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Advocate General's Opinion in Case C-768/21 | Land Hessen (Obligation of the data protection authority to act)

Protection of personal data: according to Advocate General Pikamäe, the supervisory authority has an obligation to act when it finds a breach in the course of investigating a complaint

However, the decision as to what corrective action to take depends on the specific circumstances of each individual case

A customer of a savings bank asked the Data Protection and Freedom of Information Commissioner for Land Hessen (Germany) to take action against the savings bank because of a breach of his personal data. One of the employees of the savings bank had consulted his data on several occasions, without being authorised to do so.

The Data Protection Commissioner identified a breach of data protection under the General Data Protection Regulation (GDPR) ¹. However, the Commissioner concluded that there were no grounds for action against the savings bank, which had already taken disciplinary measures against the employee concerned.

The customer challenged that refusal before a German court, asking it to order the Data Protection Commissioner to take action against the savings bank. In particular, he argues that the Data Protection Commissioner should have imposed fines on the savings bank.

The German court asked the Court of Justice about the powers and obligations of the Data Protection Commissioner as a “supervisory authority” within the meaning of the GDPR.

Advocate General Priit Pikamäe considers that the supervisory authority has an obligation to act when it finds a personal data breach in the course of investigating a complaint. In particular, it would be **required to define the most appropriate corrective measure(s)** to remedy the infringement and ensure that the data subject’s rights are respected.

In that regard, while leaving some discretion to the supervisory authority, the GDPR would require that such measures be appropriate, necessary and proportionate. The result would be, on the one hand, that discretion in the choice of means is limited where the protection required can only be ensured by taking specific measures ², and, on the other hand, that the supervisory authority could, under certain conditions, dispense with the measures listed in the GDPR when this is justified by the specific circumstances of the individual case. This could be the case in particular where the controller has taken certain measures on its own initiative. In any event, **the data subject would not have the right to require the adoption of a particular measure** ³. Those principles would also apply to the system of administrative fines ⁴.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

² Thus, it would not even be ruled out that, depending on the specific circumstances of the particular case, the discretion could be limited to the adoption of the only appropriate measure.

³ Except, where appropriate, where the discretion would, depending on the specific circumstances of the particular case, be limited to the adoption of the only appropriate measure. On the other hand, as regards the imposition of a fine, the Advocate General categorically excludes, because of its criminal nature, any subjective right of the data subject to have such a penalty imposed.

⁴ With regard to the discretion of the supervisory authority, the Advocate General observes that the principle of equal treatment makes it necessary to develop an administrative practice of imposing fines for similar cases in a comparable manner.