

900,000 euros fine against bank for profiling for advertising purposes

The State Commissioner for Data Protection (LfD) Lower Saxony has imposed a fine of 900,000 euros on a bank. The fine is not yet final.

The company had evaluated data from active and former customers without their consent. To do this, it analyzed digital usage behavior and evaluated, among other things, the total volume of purchases in app stores, the frequency of use of account statement printers and the total amount of transfers in online banking in comparison to the use of the branch offer. For this it used a service provider. In addition, the results of the analysis were compared with a credit agency and enriched from there. The aim was to identify customers with an increased inclination for digital media and to use electronic communication channels more to address them for contract-related or advertising purposes. Information was sent to most customers in advance along with other documents. However, these do not replace the necessary consents.

The company is accused of not being compatible with Article 6(1)(f) of the General Data Protection Regulation (GDPR).

According to this, a person responsible can process personal data on the basis of a balance of interests. The interests of the person concerned must not prevail. When setting the fine, it was taken into account that the company had not used the results of its evaluations. The company has also been cooperative throughout the process.

accumulation of similar cases

LfD Niedersachsen is becoming increasingly aware of cases in which those responsible evaluate customer data that was initially lawfully processed for profiling purposes. To do this, they sometimes use external providers or compare their results with them.

"Those responsible for such evaluations often do not obtain the consent of customers," says state data protection officer Barbara Thiel. "Instead, they refer to a balancing of interests according to Article 6 paragraph 1 letter f DS-GVO. However, this legal basis does not allow profiles to be created for advertising purposes by evaluating large databases."

It is true that advertising to (potential) customers is in the interests of those responsible. However, the legislator classifies this interest as less important by providing the data subjects with a simplified possibility of objection. The objection does not have to be justified. When weighing up the interests, the interests of the customers concerned also prevail.

Reasonable expectation prevails

When balancing interests, those responsible must, among other things, take into account the reasonable expectations of

customers. "However, those affected do not usually expect the responsible persons to use databases on a large scale to identify their inclination towards certain product categories or communication channels," says Barbara Thiel. In these cases, those responsible cannot therefore invoke a weighing of interests and must instead obtain consent.

If external bodies are also included (e.g. credit agencies), data from different areas of life can be linked and more precise profiles can be created. Customers do not have to reckon with this, which is why consent must be obtained for this as well.

Press release as PDF download (not fully accessible).