Arbitrary & Abusive

The Discriminatory Impact of European Fines on American Companies

U.S. Chamber of Commerce

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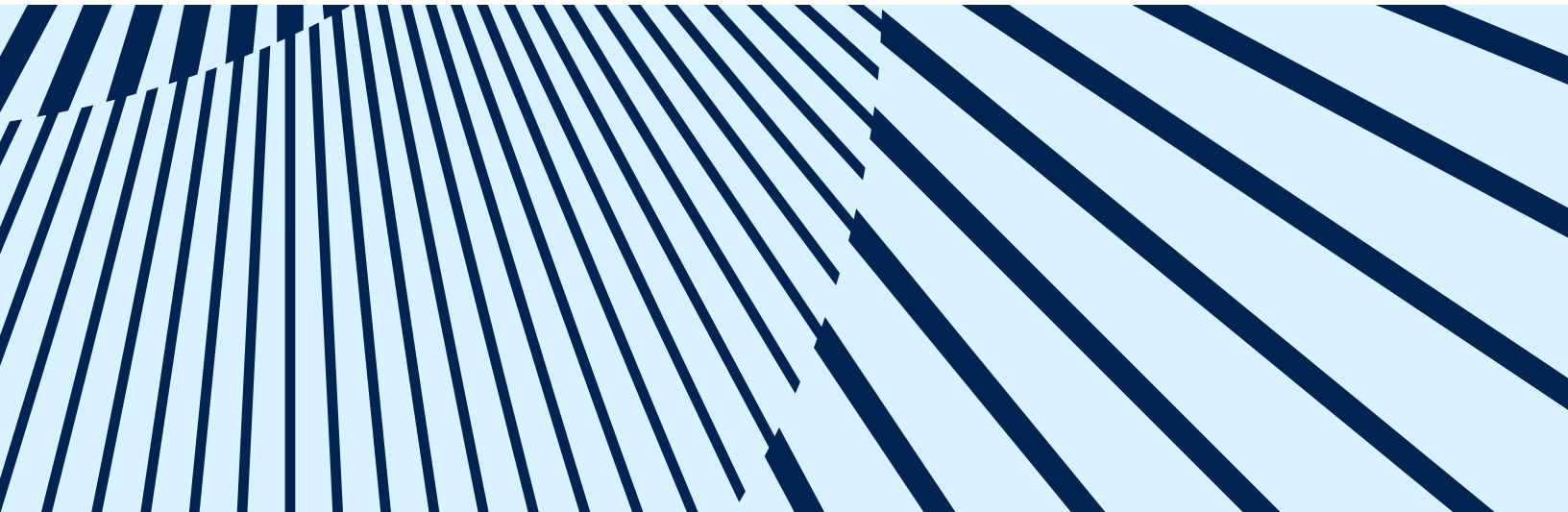
I. Introduction

The European Union (EU) has imposed tens of billions of euros in fines on American firms. In so doing, it has garnered significant criticism from the U.S. business community, Republicans and Democrats on Capitol Hill, and, most recently, the White House. In March, President Trump criticized EU policies, saying they "(s)ue our companies .... Apple was forced to pay $16 billion on a case .... they're suing Google, they're suing Facebook, they're suing all of these companies, and they're taking billions of dollars out of American companies."[1]

In response, EU officials have argued that companies operating in Europe must comply with its laws and that the application of fines as part of enforcement actions does not discriminate against American companies. It is true that companies that choose to operate in Europe must comply with its laws (both those that hamper Europe's own competitiveness as well as those that uniquely capture American companies), but Europe's increasing reliance on arbitrary fines has resulted in abusive treatment of American companies.

In recent years, a growing number of European laws have included significant fining authority, encouraging regulators to use fines as a central part of their compliance toolkit. This authority gives the regulator maximum discretion over when to levy a fine and how to calculate the amount of the fine. Troublingly, there are few established constraints in these laws to safeguard against overzealous use of fines. Nor are there meaningful legal guardrails to limit fines from becoming abusive. Levies are further turbo-charged by being calculated on the basis of worldwide turnover, rather than objective measures related to commercial activity within the EU market or harm to European consumers.

Moreover, regulators levy fines for violations of law that stem from ambiguous statutes. Companies can be assessed massive fines without knowing what could have been done to follow the law until after a legal violation has been determined and the fine is levied. American companies' only hope is to appeal the fine through a lengthy process and seek judicial redress. Occasionally, European



courts have served as an important check against this abuse, reducing and overturning some fines. Other court decisions simply uphold the validity of the discretion given to the regulators by the statute, regardless of whether a fine should have been issued or how it was calculated. As a result, the EU has fined multiple U.S. companies for seemingly tenuous violations of law, creating the impression that the EU is deliberately using fines to transfer wealth from American companies, their workers, and shareholders to European coffers.

While fines are on occasion levied against European companies, fines against American companies have been orders of magnitude larger than those imposed on domestic firms. For example, U.S. companies pay abuse of dominance competition fines in amounts that are difficult to rationalize in comparison to cartel fines paid by European firms. Similarly, the largest privacy fines are reserved for American companies, often levied without showing demonstrable harm to European consumers. More recent laws allow for substantial fining authority aimed particularly at American companies.

Under the Digital Markets Act, designated gatekeepers are exclusively foreign firms, all but one of them American. Similarly, the Digital Services Act, which seeks to regulate Very Large Online Platforms or Very Large Online Search Engines, puts U.S. companies uniquely in its crosshairs. And the EU's AI Act leverages fines that are likely to ensnare leading U.S. AI companies. Nor is the heavy reliance on fines confined to competition and digital economy regulatory policy: Europe has included similar fining authority in its Corporate Sustainability Due Diligence Directive (CS3D). While the measure has been paused for now, as drafted, it would enable EU regulators to fine American companies and their supply chains beyond Europe's borders. Punitive fines harm both sides of the Atlantic. Europe's excessive use of fines is a source of tension in transatlantic relations, and the United States is rightly considering whether to deploy remedies under U.S. law in response. Nor is overzealous application of fines in Europe's interest: It makes Europe a less attractive destination for doing business, compelling companies to rethink the goods and services that will be made available to European consumers. Ultimately, the EU's approach to fines underscores concerns about the adverse impacts of overregulation on Europe's competitiveness and its desirability as an investment destination.

To address these concerns, Europe must course correct its use of fines. As part of its efforts to improve European competitiveness, the EU should commission a fulsome review of the use of fines as a compliance tool and take concrete steps to ensure fines issued for violations of EU law are: used more selectively; calculated transparently and with a direct connection to actual harms caused by the violations; and remove global turnover as the basis for any calculation. Meaningful guardrails would restore credibility to European regulatory enforcement actions and remove the tension that fines have created in the bilateral relationship.

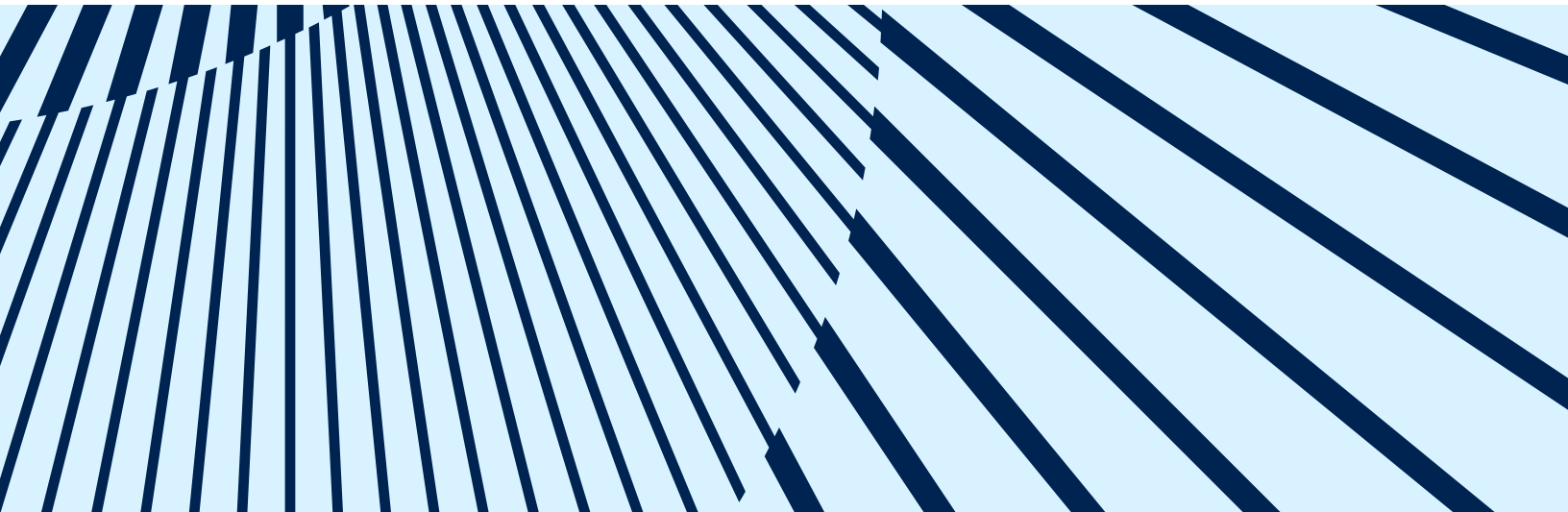
II. The Role Fines Should Play in Enforcement

Fines play an important and at times necessary role in enforcement. Where a regulatory violation causes actual harm, a fine can be an effective vehicle toward restitution. Fines can also punish and deter legal violations that are egregious, knowing, or repetitive.

At the same time, fines should be used sparingly for unknowing violations of law where the underlying law is ambiguous or where technical violations in the law fail to produce any cognizable harm. In such situations, fines appear unpredictable or run the risk of being arbitrarily high because the company's understanding of the law and ability to knowingly adhere to the law itself is uncertain.

Moreover, imposing fines to generate revenue creates a punitive environment that undermines trust in the regulatory regime. Misuse of fines chills legitimate business behavior, stifles competition, and reduces investment and innovation. When fines appear to target specific companies, they foster a sense of discrimination.

Regulators have a duty to foster a predictable regulatory environment, enforce the law, and exercise care when issuing fines. As a result, a regulator's fining authority should only be invoked in response to clear violations of the law, tethered to calculable harms in the jurisdiction they regulate. Unfortunately, the EU's approach does not reflect this basic philosophy. Instead, a pattern of practice has emerged in which large fines that can't be justified are too often levied against American companies simply because the underlying law allows for it.



