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EU Data Protection European Court of Justice: Germany Did Not Fulfill Data Protection Directive Obligations

by Lisa Nuch Venbrux and Andrea Schuessler

The European Court of Justice March 9 ruled that Germany failed to live up to its obligations under Article 28(1) of the EU Data Protection Directive (95/46/EC), which requires that data protection authorities operate “with complete independence in exercising the functions entrusted to them,” according to the court (Commission of the European Communities, v. Germany, E.C.J., No. C-518/07, 3/9/10).

In the case, the European Commission — which started infringement proceedings against Germany in 2007 — argued that data protection authorities in Germany’s regions, known as L ander, can not operate with complete independence since they are part of regional administrations and thus subject to state scrutiny.

Federal Data Protection Commissioner Peter Schaar said in a March 9 statement, “I am very happy that the European Court of Justice took a firm stand. This is a significant strengthening of data protection. Germany is now obligated to take actions to eliminate the contract’s violation. Even though the ruling directly addresses the data protection authorities of the German Laender, we will also have to look into further consequences for other authorities that are in charge of supervising data protection.”

Germany claimed that “the State scrutiny exercised in the German Laender does not constitute ... an external influence, but rather the administration’s internal monitoring mechanism, implemented by the authorities attached to the same administrative machinery as the supervisory authorities and required, like the latter, to fulfill the aims of [the Data Protection] Directive 95/46,” the court wrote.

The court rejected this argument, saying that regional governments “may have an interest in not complying with the provisions with regard to the protection of personal data [processed by non-public bodies]” if the government is itself an interested party in the data processing, such as in the case of public- private partnerships or contracts with the private sector. The government may also have an interest in databases for law enforcement or tax purposes, or favor companies that are “economically important” for the region, the court said.

“Furthermore, it should be pointed out that the mere risk that the scrutinising authorities could exercise a political influence over the decisions of the supervisory authorities is enough to hinder the latter authorities’ independent performance of their tasks,” the court wrote.

Reaction to Decision.

European Data Protection Supervisor Peter Hustinx, who supported the Commission as an intervener in the case, applauded the ruling.

“The judgment of the Court is of great importance. It strengthens and clarifies the position of data protection authorities as part of the fundamental right to data protection. This judgment is relevant for all supervisory authorities in all EU Member States,” Hustinx said in a statement.

“I think [the judgment] is not so surprising. The discussions have been there in Germany for a long time It’s good that the ECJ clarified that situation here,” Jorg Hladjk of Hunton & Williams LLP, Brussels told BNA March 9.

The only surprising aspect of the case, he said, was that the court went against an October 2009 opinion of the court’s Advocate General Jan Mazak, who said that the case against Germany should be dismissed. “It was surprising that the court didn’t follow the general advocate’s opinion ... which is very rare,” Hladjk said.

As a result of the ruling, Germany will have to reform the structure of its data protection authority system, Hladjk said. “I think it’s difficult to say how they will approach it. But they will need to make changes to the administrative structure of the setup they have currently. It cannot be done in a couple of weeks — we’re looking at a much longer period of time here,” Hladjk said.

The Commission first warned Germany about the issue in July 2005, when the Commission sent a “letter of formal notice”; German authorities replied in September that year, maintaining that the German system complied with the directive’s requirements. Germany also held its ground after receiving a “reasoned opinion” from the Commission in December 2006, according to the ruling.

A link to the final judgment, as well as other documents in the proceeding, such as the advocate general’s opinion, is available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&=Submit&=C-518/07>.

The EU Data Protection Directive (95/46/EC) is available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>.