Feedback on EDPB Guidelines 04/2026: empirical evidence from GDPR enforcement decisions*

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Submitted to the public consultation on Guidelines 04/2026, November 2026

1. About this submission

We[1] welcome the Imposition Guidelines and offer empirical evidence on how European authorities choose between a fine and other corrective measures today. We do not argue for stricter or more lenient enforcement. Our aim is to help the EDPB make its methodology measurable, so that the regular review it announces (para 13) can rest on data.

What we provide: descriptive statistics from published decisions, with the method in Appendix B, and concrete, testable suggestions. All counts are model-coded and not yet checked against human coding (Appendix B). What we do not provide: views on whether any decision, authority, or sector was treated correctly, or on the legal questions in steps 1–3.

Summary

Fewer than half of published decisions state the step-4 conclusion today, and the word "minor" already carries other meanings; most of our suggestions ask for clarity and light reporting, so that the review in para 13 can measure how the new method is applied.

*An extended version of this analysis will be submitted to an academic venue.

†*Affiliation and disclosure.* The author is employed by Vault JS, which provides privacy and security scanning of websites, mobile apps, and connected-TV apps for compliance purposes across multiple jurisdictions. This comment was prepared as independent research. No Vault JS customer reviewed, funded, or commented on it. The analysis uses only published decisions; it uses no Vault JS scan data and no customer data. Respondents in those decisions may include Vault JS customers; they are treated like every other respondent. Results per authority are shown without naming the authority, because the aim is to inform the method, not to rank authorities. The decisions themselves are public, and a named version is available to the EDPB on request.

[1]We use the authorial plural throughout, although this submission has a single author.

#	Paragraphs	Finding	Suggestion
1	10, 56–57, 59	Step-4 conclusion stated in 42–47% of reprimands and fines; "minor" also used for national categories and for 04/2022 low seriousness	Map "minor" to the 04/2022 seriousness levels; state the conclusion in each decision
2	26, 88, 90, 120	No previous infringements and cooperation are each cited in nearly 1 in 5 reprimands; burden on a company in under 1%	Clarify their role at step 4; give criteria for disproportionate burden
3	115–117, 119–121	Fine although minor: 7% of fines; no fine although not minor: 699 decisions (21% of reprimands, 14% of orders), mostly public bodies	Flag departures from the general rule
4	2, 26, 120	24% of measures against public bodies are fines, 60% for companies; national rules differ seven ways	Annex of Art. 83(7) regimes; effectiveness test where fines are unavailable
5	12, 13	Fine share of decisions ranges 0–100% across countries; no baseline for 04/2026, and the 04/2022 before-and-after is too thin to judge	Yearly counts per measure, linked to Pillar II statistics
6	112	Recurrence after a fine versus a reprimand is measurable only roughly from published data	Record recurrence for a sample of decisions
7	11, §5.2.13	No minor-infringement example on Arts 5 or 6, the most frequent provisions in reprimands	Add examples; clarify Example 11
8	87	Findings of another authority are almost never cited	Shared respondent identifier

2. Specific comments

Eight comments, ordered by how directly they concern the new guidelines. Comments 1–3 draw on 9,508 published decisions coded for the questions 04/2026 raises (Appendix B).

Comment 1 — The step-4 conclusion is stated in fewer than half of decisions, and "minor" already means several things (paras 10, 56–57, 59)

Observation. The new method turns on one conclusion: is the infringement minor? In published decisions today, the authority states that conclusion, or its opposite, expressly in 47% of fines, 42% of reprimands, and 18% of orders (9,508 decisions). Recital 148 is cited in 24% of reprimands and 10% of fines.