III. Europe's Not So "Fine" Regime

The EU first began to use fines heavily in the context of its competition laws, then expanded their use to the General Data Protection Regulation (GDPR). Fines have now become an integral part of newer measures such as the Digital Markets Act (DMA), Digital Services Act (DSA), EU Artificial Intelligence (AI) Act, and they may play a role in any final version of the Corporate Sustainability Due Diligence Directive (CS3D). Each of these regulatory frameworks authorizes or contemplates the use of significant fines, amounting to four to twenty percent of global turnover.

Overview of Notable EU Fining Authorities

EU Law	Fining Authority– % Global Turnover	Summary
EU Competition Rules *Articles 101 and 102 of the Treaty on the Functioning of the European Union and Council Regulation 1/2003*	10%	Article 103(2) TFEU mentions fines and penalties. Article 23(2) of Reg. 1/2003 empowers the Commission to impose fines of up to 10% of the entities' aggregate global turnover in the case of an intentional or negligent infringement of Article 101 and/or 102 TFEU. In setting the amount, the Commission must consider the gravity and duration of the infringement.[2]
General Data Protection Regulation (GDPR) *Regulation (EU) 2016/679 with regard to the processing of personal data and on the free movement of such data*	4%	Fines depend on the nature, gravity, and duration of infringements, with penalties reaching up to 4% of global turnover or EUR 20 million, whichever is higher. Supervisory Authorities enforce these penalties based on factors such as negligence, intent, and mitigating actions.
Digital Markets Act *Regulation (EU) 2022/1925 of the European Parliament and of the Council*	10%	Article 30 sets out the fining parameters, which largely mirror Reg. 1/2003. Fines depend on the gravity and duration of the infringement and can increase for repeat offenses (up to 20% of the annual turnover3[3] and systematic infringements (structural remedies).[4]
Digital Services Act (DSA) *Regulation 2022/2065 on a Single Market For Digital Services*	6%	Fines can reach 6% of global turnover, and up to 1% for incomplete or misleading information. Penalties must align with principles proportionality and effectiveness.
EU AI Act *Regulation (EU) 2024/1689 laying down harmonized rules on artificial intelligence*	7%	Fines focus on the gravity, intent, and duration of infringements, with upper limits set at 7% of global turnover or EUR 35 million. Both the AI Office and national Market Surveillance Authorities emphasize a tailored approach, considering factors like the scale of affected individuals, the operator's economic capacity, and the potential benefits gained from the infringement.
Corporate Sustainability Due Diligence Directive *Under consideration*	5%	Given its extraterritorial reach, the legislative proposal envisions a maximum fine of no less than 5% of the company's net worldwide turnover. The measure has been delayed by one year and is under further evaluation.

In general, the fining authorities embedded in these laws suffer from similar flaws. These statutes contain nebulous terms that hamper a company's ability to comply and afford regulators substantial enforcement discretion to find a violation and issue a fine. The laws require little transparency into how fines are calculated, nor is there a strong nexus between the fine amount and actual harm. In many cases, large fines have been issued because of a technical violation that resulted in no harm to consumers. Further, instead of focusing on compliance, fines appear to serve a questionable form of punishment or deterrence given the first-time nature of a violation.

Moreover, Europe's largest fines have been disproportionately levied against American companies. Although the EU purports to align fines with the scale of infringements and harms, in practice, the fine amounts often are tied to companies' global annual turnover. As a result, EU regulators retain a significant ability to issue large extraterritorial fines disproportionate to any harm caused within the European Union. The absence of meaningful guidance and limited judicial oversight results in fines that undercut the EU's regulatory credibility.

A. A Pattern of Abuse Emerges: Competition Fines for Abuse of Dominance vs. Cartel Violations

The EU's competition rules are enshrined in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU),[5] which cover cartels (101 TFEU) and abusive conduct by an entity in a dominant position (102 TFEU). To enforce these articles, the EU has adopted Regulation 1/2003[6] and non-binding Guidelines on setting fines.[7] Sanctions, such as fines, are imposed by the Commission following an administrative law process and serve a double objective: (i) to punish the anti-competitive behavior and (ii) to deter the entity(ies) involved in the procedure at hand (specific deterrence), as well as other entities (general deterrence), from engaging in, or repeating, the same harmful action.[8]

1. Nebulous standards counsel modest fines

Although a violation of 101 TFEU for cartel activities is straightforward, conduct or abuse of dominance enforcement under 102 TEFU is far more nebulous. Cartels are clear-cut violations of competition law. Conduct arising from cartel-led activity causes clear and discernable economic harm and is deserving of strong fines. In fact, in the United States, cartel violations are treated under criminal statutes and result in jail time for executives. Companies know full well that collusive conduct in the market is illegal. In this context, large fines become important for activities that cause clear, calculable harm to consumers. They should be used to punish and deter, especially in Europe where cartel violations are not treated criminally.

However, with 102 TFEU, both under the law's language and precedent, it is never readily discernible when exactly a company crosses over from vigorously competing on the merits to competing in a manner that the EU finds abusive. Unlike a cartel, the business conduct in question in an abuse of dominance case usually has some procompetitive justification associated with its conduct, as consumers derive some level of benefit from such aggressive competition. Often, a company only comes to understand that it violated 102 TFEU after the regulator has declared the violation to have occurred.

Given these ambiguities, the remedy in an abuse of dominance case should focus on requiring the company to change its business practices to comply with the law, rather than the imposition of a significant fine. In such cases, it is usually difficult to determine significant anticompetitive harm by which to calculate a fine, and as the violation may only be evident after the fact, fines should not be used to punish or deter. Moreover, a disproportionate fine in an abuse of dominance case deters vigorous, pro-competitive behavior, as other companies fear that a regulator might impose such a fine on arguably legitimate business conduct in the future. This suggests Europe would seek to use fines far more aggressively in cartel cases than abuse of dominance cases.

2. The EU imposes disproportionate fines for abuse of dominance matters

In practice, however, the EU has levied fines with a much heavier hand in abuse of dominance cases than in cartel cases–the exact opposite of sound policy. In the past ten years, the Commission adopted 54 decisions,[9] including 12 in cases related to single-firm conduct, 41 in cartel cases, and one involving a violation of procedural antitrust rules.[10] The Commission imposed fines in all these cases.

In the 12 single-firm conduct cases (Annex A), fines totaled €12.98B, of which a staggering €12.42B involved U.S. companies–an average of more than €1B per case. In contrast to abuse of dominance cases, in the 41 cartel cases (Annex B), fines totaled €9.56B, an average of about €233M per violation, only one of which involved a U.S. company. The fact that as few as 12 abuse of dominance case resulted in larger fines, generating more revenue than 41 cartel cases is hard to justify. The focused use of fines in abuse of dominance cases has allowed Europe to target American firms for nebulous violations of European completion law, while European companies engaged in cartel activity, the most pernicious type of competition law violation, avoid such harsh treatment.

3. The fines target American companies

Of the 12 abuse of dominance cases, the EU brought only two against European firms, with fines totaling a mere €34 million. In contrast, the other ten cases were brought against foreign firms, nine of which were American. Of these, the Commission imposed seven decisions with fines against companies in the U.S. technology sector: one on Apple, two on Qualcomm, three on Google, and, most recently, one on Meta. Google (Android) received the highest fine of €4.34 billion, which was 4.5% of the company's global turnover[11]–in sharp contrast, a European company, Altstoff Recycling Austria, received the lowest single-firm conduct fine, €6 million.[12] In all seven cases, fines were calculated based on the extraterritorial basis of global turnover. Examples from an earlier period in the Commission's history of competition enforcement cases show that similar abuse of dominance fines were also levied at far higher dollar amounts than cartel fines against American companies like Microsoft, Google, and Intel.

In total, over the last decade, U.S. companies paid 96% of all abuse of dominance fines and more than 55% of all EU competition fines. All fines in the digital technology and services sector were imposed exclusively on U.S. companies.

B. Abuse Spreads: The Generalized Data Protection Regulation (GDPR)

A similar pattern emerges regarding fines levied for GDPR violations. Under the GDPR, fines are based on the nature, gravity, and duration of infringements, with penalties reaching up to

4% of global annual turnover or €20 million, whichever is higher. Unlike competition fines levied by the European Commission, EU Member States' data protection regulators enforce these penalties based on factors such as negligence, intent, and mitigating actions. This dispersion of fining authority makes it difficult to ensure fines are levied across the European Union in an even-handed manner.

Focusing on the 20 highest fines in terms of value: from the GDPR's effective date of May 25, 2018, through October 31, 2024, it is clear that EU regulators have focused squarely on U.S. firms. Of these 20 fines, 16 were issued to U.S. companies for a total of €4.37 billion (Annex C). Like abuse of dominance, the GDPR punishes companies for at times nebulous conduct untethered from consumer harm and has been used to impose massive fines on American companies. For example, in 2023 the Irish Data Protection Commission (DPC) fined Meta €1.2 billion for conduct not tied to any demonstrable harm to consumers. Instead, the fine was based on alleged deficiencies in Meta's use of Standard Contractual Clauses for transatlantic data transfers, an issue rooted in regulatory uncertainty rather than any identifiable privacy harm to individuals. Similarly, in 2024 the Dutch Data Protection Authority levied a €290 million against Uber for alleged failures in safeguarding drivers' personal data during transatlantic transfers, even there was no evidence that these transfers resulted in any misuse of data or harm to individuals. Beyond the collection of a fine, neither company materially changed its privacy practices and legal certainty of data flows between the United States and the European Union resumed following an international agreement between the governments[13]. These two fines were levied for a period where the EU courts injected legal uncertainty regarding data transfers to the United States, not for the privacy practices of either company, but out of concern for hypothetical surveillance practices of the United States government. In neither case was the regulator required by the court to issue a fine. Yet, in both cases, they chose to do so–for what amounts to a technical violation in the law that the companies could not have anticipated the European courts creating. Moreover, the fines were egregiously high, given no evidence suggesting that European citizens' data fell victim to U.S. government surveillance because of cross-border data transfers.

Both fines are being challenged in court; in fact, all but three of the largest twenty GDPR fines levied against American companies have been challenged in court. Among the thirteen matters before the court, three cases saw the fine upheld, while the others still await judicial review. Such a high rate of challenge itself suggests that that the underlying violation, as well as the method of calculation, is questionable. Large companies typically avoid lengthy, protracted litigation battles unless there is sufficient legal basis to challenge the regulatory findings. In all cases, transparency into the violations (such as identification of theoretical harm versus actual harm to individuals' privacy) and the method for calculating the fine is severely lacking.

