



**Conference of the independent data
protection authorities of the
Federation and the Länder**

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**Concept
of the independent data protection authorities
of the Federation and the Länder
for the admeasurement of fines
in proceedings against undertakings**

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I. Introduction

The European Data Protection Board (EDPB) in its first plenary session on 25 May 2018 has - in accordance with its task laid down in art. 70, (1), (k) GDPR - confirmed the guidelines on the application and setting of fines for the purposes of the Regulation (EU) 2016/679 of the Article 29 Data Protection Working Party adopted on 3 October 2017 (WP 253). They especially specify a common understanding of the criteria in art. 83 GDPR and provide a uniform concept of the principles for the setting of fines. However, the guidelines are not exhaustive, and the detailing of the methodology for setting fines is reserved for later guidelines by the EDPB.

This concept addresses the admeasurement of fines in proceedings against undertakings in the scope of application of the General Data Protection Regulation (GDPR). It does especially not apply for fines against associations or individuals outside their economic activity. The concept is neither binding for cross-border cases nor for other EU data protection supervisory authorities. In addition, it is not binding for the determination of fines by courts.

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The independent data protection authorities of the Federation and the Länder can at any time decide a discontinuation, modification or amendment of their concept effective for the future. In addition, the concept discontinues as soon as the EDPB adopts its final guidelines for the methodology on the setting of fines.

II. Fining concept

The independent data protection authorities of the Federation and the Länder believe that the turnover of an undertaking represents a suitable, appropriate and fair basis to guarantee effectiveness, proportionality and dissuasiveness when imposing significant fines in a modern law on corporate sanctions that is relevant to a broad variety of undertakings of different sizes.

Based on the above, the admeasurement of fines in proceedings against undertakings is performed in five steps. The respective undertaking is initially allocated to a size category (1.), afterwards, the average annual turnover of the respective sub-category of the size category will be determined (2.), then an economic basic value is calculated (3.), this basic value will now be multiplied by a factor that depends on the severity of the deed (4.) and the value determined under 4. will subsequently be adjusted based on perpetrator-related and other, not yet included, circumstances (5.).

This method guarantees a form of admeasurement of fines that is comprehensible, transparent and fair for the individual case.

1. Categorization of undertakings in size categories

Based on its size, the respective undertaking will be allocated in one of four categories of undertakings (A to D) (table 1).

The categories depend on the total worldwide annual turnover of the preceding financial year (see art. 83, (4) to (6) GDPR) and are divided into micro undertakings, small and medium sized undertakings (SME) as well as large undertakings. Based on recital 150 of the GDPR, the term “undertaking” is understood in accordance with articles 101 and 102 TFEU (so-called functional undertaking).

With respect to the turnover of the previous year, the SME size classification orients itself at the Commission Recommendation of 6 May 2003 (2003/361/EC).

For the more detailed categorization of the undertakings, the categories are further differentiated in sub-categories (A.I to A.III, B.I to B.III, C.I to C.VII, D.I to D.VII).

Micro undertakings as well as small and medium sized undertakings (SME)					Large undertakings		
A		B		C		D	
Micro undertakings: Annual turnover up to €2 million		Small undertakings: Annual turnover more than €2 million up to €10 million		Medium undertakings: Annual turnover more than €10 million up to €50 million		Large undertakings: Annual turnover more than €50 million	
A.I	Annual turnover to €700,000	B.I	Annual turnover more than € 2 million up to €5 million	C.I	Annual turnover more than €10 million up to €12.5 million	D.I	Annual turnover more than €50 million up to €75 million
A.II	Annual turnover more than €700,000 up to €1.4 million	B.II	Annual turnover more than €5 million up to €7.5 million	C.II	Annual turnover more than €12.5 million up to €15 million	D.II	Annual turnover more than €75 million up to €100 million
A.III	Annual turnover more than €1.4 million up to €2 million	B.III	Annual turnover more than €7.5 million up to €10 million	C.III	Annual turnover more than €15 million up to €20 million	D.III	Annual turnover more than €100 million up to €200 million
				C.IV	Annual turnover more than €20 million up to €25 million	D.IV	Annual turnover more than €200 million up to €300 million
				C.V	Annual turnover more than €25 million up to €30 million	D.V	Annual turnover more than €300 million up to €400 million
				C.VI	Annual turnover more than €30 million up to €40 million	D.VI	Annual turnover more than €400 million up to €500 million
				C.VII	Annual turnover more than €40 million up to €50 million	D.VII	Annual turnover more than €500 million

