



RA Bodo Michael Schübel - Hohenstaufenring 62 - 50674 Cologne

Labour Court Berlin

Magdeburger Platz 1
10785 Berlin

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Bodo Michael Schübel
Rechtsanwalt
Fachanwalt für Arbeitsrecht

ANLAGE 1 / Enclosure 1

Ü B E R S E T Z U N G / Translation, 17-02-2019

Our sign: XXX

bs Cologne, 02 -2020

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Opponents: Copies attached for delivery

Legal Action under Article 15, 82, 79 II p.2 EU - GDPR

of EMPLOYEE, XXX , xxx Berlin

- Applicant -

represented by Bodo Michael Schübel, Attorney at law,
Hohenstaufenring 62, 50674 Cologne

against

**Employer INTERNATIONAL INC., represented by Chief Executive Officer (CEO) XXX,
Damrak X, XXX NH Amsterdam, The Netherlands,**

- Defendant -

represented by: ???

for: Right of access under Art. 15 I, III EU - GDPR,
Compensation Art. 82 EU - GDPR

Provisional amount in dispute: € 16. 860,00 (damage € 9,360.00 + € 2,500,00 , information € 5.000,00)

We are bringing an legal action on behalf of the applicant and we apply to the court to rule out

1. The defendant is convicted,

- a. **to provide comprehensive and complete information under Article 15 I, III EU - GDPR on - all - personal data undergoing processing by the applicant on the employment relationship between the applicant and the defendant during the period from 08.01.2018 to 31.12.2019,**
- b. **in particular to provide information**
on all personal data undergoing processing by the defendant to calculate the applicant's bonus pursuant to Section II 4 of the employment contract between the parties,
 - aa. **for the bonus entitlement in the period 01.10.2018 to 30.09.2019 for the financial year of the plaintiff 01/10/2018 to 30/09/2019**
 - bb. **for the pro rata bonus entitlement in the period 01.10.2019 – 31.12.2019 for the financial year of the plaintiff 01.10.2019 to 30.09.2020**

by providing thereby also

(1.1) bonus pool Employer target-reaching matrix a. 01.10.2018 to 30.09.2019 and b. 01.10.2019 to 31.10.2019

(1.2) Employer's budget and financial plan a. 01.10.2018 to 30.09.2019 and b. 01.10.2019 to 31.10.2019

(1.3) 360 degree performance preview of the applicant from autumn 2018

*(2) all **digital and manual and machine-written records for the calculation of the applicant's bonus, in particular records, notes, work instructions, letters and e-mails from the applicant's technical superiors until September 2019: Mr J. E. (ex-CEO), Mr T. L.n (Chief Financial Officer), Mr C. S. (Specialist, Managing Director) , Ms A. E. (Head Human Resources)***

- c. **to provide the applicant with a free – unadulterated – copy of all personal data relating to Application 1 a and 1 b per pdf, , if technically not possible by way of alternative in a file form that can be used with generally accessible software on a physical data carrier such as a USB stick or CD/DVD,**

2. The defendant is further convicted to provide **information by an orderly account** of:

- a. **duration, nature and purpose of all data processing operations in relation to the data affected after application to 1 for the determination of the annual bonus for the period 01.10.2018 to 30.09.2019 and 01.10.2019 to 31.12.2019 and thereby subdivided according to the individual processing steps, including but not limited to the indication,**
 - aa. **whether personal data are merged with the data of group**

companies, in particular but not exclusively EMPLOYER Inc, USA, and Mother Company Group, USA,

bb. whether personal data have been **passed** on to third parties other than those designated under **Application for 1 and 2.a of designated companies or persons**, or whether third parties other than the **companies** referred to **in Application for 1 and 2 a** are allowed access to such **data**;

- b. Legal basis and legality requirements of the respective data processing application to 1 and application to 2 b in particular but not limited to the indication of which standard contractual clauses apply for an international data transfer.**
- c. all mandatory information under Article 37 VII concerning the defendant's data protection officer, in particular**
- aa. address, phone number, e - mail and name,**
 - bb. Date and content of the notification to the Dutch data protection supervisory authority.**

3. The defendant is convicted

to pay compensation under Article 82 GDPR to the applicant, of an amount to be determined by the court, but at least in the amount of € 9,360.00 plus a further € 2,500,00 in total at least minimum € 11,860.00 plus 5% interest above the base interest from the date of notification of the legal action.