Where decisions do use the word, it often carries another meaning. National laws grade infringements as minor for limitation periods (e.g., Spain's "infracciones leves," LOPDGDD Art. 74), Italian decisions speak of "minore gravità," and 04/2022 uses "low seriousness" for fines that are imposed. In decisions

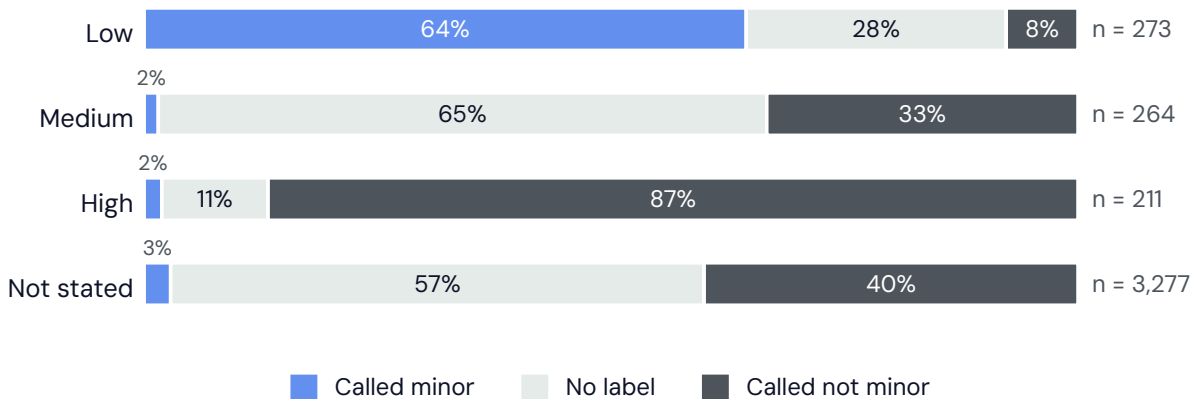


Figure 1. Where the authority graded a fined infringement as low seriousness, it usually also called it minor; where it graded it high, it called it not minor. Most decisions imposing a fine state no seriousness level. 4,025 published EU/EEA decisions imposing a fine; seriousness level as stated by the authority under 04/2022 (snapshot Nov 6, 2026).

imposing a fine where the authority stated a low seriousness level under 04/2022, almost two thirds (64%) also describe the infringement as minor or with an equivalent term (Figure 1).

Why it matters. Under 04/2026, a "minor" infringement leads, as a rule, to no fine. If the same word keeps its national or 04/2022 meaning, a reader cannot tell whether a fined "minor" infringement is an exception under para 115 or a terminology overlap. Para 10 lets the step-4 assessment feed the calculation, which makes the mapping between the two scales part of the method.

Suggestion. (a) State how the step-4 conclusion relates to the seriousness levels of 04/2022, Chapter 4 (for example: is every "minor" infringement also "low," and can a "low" one be "not minor"?). (b) Note that national statutory categories with similar names are a different concept. (c) Invite authorities to state the step-4 conclusion in one sentence in each decision.

Comment 2 — The reasons authorities give for a reprimand instead of a fine (paras 26, 88, 90, 120)

Observation. In reprimand decisions ($n = 1{,}661$), the most frequent specific reasons the authority gives for not fining are: national law bars fines on public bodies (22%), limited number of data subjects or limited harm (20%), cooperation (19%), a minor infringement (19%), no previous infringements (18%), and prompt remedy (15%). No reason is stated in 31%. A disproportionate burden on a company, which the draft extends from natural persons (Recital 148) to legal persons (para 26), is cited in 14 reprimands (under 1%); a burden on a natural person in 4 (Figure 2).

The draft says that two of these frequent reasons cannot count as mitigating by themselves: the absence of previous infringements (para 88) and ordinary cooperation (para 90).

Suggestion. (a) Clarify whether these two circumstances may still contribute to a finding that an infringement is minor at step 4, or are excluded there too; today each appears in nearly one reprimand decision in five. (b) Since a disproportionate burden on a legal person is almost never invoked today, give criteria for it (for example by reference to the inability-to-pay assessment in 04/2022, Chapter 6), so