In fact, GDPR has proven to be an incredibly complicated law. Such complexity makes compliance challenging even for the largest companies and nearly impossible for small and medium size businesses. Systemic problems within the law translate into something that is difficult to enforce evenhandedly, but all too easy to find a violation that triggers a fine. The European Union has finally recognized the need to overhaul the GDPR, recently placing it as a top priority for tackling bureaucracy and red tape that hampers the bloc's competitiveness.[14]

Based on GDPR fines, it appears that the EU and its Member States are imposing excessive fines as a blunt instrument to punish American companies for technical or procedural violations rather than actual harm,

even where companies have invested millions of euros to come into compliance. Such disproportionate enforcement undermines the GDPR's credibility and raises compliance risks for businesses, operating in the EU. The size of these fines, calculated based on global turnover, underscores the EU's willingness to impose excessive penalties on U.S. companies. In cases where privacy harms might have been material, fines were issued with precious little explanation in terms of identifying the privacy damage done to European consumers, the degree to which the company should have known it was committing a violation, or how the fine amount was ultimately determined.

C. The Great Expansion: The DMA, DSA, the AI Act, and CSDDD

Newer measures, including the Digital Markets Act (DMA), Digital Services Act (DSA), Artificial Intelligence Act (AI Act), and Corporate Sustainability Due Diligence Directive (CSDDD), all contain similar fining authorities in relationship to nebulous liability standards. These measures again place American companies uniquely in the crosshairs for significant fines. The DMA explicitly targets foreign companies, capturing seven firms, all but one of which are American. These measures also allow European regulators to impose multibillion dollar fines based on worldwide turnover irrespective of actual harm to European consumers. The combination of unclear compliance pathways and severe financial consequences leaves the EU vulnerable to legitimate criticism about its regulatory approach, hamstringing international business operations and stifling innovation in the technology space.

Most concerningly, evidence suggests that the EU means to single out U.S. companies for excessive scrutiny and punishment for reasons unrelated to legitimate regulatory policy. The European Commission designed its 2020 digital policy roadmap, in part, to advance a protectionist industrial policy by strengthening the EU's digital competitiveness vis-à-vis the United States and China.[15] As part of an effort to achieve "digital sovereignty,"[16] the EU encourages regulators to levy hefty fines on U.S.-headquartered firms with the underlying goal of reducing their competitiveness in the European market.

1. The Digital Markets Act

Ostensibly designed to "complement" EU competition rules to "make markets in the digital sector fairer and more contestable,"[17] the DMA singles out digital competitors and subjects them to ex-ante regulation and specialized enforcement when they have a "dominant" market position. Specifically, the DMA allows the Commission to impose significant fines against designated "gatekeepers"–or companies offering core platform services to users–for forecasted conduct. Almost every designated gatekeeper is an American company, save one Chinese firm.

a. The DMA's nebulous standards create regulatory uncertainty

While established EU competition law combats illegality through ex post enforcement,[18] the DMA's loosely drafted ex ante regulatory framework creates substantial uncertainty. The DMA prescribes and prohibits certain conduct for designated gatekeepers, but the vague and open-ended language affords regulators significant discretion. For example, the DMA includes terms like "fairness," "contestability," and "self-preferencing," none of which are clearly defined or rest on

meaningful precedent to provide context. This ambiguity creates a compliance minefield for companies, which must guess how regulators might interpret their actions. As a result, businesses are perpetually at risk even when acting in good faith.

This ambiguity effectively grants regulators a de facto role in the day-to-day operations of business. By requiring gatekeepers to seek preapproval or adjust their practices based on regulators' views, the DMA places regulators in a role akin to having a seat on the company's board. For instance, the DMA's provisions on data sharing, interoperability, and self-preferencing require companies to align operational decisions with regulators' expectations. This level of regulatory involvement undermines businesses' autonomy and stifles their ability to innovate or respond to market demands. Instead of fostering a predictable regulatory environment, the DMA creates a system where compliance is subject to the shifting whims of regulators.

While the DMA is objectionable policy, it is the law, backed by unchecked, exorbitant, and potentially duplicative fining authority. The DMA's design and ongoing investigations suggest that the measure will result in heavy fines on U.S. companies–as borne out by the first fines announced in April 2025.

b. The DMA deliberately targets U.S. companies

The DMA sets "objective" criteria to identify "gatekeepers," the companies subject to the law,[19] based on annual turnover and the number of active and monthly users, including business users.[20] Belying the pretense of objectivity, however, statements by EU officials underscore how they designed the DMA to target U.S. tech firms:

- In February 2021, Dita Charanzova, vice-president of the European Parliament, wrote in an opinion peice "we must state the truth: these proposals target U.S. companies."[21]

- Andreas Schwab, the European Parliament rapporteur on the DMA, repeatedly called for the scope of the DMA to be limited to non-European firms.[22]

- In May 2021, Schwab said, "Let's focus first on the biggest problems, on the biggest bottlenecks. Let's go down the line—one, two, three, four, five—and maybe six with Alibaba. But let's not start with number seven to include a European gatekeeper just to please [then-U.S. president Joe] Biden."[23]

- In June 2021, Schwab released a report in which he proposed raising the turnover and capitalization floors to €10 billion and €100 billion, respectively, admitting he calibrated the numbers to target more profitable U.S. tech firms.[24]

The ultimate gatekeeper designations confirmed the DMA's intentional focus on American companies. In September 2023, the European Commission designated six gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. In May 2024, the Commission also designated American company Booking Holdings as a gatekeeper.[25]

c. The DMA exposes U.S. companies to exorbitant fines

The EU will use the DMA to impose significant fines on American companies. Based on public reports, Europe has been formally investigating Apple, Meta, and Alphabet, three of the initial six designated gatekeepers.[26] In March 2024,

less than three weeks after gatekeepers were required to comply with the DMA,[27] the Commission opened five formal investigations. The first concerns Alphabet's rules on allegedly steering in Google Play[28] and self-preferencing in Google Search.[29] Another concerns Meta's "pay or consent model."[30] Finally, Apple is subject to not one, not two, but three investigations. Apple became the subject of two formal investigations with a focus on steering in the App Store[31] and on the choice screen.[32] Regarding the App Store, the Commission's preliminary view is that Apple is breaching the DMA.[33] This determination comes on the heels of the Commission taking action under European competition law against Apple, issuing a fine of €1.8 billion shortly after the DMA became law for the same conduct now under investigation. In that case, the European Commission found Apple "abusing its dominant position on the market for the distribution of music streaming apps to iPhone and iPad users through its App Store."[34] The Commission has opened its third DMA investigation against Apple with regard to its new contractual terms, including a new fee structure which requires app developers, amongst others, to pay a fee for each installed app.[35] The Commission seems poised to impose another fine on Apple after the company reportedly failed to allow app developers to steer users to offers outside the App Store.[36]

In April 2025, the first DMA fines were levied against Apple and Meta totaling €700 million. In response, the White House labeled the fines "economic extortion."[37] In March 2025, EU Executive Vice-Presidents Ribera and Virkkunen wrote to U.S. lawmakers that the intent of the DMA (as with all EU laws) is "to ensure compliance–not to issue fines."[38] A few weeks later, Ribera said she would be "brave" and was "bound by the law" to come down against American companies, despite DMA fines being discretionary and not required under the law.[39] Both companies are expected to appeal the decisions. Apple has complained that "despite countless meetings," regulators keep "moving the goal posts," including last fall when European Commission officials refused to provide requested feedback.[40] Meta is expected to argue that the business practices that are targeted under the DMA are legally acceptable under GDPR because the company has received consent from its customers through a series of choice screens developed in concert with GDPR regulators.[41]

2. The Digital Services Act

The DSA divides enforcement responsibilities between Member States and the European Commission. Financial penalties for non-compliance can reach 6% of worldwide turnover, while violations involving incomplete or misleading information can incur fines of up to 1%. In theory, the penalties must align with the principles of proportionality and effectiveness.

As with the other regulatory regimes, the DSA puts American firms squarely into its focus. The European Commission has identified 23 Very Large Online Platforms (VLOPs) and 2 Very Large Online Search Engines (VLOSEs).[42] Of those identified, 15 are U.S. companies. Additionally, the Commission has initiated formal proceedings against 5 VLOPs, including X[43] and Meta Platforms Ireland Limited for both its Facebook[44] and Instagram services.[45]

Here again, the investigations appear to have little relation to alleged harms arising from complaints from European consumers. For instance, these proceedings concern risk management, content moderation, dark patterns, advertising transparency, and data access for researchers, among other topics.[46]

Fines are expected to come down under the DSA, even as Executive Vice-President Virkkunen—in response to rumors that X could be fined more than a €1 billion—once again stated that the goal was "not to impose big fines" but rather to "make sure that all companies are complying with our rules."[47]

3. The EU AI Act

Although there is much uncertainty as to how regulators will interpret and enforce the EU AI Act, it appears that Brussels has again imposed ambiguous yet burdensome regulatory requirements without considering technical feasibility, actual risks, or the possible detrimental effects on innovation.[48] The Act also opens the door for European regulators to continue to use fines arbitrarily against American companies: For "compliance" failures, companies could face fines as high as €35 million or 7 percent of global annual sales, whichever is greater based on a three-tier scale. At the recent AI Action Summit in Paris, Vice President Vance noted that the White House "is troubled by reports that some foreign governments are considering tightening the screws on U.S. tech companies," a not-so-thinly-veiled reference to Europe.[49]

The AI Act nominally establishes a "risk-based" approach[50] for regulating the deployment of AI systems. Before they can enter the market, supposedly "high-risk" systems face strict requirements, such as having to disclose their data sets and capabilities. Some systems may even need to undergo testing and receive premarket regulatory approval. In adopting this approach, however, Europe failed to consider issues of cost or technical feasibility, such as how developers could demonstrate that their systems comply with the Act's amorphous standards.

Given that the EU has enforced other statutes against American technology companies in an arbitrary manner, the AI Act could dissuade U.S. companies from releasing their models in Europe. This would harm European consumers and deprive American firms of an opportunity to test their models in an important market.

4. The Corporate Sustainability Due Diligence Directive

The Corporate Sustainability Due Diligence Directive (CS3D) could also lead to excessive and unjustified fines on U.S. companies, imposing undue burdens through its broad extraterritorial reach. This Directive could capture U.S. firms under European regulatory preferences without a clear nexus to Europe, resulting in significant financial and administrative challenges, and with a maximum fine of not less than 5% of the company's net worldwide turnover.