Procedurally we request in addition,

- 1. to service process of the law suit brought by the defendant in accordance with §§ 33 , 42 of the ZRHO in Amsterdam, the Netherlands, accompanied by an annexed translation in English, in accordance with the procedural rules of the Netherlands (point 5.1 of Form I EuZustVO), as soon as the translation in progress is subsequently submitted, and the legal out of court representatives inform, whether they are authorized recipient.**
- 2. to give advice insofar as further or amended requests/procedural acts appear necessary in the legal opinion of the court due to the special features.**

Justification

The applicant was employed by the defendant company of US legal form in the period from 8 January 2018 to 31 December 2019 as Managing Director at its registered office in Amsterdam, the Netherlands, with an annual fixed salary of € 180,000, plus OnTarget Bonus, amounting to at least 20% on the annual fixed salary.

On 25 September 2019, the defendant, against her will, released the applicant from the further obligation to perform work until the end of the fixed-term contract 31.12.2019. The amount of the annual bonus payment for the period 1.10.2018 to 30.9.2019 and pro rata for the period 1.10.2019

to 31.12.2019 is also in dispute between the parties in the outcourt attempt to wind up successfully outstanding payments of the employment contract.

I. Subject-matter of the dispute / Objective of action

1. With the applications to 1. and 2. the applicant claims access to all information as applied for pursuant to Article 15(1), (3) EU - GDPR, Art. 7 sec. 2 EU - Charter of Fundamental Rights – with respect on all personal data undergoing processing from the employment relationship, according to Recital 63 p.7 EU - GDPR specified in particular to all personal data under Article 4 I EU - GDPR for the calculation and verification of the correctness of their salary component "On TargetBonus" pursuant to section II 4 of the employment contract.

2. The plaintiff continues to claim damages under Article 82(1) EU - GDPR for data processing in breach of the EU GDPR by the defendant when determining the annual bonus for that period, as well as the defendant's refusal to provide access in whole or in part to the information already requested out of court under Article 15 EU – GDPR.

3. The international jurisdiction of the Berlin Labor Court results from Art. 79 para. 2 sentence 2 EU GDPR, because the plaintiff has her habitual residence in Berlin at the address given in the complaint sub-section. The subject of the lawsuit at the habitual residence Berlin shall only be claims under the EU GDPR, which as supranational law also applies without restriction to the employment relationship between the parties ruled under Dutch labor law.

4. Delivery of the legal action in the German original with English translation in accordance with Attachment under Art. 8 I a EuZustVO is requested - as soon as a proper translation is submitted.

The correct language to translate in is the English language. The employment contract as well as all internal communication between all employees and the US-American Leadership Team as well as all external communication with all customers and service providers including internet presence (<https://www.Employer.com/about/leadership>) are carried out exclusively in English language.

II. Details

In particular, the following applies:

1. The applicant is entitled under article 15 I, III EU - GDPR to information as requested in **detail** with the application to 1.

a. By letter dated 14.10.2019 and, under threat of legal action, by letter dated 02.01.2020, the applicant claimed access to information on the calculation and derivation of the bonus for the

defendant's financial year from 01.10.2018 to 30.09.2019 and the personal data undergoing processing by the defendant. The respondent refuses to provide access to further information.

The defendant's American financial year is valid for the period from 1 October of the year to 30 September of the following year. For the pro rata employment period of just under 9 months from **8.1.2018 to 30.9.2018**, the defendant paid the plaintiff a pro rata bonus in the amount of EUR 38,025.00, i.e. for that period an on top bonus of **28.1%** on the fixed annual salary amount for the pro rata financial year 08.01.2018 to 30.09.2018.

