are implemented without undue delay, the period between the time the address data are provided for use for advertising purposes on Deutsche Post Direkt's data exchange platform and the postal delivery of the advertisement may not exceed four weeks. If this period is exceeded, another comparison against Deutsche Post Direkt's blocking list must be completed. This is done in the interest of the data subjects as well as for the purpose of avoiding complaints vis-à-vis companies that advertise.

2.5.2 Implementation of the right to object to the use of personal data for promotional purposes - for consumer addresses

- Where advertising is distributed using the Lettershop process, data subjects assert their right to object to the use of their address for advertising purposes with Deutsche Post Direkt and/or directly with the advertiser. In such cases, it is not always clear whether the data subject may not have recognised that Deutsche Post Direkt is the data controller responsible or whether they specifically do not wish to receive further advertising from the advertiser.
- A differentiated approach based upon the data subject's intentions is therefore necessary to respond correctly to such objections.
- Objections to the use of data for advertising purposes received by Deutsche Post Direkt are implemented by placing the address on a blacklist.

If the data subject only lodges an objection with the advertiser and clearly no longer wishes to receive postal advertising from the advertiser, the advertiser must implement the objection in its own blacklist. The objection to the use of the address for advertising purposes may only be forwarded to Deutsche Post Direkt if a data subject clearly requires the objection to be forwarded to Deutsche Post Direkt because this also constitutes a data transfer process for which a legal basis is required.

2.5.3 New obligations to provide information and transparency obligations under the GDPR

Articles 13 and 14 of the GDPR provide for a number of new obligations to provide information to data subjects, which must also be implemented by Deutsche Post Direkt upon initial correspondence with the data subjects.

This includes, among other things, the following information:

- information on the controller responsible for data processing and its representative;
- information on the in-house data protection officer;
- information on the purpose and legal basis of the processing, including demonstrating the legitimate interests in application of Article 6 (1) f) GDPR;
- information on the categories of data;
- information on the recipients or categories of recipients;
- information on any (potential) transfer to third countries;
- information on the duration of storage;
- information on the existing rights of data subjects (e.g., the right of access).

The scope of these new obligations to provide information quickly make it clear that various processing situations and advertising media (e.g., post cards, advertising letter) will not allow multiple pages of transparency information to be printed on the advertising medium itself, and therefore it might not be possible to achieve the desired level of transparency for the data subjects because of an information overload.

The literature on data protection law therefore takes the view that allowances should be made with regard to the implementation of transparency information on printed media and, in particular, that general obligations to provide information may also be met by presenting the information on the controller's website, for example, and having the advertising media expressly refer to that website for further information.

Deutsche Post Direkt's transparency information of can be found on the homepage at www.postdirekt.de/datenschutz.

3. Deutsche Post Direkt and data protection authorities

Deutsche Post Direkt is one of the leading German address service providers and, as such, maintains close contact with representatives of the data protection authorities. As a company that processes personal data, it is required to notify the North Rhine-Westphalia Commissioner for Data Protection and Freedom of Information when it processes personal data. Deutsche Post Direkt is also a member of the ad hoc working group "Advertising and address trading" of the German state and federal data protection authorities headed by the Bavarian Data Protection Authority (*Bayerisches Landesamts für Datenschutzaufsicht – BayLDA*).

Moreover, Deutsche Post falls under the direct jurisdiction of the Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragte für den Datenschutz und die Informationsfreiheit – BfDI*) with whom it has a regular dialogue. Deutsche Post Direkt's own data protection officer is frequently included in this dialogue for monitoring and consultation purposes.



4. Data protection and data security measures taken by Deutsche Post Direkt

Deutsche Post Direkt's employees have committed themselves in writing to observing data secrecy pursuant to Article 24 of the GDPR and are informed about further customer confidentiality obligations, such as bank or social secrecy. Organisational and security measures ensure that only authorised employees have access to the data. In the area of address rental, Deutsche Post Direkt works only with lettershops that are members of the German Dialog Marketing Association (DDV), comply with data protection regulations and requirements, and submit confirmation that the address data was deleted following completion of the customer's order. Control addresses in the rental batch ensure that data is not forwarded to other parties. In the case of online address validation/collation, Deutsche Post Direkt complies with the latest security standards. Whenever data is transferred to or from its servers, Deutsche Post Direkt uses not only customised encryption processes but also encryption techniques similar to those used, for example, in online banking. The techniques Deutsche Post Direkt uses for encryption and authentication range from the use of "https" for data transfers to virtual private networks. The most secure way to transfer address databases for the purpose of cleansing or updating customer data or to transfer rental data is the FTP transmission offered via the online services of Deutsche Post Direkt. Companies also receive user-specific access and can set their own individual password. As an additional security measure, companies can opt to transfer their data using password protection or PGP encryption.

Deutsche Post Direkt is certified in accordance with ISO/IEC 27001. The certificate is issued by TÜV AUSTRIA GmbH as the certification body and covers data management and dialog marketing order processing and the required IT systems, including the network and communication links, of the DATAFACTORY and ADDRESSFACTORY product family, the portal and the associated data exchange platform. Within the information network, personal data is stored and processed in a data hub for the purposes of address, master and reference data management as well as dialog marketing. The certification shows that Deutsche Post Direkt implements special technical and organizational security measures as prescribed by Article 28 (1), Article 28 (3) c), and Article 32 (1) of the GDPR.

The TÜV certification releases customers from the obligation to monitor Deutsche Post Direkt (the contractor) as otherwise required by data protection law.



5. Deutsche Post Direkt is a member of the German Dialog Marketing Association

Deutsche Post Direkt is a member of the Council for DirectMail Services and of the German Dialog Marketing Association (DDV) and, as such, guarantees through regular certification the highest level of professionalism and quality. In order to receive the DDV seal of approval for quality and service, important requirements must be met. These include training and instructing employees in data protection, ensuring transparent order processing and documentation, and compliance with technical and organisational data protection measures.

Council members are audited annually. Consequently, advertisers can be sure that members uphold service quality and data protection requirements. As a result, the DDV seal of approval for quality and service is also an important criterion when selecting or commissioning service providers.

Disclaimer: This additional information is no substitute for a legal review in the individual case. Although content is carefully reviewed, Deutsche Post Direkt assumes no liability for its accuracy, completeness or currency.

