



# **Bitkom on the reform of Data Protection Supervision in Germany**

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## Background and context

Unlike many other EU Member States, Germany operates a highly decentralised federal system of data protection supervision. Each federal state has its own independent data protection supervisory authority, while a separate federal authority exists at national level.

Against this background, discussions are currently underway in Germany on consolidating data protection supervision at the national level. This position paper examines the issue from the perspective of the business community, discusses key aspects as well as arguments for and against different supervisory models, assesses the respective advantages and disadvantages, and outlines possible solutions for a future-oriented supervisory structure.

## Initial Situation

The General Data Protection Regulation (GDPR) provides for a system of decentralised supervision in Europe with close European coordination. In Germany, responsibility lies with the data protection authorities of the federal states as well as with the Federal Commissioner for Data Protection and Freedom of Information (BfDI). In recent years, this model has led to a multitude of interpretations, differing enforcement practices, lengthy coordination processes, and inconsistent decisions, which are difficult for companies to plan for. What is crucial for the economy is that supervision not only acts in a legally correct manner, but also in a practical, innovation-friendly way and in line with the requirements of a digital and innovation-driven economy.

The central question therefore is: What would an efficient, fast, citizen- and business-oriented supervisory structure look like if it were to be newly established today?

A survey shows that only 7 percent support the status quo. Almost 70 percent favor at least a partial reform, and one in five even supports a fundamental realignment. At the top of the reform wish list are better coordination between authorities (74 percent), mutual recognition of decisions (72 percent), and a central database of all decisions (70 percent). Two thirds (67 percent) support stronger centralization of supervision.<sup>1</sup>

69%

of the companies want to reform data protection supervision in part, and 21 % want to reform it fundamentally.  
(According to a study by Bitkom Research)

## Challenges

For a long time, the structure of data protection supervision in Germany has operated in the field of tension between federal diversity and the need for uniform regulation.

- **Inconsistent supervisory practice:** Divergent assessments by the state authorities lead to contradictory requirements. This makes the use of new technologies more difficult, causes delays, inhibits investment, and creates considerable legal uncertainty.<sup>1</sup> Consistent and innovation-friendly decisions are indispensable for innovative business models.

<sup>1</sup> <https://www.bitkom.org/Presse/Presseinformation/Datenschutz-Aufwand-Unternehmen-nimmt-zu>

- **Complex processes and high level of bureaucracy:** Reporting channels for data protection officers and data breaches differ depending on the federal state. Coordination procedures are often lengthy, and binding majority decisions – for example within the framework of the Data Protection Conference – are not currently provided for. This leads to inefficiency and prevents swift, clear decisions.
- **Lack of balance, proportionality and openness to innovation:** Current supervisory practice is often characterized by a one-sided focus on data protection risks, without adequately considering the opportunities and societal benefits of innovative data processing. There is a lack of balanced consideration between data protection, other fundamental rights, and the legitimate interests in economic development, digital transformation, and technological progress. Instead of risk-based, proportionate regulation, blanket or restrictive requirements are often imposed, which hinder innovation and weaken the international competitiveness of German companies.
- **Insufficient response times:** In a digitalized economy, the response time of guidance and decision-making is an important competitive factor. Companies require prompt, legally sound answers – both for day-to-day issues and for innovative projects.
- **Valued regional points of contact:** At the same time, many companies experience the existing state authorities as practical, solution-oriented, and knowledgeable about specific industries. These established relationships and the specific expertise make an important contribution to trust and efficiency in the enforcement of data protection law. These strengths must be preserved as part of any reform – regardless of whether responsibilities are more strongly consolidated or reorganized in the future. What is crucial is that competent, accessible, and solution-oriented points of contact continue to exist.
- **European relevance:** Germany must act with a coordinated voice in the European Data Protection Board. Inconsistent positions weaken Germany's negotiating and enforcement power in Europe and increase legal uncertainty for companies.

## Principles for a reform of Data Protection Supervision

### Structural Reform and consolidation

A future-proof system of data protection supervision requires clear responsibilities, efficient procedures, and a coordinated German voice in Europe.

For issues of particular relevance – for example those with nationwide or European significance, fundamental importance for interpretation, or substantial economic impact – responsibility should be consolidated at the level of the Federal Commissioner for Data Protection and Freedom of Information (BfDI).

