

How are German Data Protection Authorities going to determine a fine? / EUR 14.5 million fine imposed by Berlin DPA

In October 2019, the German Data Protection Authorities ("DPAs") published [guidelines](#) on how they are going to determine the amount of a fine in case of a violation of the GDPR. The guidelines explain the concept applied by the German DPAs when determining an appropriate fine. According to the [press release](#), the concept was discussed on a pan-European level and may be amended or revised once Europe-wide guidelines are released by the European Data Protection Board. Only recently, the Berlin DPA issued a fine of EUR 14.5 million for unjustified retention of customer data.

Details of the concept

Based on the total worldwide annual turnover of a company, a daily rate will be determined ($\text{turnover}/360 = \text{daily rate}$). Depending on the severity of the violation, the daily rate will be multiplied by a certain factor.

For example: An undertaking with a total worldwide annual turnover of EUR 10 billion did not inform the data subjects at all pursuant to Art. 13/14 GDPR.

Step 1: Determination of daily rate based on the total worldwide annual turnover. In case of a turnover of EUR 10 billion the daily rate would be EUR 27 million.

Step 2: Classification of infringements as minor, moderate, severe or very severe taking the aspects of Art. 82 (2) GDPR into account (i.e., nature, gravity and duration of the infringement, intentional or negligent character of the infringement, actions taken to mitigate the damages, degree of responsibility of undertaking taking into account the security measures, relevant previous infringements, etc).

Severity of the infringement based on Art. 82 (2) GDPR	Infringements pursuant to Art. 83 (3) GDPR: Multiplier for daily rate	Infringements pursuant to Art. 83 (4) GDPR: Multiplier for daily rate
minor	1 to 2	1 to 4
moderate	2 to 4	4 to 8
severe	4 to 6	8 to 12
very severe	6 <	12 <

In case the violation is considered "moderate", this results in a multiplier of 2 to 4 for the daily rate. Thus, the fine for violating Art. 13/14 could be in the range of EUR 54 million to EUR 108 million (2 times the daily rate of EUR 27 million = EUR 54 million and 4 times the daily rate of EUR 27 million = EUR 108 million.)



Consequences

Art. 83 GDPR specifies that administrative fines shall be up to EUR 20 million, or up to 4% of the total worldwide annual turnover, whichever is higher. The concept developed by the German DPAs takes the total worldwide annual turnover into account not only as calculation basis of the cap but, more importantly, as measurement for the appropriateness of a fine. On 5 November 2019, the DPA in Berlin issued a press release according to which it sanctioned a real estate company with a EUR 14.5 million fine. The real estate company did not implement an appropriate data deletion concept and retained customer data (including financial data and sensitive data) for an unlimited period of time. The Berlin DPA identified the infringement in 2017 and ordered corrective measures. During a follow-up audit in 2019, the Berlin DPA had to determine that the corrective measures had not been taken. The fine was imposed for the violation of Art. 25 and Art. 5 GDPR between May 2018 and March 2019 and was based on the company's total worldwide annual turnover of EUR 1 billion.

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