

PRESS RELEASE

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Conflict of interest of the company data protection officer: EUR 525,000 fine against the subsidiary of a Berlin e-commerce group

The Berlin Commissioner for Data Protection and Freedom of Information (BlnBDI) has imposed a fine of 525,000 euros on the subsidiary of a Berlin trading group because of a conflict of interest of the company data protection officer. The company had appointed a data protection officer to independently monitor decisions that he himself had made in another capacity. The fine is not yet final.

Company data protection officers have an important task: They advise the company on data protection obligations and monitor compliance with data protection regulations. Pursuant to Art. 38 Para. 6 Sentence 2 of the General Data Protection Regulation (GDPR), this function may only be performed by persons who are not subject to any conflicts of interest due to other tasks. This would be the case, for example, for people with managerial positions in the company who themselves make significant decisions about the processing of personal data in the company. The task must therefore not be performed by persons who would thereby monitor themselves.

According to the BlnBDI, such a conflict of interest existed in the case of a data protection officer of a subsidiary of a Berlin e-commerce group. The person was also the managing director of two service companies that processed personal data on behalf of the very company for which he worked as data protection officer. These service companies are also part of the Group; provide customer service and carry out orders.

Berlin Commissioner for Data Protection and Freedom of Information (BlnBDI)

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The data protection officer therefore had to monitor compliance with data protection law by the service companies active in the context of order processing, which he himself managed as managing director. In this case, the BlnBDI saw a conflict of interest and thus a violation of the General Data Protection Regulation.

The supervisory authority therefore initially issued a warning against the company in 2021. After another check this year

showed that the violation persisted despite the warning, the BlnBDI imposed the fine, which is not yet final.

Volker Brozio, Acting Head of the BlnBDI: "This fine underscores the important role of data protection officers in companies. A data protection officer cannot on the one hand monitor compliance with data protection law and on the other hand have a say in it. Such self-regulation contradicts the function of a data protection officer, who is supposed to be an independent body that works towards compliance with data protection in the company."

When assessing the fine, the BlnBDI took into account the three-digit million turnover of the e-commerce group in the previous financial year and the important role of the data protection officer as a contact person for the large number of employees and customers. The intentional re-appointment of the data protection officer for almost a year despite the warning already issued was also taken into account. Among other things, classified that the company worked extensively with the BlnBDI and stopped the violation during the ongoing fine proceedings.

"In order to avoid data protection violations, companies should check for conflicts of interest in any dual roles of the company data protection officer in corporate structures," says Brozio. "This applies in particular when there is order processing or joint responsibilities between the group companies."