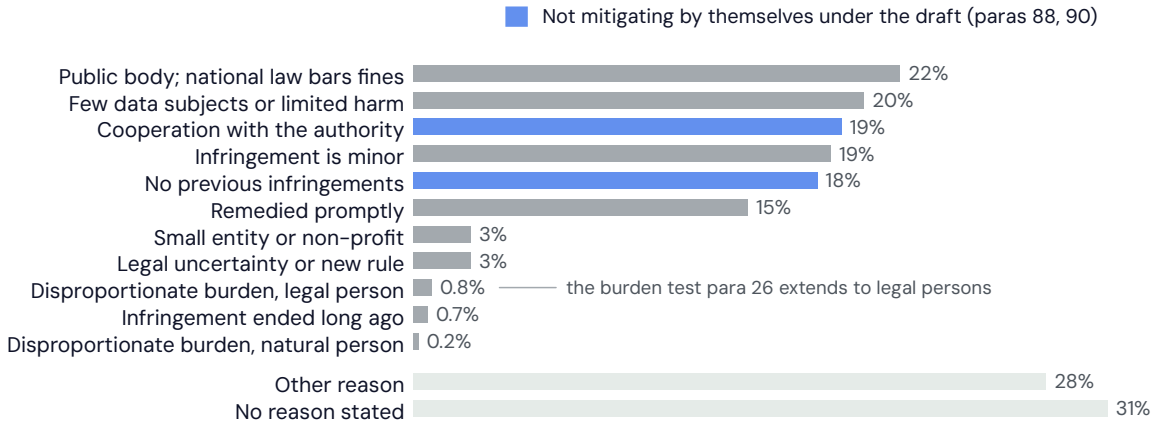


Figure 2. Reasons authorities give for a reprimand instead of a fine. Share of 1,661 published EU/EEA reprimand decisions that give each reason; a decision can give several (snapshot Nov 6, 2026).

that it is applied at similar thresholds across authorities. (c) Where a fine would be a disproportionate burden and the infringement is ongoing, mention an option that several national laws already provide: an order under Art. 58(2)(d) backed by a periodic penalty payment. No payment falls due if the respondent complies, and the authority keeps leverage if it does not. Our corpus holds more than 140 such decisions, most from the Netherlands (82) and France (38); we found no suspended GDPR fine.

Comment 3 — How often authorities depart from the general rule (paras 115–117, 119–121)

Observation. The draft allows four departures. In our data: a fine although the authority itself called the infringement minor, 7% of fines (277 of 4,025);[2] a reprimand or an order but no fine although the authority said the infringement was not minor, 699 decisions (346 reprimands, 21% of reprimands, and 353 orders, 14% of orders), 83% of them against public bodies, most of which national law shields from fines; and an established infringement with no corrective measure at all, 265 decisions, mostly closed complaints (Figure 3).

Suggestion. Invite authorities to say explicitly when they depart from the general rule or the strong presumption, and why. This is the least costly way to make paras 57, 115, and 119–121 measurable at the review the EDPB announces in para 13.

Comment 4 — Public bodies are treated differently, mostly by national law (paras 2, 26, 120; Art. 83(7))

Observation. Among published decisions that impose a measure on a company, 60% impose a fine (2,584 of 4,301). Among those against public authorities, 24% do (658 of 2,756); the rest are reprimands (25%) and orders (51%) (Figure 4). In reprimand decisions, the most frequent single reason for not fining is that national law bars fines on public bodies (22%). When public bodies are fined, the median fine is €8,600, compared with €30,000 for companies.

[2] Of these 277 fines, 176 are fines the authority graded low seriousness under 04/2022, so many may reflect the terminology overlap described in Comment 1 rather than a departure under para 115.