A mechanism through which the BfDI can be involved in cases of contradictory decisions or divergent interpretations by the Länder supervisory authorities would create additional legal certainty. Cases of particular importance could thus be centrally coordinated and decided swiftly.

Uniformity, predictability, and rapid procedures are key prerequisites for investment, fair competitive conditions, and effective protection of fundamental rights.

To determine when such consolidation applies, a transparent catalogue of criteria should be developed, for example when:

- the decision has effects beyond the federal state concerned,
- a fundamental question of interpretation of the GDPR or EU guidelines is involved,
- economic or societal impacts of significant weight exist, or
- there is a need for coordination with the European Data Protection Board.

In this way, supervision can be both regionally anchored and centrally capable of acting.

## Core components of a modern supervisory structure

In order to ensure balanced and future-oriented supervision, a reform should take three fundamental principles into account

### 1. Preserving established relationships and expertise

Trust-based relationships between companies and their state data protection authorities are important for competitiveness. A reform must safeguard functioning cooperation structures and design transition phases in such a way that no uncertainties arise. Even in the event of a possible consolidation of tasks or responsibilities, regional points of contact and local expertise must be retained – for example through coordinating teams or regional contact offices that ensure proximity to practice.

### 2. Uniformity, reliability and speed

Companies require predictable supervisory practices. Structures that enable rapid and coordinated decision-making strengthen legal certainty and competitiveness alike. Decisions require clear responsibilities. In this context, the BfDI should assume a coordinating and decision-making role, particularly in cases of supra-regional or fundamental importance.

### 3. European clout

Germany must present a clear position within the European Data Protection Board. A unified voice increases enforcement strength and creates reliable framework conditions for companies.



## Mandate for innovation and data use

Data protection supervision should actively support companies in the responsible use of data and ensure pragmatism and openness to innovation. A clearly defined mandate as an »innovation facilitator« includes in particular:

- an obligation to provide guidance on new technologies and business models,
- a proportionate balancing between the fundamental right to data protection and other fundamental rights, such as entrepreneurial freedom and opportunities for innovation,
- a practical and innovation-friendly interpretation of the GDPR with a view to competitiveness.

For this mandate to be effective, two guiding principles should shape the actions of the supervisory authority:

### 1. Pragmatism and innovation – friendliness

The mandate of the data protection supervisory authorities should explicitly include the promotion of innovation and risk-based, proportionate regulation in order to actively support digital business models and digital transformation.

### 2. Transparency and accountability

Data protection supervision should set out, through regular and transparent reports, how it reaches its decisions and how it strikes a balanced consideration between data protection, other fundamental rights, innovation, and economic development. It should also disclose how it positions itself within the European Data Protection Board, what contributions it makes there, and how it translates European guidelines and decisions into national practice.

Such transparency builds trust, strengthens the legitimacy of supervision, and ensures that data protection does not act as a barrier to innovation, but rather as a driver of responsible digital development in Germany and Europe. In this way, legal certainty, competitiveness, and an innovation-friendly climate can be ensured in equal measure.

## Conclusion

The current supervisory structure is reaching its limits in light of the speed of digital innovation and the European requirements placed upon it. It is crucial that data protection supervision acts in a uniform, reliable, and innovation-friendly manner, while at the same time being capable of swift action.

Modern data protection supervision must offer clear responsibilities, transparent procedures, and practice-oriented decision-making pathways. The objective must be improved implementation of data protection. This implementation should provide guidance, legal certainty, and trust.

This includes, in future, consolidating data protection-defining cases or fundamental decisions centrally at the level of the Federal Commissioner for Data Protection and Freedom of Information. A mechanism through which the BfDI can be involved in

overarching decisions would create legal clarity and uniformity and give Germany a coordinated voice in the European data protection discourse.

At the same time, the expertise and practical proximity of the Länder supervisory authorities must continue to be strengthened. They remain important partners for on-the-ground advice, support, and enforcement. A well-designed reform can combine both elements: regional anchoring on the one hand and central clout on the other.

Beyond this, data protection supervision should see itself as a co-shaper of digital transformation, with a clear mandate for innovation and data use that supports companies in the responsible use of data. Transparent, risk-based, and proportionate decisions build trust and strengthen the competitiveness of Germany as a business location.

Germany needs supervision that provides guidance instead of uncertainty, enables speed instead of stagnation, and understands data protection as an enabler of innovation. Consolidating key topics at the level of the BfDI can be the decisive step in making data protection supervision in Germany fit for the digital age.

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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