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# DAMAGE CLAIMS AND ENFORCEMENT TRENDS BY GERMAN REGULATORS



**ASCPD**

Asociația Specialiștilor în Confidențialitate  
și Protecția Datelor

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January 29<sup>th</sup>, 2021

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# Damage claims and enforcement trends by German regulators

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- Non-profit organisation
- Founded in 1976 (1st German Federal DP Act)
- Mission for over 40 years:
  - **Help** members (DPOs; company management) to comply with data protection provisions
  - Support data protection officers
    - **Education and training** (seminars, conferences, publications)
    - **Guidance** (legal, technical, organisational problems)
    - 30 Working Groups throughout Germany
- **Lobbying:** reasonable, effective and practicable data protection (balances)

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# Damage claims

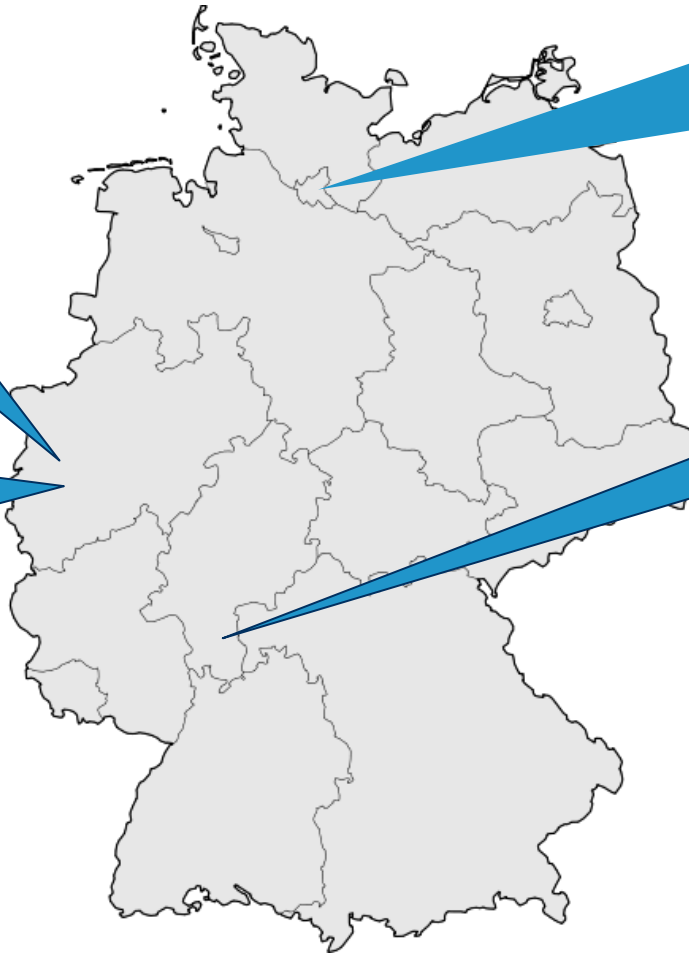
# Non-monetary damages

Labour Court of Düsseldorf  
(judgment of March 5th 2020 -  
9 Ca 6557/18): 5.000 € for a  
delayed (6 months) and  
incomplete **response to an  
access request** by an employee

District Court of Hamburg  
(judgment of November 15th  
2019 - 821 C 206/18): 0 € The  
mere breach of data protection  
regulations **does not** lead to  
compensation; the plaintiff has to  
**prove a damage caused by the  
breach** (publication of personal  
data over the internet for 6  
weeks)

District Court of Cologne  
(judgment of October 7th 2020  
- 28 O 71/20): 0 € for sending 6  
pages of account information  
to the **wrong recipient** is  
considered a trivial breach of the  
GDPR; this particular breach  
does not oblige to compensation









District Court of Darmstadt  
(judgment of May 26th 2019 - 13  
O 244/19): 1.000 € for not  
informing the data subject of a  
**data breach** (personal data of an  
applicant)