(Table 1)

2. Determination of the average annual turnover of the respective sub-category

The average annual turnover of the sub-category, into which the undertaking was allocated, will now be determined (table 2).

This step is used to illustrate the determination of the economic basic value that is based on it (3.).

Micro undertakings as well as small and medium sized undertakings (SME)						Large undertakings	
A		B		C		D	
A.I	€ 350,000	B.I	€3.5 million	C.I	€11.25 million	D.I	€62.5 million
A.II	€1,050,000	B.II	€6.25 million	C.II	€13.75 million	D.II	€87.5 million
A.III	€1.7 million	B.III	€8.75 million	C.III	€17.5 million	D.III	€150 million
				C.IV	€22.5 million	D.IV	€250 million
				C.V	€27.5 million	D.V	€350 million
				C.VI	€35 million	D.VI	€450 million
				C.VII	€45 million	D.VII	specific annual turnover*

(Table 2)

* in case of an annual turnover of more than €500 million, the percentage fining frame of 2% or 4% of the annual turnover must be used for the upper limit, which means that a calculation based on the specific turnover is performed for the respective undertaking.

3. Determination of the economic basic value

The average annual turnover of the sub-category into which the undertaking was allocated, divided by 360 (days) is used for the determination of the economic basic value and this is used to calculate an average daily rate (table 3).

Micro undertakings as well as small and medium sized undertakings (SME)				Large undertakings			
A		B		C		D	
A.I	€972	B.I	€9,722	C.I	€31,250	D.I	€173,611
A.II	€2,917	B.II	€17,361	C.II	€38,194	D.II	€243,056
A.III	€4,722	B.III	€24,306	C.III	€48,611	D.III	€416,667
				C.IV	€62,500	D.IV	€694,444
				C.V	€76,389	D.V	€972,222
				C.VI	€97,222	D.VI	€1.25 million
				C.VII	€125,000	D.VII	specific daily rate*

(Table 3)

* in case of an annual turnover of more than €500 million, the percentage fining frame of 2% or 4% of the annual turnover must be used as the upper limit, which means that a calculation based on the specific turnover is performed for the respective undertaking.

4. Multiplication of the basic value depending on the severity of the deed

Based on the specific deed-related circumstances of the individual case (see art. 83 para. 2 sentence 2 GDPR), a classification of the degree of severity of the deed is made in slight, medium, severe and very severe.

The degree of severity of the deed and the respective factor used to multiply the basic value will be determined based on the following table 4 in consideration of the circumstances of the individual case and based on the criteria laid down in art 83 para. 2 GDPR. Different factors must be selected with respect to the different fining frames for formal (art. 83 para. 4 GDPR) and material (art. 83 para. 5, 6 GDPR) infringements.

When selecting the multiplication factor for a very severe deed it must be ensured that the limit of the fining frame for the individual case is not exceeded.

Severity of the deed	Factor for formal violations as per art. 83 para. 4 GDPR	Factor for material violations as per art. 83 para. 5, 6 GDPR
Slight	1 to 2	1 to 4
Medium	2 to 4	4 to 8
Severe	4 to 6	8 to 12
Very severe	6 <	12 <

(Table 4)

5. Adjustment of the amount based on other circumstances for and against the perpetrator

The amount calculated under 4. will be adjusted based on all circumstances that are for and against the perpetrator, assumed that they were not already considered under 4. This includes especially all perpetrator-related circumstances (see criteria catalog of art. 83 para. 2 GDPR) as well as other circumstances such as a long procedural duration or an impending insolvency of the perpetrator.