

PUR models

Status quo on the
European market

October 2023



Management summary

PUR models

The PUR model offers users an alternative way to visit a desired website and consume its content and services. The classic PUR model typically offers two options. The user can choose to give their consent to advertising and tracking or pay a specified sum of money to use the service without tracking or advertising. Users can freely choose whether they want to pay money for a journalistic offering, or opt for a free experience, provided they give their consent to advertising and tracking. Note that the word PUR is not an abbreviation; it describes the condition of the offer, meaning "free of tracking and advertising requiring consent."

Admissibility

The permissibility of PUR models is currently assessed according to different criteria. The German data protection authorities evaluate the voluntary nature of consent based on its granularity, which refers to the level of user control to select and deselect purposes on the second level of the consent banner. The EDPB and CNIL evaluate the admissibility of PUR models by considering whether a PUR subscription is a comparable alternative to the consent route. It remains to be seen what standards will be used to evaluate the admissibility and the concept of equivalence in detail. The price of the PUR subscription could serve as one measure of equivalence.

According to the BVDW, there are no obstacles preventing the voluntary nature of consent under Art. 7 No. 4 of the GDPR in the context of the classic PUR model, making it permissible in principle. The wording of Art 6 (1) a) DSGVO states that *"the data subject has given his consent to the processing of personal data relating to him for one or more specific purposes"*. This shows that it is possible under data protection law to give consent for several purposes. If the recital reason 43 sentence no. 5 GDPR is also used in this context - *"consent shall not be deemed to have been freely given if consent cannot be given separately for different processing operations of personal data, although this is appropriate in the individual case"* - it becomes apparent that here, too, separate consent for different purposes is not mandatory, but only if *"this is appropriate in the individual case"*.

It therefore depends on the specific design in each individual case, with particular emphasis on transparency vis-à-vis users, no manipulation of user behavior, and the technical guarantee that the promised services of the PUR subscription are fulfilled. One example of this is to ensure that the user is informed about the possible alternatives before making a decision.

Effects of introducing a PUR model

By introducing a PUR model, companies can ensure legal compliance while also boosting revenue by monetizing all traffic. This is achieved through higher content rates which lead to an increase in target group-specific advertising revenues, and also through the fee a user pays when taking out a PUR subscription. The initial rollout phase might witness a slight increase in the bounce rate, but it typically reverts back to the previous level after two to three weeks.

The facts and figures in the following table are provided either from the companies themselves or are estimated based on various BVDW member companies.

Conclusion

For website operators, offering an advertising- and tracking-free subscription is interesting for economic and data protection reasons. From the user's perspective, the PUR model offers the opportunity to exercise their own informational self-determination, empowering them to choose how they want to finance the content and services they use.

Disclaimer

This report was commissioned by the BVDW from conneri digital development GmbH. The author is David Pfau, Head of Data & Privacy at conneri. The Lab Consent Management of the Data Economy department contributed to the report.

Overview of the PUR models on the European market analyzed in this report

Variants	Consent path (tracking and advertising)	(2) PUR subscription	Classification	Granular configuration options	Connection to other services	Number basis (without bounce rates)	Price PUR subscription
Variant 1 Spiegel, Zeit, T-Online	Continue reading with advertising (Art. 6 para. 1 lit. a) DSGVO).	Sign up for a PUR subscription (paid contract for ad tracking and maximum advertising freedom).	Both ways give the user access to the free content of the website. The PUR model applies only to the website in question.	No	With this offer, there is a paid content subscription, independent of the PUR subscription. Paid content subscribers receive a discount when they take out the PUR model.	Approval rate > 99 Conclusion of PUR subscriptions < 1% Source: Discussions with experts and estimates based on known databases.	Spiegel: €4.99 per month, for customers €1.99 Zeit: €1,20 per week, for customers €0,40 T-Online: €2.99 per month
Variant 2 Bild	Using tracking and cookies (Art. 6 para. 1 lit. a) DSGVO).	Sign up for a PUR subscription (paid contract with the service no tracking, no cookies requiring consent and no personalized advertising).	As with variant 1, but the focus is on tracking and no advertising is played via the ad server. Only native and self-advertising is played out via the CMS.	No	With this offer, there is a paid content subscription, independent of the PUR subscription. Paid content subscribers receive a discount when they take out the PUR model.	Approval rate > 96 Conclusion of PUR subscriptions < 1% Source: Discussions with experts and estimates based on known databases.	Bild: €3.99, for customers €2.99 per month
Variant 3 Contentpass	Further with advertising (Art. 6 para. 1 lit. a) DSGVO).	Sign up for a PUR subscription to Contentpass (paid contract to avoid being exposed to banner ads, video ads, and personalized tracking).	The "Contentpass" allows complete tracking and advertising freedom on all websites that cooperate with Contentpass. The PUR model is cross-site. The website receives compensation for lost advertising revenue from users who use this variant.	The extent to which granular configurations of consent are possible is left to the individual offer.	Contentpass does not offer a content subscription. However, in addition to the consent path and the PUR content pass subscription path, the offer could also offer a third path where the contractual relationship is with the offer and includes additional content and PUR functionalities.	Approval rate > 99 Conclusion of PUR subscriptions ≈ 1%. Source: Contentpass	Contentpass: €2.99 per month
Variant 4 Freechoice	Continue reading free of charge (Art. 6 para. 1 lit. a) DSGVO).	One login - many tracking-free offers! Online privacy here and wherever you go in the Freechoice offer.	Freechoice allows complete tracking and advertising freedom on all websites that cooperate with Freechoice. The PUR model is cross-site.	The extent to which granular configurations of consent are possible is left to the individual offer.	Freechoice does not offer a content subscription.	Approval rate > 99 Conclusion of PUR subscriptions ≈ 1%.	Freechoice: €2.99