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# DPA enforcement actions

## Monetary penalties under Directive 95/46/EC

	Monetary Sanction	Legal Basis
 BfDI/ „Länder“	Up to 300.000 EUR . The fine shall exceed the financial benefit to the perpetrator derived from the administrative offence	§ 43 para. 3 BDSG
 CNIL	Up to 300.000 EUR	Art. 47 ACT N°78-17
 DPC	Up to 100.000 EUR	Sect. 31 DPA
 Garante	Up to 60.000 EUR	Sect. 163 DPC
 ICO	Up to £500.000	n/a
 CBP	Up to 4.500 EUR	Art. 66 DDPA
 DI	Not specified	n/a
 AEPD	Up to 600.000 EUR	Art. 45 Ley Orgánica 15/1999

## Monetary penalties under the GDPR



Penalty	Infringement of Art.	Addressee
Up to <b>10.000.000 Euro</b> or, in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year*	8, 11, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42 und 43 GDPR	Controller, Processor
	42, 43 GDPR	Certification bodies
	41 (4) DS-GVO	Monitoring bodies
Up to <b>20.000.000 Euro</b> or, in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year*	5, 6, 7 and 9, 12-22, 44-49, 58 (1), (2) GDPR	Controller, Processor



Taking into account aggravating and mitigating circumstances (e.g. existing certifications), but, in any case, „**effective, proportionate and dissuasive**“

\* Whichever is higher



## DPA Landscape in Germany

Our consistency mechanism:



= Board of Federal and „Länder“ DPAs



+ At federal level:



+ exclusive DPA for public authorities in Bavaria



+ exclusive DPAs for evangetic and catholic churches

## Enforcement Landscape in Germany



### Sources of information concerning enforcement actions?

- No central repository for monetary penalties
- No official data format scheme for Activity Reports of DPAs
- Many Activity Reports reveal **selected** monetary fines in a „Facts and Figures“ section



- **187 Fines under GDPR (2018: 40)**

Nordrhein-Westfalen	64 (33)
Berlin	44 (12)
Niedersachsen	19 (0)
Baden-Württemberg	17 (2)
Sachsen	10
...	
Hamburg	2
Bayern, Brandenburg	1
Bremen, Schleswig-Holstein	0

Source: <https://www.handelsblatt.com/politik/deutschland/dsgvo-datenschutz-verstoesse-zahl-der-bussgelder-ist-drastisch-gestiegen/25364576.html>

- Ø Amount until 05/2019: 6.000 €

# Fining Guidelines of the German DSK



## 1. Classification of organisation according to size

- Commission Recommendation of May 6, 2003 concerning the definition of micro, small and medium-sized enterprises
- Granular classification into 20 groups

## 2. Identifying medium turnover of each group

- Functional concept of undertaking, defined by its economic activity

## 3. Identifying basic amount

- Medium turnover divided by 360 (days)