For the financial year **1.10.2018 to 30.09.2019**, **the defendant paid** the plaintiff an **annual bonus of € 37,740.00 gross, i.e. 20.96 %** on the fixed annual salary amount for that period, without further factual justification instead of 28.1% as in the previous year. For the period from **1.10.2019 to the end of the employment relationship 31.12.2019**, however despite lengthy out-of-court communication, the defendant refused to pay a bonus payment since the end of September 2019, under violation of **II 4 of the employment contract, as well as the defendant refused to provide access of information to this topic under Article 15 I, III EU - GDPR.**

b. The applicant needs the information requested to verify the amount of the annual bonus granted for the period 01.10.2018 to 30.09.2019 and the pro rata period 01.10.2019 to 31.12.2019 in which the defendant disputes the obligation to pay bonus. As to the bonus claim, Section II 4 of the employment contract in the English original states:

Employee is eligible to participate in Employer's employee benefit program. Details of the current benefits in this program are available on request. This program is subject to change from time to time and Employee will be able to participate in any program additions during the term of this agreement including a bonus program with an on-target bonus being 20% of your annual salary.

Translated into German as follows:

Der Mitarbeiter ist berechtigt am Bonusprogramm des Arbeitgebers teilzunehmen. Einzelheiten zu den aktuellen Bonusansprüchen sind auf Anfrage erhältlich. Dieses Programm kann sich von Zeit zu Zeit ändern wobei der Mitarbeiter an allen Ergänzungen während der Laufzeit der Vereinbarung teilnimmt, einschließlich einem Bonusprogramm mit einem On Target Bonus von 20 % des jährlichen Einkommens

By e-mail of 02.12.2019, the defendant defined the **calculation parameters of the annual bonus** for the period 01.10.2018 to 30.09.2020 as follows:

5. The bonus payments are calculated as a percentage of the earned bonus pool. As a "pay for performance" company, Company's personal allocation of the pool is a percentage of the overall earned compensation for the year which is based on their absolute and relative performance levels as well as the following other factors: - Total compensation including recent compensation adjustments. - Current market rates for different positions. - Relative compensation and performance within the firm. - Current as well as future potential of an individual. - Company's budget and financial plan.

In German translation:

Die Bonuszahlung errechnet sich aus einem **prozentualen Anteil des verdienten Bonuspools**. Als eine „Bezahlung für Leistung“ Gesellschaft, **errechnet sich** der Gesellschaft *Zuordnung* an dem Pool. (*entspricht die persönliche Zuteilung des Pools durch die Gesellschaft*) aus einem **Prozentsatz der für das Jahr insgesamt verdienten Vergütung, der auf dem absoluten und relativen Leistungsniveau sowie den folgenden anderen Faktoren basiert**: - Gesamtvergütung einschließlich aktueller Kompensationsanpassungen. - aktuelle Marktkurse für verschiedene Positionen – Relative Vergütung und Leistungen innerhalb der Firma - gegenwärtiges als auch künftiges Potenzial des Einzelnen – der Gesellschafts Budget – und Finanzplan

A factually verifiable calculation of the bonus, including the derivation of the basis of payment, is not possible on the basis of this information, but only and at most after the data claimed - information has been granted.

c. To calculate the bonus, the defendant uses an internally designated "bonuspool Company s target matrix" according to application to 1 c 1.1 + 1.2. The defendant must provide "Company's budget and financial plan" for a. fiscal year 01.10.2018 to 30.09.2019 and b. pro rata financial year 01.10.2019 to 31.10.2019. Insofar, personal, performance-related assessments of the applicant are relevant in accordance with the bonus criterion 'Relative compensation and performance within the firm', the defendant must submit the performance test in accordance with application 1 c (1.3) which the defendant, with the applicant's consent, performed in the autumn of 2018 with an external personnel company.

d. All information contents which are claimed in particular under Application 1 and 2 are personal data within the meaning of Article 4 I EU - GDPR.

