

PRESS RELEASE

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Conflict of interest of the company data protection officer: 525,000 euros fine

against the subsidiary of a Berlin e-commerce group

The Berlin Commissioner for Data Protection and Freedom of Information (BlnBDI) has against the

Subsidiary of a Berlin trading group a fine of 525,000 euros

of a conflict of interest of the company data protection officer. The company

had appointed a data protection officer who was to independently monitor decisions

whom he himself had met in another capacity. The fine is not yet final.

Company data protection officers have an important task: They advise the company

with regard to data protection obligations and monitor compliance

Privacy Policy. According to Art. 38 Para. 6 Sentence 2 data protection

Basic Regulation (DS-GVO) only exercise persons who do not have any conflicts of interest

subject to other duties. This would be, for example, for people with managerial positions in

This is the case for companies that have the authority to make decisions about the processing of data

meet personal data in the company. The task must therefore not be carried out by persons

are perceived, which would thereby monitor themselves.

According to the BlnBDI, there was a conflict of interest in the case of a data protection officer

Subsidiary of a Berlin e-commerce group. The person was at the same time

Managing directors of two service companies who work on behalf of exactly that company

processed personal data for which he worked as data protection officer. This

Service companies are also part of the group; provide customer service and

execute orders.

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and Freedom of Information (BlnBDI)

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The data protection officer therefore had to ensure compliance with data protection law by the monitor the service companies active in order processing, which he himself considers directors were managed. 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 a re-examination this year revealed that the violation despite the warning persisted, the BlnBDI imposed the fine, which is not yet legally binding.

Volker Brozio, Acting Head of the BlnBDI: "This fine underlines the important role of data protection officers in companies. A data protection officer can not on the one hand monitor compliance with data protection law and on the other hand about it co-decide. Such self-regulation contradicts the function of a data protection officer, which is supposed to be an independent body responsible in the company for compliance with the data protection."

When assessing the fine, the BlnBDI took into account the three-digit million turnover of the e-Commerce Group in the previous fiscal year and the significant role of the

Data protection officer as contact person for the large number of employees and customers.

The intentional re-appointment of the data protection officer via fast was also taken into account one year despite the warning already issued. Among other things, classified that that

Company worked extensively with the BlnBDI and reported the violation during the

ongoing fine proceedings.

"To avoid data breaches, companies should avoid any dual roles of the company data protection officers in corporate structures for conflicts of interest," says Brozio. "This applies in particular when order processing or joint Responsibilities exist between the group companies."