COMMENT

Comment

from the General Association of the
German Insurance Industry
ID number 6437280268-55

on the Guidelines 04/2026 on the application of the power to impose administrative fines in relation to other corrective powers under the GDPR

German Insurance Association e. V.
Wilhelmstraße 43 / 43 G, 10117 Berlin
PO Box 08 02 64, D-10002 Berlin
Telephone: +49 30 2020-5000 · Fax: +49 30 2020-6000

Rue du Champ de Mars 23, B-1050 Brussels
Telephone: +32 2 28247-30 · Fax: +49 30 2020-6140
ID number 6437280268-55
www.gdv.de

Contact
Legal/Compliance/Consumer Protection

Email
data-protection@gdv.de

Contents

1. Summary 3

2. Individual comments 4

2.1 Combination of corrective measures 4

2.2 Individual assessment of whether to impose an administrative fine 5

2.3 Establishing intent or negligence 5

1. Summary

The German Insurance Association welcomes the European Data Protection Board's initiative to develop a common methodology for the exercise of corrective powers under Articles 58(2) and 83 GDPR. The choice of measures should always reflect the circumstances of the individual case and comply with the Charter of Fundamental Rights of the European Union (the Charter).

2. Individual comments

2.1 Combination of subsequent corrective measures

The relationship between a final reprimand under Article 58(2)(b) GDPR and subsequent proceedings to impose an administrative fine for the same infringement should be clarified in accordance with the Charter.

The wording of Article 58(2)(i) GDPR and Article 83(2), first sentence, GDPR may be understood as allowing a supervisory authority to first issue a reprimand and, once that decision has become final, to initiate subsequently separate proceedings to impose an administrative fine. In such a case, the final reprimand could be relied upon in order to treat the infringement as already conclusively established. The subsequent fining proceedings would then risk being reduced, in practice, to determining the amount of the administrative fine.

Such a temporal separation of sanctions creates a risk that the finality of an administrative reprimand may be used to avoid an independent assessment of the infringement and of the conditions for imposing an administrative fine in the subsequent proceedings. A reprimand initially accepted by the controller must not, solely because it has become final, allow the supervisory authority to treat the existence of the infringement and culpability as conclusively established in the fining proceedings.

Moreover, a controller is likely to accept a reprimand as a proportionate response more readily than an administrative fine. Where the controller also refrains from challenging the findings of fact, in reliance on the matter having been resolved without an administrative fine, it may forgo legal remedies on a false premise. If an administrative fine can be imposed without prior notice after the reprimand has become final, it would ultimately become advisable to challenge every reprimand as a precaution. This would also increase the administrative burden on supervisory authorities.

There are also significant concerns in relation to the prohibition of double jeopardy under Article 50 of the Charter and the customary-law principle of good faith, which may also be understood as an expression of the principle of proportionality under Article 52 of the Charter. Before initiating separate fining proceedings, the supervisory authority should assess whether a final reprimand under Article 58(2)(b) GDPR has already been issued against the same person in respect of the same material facts.

Where this is the case, the Guidelines should expressly clarify that a subsequent decision imposing an administrative fine should be avoided in view of the prohibition of double jeopardy, the principle of good faith and Recital 148. In particular, the finality of a reprimand must not replace an independent assessment and statement of reasons concerning the conditions for imposing an administrative fine in the decision imposing that fine.

Where procedural law permits, supervisory authorities should determine the corrective measures relating to a given set of facts in a single decision. Where this is not possible for duly substantiated reasons, the controller should at least be informed in the first decision that separate proceedings to impose an administrative fine may follow.

2.2 Individual assessment of whether to impose an administrative fine

The strong presumption in favour of imposing an administrative fine for infringements that are not considered minor, as set out in paragraphs 57 and 119, should be removed.

Recital 148 identifies minor infringements as cases in which a reprimand may be sufficient. However, Article 58(2)(i) and Article 83(1) and (2) GDPR, read in conjunction with Recital 129, require an individual assessment of necessity and proportionality, taking due account of the factors set out in Article 83(2)(a) to (k) GDPR. In Land Hessen, the Court of Justice emphasised that corrective measures must be appropriate, necessary and proportionate in order to remedy the shortcoming found and ensure full enforcement of the GDPR.

The classification made at Step 4 should inform the assessment at Step 5. The supervisory authority should explain why an administrative fine is effective, proportionate and dissuasive and why a less onerous measure would not be sufficient. Particular account should be taken of prompt remediation and measures adopted to prevent recurrence.

Example 14 already illustrates that a reprimand may be proportionate even where an infringement is not considered minor. The Executive Summary and Annex 1 should reflect this approach. Step 5 b should ask whether an administrative fine is warranted in the circumstances of the individual case.

2.3 Establishing intent or negligence

The EDPB should consider framing the negligence threshold in paragraphs 49 and 50 by reference to what the addressee was in a position to recognise at the time of the unlawful conduct. Negligence should not be inferred from the objective existence of an infringement without further assessment.

In particular, the statement that an error in law is always avoidable where EDPB Guidelines exist appears too categorical. The relevant question should instead be whether the unlawful nature of the conduct was reasonably recognisable, taking into account the clarity and applicability of the legal provisions and available interpretative guidance, as well as the compliance measures adopted by the controller or processor.

Berlin, 10 November 2026