Can fines for illegal data operations finance legal data sharing in the public interest?

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Agenda

- Data sharing in the public interest
  - Legal ground
  - Financing restrictions
- Fines for illegal data operations
  - Legal base
  - Experiences
- Examples of financing “good“ actions with fines for “bad” actions
  - Germany
  - USA
- Conclusion
Data sharing in the public interest

● Legal ground: “data altruism”
  ● DGA – REGULATION (EU) 2022/868
  ● Article 2 (16): voluntary sharing of data (...) without seeking or receiving a reward (...) for objectives of general interest (...)

● Chapter IV
  ● National policies, Competent authorities, monitoring
  ● Public registers
  ● Transparency
  ● Rulebook from the EC
  ● Not for profit
Fines for illegal data operations

- Legal base: GDPR Article 83
  - Up to 20 million EUR or 4% of annual turnover
  - EDPB Guidelines 04/2022 on the calculation of administrative fines under the GDPR
- Accumulated fines after 5 years:
  (listed at GDPRhub.eu, including cases under judicial review)
  - Germany: > 80 million EUR
  - France: > 500 million EUR
  - Ireland: > 2 000 million EUR
- Many fines still subject to judicial review
Examples: NGO payments

- **Germany:**
  - Courts may close a case if defendant pays (§153a StPO)
  - No connection between alleged crime and recipient objectives
  - Decision by judge: payment to state or NGO

- **USA:**
  - Settlements in class action or FTC cases
  - 2023: Google tracking: 62 million USD for privacy NGOs (?)
  - 2007: Google cookie tracking: dispute about selected NGOs
Pros and Cons

- Significant amounts of fines
- Legally possible to add data altruism organisations to list

- Huge differences between member states
- Long delay between decision and payment (court cases)
- No planning certainty for receiving organisations
- Absence of non-financial sanctions
- Discretion of courts, Absence of legal certainty
Conclusion

- Possible in principle, but legal instrument required
- Needs distribution mechanism at EU/EEA level
  - Unlikely to be implemented in short time
- Check possibility to create national financing systems
• Thank you for your attention.
• ???