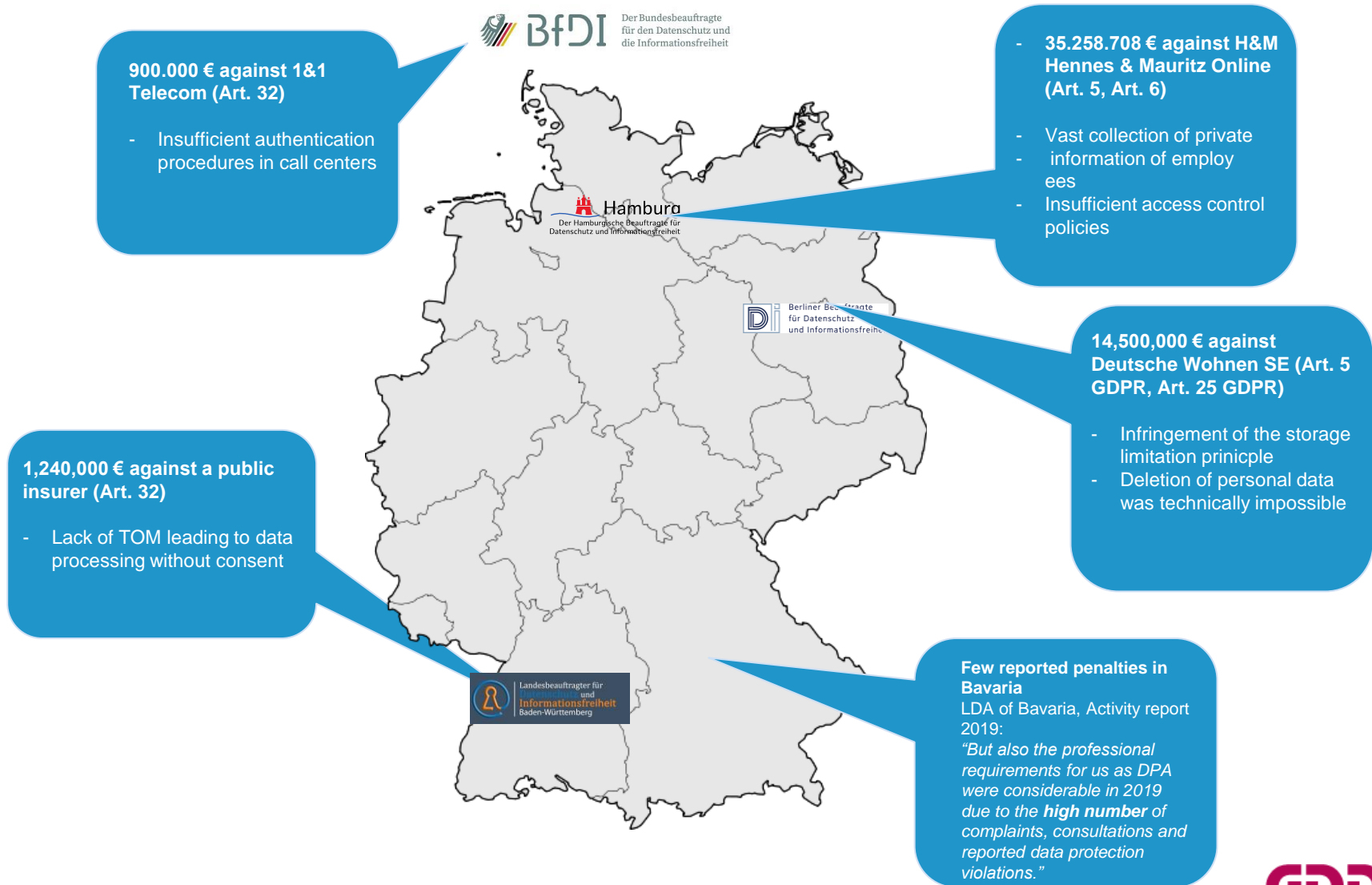
## 4. Multiplying basic amount depending on seriousness of infringement (Art. 83(2)(a))

- Violation of Art. 83 para. 4 = multiplier of 1-2 (minor) to 6+ (very severe)
- Violation of Art. 83 para. 5, 6 = multiplier of 1-4 (minor) to 12+ (very severe)

