

Wednesday, January 18, 2023 2: Press releases European Court of Justice hears fundamental question on sanctioning data protection violations by companies P R E S S E I T T E I L I N G

the Conference of Independent Data Protection Authorities

of the federal and state governments of January 18, 2023 DSK statement in full Before the European Court of Justice, the oral hearing in the "Deutsche Wohnen" case (C-807/21) took place on Tuesday, January 17, 2023. The background is a fine of 14.5 million euros imposed on the company by the Berlin Commissioner for Data Protection and Freedom of Information (BlnBDI) for excessive storage of tenant data. The ECJ is now dealing with the fundamental question of whether a legal entity operating a company in Germany can be sanctioned directly for data protection violations under the General Data Protection Regulation (GDPR) in accordance with the principles of EU law, without an administrative offense being committed by a natural and identified manager must be determined. Such requirements are alien to the GDPR. Accordingly, in yesterday's oral hearing, the ECJ was particularly interested in the extent to which national regulations in Germany represent obstacles to European harmonization. Due to the importance of the case, the conference of the independent data protection supervisory authorities of the federal and state governments (DSK) has positioned itself in the run-up to the hearing with a legal assessment (<https://uldsh.de/230118-dsk>). Marit Hansen, State Commissioner for Data Protection in Schleswig-Holstein and Chairwoman of the Data Protection Conference for 2023: "The decision in this process will set a fundamental course for Germany. It is therefore eagerly awaited by the German data protection supervisory authorities." Meike Kamp, Berlin Commissioner for Data Protection and Freedom of Information: "The sanctioning of data protection violations by companies is currently much more difficult in Germany than in other EU member states. This contradicts the goal of uniform enforcement of European law and is not in line with the GDPR. In the case of large corporations in particular, it is often almost impossible to prove personal causation in the company management. Hopefully, the proceedings before the ECJ will create the necessary legal certainty for companies and supervisory authorities on this issue." Background:

The Berlin Commissioner for Data Protection and Freedom of Information imposed a fine of 14.5 million euros on the company's leading legal entity in 2019 for excessive storage of tenant data. The Berlin Regional Court discontinued the proceedings. The decision of the regional court is based on the legal opinion that fines for violations of the General Data Protection Regulation can only be imposed on legal entities if the violation was committed by a manager, either through their own actions or through a breach of supervisory duties. This corresponds to German administrative offense law, but not to the

principles of sanctioning administrative offenses in EU law. Due to a complaint by the public prosecutor's office in agreement with the Berlin data protection officer, the proceedings are now pending at the Berlin Court of Appeal, which has submitted the key legal issues to the ECJ for a preliminary ruling. The Bonn Regional Court, as a German court, recognized in another procedure that the Union legislature, through the European regulation on the punishment of data protection violations, in the interest of enforcing a uniform Union-wide data protection standard, requires legal persons to be sanctioned directly. Deviating from the European context, German administrative offense law assumes that violations of national fines can only be committed by natural persons (so-called legal entity principle). Under European antitrust law, on the other hand, direct sanctions against the company only require the determination that employees of a company have committed a violation, without the actual persons acting being identified or having to be managers of the company (principle of officials). Contact:

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