

Can fines for illegal data operations finance legal data sharing in the public interest?

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Agenda

- Data sharing in the public interest
 - Legal ground
 - Financing restrictions
- Fines for illegal data operations
 - Legal base
 - Experiences
- Examples of financing “good“ actions with fines for “bad“ actions
 - Germany
 - USA
- Conclusion

Data sharing in the public interest

- Legal ground: “data altruism”
 - DGA – REGULATION (EU) 2022/868
 - Article 2 (16): voluntary sharing of data (...) without seeking or receiving a reward (...) for objectives of general interest (...)
 - Chapter IV
 - National policies, Competent authorities, monitoring
 - Public registers
 - Transparency
 - Rulebook from the EC
 - Not for profit

Fines for illegal data operations

- Legal base: GDPR Article 83
 - Up to 20 million EUR or 4% of annual turnover
 - EDPB Guidelines 04/2022 on the calculation of administrative fines under the GDPR
 - Accumulated fines after 5 years:
(listed at [GDPRhub.eu](https://gdprhub.eu), including cases under judicial review)
 - Germany: > 80 million EUR
 - France: > 500 million EUR
 - Ireland: > 2 000 million EUR
 - Many fines still subject to judicial review

Examples: NGO payments

- Germany:
 - Courts may close a case if defendant pays (§153a StPO)
 - No connection between alleged crime and recipient objectives
 - Decision by judge: payment to state or NGO
- USA:
 - Settlements in class action or FTC cases
 - 2023: Google tracking: 62 million USD for privacy NGOs (?)
 - 2007: Google cookie tracking: dispute about selected NGOs

Pros and Cons

- + Significant amounts of fines
- + Legally possible to add data altruism organisations to list
- Huge differences between member states
- Long delay between decision and payment (court cases)
- No planning certainty for receiving organisations
- Absence of non-financial sanctions
- Discretion of courts, Absence of legal certainty

Conclusion

- Possible in principle, but legal instrument required
- Needs distribution mechanism at EU/EEA level
- Unlikely to be implemented in short time

- Check possibility to create national financing systems

- Thank you for your attention.
- ???