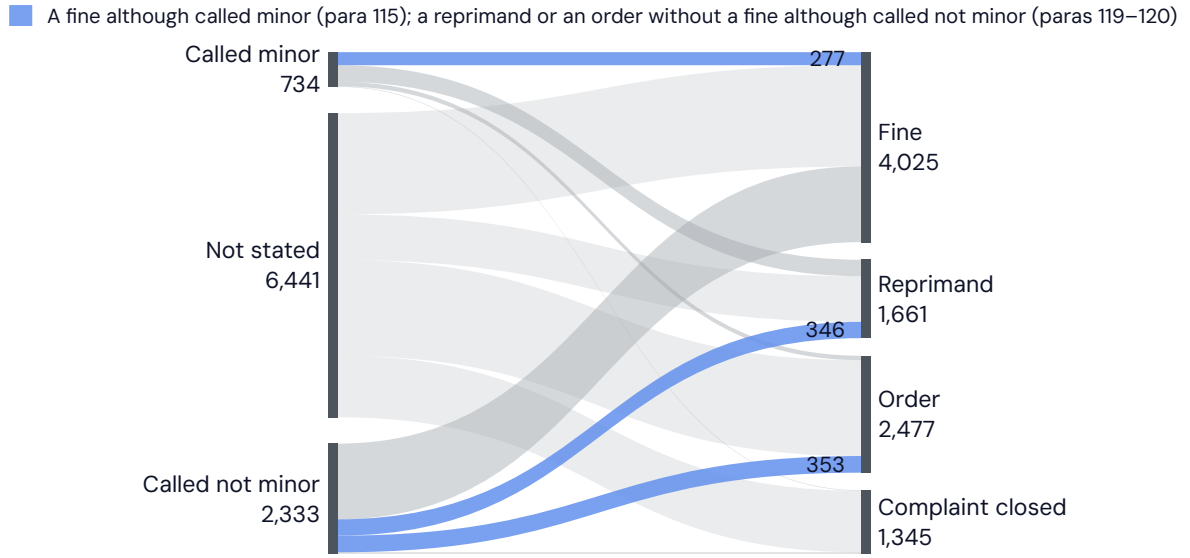


Figure 3. How the authority's step-4 conclusion (left) relates to the measure it chose (right). 9,508 published EU/EEA decisions (snapshot Nov 6, 2026); "not stated" includes decisions that weigh the factors without stating a conclusion.

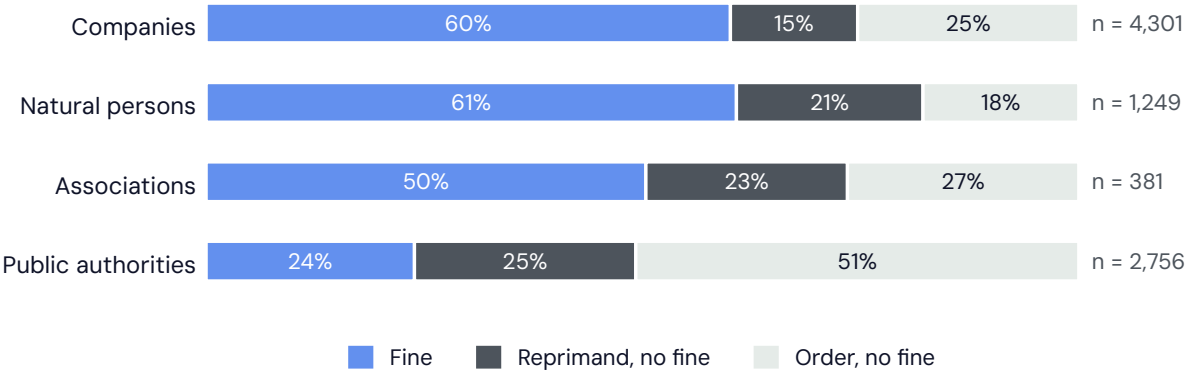


Figure 4. Measures imposed on companies and on public authorities. 8,687 published EU/EEA decisions imposing a fine, a reprimand, or an order whose respondent type is clear (snapshot Nov 6, 2026); natural persons include sole traders and office holders.

The national rules differ in at least seven ways. Our register, compiled from the national statutes of 20 EEA States, shows: no fines on public bodies in Germany (federal level, Bavaria, Baden-Württemberg), Czechia, Croatia, Finland, Liechtenstein, Estonia, Latvia, Spain, and Austria; capped fines in Poland, Hungary, Romania, Sweden, Denmark, and Lithuania; full Art. 83 amounts in Slovakia, Norway, and Iceland; partial carve-outs in Belgium (public bodies that offer goods or services on a market can be fined) and Luxembourg (only the State and the municipalities are exempt). Romania requires a warning and a remediation period before any fine on a public body, and in Latvia the responsible official can be fined instead (up to €1,000).

Why it matters. Para 120 already allows a reprimand where national law bars fines. The practical consequence is that, for a large part of the public sector, the effectiveness and dissuasiveness test of paras 110–112 must be met by measures other than fines.

Suggestion. (a) Add an annex, or a maintained EDPB page, listing each EEA State's Art. 83(7) regime. (b) Say how authorities should assess effectiveness and dissuasiveness (paras 110–112) where a fine is legally unavailable, for example by following up on compliance with the orders issued. (c) Report measures against public bodies separately in enforcement statistics, so the review can see whether these measures achieve compliance.

