

# EMPLOYEES' CONSENT TO DATA PROCESSING SOON TO BE MADE ELECTRONIC UNDER GERMAN DATA PROTECTION LAW

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Legal Briefings - By **Dr. Simone Ziegler and Anna Rosón Eichelmann**

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When it comes to employment-related data processing, employers in Germany are regularly required to obtain consent from their employees by seeking their wet ink signature to be on the safe side.

This additional administrative burden may soon be a thing of the past according to the recently approved draft law for the Second Data Protection Adaptation and Implementation Act (2. Datenschutz-Anpassungs- und Umsetzungsgesetz, hereinafter "2. DSAnpUG").

Under the General Data Protection Regulation (EU) 2016/679 (GDPR), consent generally does not have to be in a written form. However, the currently applicable version of sec. 26 para. 2 of the German Federal Data Protection Act (Bundesdatenschutzgesetz, hereinafter "BDSG"), states that employees consent for employment-related data processing, in most cases, must be in written form. In practice, employers have often sought to obtain a wet ink signature from employees, to be on the safe side.

On 20 September 2019, the German Federal Council approved the draft law for the 2. DSAnpUG. According to the amended version of the BDSG, consent in the context of an employment relationship can also be given electronically. The law has not been promulgated yet, but it is likely that the changes will come into force on 1 January 2020 at the earliest.

The legislator stated the following in the explanatory memorandum of the 2. DSAnpUG:

***"Since consent can be given electronically, it is sufficient, for example, for the employer to save it as an email."***

This would mean that no qualified electronic signature, according to the German Civil Code will be required, which would also have led to considerable effort. Consequently, any evidence of consent that is permanently stored in a tamper-evident manner and allows the exhibitor to be identified, will in theory be acceptable. By allowing consent to be given electronically, the amendment aims to reduce the administrative burden on employers. The new regulation also helps to adapt the working practice to a digital working environment.

[Read more on the data economy](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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