The Directive, as drafted, imposes stringent compliance requirements that may not align with existing corporate governance practices in the United States. This forces companies to overhaul their supply chain management and reporting systems, leading to significant financial and administrative burdens. The cost of these adjustments, coupled with the risk of non-compliance even under circumstances well outside a company's control, increases the likelihood of substantial fines.

Additionally, the complex regulations and EU-centric standards create a competitive disadvantage for U.S. companies operating globally. American firms face conflicting demands under U.S. law, heightening legal risks and the potential for frivolous litigation. This environment makes U.S. companies more vulnerable to potentially significant fines as they navigate these regulatory challenges.

Implementation of CSDDD has been paused for one year, allowing officials time to rethink their approach as part of a larger effort to grapple with regulatory overreach by Brussels. It is unclear at this time how the Directive will be finalized and what role fines may play as part of any enforcement regime.

IV. Lack of Sufficient Guardrails

All the laws referenced above call for fines to be "effective, proportionate, and dissuasive." However, none of these terms are well-defined. Moreover, despite issued guidance, regulators hold significant authority to decide when to issue and how to calculate a fine for violations of laws that are both ambiguous and shaped by the regulator's discretion—at the expense of those regulated (Annex D).

Competition cases provide the most experience with fines. Voluntary guidelines used in competition enforcement may be appropriate for cartel cases but have proven to be abusive for use in abuse of dominance cases. Problematically, DMA fines rely on the same fine guidance used for ex-post competition law violation. Guidance similarly exists for the GDPR, the DSA, and the AI Act, but fining experience under the GDPR demonstrates that it is not effective. Ultimately, American companies punished under the European Commission's fining authority are left to seek judicial review before the EU's General Court and the Court of Justice of the European Union as to whether the fines are appropriate.

In theory, the courts should play a pivotal role in overseeing fines and acting as a critical check on regulatory authorities. The European judicial process, however, often presents challenges for businesses as cases can take years to adjudicate due to the complexity of the economic and policy analyses involved. This delay can leave companies in prolonged purgatory, particularly when fines rest on ambiguous or broad regulatory requirements.

Even more importantly, the courts have only a limited ability to address systemic issues when the underlying legal frameworks are designed to target specific entities, particularly foreign companies. While courts can review individual cases, they cannot easily remedy the broader regulatory environment that enables such practices, an issue exacerbated by the opacity of regulatory requirements and penalties based on global turnover.

Despite these challenges, European regulators have seen significant fines overturned or reduced by the courts often enough to suggest that fining practices need reform. Across all competition cases examined for this report, the courts partially annulled or fully annulled Commission decisions a third of the time (Annex E). Looking at abuse of dominance competition cases, U.S. companies have had notable success in court in pushing back on fines levied. Among the appeals lodged by U.S. companies before the General Court against Commission competition decisions Qualcomm and Google (AdSense) achieved fully successful appeals overturning the decision and the fine, while in the other Qualcomm and Google (Android) cases the decisions were partially annulled, and the fine was reduced. Only in the Google (Shopping) case was the fine left intact despite the decision being partially annulled. Several matters remain pending. Finally, in the merger case against Illumina-Grail, the Commission had its efforts to block the transaction overturned and the €432 million fine vacated.[51]

Relying solely on courts to intervene after the fact creates uncertainty for businesses and prolongs the resolution of disputes, often at great cost to the companies involved. A proactive framework for guiding regulators is necessary to prevent such disputes from arising in the first place.

V. Much Needed Reforms

The EU's current approach lacks clear, consistent, and predictable guidelines, leaving companies vulnerable to arbitrary and excessive penalties. Regulators appear motivated by the desire to levy the maximum possible fines, often basing penalties on global turnover rather than the actual harm within the EU. This approach undermines the credibility of the EU's enforcement mechanisms and chills innovation and investment, particularly for U.S. companies, and ultimately harms Europe's competitiveness and European consumers.

To address these concerns, the EU should undertake its own review of its use of fines and adopt a horizontal measure that provides clear guidance and guardrails to European regulators to ensure that fines, when administered, are proportionate, tied to demonstrable harm within the EU, and applied in a manner that fosters compliance rather than punishing companies excessively. Without such guardrails, the EU risks further alienating its largest trade partner and undermining its own economic goals.

Priority reforms include:

- A clear policy articulation that fines are optional, not mandatory, as part of any enforcement action.
- Removal of global turnover as metric for calculating potential fines.
- Requiring greater transparency into how each fine is calculated.
- Calculating fines based on actual, identifiable harms, not hypothetical harms.
- Requiring explicit consideration of whether the violation was an unambiguous violation of the law; if not, a conduct remedy rather than a fine should be sufficient.
- Adopting distinctive fining practices for cartel, abuse of dominance, and DMA violations.

First, regulators should be bound to adhere to clear and consistent horizontal guidelines that define how fines are determined. These guidelines should include specific criteria, such as the severity of the violation, the harm caused, and the violator's intent. Through a structured framework, regulators can avoid arbitrary or excessive penalties.

Second, the EU should require regulators to demonstrate a direct correlation between the size of the fine and the actual harm caused. This should include specific calculations and evidence to justify the penalty amount. Without such quantification, fines risk being perceived as punitive or revenue-generating rather than corrective.

Third, legislative guardrails are essential to limit the discretion of regulatory bodies in imposing fines. For instance, maximum fine thresholds can prevent excessive penalties, especially in cases where the harm is minimal or unintentional. Where the legal standards are vague, fines should be reserved for repeat offenses, not for initial violations.

In sum, to ensure that enforcement actions are appropriate, proportionate, and aligned with the principles of due process, the EU must move away from its current punitive approach and adopt a more measured and evidence-based framework for fines. Only by placing better guardrails on its fining authority can the EU restore confidence in its regulatory system in a way that strengthens the transatlantic relationship. A review of Europe's approach to fines should be part of the European Commission's competitiveness agenda.

Appendix A

Summary of Competition Abuse of Dominance Fines (Past Decade)

1. Meta–2024[52]

€797.72 million for breaching EU antitrust rules by tying its online classified ads service Facebook Marketplace to its personal social network Facebook and by imposing unfair trading conditions on other online classified ads service providers

2. Mondelez–2024[53]

€337.5 million for hindering the cross-border trade of chocolate, biscuits and coffee products between Member States, in breach of EU competition rules

3. Teva–2024[54]

€462.6 million for misuse of the patent system and disparagement to delay rival multiple sclerosis medicine

4. Apple–2024[55]

€1.8 billion for abusing its dominant position on the market for the distribution of music streaming apps to iPhone and iPad users ('iOS users') through its App Store

Appeal pending (T-260/24)

5. Teva and Cephalon–2020[56]

€60.5 million for delaying entry of cheaper generic medicine

6. Qualcomm–2019[57]

€242 million for engaging in predatory pricing

Commission decision upheld, but fine reduced to €238.7 million

7. Google–2019[58]

€1.49 billion for abusive practices in online advertising, specifically by imposing restrictive clauses in contracts with third-party websites that prevented Google's competitors from placing their ads on these sites

Appeal pending (C-826/24 P)

8. Qualcomm–2019[59]

€997 million for abuse of dominant market position in LTE baseband chipsets

Commission decision annulled (T-235/18)

9. Google–2018[60]

€4.34 billion for imposing illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search

Appeal pending (C-738/22 P)

10. Lietuvos geležinkeliai–2017[61]

€28 million for hindering competition on rail freight market

11. Google–2017[62]

€2.42 billion for abusing its dominant position in the search engine market by giving an illegal advantage to its own comparison shopping service

12. Altstoff Recycling Austria–2016[63]

€6 million for hindering competition on Austrian waste management market

Appendix B

Summary of Competition Cartel Fines (Past Decade)

1. Credit Suisse[64]

€83 million for participating in a Foreign Exchange spot trading cartel

2. UBS, Barclays, RBS, HSBC[65]

€261 million for participating in a Foreign Exchange spot trading cartel

3. Essex Express (UBS, Barclay, RBS and Bank of Tokyo-Mitsubishi (now MUFG)[66]

€811.197 million for participating in foreign exchange spot trading cartel

4. TWBS (UBS, Barclay, RBS, Citigroup, JP Morgan)[67]

€257.682 million for participating in foreign exchange spot trading cartel

5. Mastercard[68]

€570 million for obstructing merchants` access to cross-border card payment services

6. ICAP[69]

€14.9 million for participation in several cartels in Yen interest rate derivatives sector

7. Bank of America Merrill Lynch, Crédit Agricole and Credit Suisse Cartel[70]

€28 million for participating in SSA bonds trading cartel

8. Bank of America, Natixis, Nomura, RBS, UBS, UniCredit and WestLB[71]

€371 million for participating in a European Governments Bonds trading cartel

9. Rabobankz[72]

€26.6 million for participating in a cartel concerning the trading of certain Euro-denominated bonds

10. Riberebro (Ribererbro)[73]

€5.2 million for participation in canned mushrooms cartel

11. CECAB, Bonduelle, Coroos[74]

€31.6 million for participating in canned vegetables cartel

12. Conserve Italia Soc. coop. agricola and subsidiary Conserves France S.A.[75]

€20 million for participating in canned vegetables cartel

13. Melco (Mitsubishi Electric) and Hitachi, Denso[76]

€137,789,000 on Melco (Mitsubishi Electric) and Hitachi for participating in a cartel for alternators and starters with another firm, Denso, in breach of EU antitrust rules

13. Bosch and Continental, TRW[77]

€546 million for taking part in four different cartels relating to cars

14. Behr, Calsonic, Denso, Panasonic, Sanden and Valeo[78]

€155 million for taking part in one or more of four cartels concerning supplies of air conditioning and engine cooling components to car manufacturers in the European Economic Area (EEA)

15. Campine, Eco-Bat Technologies, Johnson Controls and Recylex[79]

€68 million for fixing prices for purchasing scrap automotive batteries, in breach of EU antitrust rules

Campine's appeal was successful (T-240/17, reduction from 8.16 million to 4.28 million)

16. Automotive Lightning and Hella (Valeo, Magneti Marelli)[80]

€26,744,000 for participating in an automotive lighting cartel

17. Tokai Rika, Takata, Autoliv, Toyoda Gosei und Marutaka[81]

€34 million for participating in one or more of four cartels for the supply of car seatbelts, airbags and steering wheels to Japanese car manufacturers in the EEA