Comment 5 — Light reporting would let the EDPB measure how 04/2026 is applied (paras 12, 13)

Observation. Where turnover and seriousness are both stated, the share of published fines that fall inside the range our re-implementation of the 04/2022 method gives rose from 30% (3 of 10) before the draft (May 12, 2022) to 67% (44 of 66) after the final version (May 24, 2023). The early sample is small, and the rise does not hold once the case mix is held fixed (Appendix C), so we present it as an association, not as an effect of the guidelines.

For 04/2026 there is no such baseline yet. Across 10,688 published decisions that end in a fine, a reprimand, an order, or a closure (4,283 fines, 1,741 reprimands, 2,987 orders, 1,677 closures), the share of these decisions that are fines ranges from 0% to 100% among the 26 countries in Figure 5 (Germany, Slovakia, Liechtenstein, and Portugal are left out for coverage reasons; Appendix A). Publication policy likely explains much of this: some authorities publish mainly fines, others mainly reprimands and orders, and in two countries fines are imposed only through the courts (Recital 151).

Suggestion. Keep the reporting burden small: (a) the yearly number of each corrective measure per authority, which most authorities already compile for their annual reports, and (b) the one-sentence step-4 conclusion in each decision (Comment 1). Together with the EDPB's planned work on consistent enforcement statistics (EDPB, 2026b, Pillar II), this would give the review in para 13 firmer before-and-after evidence than is available for 04/2022.

Comment 6 — Dissuasiveness can be measured, but only with follow-up data (paras 112, 115, 119–121)

Observation. Para 112 defines dissuasiveness through specific deterrence (the same addressee) and general deterrence (others). Published decisions allow only a rough test of specific deterrence, and we do not report one here.



Figure 5. Share of decisions that are fines, by country. 10,688 published EU/EEA decisions ending in a fine, reprimand, order, or closure (snapshot Nov 6, 2026); countries with at least 20 decisions, anonymized; Germany excluded (fines held only as summaries).

Why published decisions are not enough. Fines and reprimands go to respondents that differ in size, sector, and history, so the groups are not comparable without matching. A later published decision measures detection and publication as much as behavior. Many respondents also come into compliance during the investigation, before any measure is chosen, and a later decision may be the follow-up on an earlier order rather than a new infringement.

Suggestion. For the review in para 13, ask authorities to record, for a sample of decisions, whether the infringement recurred within a fixed period after a fine, a reprimand, an order, or no measure. Authorities already hold this information through follow-up checks, repeat complaints, and later decisions (paras 79–88). For website infringements, archived copies of the respondent's site can show whether a tracker or banner changed after the decision, when compared with unsanctioned control sites. Dimova et al. (2026) used such longitudinal measurements to trace cookie-banner compliance and the role of regulators in it.

Comment 7 — Examples that follow the case load, in step with the 2026 coordinated action (para 11, §5.2.13, §5.3.2)

Observation. All eight examples of minor infringements (Examples 6–13) concern transparency, access, or security (Arts 12, 13, 15, and 32). These are frequent in practice, and transparency is the subject of the EDPB's 2026 coordinated enforcement action (Arts 12–14). The most frequent provisions in published reprimand decisions, however, are the principles (Art. 5, in 50% of reprimands) and lawfulness (Art. 6, 23%); no minor-infringement example concerns them (Figure 6). Example 11 also leaves two things implicit: that the investigation concerned only the bank (the employee's intent is not attributed to it, para 41), and the step-4 conclusion.

Suggestion. (a) Add examples for Arts 5 and 6, in both directions (minor and not minor). (b) In Example 11, state who was investigated and the step-4 conclusion. (c) Consider aligning the transparency examples with the findings of the 2026 coordinated action once those are published.