			The website receives the majority of the proceeds collected.			Source: Traffactive	
Variant 5 Krone	Continue reading with advertising (Art. 6 para. 1 lit. a) DSGVO).	Subscribe to PUR (paid contract for tracking freedom).	<p>According to statements by the responsible persons on the part of the Austrian supervisory authorities published.</p> <p>The model could be okay from the perspective of the German data protection supervisory authorities after the DSK decision (March 2023).</p>	On the second level of the CMP, the user has the option of granular consent. Here, all categories of purposes, with the exception of the category of personalized advertising, can be rejected.	Independent of the conclusion of the PUR subscription, it is possible to conclude a paid content subscription for additional content. Paid content subscribers receive a discount when taking out the PUR model.	<p>Approval rate for all purposes > 94</p> <p>Conclusion PUR subscriptions < 1%</p> <p>Consent for mandatory purposes, second stage between 2-5%.</p> <p>Source: Discussions with experts and estimates based on known databases.</p>	Krone: Free of charge, registration required.
Variant 6 Rheinische Post	Continue with RP basic (Art. 6 para. 1 lit. b) DSGVO).	Subscribe to PUR: Sign up to receive no personalized ad tracking and a heavily ad-reduced offering, plus additional features and premium content for a fee in a subscription called RP+.	<p>Both ways are concluded as a contract with the user and are each based on Art. 6 (1) lit. b) DSGVO.</p> <p>It is not a PUR model, but two contractual relationships that allow access to the site.</p>	No	At Rheinische Post, only an RP+ subscription is offered, which includes access to additional content and PUR features.	<p>Approval rates > 95%</p> <p>Completion RP+ between 2- 5</p> <p>Source: Discussions with experts and estimates based on known databases.</p>	<p>RP+: €1 per week, after 52 weeks €2 per week</p> <p>To our knowledge, the prices are largely based on market practice.</p>

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1. Background information

The PUR models have evolved from the changing regulatory framework and economic necessities of digital service providers in Europe. Since the GDPR came into force in 2018, there have been several legislative processes, such as the TTDSG, and various positioning of relevant stakeholders on the design of consent banners and the legal scope for service providers.

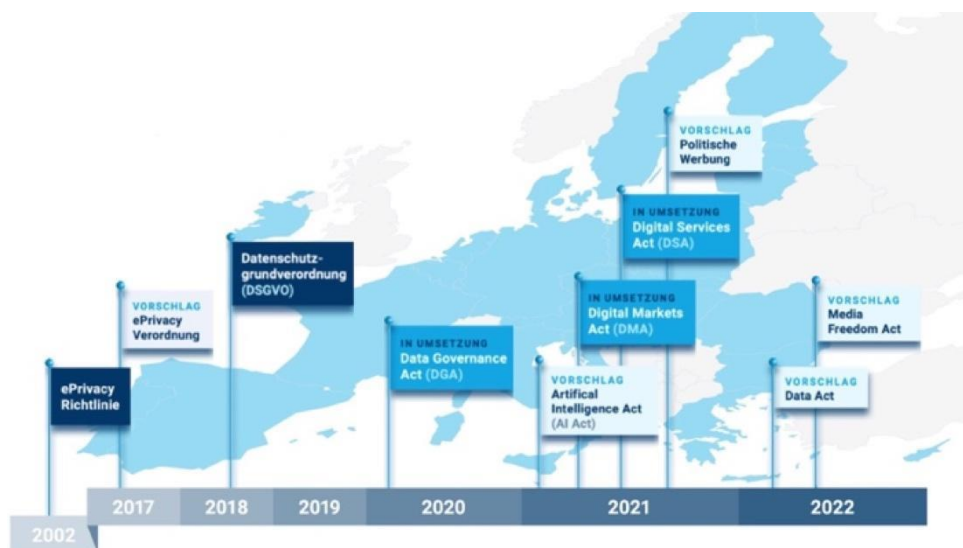


Figure 1: Regulatory developments in the European Union (exemplary)

Regulatory developments pose unprecedented challenges for the digital industry in Europe. Technical demands imposed by browser manufacturers and mobile operating system providers, such as the blocking of third-party cookies, IP addresses masking, and the introduction of increasingly comprehensive privacy settings, further exacerbate the complexity of the situation.

In addition, since the end of 2021, European supervisory authorities, particularly those in France and Germany, have begun to take an intensive look at the business models of companies in the media and digital industries. This includes not only data protection supervisory authorities, but also consumer protection and data privacy activists. In Germany, the primary focus is on content providers who partially fund themselves through targeted advertising. In this context, the collection of consent through so-called consent banners on websites is the focus of attention.

Before the discussion about the design of consent banners, particularly regarding the opt-out button on the first level started, users could usually give their consent on the first level and individually configure or reject data processing on the second level. There are still legal arguments made against the opt-out button on the first level, however these will not be discussed further here. Reference is made to the BVDW publication "[Reject all" button](#) within this context. European supervisory authorities appear to be mostly in agreement on this issue with initial court cases in Germany pointing in a similar direction. However, these initial rulings have been partially appealed. The introduction of a corresponding opt-out button at the first level of consent banners may result in a reduction in consent rates of up to 40 percent.

The demand for a deny-all button at the first level of consent banners from data protection regulators and consumer protection agencies, as well as the significance of consent-based data processing for data-driven business models, has prompted providers of digital content and services to introduce so-called PUR models. The objective is to ensure compliance with data protection regulations while also securing sustainable funding of their content and services.

The PUR model offers the user different options for using the content and services of the offer when calling up the website via a banner. The classic PUR model usually offers two distinct paths. Therefore, the solution can also be called a path model. The user can either give consent to advertising and tracking or pay a monetary amount for the tracking- and largely ad-free use of the offer. Users are free to choose whether they want to pay money for a journalistic offering, for example, or access it for free by consenting to advertising and tracking.

The PUR model considers both the user's interest in using the website without being tracked and, if applicable, without viewing advertisements, as well as the provider's economic interest in not offering its content and services available free of charge. In practice, users are most frequently offered the option to pay a monthly flat rate in order to be able to use the content of the website in question free of tracking or advertising.