Under the previously known case law decisions on Article 15 EU - GDPR data processing in accordance with Article 4 I EU - GDPR includes "all data" on the person as applied for. The OLG Köln had last stated on 29.07.2019 by judgment of 26.07.2019, 20 U 75/18, <https://open-jur.de/u/2177719.html>,

313 The concept of 'personal data' under Article 4 GDPR is **broad and**, according to the legal definition in Article 4(1) of the GDPR, covers all information relating to an identifiable natural person.

314 The provision thus covers personal information used in context, such as identification characteristics (e.g. name, address and date of birth), external characteristics (such as gender, eye colour, height and weight) or internal conditions (e.g. opinions, motives, wishes, beliefs and value judgments), as well as factual information such as property and ownership relationships, communication and contractual relations and all other relationships of the data subject with third parties and their environment. *Clear/cooling* in Kühling/Buchner, DS-GMO/BDSG, Art. 4 GDPR paragraph 8; *Ernst* in: Paal/Pauly, DS-GMO/BDSG, 2nd edition 2018, Art. Such statements, which provide a subjective and/or objective assessment of an identified or identifiable person, also have a personal reference (*Klar/Kühling* in Kühling/Buchner, aaO, Art. 4 GDPR paragraph 10 m.w.N.; *Ernst* in: Paal/Pauly, aaO, Art.

The claim for information includes all digital as well as hand written and machine-written records specified in the application to 1 c (2). According to the principle of "technology neutrality" enshrined in recital 15 EU GDPR, the protection of the EU GDPR "should apply to

the processing of personal data by automated means, as well as to manual processing". Insofar as, contrary to expectations, handwritten records of the named employees of the defendant for the bonus have not yet been digitally processed Section 26 V II BDSG expressly states – here the legal idea of - in addition in the employment relationship, that the principles of Article 15 I EU - GDPR also apply if "personal data, of employees including special categories of personal data, are processed *without being stored or intended to be stored in a filesystem.*"

In its **judgment of 20.12.2018, 17 Ca 4075 /17**, the **LAG Baden –Württemberg**, as the first Regional Labour Court, confirms this interpretation of Article 15 EU – GDPR, and states, inter alia, that:

" .. the employee in the existing employment relationship has the right to get access in the personnel file ("Personalakte") undergoing processing. **Under "personnel file"** it is understood that any collection of documents which **is internally related to the worker, irrespective of the form, material, internal department ("Stelle") and place where it is kept Rz17.5 : The fact that the defendant processes personal data of the applicant is apparent** from the large number of **official e-mails submitted by the parties as printouts in this dispute**, which the plaintiff wrote, sent and received in the course of his employment. Each individual e-mail sent and received by the plaintiff already contains personal data, namely information relating to the plaintiff

17.4. The applicant is entitled to the provision of information on **personal performance and behavioural data. Personal performance and behavioural data is a specific category of personal data i.s. of Art 15 I 2b EU - GDPR i.V.m. Art. 4 I EU - GDPR.**

.... 17.7 **The right to provide access with of a copy of the data follows from Art. 15 III P.1 EU - GDPR.**

Therefore, all personal data cited in the applications for 1 and 2 a and 2 b are covered by the right to information under Article 15 I, III EU - GDPR, here in particular specified on the salary component bonus 10 – 2018 to 12 – 2019.

e. In this regard, the defendant is obliged under **Article 15 III P.1 EU (GDPR)** to provide all the information claimed from application for 1 a and 1 b with " a copy of the personal data undergoing processing ". The information shall be provided in accordance with Article 12 III P.1 EU - GDPR without undue delay and in any event within one month of receipt of the request, and in accordance with Article 12 V EU - GDPR free of charge.

2. The applicant is entitled under Article 15 I EU – GDPR to an orderly compilation of the information referred to in application 2.

a. The legal basis for applications 2 a + b is Article 15 I EU - GDPR i.V.m. with the obligation to maintain a record of processing activities under Article 30 I + II EU - GDPR.

b. The applicant is also entitled, in accordance with Article 15 I i i.V.m. Art 37 VII EU – GDPR, to designate all the information requested in the application for 2c concerning the data protection officer of the defendant, since the defendant has not yet disclosed information on its data protection officer in breach of Article 37 VII EU – GDPR.