18. Autoliv and TRW[82]

€368,277,000 for participating in two cartels for the supply of car seatbelts, airbags and steering wheels to European car producers

19. NYK, "K" Line, WWL-EUKOR, CSAV[83]

€546 for raising component prices or transport costs for cars

20. Brose und Kiekert[84]

€18 for cartels concerning supplies of closure systems for cars in the European Economic Area (EEA)

21. Daimler, BMW and Volkswagen group (Volkswagen, Audi and Porsche)[85]

€875 for restricting competition in emission cleaning for new diesel passenger cars

22. Daimler, Volvo, others (Settlement decision– Scania did not settle, see following point)[86]

€2.93 billion for participating in a cartel

23. Scania (with MAN, DAF, Daimler, Iveco, Volvo/Renault which all settled– see previous point)[87]

€880 million for participating in trucks cartel

24. Elna, Hitachi Chemical, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con, Rubycon[88]

€254 for the supply of aluminium and tantalum electrolytic capacitors

25. Sony, Panasonic and Sanyo, Samsung[89]

€166 million for coordinating prices and exchanged sensitive information on supplies of rechargeable lithium-ion batteries, used for example in laptops and mobile phones

26. Bandai Namco (+Valve)[90]

€340.000 for "geo-blocking" practices

27. Capcom (+Valve)[91]

€396.000 for "geo-blocking" practices

28. Focus Home (+Valve)[92]

€2.888 billion for "geo-blocking" practices

29. Koch Media (+Valve)[93]

€977.000 for "geo-blocking" practices

30. ZeniMax (+Valve)[94]

€1.664 billion for "geo-blocking" practices

31. Westlake, Orbia, Clariant and Celanese[95]

€1.624 billion for "geo-blocking" practices

32. Pometon S.p.A. (Ervin Amasteel, Metalltechnik Schmidt GmbH & Co. KG, Ervin Industries Inc., Eisenwerk Würth GmbH, Winoa Holding SAS, Winoa SA)[96]

€6.2 million for participation in steel abrasives cartel

Pomenton's appeal was successful (C-440/19, reduction from 6.2 million to 2.63 million)

33. Sunpor, Synbra, Synthomer, Synthos and Trinseo[97]

€157 for participating in a cartel concerning purchases on the styrene monomer merchant market

34. Alkaloids of Australia, Alkaloids Corporation, Boehringer, Linnea and Transo-Pharm[98]

€13.4 million for participating in a cartel concerning an important pharmaceutical ingredient

35. České dráhy and Österreichische Bundesbahnen[99]

€48.7 million over collusion to exclude common competitor

36. Lantmännen[100]
€47.7 million over ethanol benchmarks cartel

37. Abengoa[101]
€20 million over ethanol benchmarks cartel

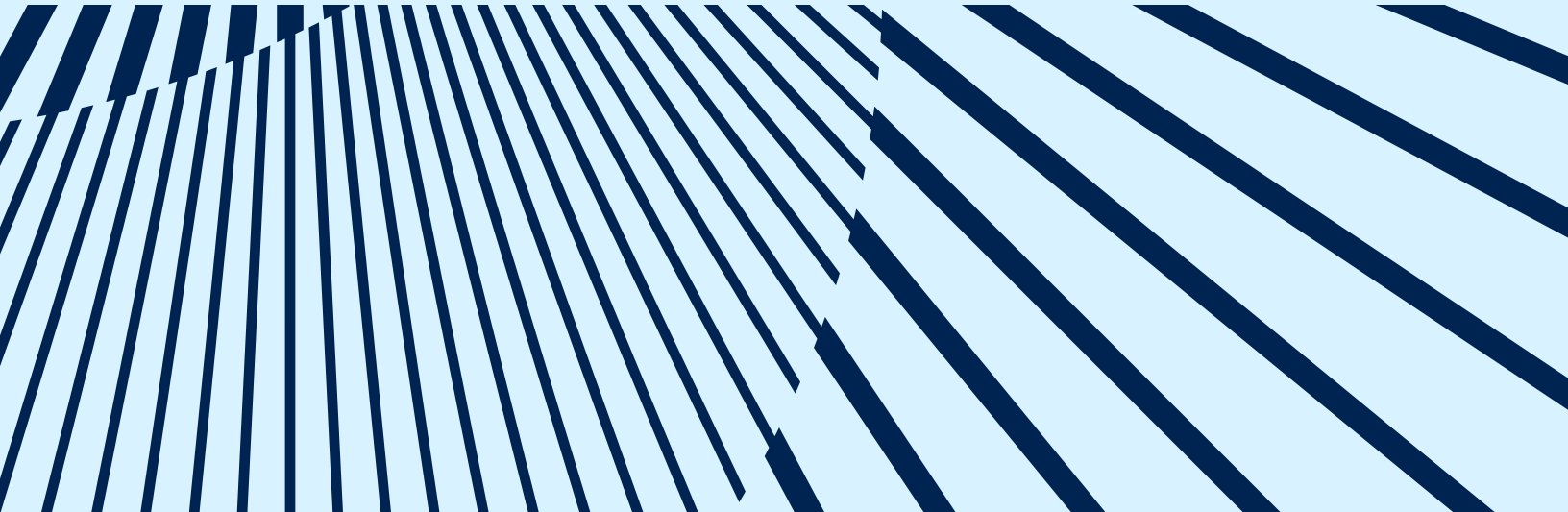
38. Crown and Silgan[102]
€31.5 million for participating in a cartel concerning sales of metal cans and closures in Germany

39. Diehl[103]
€1.2 million for participating in a cartel concerning the sale of military hand grenades together with its rival RUAG

40. Linpac, Vitembal, Huhtamäki, Sirap-Gema, others[104]
€9.44 million for participation in retail food packaging cartel

Appendix C

Highest Fines Issued to U.S. Companies Under the GDPR



Highest Fines Issued to U.S. Companies Under the GDPR **May 25, 2018–October 31, 2024**

U.S. Company	Fining Entity	Year	Fine (EUR)	Rationale and Subsequent Action	Fine Status
Meta	Irish Data Protection Commission (DPC)	2023	1.2 billion	DPC concluded that Meta's use of Standard Contractual Clauses for EU to U.S. data transfers did not comply with GDPR Article 46(1) due to insufficient safeguards against U.S. surveillance laws, and that Meta could not rely on Article 49 derogations to justify these transfers.[105]	No identifiable privacy harms. The fine has reportedly been appealed by Meta before the Irish High Court.[106] However, no final outcome of the appeal has been announced.
Amazon	Luxembourg National Commission for Data Protection (CNDP)	2021	746 million	In a press release about the decision, CNDP did not disclose the exact facts and reason(s) for the imposition of the fine but mentions that the fine was imposed due to infringements of the GDPR.	No transparency as to violation, level of harm, or how the fine was calculated. Amazon has reportedly challenged the decision before Luxembourg's Administrative Court. Reportedly a hearing of the case took place in January 9, 2024 but no final outcome has been announced.
Meta	Irish Data Protection Commission	2022	405 million	Meta allegedly violated the GDPR by publicly disclosing children's email addresses and phone numbers on Instagram business accounts, and setting their personal accounts to public by default without clear notification.[107]	The fine has reportedly been challenged before the High Court of Ireland but no final outcome has been announced.[108]
LinkedIn	Irish Data Protection Commission	2024	310 million	LinkedIn allegedly violated the GDPR by not validly obtaining users' consent for processing third-party data for behavioral analysis and targeted advertising.	The fine has reportedly been challenged before the High Court of Ireland but no final outcome has been announced.[109]
Uber	Dutch Data Protection Authority	2024	290 million	Uber allegedly failed to provide necessary safeguards for transatlantic data transfers of drivers' personal data from August 6, 2021, to November 27, 2023, and could not rely on GDPR Article 49 exceptions.[110]	No identifiable privacy harms. The fine will reportedly be challenged but no further information has been announced.[111]
Meta	Irish Data Protection Commission	2022	264 million	Meta allegedly violated GDPR Articles 25(1) and 25(2) by implementing insufficient measures to prevent data scraping and by making users' phone numbers and email addresses searchable by default, exposing personal data to misuse.[112]	The fine has reportedly been challenged before the High Court of Ireland.[113] At Meta's request, the High Court decided[114] to adjourn the proceedings to await the outcome of the WhatsApp Ireland Ltd case currently pending before the CJEU.[115]
WhatsApp	Irish Data Protection Commission	2021	225 million	WhatsApp allegedly violated GDPR Articles 12, 13, and 14 by failing to provide mandatory information to users and non-users and by not meeting transparency obligations regarding data sharing with Facebook Companies.[116]	The fine has reportedly been challenged,[117] and the decision on appeal is reportedly pending.[118] WhatsApp challenged the European Data Protection Board's (EDPB) Binding Decision on which DPC's decision was based,[119] before the General Court (GC), seeking to annul it. The GC ruled that the proceedings were inadmissible on the grounds that WhatsApp does not meet the admissibility criteria to request the annulment of the EDPB's Binding Decision.[120] WhatsApp has brought an appeal to the Court of Justice of the European Union against the GC's first instance ruling which is currently pending.[121]
Meta	Irish Data Protection Commission	2022	210 million	Facebook allegedly violated GDPR by improperly relying on Article 6(1)(b) for behavioral advertising and failing to meet transparency and fairness requirements under Articles 5(1)(a), 12(1), and 13(1)(c).[122]	The fine has reportedly been challenged before the High Court of Ireland; final outcome has yet to be announced.[123]
Meta	Irish Data Protection Commission	2022	180 million	Meta allegedly violated GDPR by compelling users to consent to data processing, failing transparency requirements, and improperly relying on Article 6(1)(b) for behavioral advertising, which is not necessary for contract performance.[124] DPC also found that Meta's information failed to meet transparency requirements of Articles 5(1)(a), 12(1), and 13(1)(c) of the GDPR. Lastly, DPC concluded that Meta also infringed the principle of fairness under Article 5(1)(a) of the GDPR.	The fine has reportedly been challenged before the High Court of Ireland; no final outcome has been announced.[125]
Google	French Data Protection Authority (CNIL)	2021	150 million	The fines were issued due to alleged breaches related to cookie consent mechanisms. The practices were found to have violated the legal requirement for freedom of consent under Article 82 of the French Data Protection Act, as interpreted by the GDPR.[126]	Fine does not appear to have challenged.
Google	French Data Protection Authority	2020	100 million	CNIL found Google to be in violation of three core areas of the GDPR: lack of clear information, lack of prior consent, and an ineffective opt-out mechanism for cookies.[127]	CNIL's decision was challenged; however, its reasoning was endorsed and the fines were upheld.[128]
Meta	Irish Data Protection Commission	2024	91 million	DPC's inquiry found Meta in violation of multiple GDPR provisions for allegedly storing user passwords in plaintext, failing to notify or document the breach, and lacking appropriate security measures.	The fine has reportedly been challenged before the High Court of Ireland; final outcome has yet to be announced.[129]
Meta	French Data Protection Authority	2021	60 million	CNIL found that Meta's process for refusing cookies and information provided to users violated Article 82 of the French Data Protection Act and GDPR.[130]	Fine does not appear to have challenged.
Microsoft	French Data Protection Authority	2022	60 million	CNIL concluded that Microsoft's automatic placement of advertising cookies without prior consent and a consent mechanism violated Article 82 of the French Data Protection Act and GDPR, compromising user consent.[131]	Fine does not appear to have challenged.
Google	French Data Protection Authority	2019	50 million	CNIL found Google to be in violation of GDPR Articles 12 and 13 for providing what was considered unclear and fragmented information to users and for allegedly invalidly collecting user consent for personalized advertising.[132]	The decision was challenged; however, the reasoning was endorsed and the fine was upheld.[133]
Amazon	French Data Protection Authority	2020	35 million	CNIL found that Amazon violated Article 82 of the French Data Protection Act by allegedly placing cookies without user consent, providing insufficient information about cookie use, and failing to explain how to refuse cookies.[134]	The decision was challenged; however, the reasoning was endorsed and the fine was upheld.[135]
TOTAL			**4.376B**		