2. Analysis of existing PUR models on the market

Different variants of PUR models are currently offered on the market, which differ on the basis of various criteria.

a) Distinguishing criteria

The distinguishing criteria are explained below:

- **Linking with additional paid services:** The original form of the PUR model offers the option of tracking and largely ad-free use of content without additional service components. In some cases, the PUR subscription is offered at a reduced price for existing customers. Other conceivable service components are additional content (paid content) and services that can be obtained as part of the PUR subscription.
- **Tracking freedom with or without advertising freedom:** The individual PUR variants differ in that they offer either tracking-free use with non-personalized advertising only or tracking- and advertising-free use, whereby there are also different models with regard to the remaining advertising volume.
- **Cross-site PUR variants:** In addition to website-specific PUR models, there are also cross-website PUR models. In these models, the user takes out a PUR subscription with a third party and receives tracking- and ad-free access on a large number of affiliated websites as part of the subscription.
- **Granularity of consent:** Another criterion currently being discussed by data protection supervisory authorities is the granularity of consent. Most PUR models available on the market do not offer the option of selecting or deselecting certain categories of data processing. So far, only a few PUR variants offer a limited granular configuration option.
- **Invocation of different legal bases:** Some PUR variants offered on the market are not based on consent, but on the legal basis of the contract, leading to differences in the type and scope of data protection-related information provided.

What all variants have in common is that users are asked to consent to data processing that requires their consent. Users are alternatively offered tracking-free and, in some cases, ad-free use of the content in return for payment. In some cases, users are also offered additional options for using the website, such as an extended offer with additional content.

The following section presents the most important PUR variants on the market. The most significant distinguishing features are shown and includes a pictorial representation and other relevant information on the models.

b) Variant 1 (Spiegel, Zeit, T-Online)

In the Spiegel, Zeit and T-Online models, users have the choice of either consuming the website's free articles with advertising and tracking or taking out a PUR subscription. The PUR subscription ensures the absence of advertising and tracking. What is meant by the greatest possible freedom varies and must be considered in detail in the models. As a rule, it is based on not sharing user data with advertisers and excluding advertising tracking. Independent of the PUR subscription, it is possible at Spiegel and Zeit to take out a paid content subscription for additional content. Paid

content subscribers receive a discount when taking out the PUR model. The PUR model applies only to the website in question.

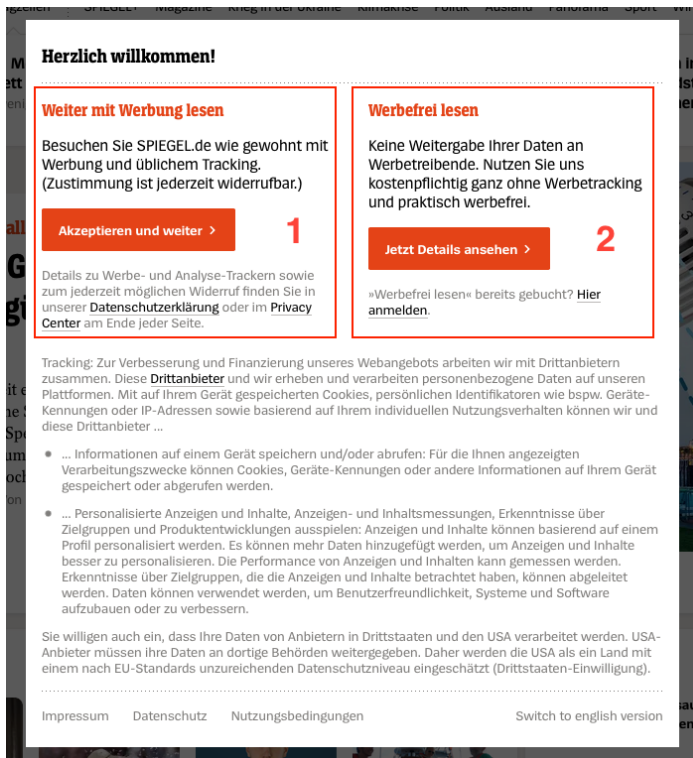


Figure 2: First level of the PUR banner of the Spiegel (July 2023).

Providers of PUR models are motivated by two primary factors: the desire to generate revenue from the PUR subscription, or the goal of stabilizing consent rates to ensure the ongoing processing of data subject to consent, and thus refinancing the offer.

c) Variant 2 (Bild)

In the BILD.de model, users also have the choice of either consuming the website's free articles with advertising and tracking or taking out a PUR subscription. With the PUR subscription, the focus is on tracking and no advertising is played via the ad server. Only native advertising and self-advertising are played out via the content management system (CMS).

The most important facts at a glance:

- Way 1: Continue reading with tracking and advertising (Art. 6 para. 1 lit. a) DSGVO).
- Path 2: Conclusion of a PUR subscription (paid contract for exemption from tracking and advertising).
- Both ways give the user access to the free content of the website.
- Independent of the conclusion of the PUR subscription, it is possible to conclude a paid content subscription for additional content. Paid content subscribers receive a discount when taking out the PUR model.
- The PUR model applies only to the website in question.

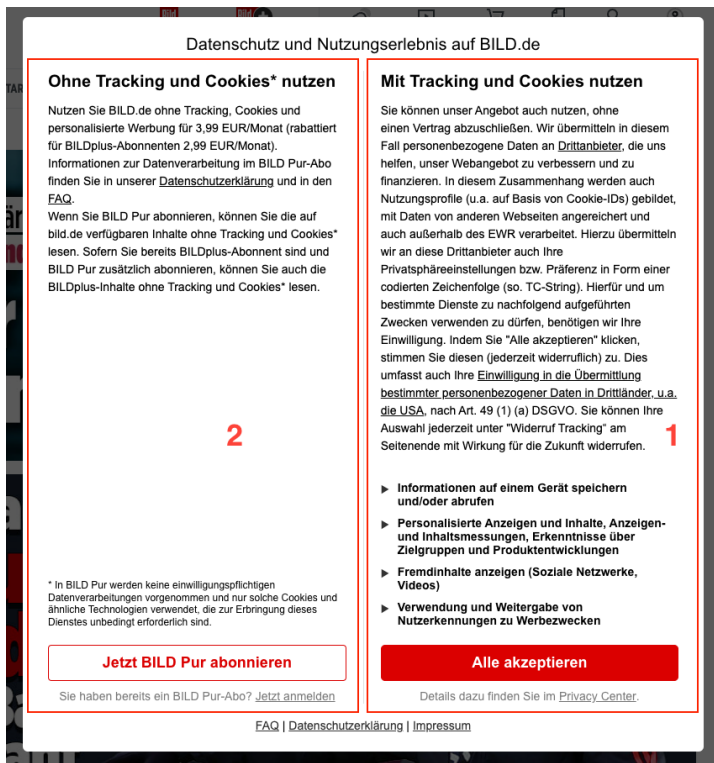


Figure 3: First level of the PUR banner of BILD.de (July 2023)