The defendant's subject-matter requires a data protection officer under Article 37 I EU GDPR. The defendant's core activity exists in accordance with Article 37 I b EU — GDPR in the performance of processing operations which, by virtue of their nature, their scope and their purposes, require regular and systematic monitoring of data subjects on a large scale. In <https://www.Employer.com/right> at the beginning, it says:

"We deliver real-time and historical data, forecasts, analytical insight, tools, and software solutions leveraging a combination of unique data collection techniques, data science, and a team of experienced energy market analysts".

in German translation:

„Wir liefern Echtzeit- und Verlaufsdaten, Prognosen, analytische Erkenntnisse, Tools und Softwarelösungen, die auf einer Kombination einzigartiger Datenerfassungstechniken, Datenwissenschaft und einem Team erfahrener Energiemarktanalysten beruhen“.

3. The applicant is entitled to compensation under Article 82 I EU - GDPR in accordance with the application for 3

- a. because of the defendant's refusal, contrary to its obligations under Article 15 I, III EU , GDPR, to provide information on all personal data for the purpose of calculating the bonus and proving the correctness of the calculation of the applicant's bonus in the period 01.10.2018 to 31.12.2019,**
- b. because of the defendant's refusal to comply with its obligations under Article 24 I EU (GDPR) and also Article 5, 6 EU - GDPR in general, and with regard to the calculation of bonuses in particular,**
- c. due to non-payment of the bonus for the period 01.10.2018 to 31.12.2019 in the amount of at least € 9,360.00 due to incorrect data processing in violation of Art. 5, 6, EU - GDPR.**

a. The defendant continually refuses to provide information in whole or in part, as requested in Article 15 I, III EU (GDPR).

By letter dated 14.10.2019, the Signatory requested the defendant, who was represented by lawyers XXX, Amsterdam, for information under Article 15 I, III EU (GDPR as follows:

We hereby strongly ask you to search and provide access to and make a pdf copy of all documents and correspondence within the Company's control where our client is the data subject available in accordance with the EU - General Data Protection Regulation 2018. This includes

- all correspondence, notes (typed and handwritten), memorandums, data sheets, emails, letters, text messages, instant messaging including WhatsApp or similar and other records in general,
- all correspondence, notes (typed and handwritten), memorandum, data sheets, emails, letters, text messages, instant messaging including WhatsApp or similar and other records **in particular between a. Mrs F.'F. and Company s Leadership Team Members, <https://www.Employer>, and in particular, b. Mrs F. F. / Company s Leadership Team Members and all third parties including EMPLOYER Group since 01.Jan.2019,**
- all correspondence, notes (typed and handwritten), memorandum, data sheets, emails, letters, text messages, instant messaging including WhatsApp or similar and other records **with reference to the "on target bonus" under section II 4 of Contract of Employment dated Dec 18, 2018.**

....

We reserve the right to request all necessary documentation as requested under Art. 15 GDPR & the related rights of information with reference

- to all Data related with the bonus entitlements of my client under section II 4 of Contract of Employment dated 18 Dec. 2018,
- to all open ongoing and all successfully closed deals with your clients under responsibility of Mrs Staude for the period 01.Oct.2018 – 30.Sept.. 2019 hereby in particular the successful deals referring to the tools Power RT and EPSI

Finally, in the course of extrajudicial negotiations with the defendant, the signatory again requested information as follows by letter dated 02.01.2020:

In case your client can not agree on this outcourt bonus proposal, and to verify the until now not reasonable bonus calculation for the period 01.10.2018 – 30.09.2019 & 01.10.2019 – 31.12.2019, my client must insist on all legal information claims with reference to the Entitled Bonus under Art. 15, GDPR, Art. 7:619, I Dutch Civil Code as requested in my letter dated 14.10.2019 and mail dated 06.12.2019. I informed my client about her rights under Art. 15, 79 II 2 GDPR alternatively to Amsterdam, if useful such information proceedings request may be brought before the local court of Berlin in Germany where she has her habitual residence.