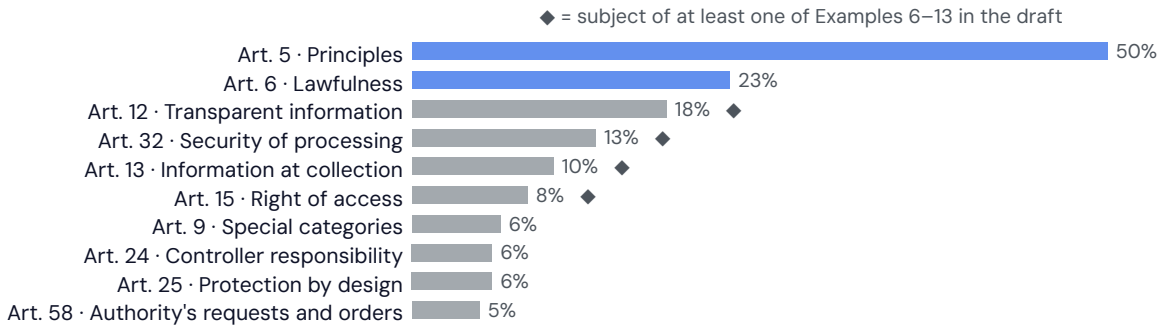


Figure 6. GDPR articles found infringed in reprimand decisions, compared with the articles the draft's examples cover. Share of 1,661 published EU/EEA reprimand decisions, most frequent ten articles (snapshot Nov 6, 2026); a decision can find several articles infringed.

Comment 8 — Previous infringements found by another authority (para 87)

Observation. Para 87 lets an authority count infringements found by another authority. In practice this possibility is almost unused: of the 611 decisions that mention a previous infringement, 9 refer to another authority's finding. By exact name, the situation itself is also rare: of 2,651 named companies in our corpus, 16 appear in decisions of authorities from two or more countries, mostly large platforms (one facial-recognition company appears in decisions of four authorities).

Suggestion. A shared respondent identifier in the EDPB's collection of decisions (Pillar II) would make para 87 workable at low cost.

Context — outside the EEA

Outside the EEA, several authorities have written down, in different ways, the same choice the draft codifies. We read the published instruments of five (Table 2); each takes a different position on the default.

In our corpus, decisions from fining jurisdictions outside the EEA end in a fine in 62–92% of violation findings (Argentina 92%, Colombia 75%, South Korea 70%, Peru 70%, Singapore 62%), while authorities without a fining power issue findings, orders, and recommendations (Canada, Hong Kong), and in Taiwan personal-data offenses reach the criminal courts (4,355 convictions in our data).

Suggestion. None for the text of the guidelines. Two features may interest the EDPB at the review: South Korea ties the no-fine option to completed correction and to no recurrence within a fixed period, and Brazil draws the line between serious and other infringements rather than between minor and other ones.

A. The corpus

The corpus holds 24,817 coded documents from authorities of the 30 EEA countries and the EU institutions, decided mostly between May 2018 and November 2026 (snapshot of November 6, 2026). They were collected from each authority's own publication page and from two public aggregators (the CMS Enforcement Tracker and The DPO). A document naming a respondent is treated as a case, even

Table 2. How five authorities outside the EEA write down the choice between a fine and other measures.

Authority	Default and threshold	Public bodies
South Korea, PIPC (penalty-surcharge notice, in force Sep 11, 2026)	A written "whether to impose" step before the amount: the surcharge may be waived if the violation is minor or causes little or no harm, and it was corrected and breach-notification duties were met; the waiver lapses if the same violation recurs within 3 years	Can be fined; turnover not used; up to 50% reduction for scale
Brazil, ANPD (Dosimetry Regulation 4/2023)	Infractions graded light, medium, or serious; a warning may be used for light and medium ones without specific repetition; a fine shall be imposed for serious ones	Cannot be fined
Singapore, PDPC (Guide on Active Enforcement)	First asks whether directions without a penalty are effective; a penalty where needed to reflect seriousness	Public agencies outside the Act
Quebec, CAI (monetary-penalty framework)	No exemption for minor breaches (a small base penalty applies); a notice of non-compliance must come first; serious or intentional cases go to criminal prosecution	Private-sector Act only
Australia, OAIC (regulatory action policy)	Civil penalties only through the Federal Court; since 2024 infringement notices for listed provisions; tools escalate from less to more serious, with no written threshold	Covered

when the authority's act is not binding. The corpus also holds decisions of authorities outside the EEA; they are used only in the context section on outside the EEA.

Table 3. Outcomes of the coded documents.