The most important facts at a glance:

- As with variant 1 with the exception that no general advertising freedom is offered, only tracking freedom.
- Way 1: Continue reading with tracking (Art. 6 para. 1 lit. a) DSGVO).
- Way 2: Sign up for a PUR subscription (paid contract for tracking freedom).

d) Variant 3 (Contentpass)

Contentpass is a cross-site, independent PUR solution. The Contentpass subscription offers users cross-site PUR functionalities in one. Currently available on over 290 websites, Contentpass has expanded its reach from Germany, Austria, and Switzerland, to also include France, Italy, and Luxembourg.

Contentpass offers its service for all websites on the market. Most of the Consent Management Platforms (CMP) offer convenient integration options. Websites that integrate the service receive compensation from Contentpass for the traffic generated by Contentpass users. Thus, all users who use the offer's content or services are monetized: the majority of users via targeted advertising and Contentpass users via compensation for lost advertising revenue.

In October 2022, Contentpass increased the price for users from €1.99 to €2.99, which speaks to the growth of the model. For the website operator, the integration is straightforward and there are no development costs. Contentpass regularly reviews the offers in its portfolio and guarantees users an advertising and tracking free experience. The company specifically checks the extent to which third-party providers are loaded without consent. Self-advertising is still permitted on the websites.

Contentpass maintains its confidence in the legal conformity of the model and is therefore available to Contentpass publishers as a strong partner, addressing any inquiries from authorities and data subjects. Ongoing development of the model and its data protection compliance is also guaranteed. For example, publishers can determine the level of granularity at the purpose level.

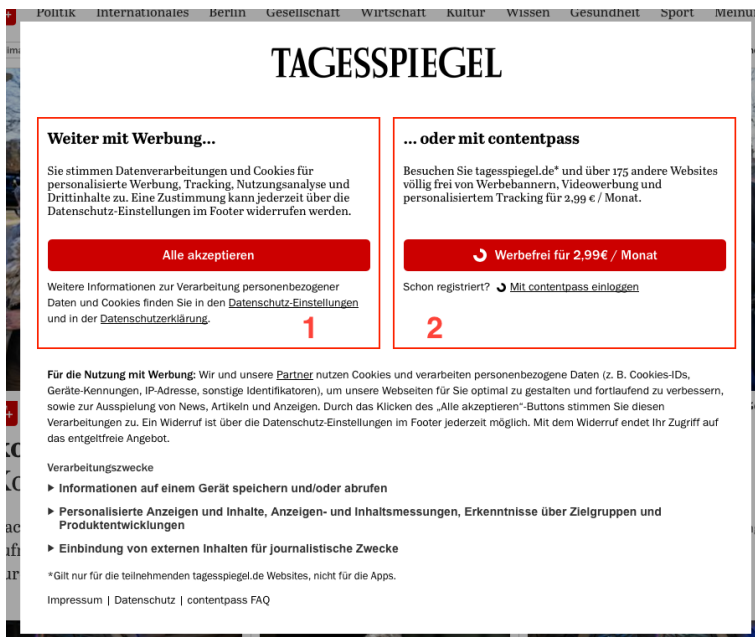


Figure 5: First level of the PUR screen of the Tagesspiegel (July 2023)

The most important facts at a glance:

- Way 1: Continue reading with advertising and tracking (Art. 6 para. 1 lit. a) DSGVO).
- Path 2: Conclusion of a PUR subscription (paid contract for exemption from tracking and advertising).
- The "Contentpass" allows complete tracking and advertising freedom on all websites that cooperate with Contentpass.
- The PUR model is cross-site.
- The website receives compensation for lost advertising revenue from users who use this variant.

A modified variant has emerged, blending the Contentpass cross-site model with a standalone PUR model. This variant incorporates the advertising and tracking consent path and the Contentpass subscription, along with a separate offer from the service provider that links PUR functions with additional content.

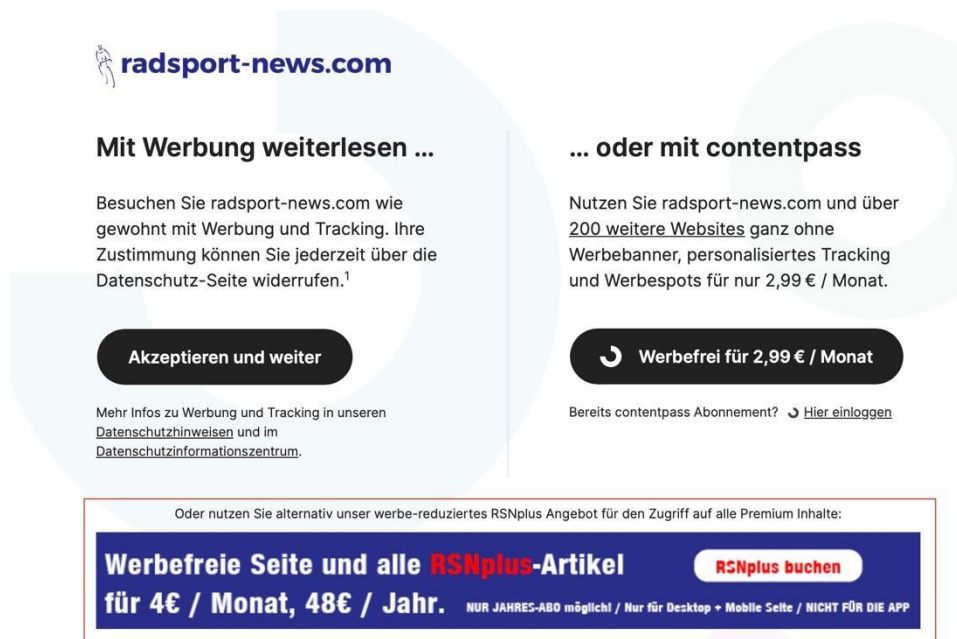


Figure 6: First level of the PUR screen of the cycling news (July 2023).

e) Variant 4 (Freechoice)

Freechoice is also a cross-site PUR solution offered by marketer and consent management provider Traffactive. The Freechoice subscription offers users cross-site PUR functionalities on all partner websites in one.