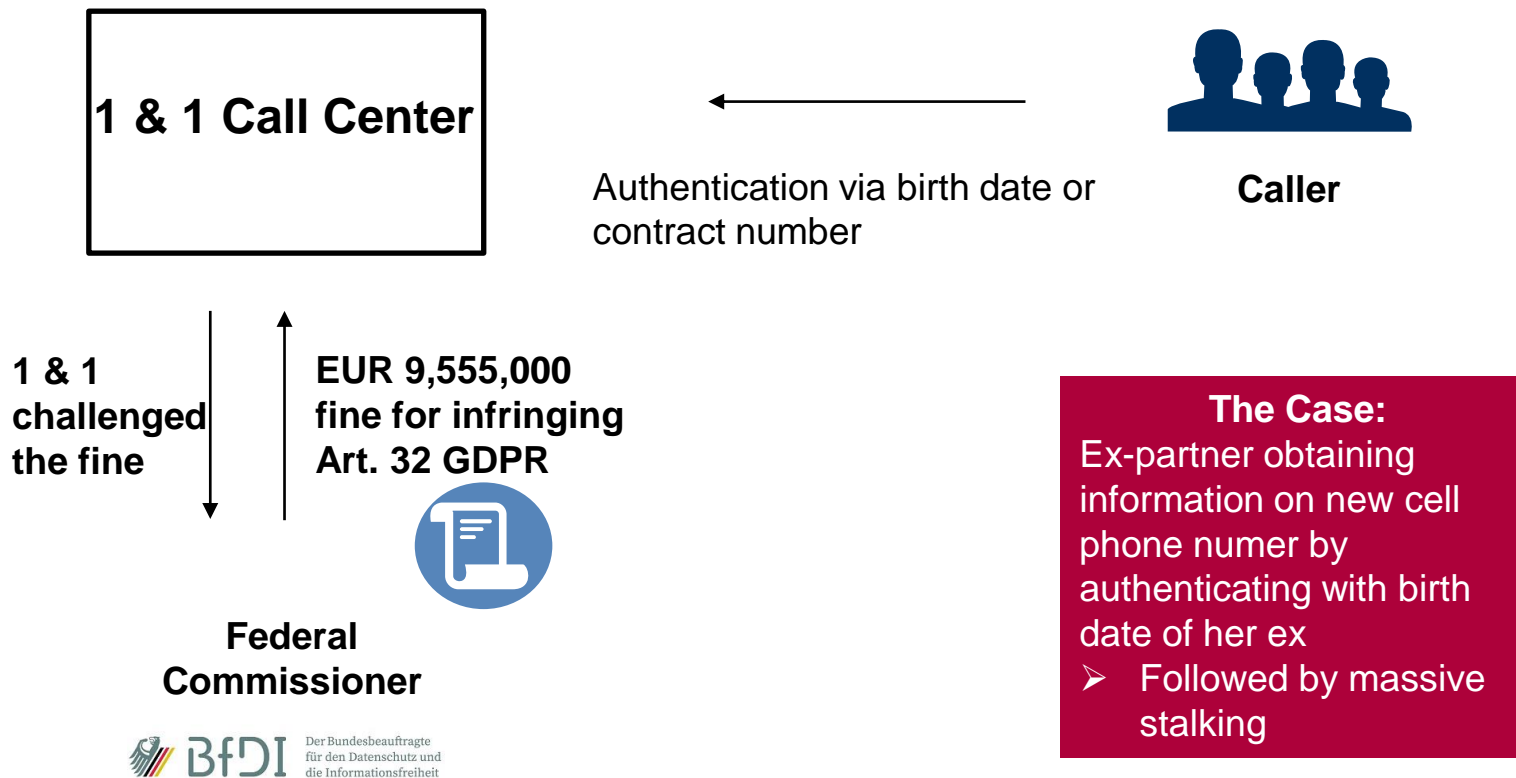
## 5. Adjusting to other relevant aggravating and mitigating factors

- Other factors of Art. 83 para. 2 GDPR
- Examples: good cooperation with DPA, mitigating actions, low profitability
- Can lead to increase or decrease of fine

## Recent popular enforcement actions



## The 1 & 1 Case



- On November 11, 2020, the Regional Court Bonn published a press release about the decision (Judgement of November 11, 2020 - 29 OWi 1/20)
- Court took the view that the breach of the GDPR was minor, only a small number of personal data was disclosed unlawfully to the ex-partner; no sensitive data were disclosed
- 1&1 acted in good faith assuming that its authentication procedure is working properly; the procedure never was challenged by the Federal Commissioner
- As a consequence, the Regional Court Bonn reduced the amount of fine down to **EUR 900,000**
- A further interesting aspect of the decision is that the Court took the view that Sections 31, 130 OWiG (Act on Regulatory Offences) do not apply within the framework of the GDPR

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**Thank you for your  
attention.**

**Questions?**