Translated into German as follows:

Für den Fall, dass Ihre Mandantschaft dieses außergerichtliche Bonusangebot nicht akzeptiert, und um die dann nicht nachvollziehbare Bonus Kalkulation für den Zeitraum 01.10.2018 bis 30.9.2019 und 1.10.2019 bis 31.12.2019 zu überprüfen, muss meine Mandantin darauf bestehen, alle ihr rechtlich zustehenden Auskünfte nach Art. 15 EU DSGVO, Art. 7.619.Abs. 1 NL Civilcode, wie in meinem Schreiben vom 14.10.2019 und Mail vom 06.12.2019 angeführt, zu beanspruchen. Ich habe meine Mandantin über ihre Rechte aus Art. 15,79 Abs. 2 S.2 EU - DSGVO informiert, wonach sie anstelle am Gerichtsstand Amsterdam, wenn sinnvoll diese Auskünfte auch vor dem zuständigen Gericht in Berlin Deutschland an ihren ständigen Aufenthaltsort geltend machen kann.

b. The defendant's refusal to provide information in whole or at least in part as claimed in a timely manner - within 1 month of the application on 14.10.2019 - is contrary to Article 15 I, III, 12 III EU - GDPR.

A factually comprehensible review of the bonus calculated by the defendant during the period of the dispute is only possible after information on the applicant's personal data used for the bonus. The EU GDPR therefore regulates tight, legally specified deadlines within which a request for information must be fully fulfilled by the person responsible for employment, in which it provides in **Article 12 III EU - GDPR:**

The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay **and in any event within one month** of receipt of the request.

The refusal of the information, as well as the delay in time, is sanctioned by the legislature because of the high purpose of protection with claims for damages under Article 82 I GDPR and a particularly serious case of a fine under Article 83 V b GDPR. According to the will of the EU legislator, the purpose of the right to information under **Article 15 GDPR is, in particular, to enforce the fundamental transparency obligations** of the EU GDPR in an effective and timely **manner, as well as** to enable the data subject to obtain the rights under Article 16 GDPR in an appropriate and compliant **manner, i.e. correction, and Article 18 GDPR, i.e. restriction, as well as** compensation under Article **82 EU - GDPR.**

That is why, under **Article 79 I GDPR**, the national courts are expressly required **to ensure** the right to an effective **judicial remedy** in order to assert their right of **access** if the individual considers that his rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation.

c. The defendant's refusal to pay the applicant the bonus due for the period 01.10.2019 to 31.10.2019 without providing information as requested and to demonstrate compliance with the correct data processing in the calculation of the bonus is a breach of Article 24 I EU- GDPR.

Contrary to Article 24 I EU - GDPR the defendant refuses to provide evidence (alt.: demonstrate compliance) that the personal data used were identified and processed for the the bonus determination in accordance with the EU GDPR. The verifiability of the legality of data processing can only be guaranteed if the data processing operations are disclosed by the defendant in the form and detail required in the application for 1, in accordance with its obligation to provide evidence under Article 24 I EU (GDPR).

The defendant must prove compliance with the requirements arising from the EU GDPR at any time in accordance with Article 24 I EU - GDPR. The defendant must therefore present conclusively and comprehensibly “accountability”, a written documentation relating to all the measures taken and the corresponding consideration for the determination and distribution of the volume of distribution determined by the defendant for the financial year in question and the 'personal data' share resulting from it.

d. Contrary to its accountability under Article 5 II EU - GDPR, the defendant has not demonstrated that it complied with the principles relating to processing of personal data under Article 5 I EU - GDPR in determining the bonus in particular.