Freechoice offers its services to the websites in its own Traffactive network. The offer that integrates the service receives remuneration from Freechoice for the traffic generated by Freechoice users on its own website. This way, all users who use the offer's content or services are monetized: the majority of users via targeted advertising and Freechoice users via compensation for lost advertising revenue.



Figure 7: First level of the PUR screen of the district newspaper (July 2023).

The most important facts at a glance:

- Way 1: Continue reading with advertising and tracking (Art. 6 para. 1 lit. a) DSGVO in conjunction with § 327 III BGB) (Numbers with data).
- Path 2: Conclusion of a PUR subscription (paid contract, use of the site without tracking, tracking-free advertising remains possible).
- The PUR model is available across websites on all Freechoice partner sites.
- The website receives compensation for lost advertising revenue from users who use this variant.

f) Variant 5 (Krone, HEISE, Braunschweiger Zeitung)

Much like the previous models, the "Krone" in Austria model offers users a choice between two options. The difference, however, is that on the second level of the consent banner, the user can refuse consent to most of the purposes and still visit the offer, allowing for a third choice. However, the purposes "Necessary data processing" and "Advertising" cannot be deselected.

This variant is also used by the German news site HEISE and the Braunschweiger Zeitung in Lower Saxony. However, the models show differences in the presentation of how the granular configuration options are offered and the consequence of deselecting certain purposes. The model used by HEISE and the Braunschweiger Zeitung was developed in cooperation with the regulatory authority in Lower Saxony.

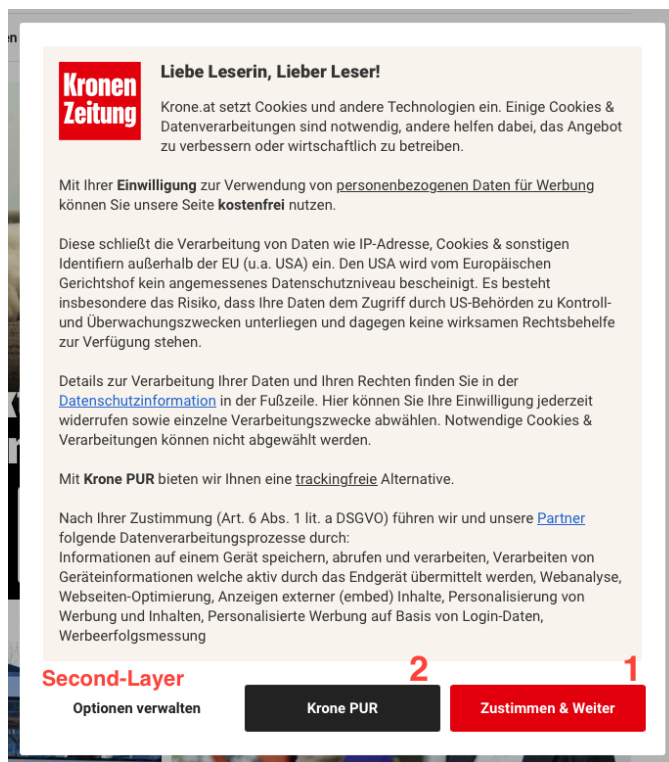


Figure 8: First level of the PUR screen of the Krone (July 2023)

g) Variant 6 (Rheinische Post)

The Rheinische Post model deviates from the preceding models for several reasons. Firstly, the previous models are all based on obtaining consent in accordance with Art. 6 (1) a) DSGVO in the case of free access. Rheinische Post is taking a different approach here and entering into a usage contract with users.

Furthermore, the Rheinische Post does not have a separate PUR and paid content subscription, but only the RP+ subscription, which includes both premium content and PUR features. This is exciting since, from the author's view, the RP does not really offer an alternative to the consent route, as the RP+ is a completely different product with more extensive services. This means that a legal assessment would have less emphasis on the voluntariness of consent and more on the discerning what data processing can be covered by a contract.

The most important facts at a glance:

- Way 1: Continue reading with advertising (Art. 6 para. 1 lit. a) DSGVO).
- On the second level of the CMP, the user has the option of granular consent. Here, all categories of purposes, with the exception of the category of personalized advertising, can be rejected.
- Path 2: Conclusion of a PUR subscription (contract for tracking and advertising freedom, subject to a fee).
- Independent of the conclusion of the PUR subscription, it is possible to conclude a paid content subscription for additional content. Paid content subscribers receive a discount when taking out the PUR model.

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Weiter mit RP+

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[Vorteilsübersicht](#)

nur **1 € pro Woche**
monatlich per Klick kündbar

2

50% sparen

Weiter mit RP basic

Ich möchte die frei verfügbaren Inhalte der Rheinischen Post inkl. Werbung und Tracking lesen. Hierfür stelle ich meine Daten zum Online-Verhalten gemäß [Nutzungsvertrag](#) bereit.

1

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Was bedeutet RP basic?

Das Anbieten unserer journalistischen Inhalte verursacht Kosten. Deshalb bieten wir Ihnen neben unserem kostenpflichtigen Abonnement eine Variante an, bei der Sie mit Ihren Daten bezahlen. Als Gegenleistung stellen wir Ihnen den gewünschten Telemediendienst zur Verfügung ("Leistung gegen Daten"). Zusätzlich spielen wir zu dessen Finanzierung nutzungs-basierte Werbung aus und verarbeiten mit unseren Partnern Cookies, Geräte-IDs und ähnliche Tracking-Technologien auf Endgeräten. Mit Hilfe der aus Ihrer Nutzung gewonnenen Erkenntnisse können wir u. a. Anzeigen und Inhalte gezielter ausspielen, die Nutzerfreundlichkeit unserer Webseite verbessern sowie neue Produkte entwickeln. In diesem Zusammenhang können gem. Art. 49 Abs. 1 lit. b) DSGVO auch Daten in Drittländer außerhalb der EU übermittelt werden.

