

## 1. Scope

*“The guidance set out applies to all types of controllers and processors according to Article 4(7) and (8) GDPR except natural persons when they do not act as undertakings”*

What then applies to any natural persons when they do not act as companies? Clarify.

## 2. Concepts. One punishable conduct/several punishable conducts.

Difference between a punishable conduct and several punishable conducts. According to the current wording, the term "one punishable conduct" is an indeterminate legal concept, which is difficult to interpret, and therefore more detail and specificity of the term is required. Clarify the contexts in which processing operations are contextually, spatially and temporally related.

The concept of "outside observer" who is considered as such? An orderly trader? An average consumer?

## 3. Methodology for calculating the amount of the sanction.

*Step 5 Analysing whether the final amount of the calculated fine meets the requirements of effectiveness, dissuasiveness and proportionality, as required by Article 83(1) GDPR, and increasing or decreasing the fine accordingly. (Chapter 7)*

If the categorisation of infringements according to their nature, the gravity of the infringement and the turnover of the company are taken into account in calculating the fine, then, due to the requirement of Article 83(1), and the consequent increase or decrease of the fine due to the requirements of that Article, a large company such as Google will always be penalised at the highest level on the basis of turnover. This will be taken into account both for the classification and gravity of the infringement, as well as for the calculation of the amount of the financial penalty.

#### 4. Unity of action and infringement of several legal provisions.

*In case of a unity of action the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.*

How and under what parameters are infringements of the various provisions taken into account for the calculation of the fine? In terms of number of data subjects, processing operations carried out, data processed, profit obtained, etc.?

#### 5. Starting point to calculate.

*If permitted by national law, both the period after the GDPR's effective date and the previous period may be taken into account when quantifying the fine, taking into account the conditions of that framework.*

Regarding the duration. We understand that the period prior to the date of entry into force of the GDPR should not be taken into account for the quantification of the fine.

In relation to the intentional or negligent nature. Clarify When an intentional infringement demonstrates a disregard for the law, what weighs more for the calculation of the penalty, the degree of intentionality or the degree of negligence?

#### 6. Aggravating and mitigating factors.

Determine with examples under which circumstances the person responsible or in charge will be considered to have gone beyond the obligations imposed in order to apply the mitigating circumstance.

Clarify with examples in terms of time the previous infringements. For example, 1 month previous non-compliance is relevant and not 1 year.

**Adherence to codes of conduct as a mitigating factor** and, where appropriate, payment of any sanctions imposed by the supervisory body set out in the Code should be taken into account by the competent supervisory authority. Otherwise you may be sanctioned several times for the same thing, and the essence of adherence to the Code as a compliance mechanism could be undermined, and also because the Code is also subject to approval by the supervisory authority.

**Liability of the companies and persons authorised to act on behalf of the company.** Clarify what is meant by "natural persons authorised to act on behalf of companies": on the basis of the granting of powers of attorney or because they hold a position in the company's management body?

## **7. Various**

There are other corrective measures that have not been mentioned by the CEPD in its guide, **such as warnings in the event of a possible infringement, warnings in the event of an infringement**, the obligation to carry out certain actions on the responsible party, the withdrawal of certifications, the suspension of data flows outside the European Union.

We also miss a mention of the **equivalence of sanctions** by the different supervisory authorities of the member states.