

GDPR: What about the fine?

Regarding the new General Data Protection Regulation of the European Union (GDPR) apart from the professional and systematic challenges of the domestic interceptions, the were dominated by new fines. It is well known that the general maximum of the fine will be EUR 20 million, while and it may be 4% of their annual turnover in case this latter amount is higher, although the principles of imposing these fine are further from the centre of attention.

At community level the guidelines of application and definition of fines, published by WP 29 (Article 29 Working Party), which lays down the most important aspects to be considered during the imposition of fines by the authorities. The chairman of the Hungarian National Authority for Data Protection and Freedom of Information Dr. Attila Péterfalvi explained in a recently published interview, that there will be no discrepant practice of fining by national authorities regarding the GDPR, furthermore he explained that a unified system will be implemented through organised information exchange.

It can be fundamentally alarming that the amount of fines will not be affected by the state in which the fine is imposed (hence the amount of the fines in Germany will not differ from the fines in Hungary), but this is not the full picture. The aforementioned guidelines place strong emphasis on the equivalent sanction principle, meaning that the infringement of rights should be treated the same manner in all Member States, and it is an integral part this concept that the jurisdiction and competence of authorities may not determine how the infringement is evaluated.

Additional consideration must also be given to the requirement of effectiveness, proportionality and deterrence, as well as infringement cases should be evaluated in their entirety. It is therefore clear, that this will not be a system based on unified amount of fines, which will shorten infringers with EUR 20 million, but establish a system which able punish the actual infringement and to deter the specific offending legal entity (which – in our opinion – may not mean the dismantling of the infringer).

Based on the above, we believe that a strict but fundamentally manageable and enforceable system of fines will enter into force on the 25th May.