In doing so, it also violates, in particular, the principle of lawfulness, fairness and transparency of art. 5 I a EU GDPR, because it is not ascertainable to what extent and according to what criteria the bonus was calculated for the period 01.10.2019 – 31.12.2019 using the personal, performance-related data designated by the defendant, in particular if, as in this case, the bonus for that period was in breach of the '20% Regulation in Sec. II of the employment contract reduced to "0" % after a change of management in October 2019.

It continues to inbreach the principle of accuracy enshrined in Article 5 I d EU – GDPR because it cannot be established that the defendant used the applicant's performance data in the bonus calculation at all, and, if so, which ones.

Nor has the defendant, in breach of Article 6 I EU – GDPR, so far demonstrated the legality of the processing of performance-related, person-related data in the processing of the bonus amount, neither a basis of authorisation for processing in accordance with Article 6 I EU – GDPR, nor for the (probable) processing on behalf under Article 28 EU - GDPR, nor in relation to other third-parties, in particular affiliated companies such as Employer Inc. or the new shareholder Wood Mackenzie Group since autumn 2019.

e. As in the present case, the defendant does not comply with those requirements of Article 15, 24 I, 5 I, II, & 6 EU - GDPR and in the case that it will not succeed demonstrating to disprove the presumptions under Article 5 II, 24 I EU - GDPR with reference to all its obligations to EU – GDPR and to exculpate itself under Article 82 III EU - GDPR, it acted culpably and is liable to material and non-material damages as requested.

aa. The amount of the positive material damage to be compensated here depends on the amount of the bonus to be granted at least by the defendants for the period October 1, 2018 to September 30, 2019, i.e. at least € 9360.00. Because the yet not paid bonus is calculated from the amount of the bonus for the last period paid, i.e. the financial year 01.10.2018 to 30.09.2019 with € 37,740.00 for 12 months, i.e. pro rata € 3,145.00 per month, i.e. for three months for the time from 01.10.2019 to 31.12.2010 a total of € 9,435.00.

In accordance with recital 146 EU - GDPR, Art 82 EU – GDPR intends to guarantee the data subject a "broadly interpreted and effective" claim for damages in the event of a breach of the EU GDPR. According to recital 146 sentence 3 EU – GDPR the concept of damage shall be broadly interpreted. According to the wording of the standard clause, 'any infringement of the Regulation' should be compensated. According to recital 146 EU - DSGVO the amount of material damage is to be measured in accordance with the broad concept of damage based on the case law line of the ECJ, i.e. positive damage, loss of profit and direct or pure indirect, present or future damage, provided that there is an overly predictable link between this and the reason for liability.

Until all required data information on the bonus is proven, it must therefore be assumed that the refusal of the bonus payment is based on incorrect data processing in breach of the EU GDPR. It is simply inconceivable, and seems unusually alien to life, that the applicant should not be entitled to a bonus entitlement for the period from 1.10.2019 to 31.12.2019, if the defendant has properly proceeded correct data data, based on using correct data. Under Article 24 I EU – GDPR the defendant must provide the burden of producing evidence (Darlegungslast) and the substantive burden of proof to refute this evidence.

bb. In accordance with the request under application 3 the defendant is liable to **non-material damages under Article 82 I EU - GDPR** for breach of Article 15 I, III, 24 I EU — GDPR, because it refuses generally – ongoing - to comply giving access to the claimed information.

In accordance with § 287 ZPO (Code of Civil Procedure) the court shall determine non-material damages. Indications for determination are Recitals 75 and 85 EU - GDPR as well as, in particular, a recourse to the fine provisions of the EU - GDPR Euro in accordance with Articles 83 IV and V EU - GDPR. The defendant's refusal to provide information on the applicant's personal data is also a serious breach of the applicant's right of access to information protected under Article 8 II EU GRC. Since the defendant here persistently, deliberately refuses to provide access to information, the non-material damages should therefore amount to at least € 2,500.00 as requested.

Further presentation and extension of claims are reserved during the proceedings

Proper Translation for delivery will be submitted immediately.

(signature Bodo Michael Schübel)