

PRESS RELEASE

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Conflict of interest of company data protection officer: 525,000 euro 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-based retail group due to a conflict of interest of its company data protection officer. The company had appointed a data protection officer to independently monitor decisions which he himself had made in another function. The fine is not yet legally binding.

Company data protection officers have an important task: they advise the company regarding data protection obligations and monitor compliance with data protection regulations. Pursuant to Art. 38 (6) sentence 2 GDPR, this function may only be performed by persons who are not subject to conflicts of interest due to other tasks. This would, for example, be the case for persons with executive functions in the company who themselves make significant decisions about the processing of personal data in the company. Accordingly, the task may not be performed by persons who would thereby monitor themselves.

In the opinion of 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 simultaneously the managing director of two service companies that processed personal data on behalf of the same company for which he was acting as the data protection officer. These service companies are also part of the Group; provide customer service and execute orders.

Accordingly, the data protection officer was required to monitor compliance with data protection laws for the service companies which operated within the scope of the commissioned processing, and which were managed by him as the managing director. The BlnBDI saw a conflict of interest in this case and thus a breach of the General Data Protection Regulation.

The supervisory authority therefore initially issued a warning against the company in 2021. After a renewed inspection this year showed that the violation continued despite the warning, the BlnBDI imposed the fine, which is not yet legally binding.

Volker Brozio, commissioner head of service at BlnBDI: *"This fine underlines the important role of data protection officers in companies. A data protection officer cannot monitor compliance with data protection laws on the one hand and make decisions about them on the other. Such self-monitoring contradicts the function of a data protection officer, who is supposed to be an independent authority working within the company to ensure compliance with data protection law."*

When determining the amount of the fine, the BlnBDI took into account the e-commerce group's turnover of three-digit millions in the previous fiscal year and the significant role of the data protection officer as a contact person for the high number of employees and customers. Consideration was also given to the intentional continued appointment of the data protection officer for almost a year despite the warning that had already been issued. Among other things, the fact

that the company cooperated extensively with the BlnBDI and stopped the violation during the ongoing fine proceedings was deemed to reduce the fine.

"To avoid data protection violations, companies should check any duplicate roles of company data protection officers in corporate structures in terms of conflicts of interest," says Brozio." This particularly applies for commissioned processing activities according to Article 28 GDPR or joint controllership relationships between group companies."