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Figure 9: First level of the PUR screen of the Rheinische Post (July 2023)

The most important facts at a glance

- Path 1: Continue reading with advertising (Art. 6 para. 1 lit. b) DSGVO).
- Path 2: Take out a PUR subscription: Contract for tracking and advertising freedom, plus additional features and premium content for a fee.
- Both path 1 (free use of content) and path 2 are concluded as a contract with the user and are each based on Art. 6 (1) lit. b) DSGVO.

In addition to the PUR variants outlined above, some website operators offer additional models for alternative access. In one variant, for example, users can choose between consenting to the use of cookies and comparable tracking technologies for personalized advertising, alternatively, they are offered an advertising video selection from a range of available videos. These advertising videos enable website operators to generate additional advertising revenue to finance their content.

3. Data protection issues

The legal compliance of each individual PUR model must be examined separately. The fundamental question that arises for all variants is whether the voluntary nature is fulfilled for the consent to be valid under data protection law in accordance with Art. 4 No. 11 GDPR.

The PUR subscription is directly related to the cookie wall. When a cookie wall is used, access to digital content and services is contingent upon providing consent to the integration of cookies and comparable technologies. The PUR subscription serves as an alternative to this consent, ensuring that the service is not blocked if consent is not granted, and providing another access option instead. The use of a pure cookie wall without offering the user an alternative is considered illegal by numerous experts in the literature and supervisory authorities due to the lack of voluntary consent.

For all PUR models, therefore, the first legal question revolves around the extent to which website usage can be made dependent upon consent to the use of cookies and other tracking technologies. If the voluntary nature of consent were to require that the service offered can alternatively be used free of charge without the use of cookies or other tracking mechanisms, the incentive for users to opt for a paid PUR subscription would diminish. Consequently, the purpose pursued by the service providers of using the PUR models to finance the respective online offerings would be invalidated, resulting in a significant infringement upon the private autonomy and professional freedom of the respective providers.

According to Recital 42, fifth sentence of the GDPR, "*voluntary consent should only be presumed if (the data subject) has a genuine choice and is thus able to refuse or withdraw consent without suffering any disadvantage*". According to Recital 43(1) of the GDPR, a "*clear imbalance*" between the data subject and the controller precludes the voluntary nature of consent.

In principle, it cannot be assumed that there is an imbalance between website providers and users, because unlike in the relationship between public authorities and citizens, there are usually possibilities for circumvention in the case of private-sector online services due to the large number of comparable services.

For instance, when assessing whether the market position of a news content provider significantly restricts the user's freedom of choice, the importance of the offer for the user is decisive. A restriction of the freedom of choice would be presumed if the user is dependent on the offer due to the company's market-dominance. Even if the company in question is a large platform with many users, this does not exclude the possibility of an equivalent alternative by other market participants, thereby upholding the voluntary nature of consent. Companies with a strong market presence also maintain private autonomy, and there is no obligation to offer services free of charge based on the background of professional freedom.

According to the DSK, a comparable selection is often deemed not sufficient to affirm voluntariness, as this would depend on a comparable offer from other market participants and its subjective classification by the data subject. This view is not convincing, especially considering the objectively assessable variety of offers, which makes an "examination of what is happening on the market" superfluous. In addition, the DSK's view is not compatible with the wording of the GDPR, which, in comparison to Section 28 (3) of the old BDSG, explicitly lacks this wording.

In the legal opinion "[CHALLENGES FOR TELE-MEDIA PROVIDERS IN COMPLIANCE WITH THE REQUIREMENTS OF THE TTDSG AND the GDPR](#)" by Prof. Dr. Jürgen Kühling, the latter also takes the view that the protective purpose of the voluntariness requirement does not apply precisely when the individual can fall back on other, equivalent offers on the market. According to the prevailing opinion in the literature, it is not necessary for the offers to be identical. It should also be noted that even if identity is required, it cannot yet be assumed that PUR models are inadmissible, since a payment alternative that offers identical content, if priced accordingly, represents a genuine choice for the user.

a) Position of the German data protection supervisory authorities

The Data Protection Conference (DSK) has developed a unified stance on PUR models in the Media Working Group. This position was published on March 22, 2023 in the resolution [Evaluation of PUR subscription models on websites](#).

For the DSK, PUR models are legally possible. However, the DSK restricts and assesses the permissibility of PUR models on the basis of three criteria:

- **Equivalent alternative:** the PUR subscription must be an equivalent alternative to the service that users receive through their consent to tracking and advertising (paragraph 1).
- **Legal compliance of consent:** The effectiveness requirements for consent standardized in the GDPR, i.e. in particular those in Art. 4 No. 11 as well as Art. 7 GDPR, must be met (paragraph 1).
- **Granularity of consent:** Users must be able to consent or not to the different purposes of data processing on a granular basis (paragraph 4).

The DSK assesses the equivalence of the PUR subscription by considering two main factors: Firstly, that the same content and services are behind the PUR subscription (paragraph 1), and secondly, that PUR subscribers pay a standard market fee for it (paragraph 2). On a first reading of the decision, it seems that DSK makes the assessment of equivalence more dependent on price than CNIL, which refrains from influencing pricing but places the responsibility on the provider of the service.

Background discussions with supervisory authorities have already shown for some time that they are deviating from their original position and are generally accepting PUR subscriptions. Their previous approach to judging legal admissibility was primarily based on whether a user had the option to selectively choose and reject purposes and processing on a second level, in addition to consenting to all data processing and subscribing to PUR. The underlying logic was that, from the author's view, regulators were assessing the consent pathway separately from the PUR subscription, rather than looking at the entire PUR model. Although the wording of Art. 6(1)(a) GDPR "*The data subject has consented to the processing of personal data relating to him or her for one or more specified purposes*" suggests that multiple purposes may be included in a consent case, the German supervisory authorities maintain their own position.

