

Fine against VattenfallEuropeSalesGmbH

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Fine imposed on Vattenfall Europe Sales GmbH

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Between August 2018 and December 2019, Vattenfall Europe Sales GmbH (Vattenfall) routinely checked whether customers were showing "conspicuously changing behavior" when it came to contract inquiries for special contracts that were associated with special bonus payments. This review was intended to prevent customers from not concluding such bonus contracts so regularly that this offer to acquire new customers is no longer profitable for the company. To check this, Vattenfall used invoices from previous contractual relationships with these customers, which, according to tax and commercial law, must be kept for up to ten years anyway. The customers could not see that such a data comparison was taking place.

After examining the process, the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) came to the conclusion that Vattenfall violated the data protection transparency obligations (Articles 12, 13 GDPR) with this procedure, as the customers were not sufficiently informed about the data comparison became. A total of around 500,000 people were affected. The HmbBfDI then imposed a fine of 901,388.84 euros on Vattenfall. The unlawfulness found does not relate to the data comparison itself, but is limited to the insufficiently fulfilled transparency obligations. The decision is final.

The fine imposed does not affect the further question of whether such a comparison is permissible at all. This is not expressly regulated in the GDPR, so there are no clear legal requirements in this respect. The HmbBfDI has agreed a procedure with Vattenfall which, in its opinion, takes into account both the data protection rights of customers and the economic interests of the company. Both those who are interested in concluding a contract with Vattenfall for the first time and existing customers are informed in a transparent and understandable way about the data comparison and its purpose. In the future, consumers will be able to make an informed decision as to whether they want to conclude a discounted bonus contract that includes an internal review of their status as a new customer, or a non-discounted contract without such a comparison.

Ulrich Kühn, the acting HmbBfDI: "We consider the procedure now being practiced to be an appropriate balance between all the interests involved. The comparisons made in the past were sanctioned because transparency obligations were violated by customers disregarding the requirements of Art. 12, 13 GDPR were left in the dark about the practiced data comparison. Since

this affected around 500,000 cases, the imposition of a fine was indicated. Vattenfall cooperated extensively with the HmbBfDI in the process and stopped the opaque data comparison immediately after the HmbBfDI took action. Therefore, the fine had to be significantly reduced. The amount that was nevertheless imposed should be a warning to all companies not to neglect the statutory transparency obligations. In the case of a large number of those affected, high fines are clearly indicated, as in the present case.”

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