Appendix D

Fine Guidance

Competition & DMA Fines Guidance

It is important to note that upon reading the guidance for calculating fines arising from a competition violation, it is far more discernable how the guidelines might be applicable to cartel infringements than to abuse of dominance cases or DMA violations. Yet, the guidelines are applicable to all types of competition violations.

Methodology for Calculation of Fines

Articles 101 and 102 TFEU themselves do not empower the Commission to impose fines on undertakings for infringements of the antitrust rules. However, Article 103 TFEU empowers the Council, upon a proposal by the Commission, to adopt specific rules for the implementation of the substantive rules of the TFEU. Article 103(2) TFEU specifically mentions the imposition of fines and penalties among these implementing rules. This has been achieved with the adoption of Reg. 1/2003 which entered into force on May 1st, 2004. Article 23(2) of Reg. 1/2003 empowers the Commission to impose fines of up to 10% of the undertakings' aggregate global turnover in the case of an intentional or negligent infringement of Article 101 and/or 102 TFEU. The relevant turnover is taken from one of the business years preceding the finding of the infringement by way of a Commission decision. The rules on the imposition of fines on undertakings for any infringements of the DMA rules are set out in Article 30 DMA and largely mirror those in Reg. 1/2003, albeit with certain specificities.

When setting the amount of the fine, the Commission must take into consideration the gravity and duration of the infringement.[136] Further details on the method are set out in the non-binding Guidelines, a soft law instrument adopted by the Commission. For the application of the principles set out therein, the Commission enjoys wide discretion to adapt the level of fines to be imposed to the specific circumstances of each individual case. This system entails a certain level of unpredictability regarding the exact amounts of the fines, which is meant to maintain a deterrent effect.[137] This discretion has in principle been endorsed by the EU Courts, but is subject to full judicial review.

To adequately assess fines for violations of the EU antitrust rules, they are calculated following a two-stage process. First, a basic amount is set, and second, the amount is adjusted upwards or downwards due to aggravating or mitigating circumstances.

Basic Amount

The calculation of the basic amount of the fine consists of three elements: first the Commission will determine the value of relevant sales, second it will determine a specific proportion of this amount on account of the gravity of the infringement, and third it will multiply the resulting figure by the number of years and months corresponding to the duration of the infringement.

Value of Relevant Sales

The Commission determines the relevant sales of the undertaking(s) concerned by making use of the best available figures.[138] The standard rule is to use the undertaking's net value of sales of goods and services directly or indirectly related to the infringement within the European Economic Area ("EEA") in the last full year preceding the year of the undertaking's participation in the infringement.[139] To enable this assessment, the Commission commonly addresses Requests for Information ("RFI") to the undertakings, asking them to provide these figures.

In cases where multiple product markets are concerned, the Commission adds the individual values of sales to achieve a total value of sales.[140] Certain cases may also require a deviation from this general rule to include certain values of sales generated outside the EEA, to properly reflect the weight of an undertaking in the infringement, e.g., in worldwide market-sharing arrangements.[141] It may also be the case that an involved undertaking does not make sales in the EEA but nevertheless played an important role in the infringement.

Gravity and Duration

In order to take into account the gravity of the infringement, the Commission will specify a proportion of the value of relevant sales, up to 30%.[142] In principle, horizontal price-fixing,

market-sharing and output-limitation agreements, which are usually secret are—by their very nature—among the most harmful restrictions of competition, and will usually be assessed at the higher end of this scale.[143] The Commission is entitled to apply the same percentage of value of relevant sales to all undertakings that participated in the infringement.[144]

Once the proportion of the value of relevant sales has been identified, it will be multiplied by a factor reflecting the duration of the specific infringement of the antitrust rules by the undertaking. Both months and years of the infringement are considered. The practical application of this rule has changed over time. Initially, incomplete months and years were rounded up so as to take into consideration periods of up to six months with a factor of 50%, whereas periods above six months were 'rounded-up' to 100%. By way of example, if an undertaking had committed an infringement of Article 101 TFEU for 5 years and 4 months, this method led to a multiplying factor of 5.5.[145]

However, this calculation was determined to be disproportionate, and incompatible with the principle of equal treatment.[146] Therefore, the current Commission practice follows a more detailed calculation, so as to properly reflect each undertaking's participation in the respective multiplying factor. As a consequence, multiplying factors with up to two decimal points can occur, e.g., an infringement period from 24 February 2004 to 10 November 2007 has led to a multiplier of 3.71.[147]

In order to effectively achieve deterrence in cases of particularly harmful restriction of competition, e.g., horizontal price-fixing, market-sharing and output-limitation, the Commission usually includes in the basic amount of the fine an additional amount of 15-25% of the relevant values of sales as previously determined.[148] In practice, all punished cartels so far have become subject to such an additional amount of 15%.[149] The Guidelines, however, state explicitly that an additional amount may also be applied in case of other types of infringements.[150]

Aggravating Circumstances

Aggravating circumstances include the continued infringement or the repetition of a similar or same infringement previously of Article 101 or 102 TFEU. Further, refusing to cooperate with the Commission or obstructing its investigation, as well as holding a leading role or being the instigator of the infringement, may trigger an increase of the fine.[151]

Continued or Repeated Infringements

Continued infringements occur when undertakings pursue their anti-competitive conduct, despite knowing of the Commission investigation into that same conduct. Such knowledge must be demonstrated by the Commission, but it can be presumed once the undertaking has had an unannounced inspection or received a statement of objections. Continued infringements have led to increases of the basic amount of between 10% and 60%.[152]

In the Commission's recent enforcement practice, most practical importance is attributed to repeated infringements by the same undertaking. This element requires due consideration, particularly in view of repetition of infringements by different subsidiaries, or in cases where an undertaking recently acquired a company that had already infringed antitrust rules in the past.

The parent company may be held liable for a repeated offence, regardless of whether it was the subject of the previous decision. If this did not apply, each infringement could be intentionally the result of another subsidiary and would never bear any consequences for the parent company.[153] However, the parent company may not be subject to an uplift on the grounds of recidivism if the previous infringement(s) took place prior to the acquisition.[154]

For repeated infringements, the Commission has the power to increase the fine by up to 100%, but it usually follows a staggered approach. e.g., the Commission has imposed a 100% increase for a four-time repetition, whereas a first-time repetition has led to an increase by 50%.[155]

An infringement may be considered as a repetition even if the first Commission decision is still subject to judicial review. Should the Court annul the earlier decision, the Commission would have to adapt the later decision accordingly or withdraw it completely.[156] Repeated infringements must concern the same provision, i.e., Article 101 or Article 102 TFEU.[157] However, the product or geographical markets may differ.[158]

The adjustment of the basic amount due to aggravating circumstances has occurred in various cases. The ongoing duration of the infringement of less than a year has led to an aggravating factor of 60% in one case,[159] whereas in another case, this increase was only 10%.[160]

The cumulation of several aggravating factors, such as a continued infringement and a leading role in the same, can cause a significant increase. For instance, one undertaking participating in a continued infringement received a 10% increase, whereas another undertaking received an increase of 50% for being the ringleader, and another received a further increase of 25% for having warned other cartel members of the forthcoming Commission investigation. All this has been endorsed by the EU Courts.[161]

Obstruction of Investigation

Another aggravating circumstance is the refusal to cooperate with the Commission or the intentional or negligent obstruction of the investigation. In such a case, the Commission needs to decide whether to sanction such behavior in a separate procedure under Article 23(1) of Reg. 1/2003, or to consider it as an aggravating circumstance in the main investigation.[162] The Commission cannot do both.[163]

The CJEU has confirmed that an undertaking is entitled to refuse cooperation in so far as this would go beyond what is required by the law, and this cannot be treated as a refusal to cooperate.[164]

Mitigating Circumstances

The list of possible mitigating factors in the Guidelines is also non-exhaustive and serves as an indication for an undertaking as to what actions may potentially lead to a reduction of the fine. First, immediate termination of the infringement upon the Commission's intervention is a possible mitigating factor. However, the likelihood of such reductions is limited in practice, because termination of the infringement once the investigation has started is considered to be an obligation for the undertakings concerned.[165]

An example of a successful case of mitigation due to the termination of an infringement is where the undertaking concerned deleted an anti-competitive clause in a non-compete agreement that had led to the investigation, within 30 days after receiving the first RFI and within 16 days after the proceedings were initiated by the Commission. These elements led to a reduction of the basic amount of the fine by 20%.[166]

Limited involvement in the infringement and adopting pro-competitive conduct may also lead to a reduction of the fine. In the Dynamic Random Access Memory (DRAM) case, the Commission granted a 5% reduction to an undertaking for only partially applying the restrictive agreement in order to adopt pro-competitive conduct, going beyond mere opportunistic behavior.[167] Two other undertakings benefitted from a reduction of 10%, because they were less involved in the cartel and did not participate in all aspects of the infringement.[168]

Individual deterrence

In order to achieve individual deterrence for the infringer, and to ensure effective competition within the EU, after having determined the basic fine and any aggravating and/or mitigating circumstances, the Commission has the power to apply a further mark-up.[169] This may occur in cases where the undertaking's turnover exceeds by far the value of sales of goods and services related to the infringement.[170] The Commission may in such circumstances increase the final amount of the fine by up to 100%.[171] This provision has been applied in 15 cases and led in most cases to an increase of between 10-20%.[172]

Leniency Bonus

Once the final amount of the fine has been set under the preceding steps, the Commission will take into consideration a potential reduction of the fine due to a bonus for leniency applicants. The EU's Leniency Notice of 2006 is intended to incentivize parties to a (secret) cartel to come forward in exchange for potential immunity or a reduction of their fines.[173] Leniency may be requested by any cartel member at any stage of the proceeding. It is at the Commission's discretion, on the basis of all documents and information provided and the level of cooperation across the proceedings, to decide whether a leniency status shall be granted to a given undertaking.