In the meantime, there are supervisory authorities in Germany that acknowledge only some of the data processing operations can be deselected at the second stage, For example, data processing

operations for advertising funding must be subject to mandatory consent, such as the Hamburg data protection supervisory authority.

Other authorities, such as the Lower Saxony authority, expected until recently that all purposes must be separately deselectable. This view resulted in the Lower Saxony authority demanding free access to the content and services of the offering, which cannot be refinanced by advertising and tracking or by a PUR subscription. If this logic were taken to its logical conclusion, it would mean that all content and services would disappear behind paywalls.

b) Position of the European Data Protection Board (EDPB)

The European Data Protection Board (EDPB) issued a statement on the subject of cookie walls in 2020 and clarified its position on the matter. It should be noted that the terms PUR and cookie wall are not interchangeable. A cookie wall refers to a request for consent which is the prerequisite for visiting the website, without offering an alternative access path. In its [Guidelines 05/2020 on consent under Regulation 2016/679](#), the EDPB takes the view (paras. 38, 39) that cookie walls are to be classified as unlawful if no reasonable alternative (paras. 40, 41) is offered. This can also be understood as meaning that cookie walls featuring an alternative path, such as PUR models, are permissible if the controller offers a reasonable alternative.

The Federal Commissioner for Data Protection and Freedom of Information in Germany also weighs in on this issue. He considers cookie walls to be permissible if "*a comparable service is also offered without tracking, for example as paid access to the online offering.*"

As far as the BVDW is aware, an updated position on PUR models is to be developed at European level in the EDPB.

c) Position of the Austrian data protection supervisory authority

On April 11, 2023, the Austrian supervisory authority published a decision on proceedings between the news website Der Standard in Austria and the data protection organization NOYB in the context of a complaint against Der Standard's PUR model.

First of all, it is interesting how differently Der Standard (<https://www.derstandard.at/consent/tcf/story/2000145408709/datenschutzbehoerde-bestaetigt-dass-pur-abo-des-standard-rechtmaessig-ist>) and NOYB (<https://noyb.eu/en/pay-or-okay-beginning-end>) interpret the decision (https://noyb.eu/sites/default/files/2023-04/Standard_Bescheid_geschwaerzt.pdf). Once again, it shows how important interpretive autonomy is.

In summary, the case was centered on NOYB's objection to the lawfulness of the data processing operations based on the PUR model on the website of Der Standard and filing a complaint with the authority.

The main findings are presented below:

Previous position of the Austrian data protection supervisory authority

- The Austrian data protection supervisory authority had already addressed the contested issue (admissibility of "pay or okay") in 2018 and decided that a paid subscription can be a viable alternative to consent (GZ: DSB-D122.931/0003-DSB/2018).
- The 2018 decision will not be overturned but will be supplemented after consultation with additional regulators and various rulings of the European Court of Justice.

Validity of consent in a particular case

- With reference to Directive (EU) 2019/770, it is recognized that contractual aspects for the provision of content and digital services may require the provision of data by the consumer.
- The granularity is used as a decisive criterion for the voluntariness of consent, with reference to Guidelines 05/2020 loc. cit., para. 43 f., of the EDPB. In this context, the GDPR refers to Recital 43, Sentence 2, GDPR: "*Consent shall not be deemed to be freely given if consent cannot be given separately for different processing operations of personal data, even if this is appropriate in the individual case.*"
- It is noted that the standard currently requires a single consent for numerous processing operations without providing a comprehensive explanation for why other processing operations are included in addition to consent for targeted advertising and advertising measurements. This suggests the assumption of a model in which only the "hard" refinancing purposes are binding on the user. However, this viewpoint lacks consideration that analytics tools and social plugins also contribute to the monetization of the offer.
- The reference to the possibility of using other news portals as justification for voluntariness is not accepted by the authority.
- In the opinion of the authority, such "blank consent" without granularity would lead to the real danger that many offers on the Internet (such as those from Facebook or Google) would follow this practice. The authority sees this as a serious encroachment on the fundamental right to data privacy of those individuals who cannot afford a subscription option. Such reasoning in the present decision seems very questionable and politicizes data protection.

Conclusion

- A paid subscription can still be an alternative to consent in Austria, especially since data subjects must be granted a certain degree of autonomy over the processing of their data.
- However, processing must be limited to what is absolutely necessary. There will be an interesting debate about what falls under this category.
- The design of the granularity regarding the processing purposes will also be crucial here.

d) Position of the French data protection supervisory authority CNIL and the NOYB

On May 16, 2022, the French data protection supervisory authority Commission Nationale de l'Informatique et des Libertés (CNIL) published the first [evaluation criteria in connection with cookie walls and so-called PUR models](#). The publication was triggered by numerous complaints and the question of legality in practice. As a result, the CNIL recognizes that many free services on the Internet are financed by (target group-specific) advertising.

CNIL cites a June 19, 2020 Council of State decision on cookie walls, which states "*that the requirement of free consent cannot justify a general ban on the practice of tracker walls, since the free consent of individuals must be assessed on a case-by-case basis, taking into account in particular the existence of a genuine and satisfactory alternative in the event of rejection of cookies.*"

Therefore, in the view of the CNIL, PUR models are fundamentally compliant with data protection. According to the CNIL's assessment criteria published in May 2022, a genuine choice and the opportunity for voluntary consent to an alternative, fee-based access without tracking, for instance, can be considered acceptable if the price charged is reasonable in the individual case. It remains to be clarified to what extent the providers of the PUR model must demonstrate and prove the appropriateness of their pricing.

The Danish Data Protection Authority suggests in its guidance on cookie walls that "companies wishing to use a cookie wall where the alternative to visitor consent is payment must not set an unreasonably high price for the payment alternative." The guidance further states, "It is not the role of the Danish Data Protection Authority to elaborate on the pricing of content, services, etc." Companies therefore have wide discretion in evaluating and determining the specific amount that a payment alternative must represent in order to obtain the visitor's consent for the processing of personal data.