Outcome of the document	Documents
Fine	4,283
Reprimand, no fine	1,741
Order, no fine	2,987
Complaint closed, no further action	1,677
No infringement found	3,507
Other (mostly court judgments and opinions)	7,671
Outcome not in the available text	1,073
Text not usable (stub, press release, or redacted)	1,878
Total	24,817

The first four outcomes (10,688 decisions) form the cohort of Comments 4 and 5; Comments 1–3, 7, and 8 use the 9,508 of them that Form 2 could code (Appendix B). Among the 9,011 decisions that impose a measure, 4,301 concern companies, 2,756 public authorities, 1,249 natural persons, and 381 associations; in 324 the respondent type is contested or unclear.

Coverage gaps. Some authorities publish fines mainly as press releases or in annual reports, so for many fines we hold a summary rather than the decision. Germany (18 authorities): the CMS Enforcement Tracker lists 218 German fines; we hold summaries of 209 of them but no decision text, so none of our 55 German decisions in the cohort is a fine. Romania: of the 303 fines the Enforcement

Tracker lists, we could code 21; for the rest we hold only short press summaries. In Cyprus and Croatia, too, most documents we hold are too short to code. Slovakia (12 documents) and Liechtenstein (1) yield no usable decision, and Ireland (29 decisions) and Portugal (16) hold few; Portugal falls below the 20 decisions that Figure 5 requires. Figure 5 therefore leaves out Germany, Slovakia, Liechtenstein, and Portugal.

B. Method and limitations

Extraction. A language model reads each decision in its original language and fills a fixed form. It records only what the authority states, and it keeps a verbatim quote for its key answers. We used two forms, both filled by the same model (OpenAI gpt-5.6-luna):

- *Form 1 (fine amounts):* the outcome, the provisions found infringed, intent or negligence, the authority's stated seriousness, the respondent type, the data categories and channel, the fine amount, and any turnover the decision states.
- *Form 2 (choice of measure, for 04/2026):* every Art. 58(2) measure imposed; whether the authority calls the infringement minor or cites Recital 148; whether it explains its choice of measure and with which reasons; how it uses each Art. 83(2) factor (aggravating, mitigating, neutral, or not discussed); previous infringements; how the case reached the authority; when the respondent remedied the infringement. Of the 10,688 decisions, 1,180 (11%) could not be used, mostly Austrian and Dutch: in 908 the text we hold is a court judgment reviewing the authority's decision, in 146 only the operative part without reasons, and the rest are press summaries or have no text. That leaves 9,508.

Validation. The EU extraction has not yet been checked against human coding; this is planned for the extended paper. A comparable extraction on US privacy litigation, scored against a dataset coded by a law professor, reached an F1 score of 0.784 with the same model (Nielsen and Kubicek, in preparation).

National rules. The register of national rules (Comment 4) was compiled with model-assisted searches and then checked against the statutory text.

Limitations.

- *Publication selection.* We see only what authorities publish, and publication policies differ (Comment 5).
- *Facts as found by the authority.* Seriousness, intent, and the other findings are the authority's own. We take them as recorded and do not second-guess them; this is the best available source, but a harsher or more lenient authority may also describe the same facts differently.
- *Stated seriousness is rare.* Authorities state a 04/2022 seriousness level in under 1 fine in 5 (748 of 4,025).
- *Name matching.* Comment 8 matches respondents by name, excluding anonymized respondents. Group structures and spelling variants are not resolved.

C. Fine amounts under 04/2022

These results concern the amount of a fine, not the choice whether to fine, and are summarized here for context. We re-implemented the 04/2022 method and compared 3,188 published fines with the range our re-implementation gives.

Consistency over time. Where turnover and seriousness are both stated, 3 of 10 fines fell inside the range before the draft (May 2022) and 44 of 66 after the final version (May 2023). On the larger sets the share changed little, and the spread did not narrow once the case mix was held fixed.

Size. For the same infringement type, a small firm's fine sits about 12 times closer to the method's ceiling than a fine on a firm with €250–500m turnover; about 1 in 5 small-firm fines lies above the range.

Public bodies. 64% of fines on public authorities lie below the range; national Art. 83(7) rules explain most of this.

Inputs. Only about 1 decision in 8 states the turnover used. For the others we looked up the turnover in public sources; it is within a factor of two of the authority's figure in 84% of 273 test cases.

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