Total immunity is available to the first undertaking revealing a cartel. If granted, this will result in a reduction to zero of the amount that would otherwise have been imposed as a fine. In case of multiple undertakings applying for leniency, only the first undertaking to make the application will receive immunity. The right to immunity also requires that the evidence provided by an undertaking either enables the Commission to conduct a targeted investigation or to render a decision for an infringement of Article 101 TFEU.[174] The Commission therefore must receive a sufficient benefit based on the evidence brought forward.[175]

Following the first leniency application, other undertakings may still benefit from a reduction of their fine between 30 and 50%. The Commission will consider such a reduction of the fine if the undertakings provide significant added value to the investigation.[176] Reductions under the Leniency Notice vary according to the order in which

information of significant added value is brought forward. The first and second undertakings may benefit from a reduction by 30-50% and 20-30% respectively. Any further undertakings may all receive a reduction of up to 20%. As a consequence, it is possible that some undertakings will benefit from the same level of fine reduction.[177]

Settlement Bonus

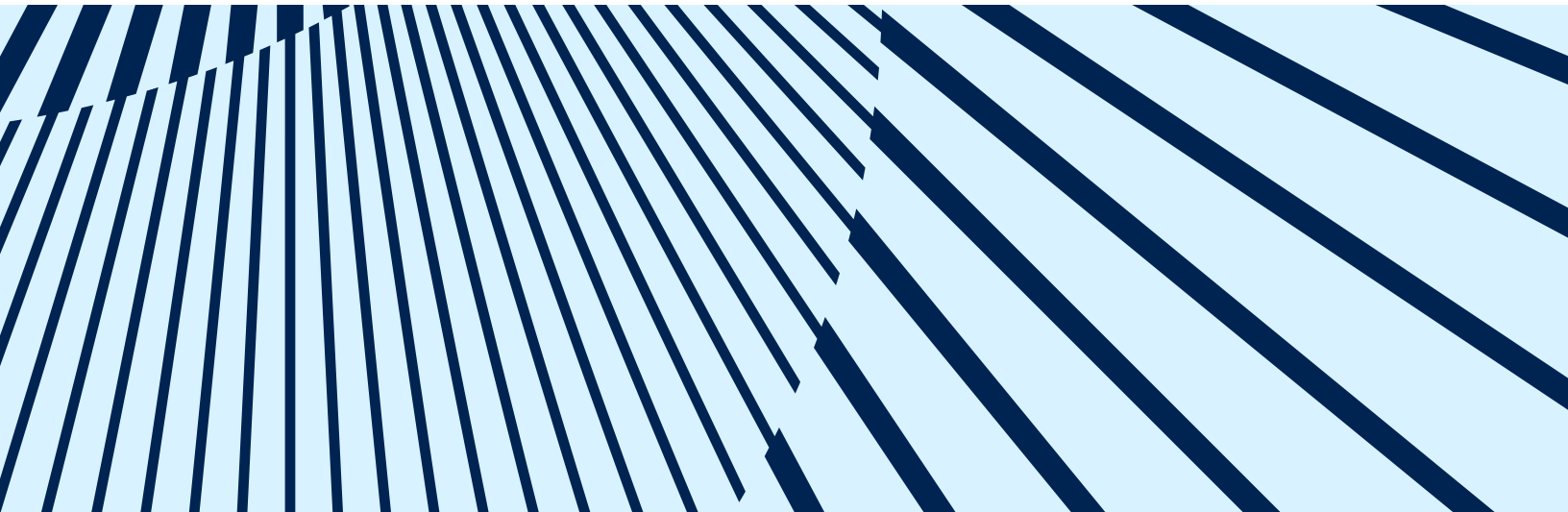
In order to reduce appeals before the EU Courts, and to accelerate procedures, the so-called Settlement Procedure was introduced in 2008.[178] Settlement procedures, like the leniency process, are ostensibly only applicable to cartel cases.[179] However the Commission has already applied it (by analogy) in several abuse of dominance cases and for procedural infringements as well.[180]

The Commission assesses on a strict case-by-case basis whether a settlement may be reached and could therefore be proposed to the undertakings concerned.[181] The settlement procedure is conducted through bilateral meetings and exchanges between the Commission and the settlement candidates, who are essentially required not to contest the relevant facts, their preliminary assessment by the Commission including gravity and duration, their liability for the infringement and the potential range of the fine to be imposed on them.[182]

After successful settlement discussions, the Commission will transfer its preliminary findings on the matter into a final decision without any more hearings or access to file. However, if the Commission decides to take a position different from its statement of objections, the undertaking has the right to access the file, submit a reply and request a hearing.[183] For the undertakings concerned, the main advantage of a successful settlement submission is a reduction of the fine by 10%, in addition to a leniency bonus if applicable.

However, there is no right to settlement for the undertakings, and whilst “hybrid settlements” are legally possible, and have occurred in four cartel matters since 2015[184], the Commissions is not always inclined to adopt both a settlement decision and an ordinary prohibition decision against different undertakings in one and the same case.[185] If one or several undertakings involved in the same cartel are not willing to settle, a settlement may be denied by the Commission for all undertakings.

The EU settlement procedure is not identical to the concept of plea bargaining in the United States. In the EU, a settlement procedure is only initiated upon clarification of the facts and will not lead to a hearing.[186] Plea bargaining, on the contrary, is possible at any stage of the procedure and takes the form of a trial.[187]



GDPR Fine Guidance

When deciding whether to impose a fine and in determining the amount of such fine, the regulator must ensure that it is "effective, proportionate and dissuasive", and must consider the following criteria:

- the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned, as well as the number of data subjects affected and the level of damage suffered by them;
- the intentional or negligent character of the infringement;
- any action taken to mitigate the damage suffered by data subjects;
- the degree of responsibility, taking into account technical and organizational measures implemented pursuant to Articles 25 and 32 of the GDPR;
- any relevant previous infringements;
- the degree of cooperation with the SA, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- the categories of personal data affected by the infringement;
- the manner in which the infringement became known to the SA, in particular whether, and if so to what extent, the concerned organization notified the infringement;
- where corrective measures have previously been ordered against the concerned organization with regard to the same subject-matter, compliance with those measures;
- adherence to approved codes of conduct or approved certification mechanisms; and
- any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.[188]

Methodology for Calculation of GDPR Fines

The abovementioned criteria and the methodology to be followed to calculate the amount of a fine have been clarified by the European Data Protection Board ("EDPB"), which coordinates all EU Supervisory Authorities (SAs).[189]

SAs are not obliged to follow all steps detailed in the EDPB's guidelines. Notwithstanding cooperation and consistency duties, the calculation of the amount of the fine is at the discretion of the supervisory authority. In certain circumstances, the SA may consider that certain infringements can be punished with a fine of a predetermined, fixed amount. It is at the discretion of the SA to establish which types of infringements can be punished with a predetermined fixed amount, based on their nature, gravity and duration.

Nevertheless, an SA's reasoning should at least include the factors which led to determining the level of seriousness, the turnover which is applied, and the aggravating and mitigating factors that were applied. Further, SAs are required to provide sufficient reasoning for their findings subject to applicable national and EU procedural rules.

According to the EDPB guidelines, SAs must follow the following five-step methodology:

Step 1:

Identification of sanctionable conduct and infringement(s)

In this step, SAs should identify the specific conduct that led to a GDPR infringement, as well as the said infringement(s) on which the fine could be based upon. A particular case may involve a single or multiple sanctionable conducts, as well as a single or multiple infringements of the GDPR.

Step 2:

Establishment of the starting point for further calculation of the amount of the fine

In this step, SAs should find the starting point for further calculation of the administrative fine based on an evaluation of several factors. These factors are:

- the respective legal maximums for fines set in the GDPR (i.e., up to EUR 10 million or 2% of total worldwide annual turnover of the preceding financial year; up to EUR 20 million or up to 4% of the total worldwide annual turnover of the preceding financial year, depending on the infringement);

- the seriousness of the infringement at hand, taking into account the nature, gravity and duration of the infringement, considering the nature, scope or purpose of the processing concerned, as well as the number of data subjects affected and the level of damage suffered by them; the intentional or negligent character of the infringement; and the categories of personal data affected by the infringement.

Based on the evaluation of the factors outlined above, the infringement is considered to be of a (i) low, (ii) medium, or (iii) high level of seriousness and the following starting points will apply:

- Infringements of a low level of seriousness: the starting amount for further calculation will be at a point between 0% and 10% of the applicable legal maximum;

- Infringements of a medium level of seriousness: the starting amount for further calculation will be at a point between 10% and 20% of the applicable legal maximum;

- Infringements of a high level of seriousness: the starting amount for further calculation will be at a point between 20% and 100% of the applicable legal maximum.

Further, the EDPB considered that it is fair to reflect a distinction of the size of the undertaking in the starting points, and suggested using the below factors:

- For undertakings with an annual turnover of ≤ EUR 2 million, SAs may consider to proceed with calculations on the basis of a sum between 0.2% and 0.4% of the identified starting amount;

- For undertakings with an annual turnover of EUR 2 million up until EUR 10 million, SAs may consider to proceed with calculations on the basis of a sum between 0.3% and 2% of the identified starting amount;

- For undertakings with an annual turnover of EUR 10 million up until EUR 50 million, SAs may consider to proceed with calculations on the basis of a sum between 1.5% and 10% of the identified starting amount;

- For undertakings with an annual turnover of EUR 50 million up until EUR 100 million, SAs may consider to proceed with calculations on the basis of a sum between 8% and 20% of the identified starting amount;

- For undertakings with an annual turnover of EUR 100 million up until EUR 250 million, SAs may consider to proceed with calculations on the basis of a sum between 15% and 50% of the identified starting amount;

- For undertakings with an annual turnover of EUR 250 million up until EUR 500 million, SAs may consider to proceed with calculations on the basis of a sum between 40% and 100% of the identified starting amount; and

- For undertakings with an annual turnover above EUR 500 million, SAs may consider to proceed without an adjustment of the identified starting amount.