Factors such as the scope of the data, its associated informative value and lifespan, as well as the customary market price for comparable offerings can serve as assessment criteria for measuring the "useful data value". The amount of advertising revenue lost when choosing the PUR subscription can also be considered when determining the appropriateness of the price. If editorial content is also published in a print format in addition to the online offering, the price for the print version can also be used as an aid in determining an appropriate price for the paid alternative to the online offering.

The Austrian data protection organization NOYB takes a similar, albeit more radical, position to the CNIL in France. The latter filed complaints with various supervisory authorities against PUR models and "cookie paywalls" employed by several prominent German and Austrian news sites in 2021 and 2022. NOYB based the complaint, among other things, on the lack of voluntary consent, as no equivalent alternative access was offered due to unreasonable prices. The costs for the alternative access would significantly exceed the lost advertising revenues due to the absence of tracking.

e) Data processing in PUR subscription

In their statement on PUR, the German data protection supervisory authorities state that, in the case of the paid alternative to consent, no data processing requiring consent should be active in principle, since the user has consciously opted for the PUR subscription and against data processing requiring consent (paragraph 3).

However, essential data processing operations that enable the website to function may continue to be used. In Germany, the "absolute necessity" according to Section 25 (2) No. 2 TTDSG must be taken into account in this context.

In the opinion of the BVDW, the provider is still permitted to request specific consent, such as for content displayed by third parties, including videos and graphics. It is recommended to implement a two-click solution and to request consent via a button before the content is displayed.

In addition, reach measurement and processing for personalization of content by the controller should also be possible if it is a personalized service.

f) Admissibility of PUR models in general

Under the current legal framework the implementation of PUR models is generally permissible. However, the legal conformity of the respective model depends on the design in the individual case. Transparency is crucially important for the voluntary nature of consent, including providing information about an equivalent alternative offer, and the appropriateness of the price.

The technical implementation of the value proposition is also essential, such as refraining from using cookies or other tracking technologies requiring consent for PUR subscriptions, unless this has been explicitly agreed upon additionally. According to the BVDW, the latter point is critical to advocating for PUR models on a broad scale.

On the part of the supervisory authorities, voluntariness is primarily assessed on the basis on the bundling of purposes within the context of consent, although there is no conclusive legal precedent on this matter to date. Contrary to the view of the German Data Protection Conference, the BVDW believes that PUR models can be considered permissible even without the option to select and deselect purposes on a granular basis at a second level of the consent query.

The wording of Art 6(1)(a) GDPR states that *"the data subject has given his consent to the processing of personal data relating to him for one or more specified purposes"*. This shows that it is possible under data protection law to give consent for several purposes. If Recital 43, Sentence No. 5 of the GDPR is also used in this context - *"consent shall not be deemed to be freely given where consent cannot be given separately for different processing operations of personal data, although this is appropriate in the individual case"* - it becomes apparent that here, too, separate consent for different purposes is not required per se, but only if *"this is appropriate in the individual case"*.

Thus, under the GDPR, there is no prohibition on bundling purposes as long as this is presented transparently to the data subject. Consequently, a "accept all" button, which allows consent to all data processing at the same time, is not inherently impermissible in terms of voluntariness. Contrary to the view of the supervisory authorities, It is not the case that the bundling of purposes results in a lack of voluntariness of the user's consent decision, nor should the evaluation of voluntariness be based primarily on this this criterion.

In the [ECJ judgment](#) of July 4, 2023, subscription models were also endorsed by the latter when it stated that users "may, where appropriate, be offered, for a reasonable fee, an equivalent alternative which does not involve such data processing operations" (para. 150). In detail, this paragraph states the following: *"Therefore, these users must be free to refuse individually, in the course of concluding the contract, consent to certain data processing operations that are not necessary for the performance of the contract, without being forced to completely renounce the use*

of the service offered by the operator of the online social network, which requires that they be offered, where appropriate for a reasonable fee, an equivalent alternative that does not involve such data processing operations."

In the opinion of the BVDW, there is no obstacle to the voluntary nature of consent pursuant to Article 7 (4) of the GDPR in the context of the classic PUR model. In fact, the introduction of a so-called PUR model even increases voluntariness, since it demonstrates to users the value of their own data in a tangible manner. This is also based on the fact that there is no obligation for a service provider to offer services and content free of charge.

4. Conclusion and future developments

It remains to be seen how the existing PUR models on the market, and in particular their evaluation under data protection law, will change. The statements published by the data protection supervisory authorities show that there are still unresolved legal issues here.

a) Privacy

- PUR models currently result in improved legal compliance by eliminating the discussion of a decline button at the first level of consent banners and no longer having services requiring consent active without prior user consent.
- In addition, PUR models reduce disputes with regulators in Europe, as they tolerate PUR and accept it in certain forms.
- The current draft of the ePrivacy Regulation of the EU Council of Ministers from February 10, 2021 regulates the permissibility of "cookie walls" with equivalent alternative access. The [Dutch data protection authority](#) itself also proposes offering a "paid" alternative instead of cookie walls. Accordingly, the PUR model would be permissible in principle.

b) Economic Effects

- Stabilization and (significant) increase in approval ratings.
- Increase in marketing revenues.
- PUR is relevant for content and service providers and for affiliated partners.

c) User perspective

- Transparent presentation of the fact that even free content and services must be refinanced.
- Free choice of the form in which access to content and services, and thus refinancing, takes place.
- PUR solutions currently lead to higher legal compliance than normal Consent Banners, without the possibility of rejection in the first stage.

d) Assistance for the practice

Each service provider must decide for itself which PUR variant is in line with its own business objectives and how it can possibly reduce regulatory risks.

The following questions may help to approach an answer:

- Should the scope of services of the PUR subscription only include the waiver of data processing requiring consent (i.e. tracking, for example) or also the waiver of advertising in general?
- Does the toll-free access option ask for consent for multiple purposes? If multiple purposes are stated, do users have the option to opt out of all or part of them?
- What is the consequence of selectively rejecting purposes in a granular fashion?
- Which data processing operations can be justified on the basis of a contract or legitimate interest without requiring the consent of PUR subscribers?
- What is the price and what criteria are used to determine it for the PUR subscription?