Overall, the higher the turnover of an undertaking within its applicable tier, the higher the starting amount is likely to be. SAs have the discretion to utilize the full fining range from any amount until the legal maximum, ensuring that the fine is tailored to the circumstances of the specific case.

Step 3:

Evaluation of the aggravating and mitigating circumstances

SAs must evaluate a range of factors, including the nature, gravity, and duration of the GDPR infringement, the responsibility of the controller or processor, any previous infringements, the degree of cooperation with authorities, efforts to mitigate damage, and adherence to codes of conduct or certification mechanisms. The assessment considers both aggravating and mitigating circumstances, with the goal of ensuring fines are effective, proportionate, and dissuasive. Exceptional efforts by controllers or processors, timely measures to mitigate damage, and self-reporting can be mitigating factors, while recent and repeated infringements or non-compliance with ordered measures can be aggravating. Each factor is weighed based on the specifics of the case to determine the appropriate fine.

Step 4:

Determination of the relevant legal maximums for the different sanctionable conducts

The GDPR does not specify fixed fines for specific infringements but sets overall maximum amounts to ensure effectiveness and proportionality. Article 83(4)–(6) of the GDPR outlines these legal maximums, with fines up to either EUR 10 million (static amount) or 2% of the total annual turnover from the previous financial year (dynamic amount); or EUR 20 million (static amount) or 4% of the total annual turnover from the previous financial year (dynamic amount). The GDPR specifies that the higher amount between the static amount and the dynamic amount must be used to determine the relevant legal maximum in order to ensure that the fine is effective and dissuasive. SAs must ensure fines do not exceed these legal maximums. For example, a company with a turnover of EUR 3 billion could face a fine up to EUR 120 million for severe infringements. The determination of turnover for fines is based on the previous financial year, using consolidated financial statements if available, and ensuring fines align with principles of proportionality and deterrence.

Step 5:

Analysis of the final amount of the calculated fine in light of the requirements of effectiveness, dissuasiveness and proportionality

The administrative fines imposed for GDPR infringements must be effective, proportionate, and dissuasive, tailored to the specific context of the infringement. SAs are responsible for ensuring the fine meets these requirements and making necessary adjustments:

- Effectiveness means the fine should achieve compliance or punish unlawful behavior;

- Proportionality means the fine is appropriate to the infringement's gravity and the entity's size, without exceeding what is necessary. Authorities may reduce fines for financial hardship in exceptional cases, requiring detailed financial data.

- Dissuasiveness means the fine should deter both the specific entity and others from future infringements, potentially justifying an increase or a deterrence multiplier if the initial amount is insufficient.

DSA Fine Guidance

The European Commission can impose fines (among other sanctions) against Providers of VLOPs and VLOSEs when it finds that they, intentionally or negligently:

- infringed the DSA;
- failed to comply with a decision ordering interim measures imposed by the European Commission, pursuant to Article 70 of the DSA; or
- failed to comply with a commitment made by the given Provider which has been made binding by the European Commission, pursuant to Article 71 of the DSA.[144]

These fines must not exceed 6% of the VLOP's or VLOSE's total worldwide annual turnover in the preceding financial year.[145]

Moreover, the European Commission may impose a fine on a Provider of a VLOP or VLOSE or any other natural or legal person acting for purposes related to their trade, business, craft or profession that may be reasonably aware of information relating to a suspected infringement, when they intentionally or negligently:

- supplied incorrect, incomplete or misleading information in response to request for information by the European Commission, pursuant to Article 67 of the DSA;
- failed to reply to the request for information within the set period;
- failed to rectify within the period set by the European Commission, incorrect, incomplete or misleading information given by a member of staff, or fail or refuse to provide complete information;
- refused to submit to an inspection by the European Commission pursuant to Article 69 of the DSA;
- failed to comply with the measures adopted by the European Commission in the context of its monitoring actions pursuant to Article 72 of the DSA; or
- failed to comply with the conditions for access to the European Commission's file regarding the proceedings at hand, pursuant to Article 79(4) of the DSA.[146]

These fines must not exceed 1% of the total annual income or worldwide turnover in the preceding financial year.

Member States must lay down the rules on sanctions for infringements performed by other Providers of Intermediary Services.[147] Fines that will be imposed by Digital Services Coordinators for non-compliance with the DSA, must be at a maximum of 6% of the Provider's annual worldwide turnover in the preceding financial year.[148] In turn, in cases of supplying incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information, and failure to submit to an inspection, the maximum amount of fine must be 1% of the annual income or worldwide turnover of the Provider of Intermediary Services or the person concerned in the preceding financial year.[149]

Methodology for calculating the amount of a fine

European Commission

The calculation of the amount of fines is at the discretion of the European Commission, subject to the rules provided for in the DSA, including about the maximum amounts of fines set therein.[190] When setting the amount of the fine, the European Commission must take into account a list of circumstances that refer to features of the infringement at hand. Specifically, it must consider the infringement's nature, gravity, duration, recurrence and any delay that such an infringement may have caused to the proceedings at hand.[191]

Digital Services Coordinators

The calculation of the amount of fines is subject to the rules provided for in the DSA, including about the maximum amounts of fines set therein,[192] while Member States will establish specific rules and procedures for the exercise of the powers of their Digital Services Coordinators, including in relation to fines.[193] In this context, the DSA requires that fines must be effective, dissuasive and proportionate, taking into account, in particular, the nature, gravity, recurrence and duration of the infringement, as well as the economic, technical and operational capacity of the provider of the Intermediary Services concerned, where relevant.[194] Overall, the exercise of powers of Digital Services Coordinators, including their power to impose fines, must be proportionate to the nature and the overall actual or potential harm caused by the infringement at hand.[195]

Among other sanctions, the AI Office may impose on providers of GPAI models fines not exceeding 3% of their annual total worldwide turnover in the preceding financial year or EUR 15 million (whichever is higher), when it finds that the provider intentionally or negligently:

- infringed the relevant provisions of the AI Act;
- failed to comply with a request for a document or for information of the European Commission pursuant to Article 91 of the AI Act, or supplied incorrect, incomplete or misleading information;
- failed to comply with a measure requested by the European Commission under Article 93 of the AI Act; or
- failed to make available to the European Commission access to the GPAI model with a view to conducting an evaluation pursuant to Article 92 of the AI Act.

At the Member State level, the AI Act sets maximums for the fines that National Market Surveillance authorities can impose on its basis. Specifically, the AI Act provides that non-compliance with the rules on prohibited AI practices[196] can incur fines of up to EUR 35 million or, in case of an undertaking, up to 7% of its total worldwide annual turnover for the preceding financial year (whichever is higher).[197] Moreover, non-compliance with obligations applicable to providers, deployers, importers, distributors and authorized representatives[198] of high-risk AI systems,[199] and AI systems subject to specific transparency obligations,[200] can lead to fines of up to EUR 15 million or, in case of an undertaking, up to 3% of its total worldwide annual turnover for the preceding financial year, (whichever is higher).[201]

Further, supply of incorrect, incomplete or misleading information to notified bodies or Market Surveillance Authorities, can be subject to fines of up to EUR 7.5 million or, in case of an undertaking, up to 1% of its total worldwide annual turnover for the preceding financial year, (whichever is higher).[202]

Methodology for calculating the amount of a fine

AI Office

The calculation of fines is at the discretion of the AI Office, subject to the rules provided for in the AI Act, including about the maximum amounts of fines set therein.[203] Specifically, in determining the amount of the fine, the AI Office must consider the nature, gravity and duration of the infringement, in light of the principles of proportionality and appropriateness. Overall, the fines imposed by the AI Office must be effective, proportionate and dissuasive.[204] The European Commission is expected to adopt additional rules on detailed arrangements and procedural safeguards for the AI Office's proceedings related to the imposition of fines.[205]

National Market Surveillance Authorities

The calculation of the amount of fines is at the discretion of the National Market Surveillance Authorities, subject to the rules provided for in the AI Act, including the maximum amounts of fines set therein.[206] Overall, fines "shall be effective, proportionate and dissuasive".[207] When deciding whether to impose a fine and determining the amount of the fine in each individual case, Market Surveillance Authorities must consider all the relevant circumstances of the specific situation.[208] These circumstances include:

- the nature, gravity and duration of the infringement and of its consequences, taking into account the purpose of the AI system, as well as, where appropriate, the number of affected persons and the level of damage suffered by them;
- whether fines have already been applied by other Market Surveillance Authorities to the same operator for the same infringement;
- whether fines have already been applied by other authorities to the same operator for infringements of other Union or national law, when such infringements result from the same activity or omission constituting a relevant infringement of the AI Act;

- the size, the annual turnover and market share of the operator committing the infringement;
- any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement;
- the degree of cooperation with the national competent authorities, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- the degree of responsibility of the operator, taking into account the technical and organizational measures implemented by it;
- the manner in which the infringement became known to the national competent authorities, in particular whether, and if so to what extent, the operator notified the infringement;
- the intentional or negligent character of the infringement; and
- any action taken by the operator to mitigate the harm suffered by the affected persons.

Appendix E

Competition Cases Appealed Before the Court

Commission decision	Court case number	Parties	Decision	Reduction of fine
AT.39563	T-582/15	Silver Plastics and Johannes Reifenhäuser v Commission	Rejection–Commission decision confirmed	No
	C-702/19 P	Silver Plastics and Johannes Reifenhäuser v Commission	Rejection–General Court decision confirmed	No
	T-531/15	Coveris Rigid France v Commission	Rejection–Commission decision confirmed	No
	T-530/15	Huhtamäki and Huhtamaki Flexible Packaging Germany v Commission	Rejection–Commission decision confirmed	No
AT.39686	T-74/21	Teva Pharmaceutical Industries and Cephalon v Commission	Rejection–Commission decision confirmed	No
AT.39711	T-671/19	Qualcomm v Commission	Partial annulment	Yes
	C-819/24 P	Qualcomm v Commission	Pending	N/A
AT.39740	T-612/17	Google and Alphabet v Commission (Google Shopping)	Partial annulment	No
	C-48/22 P	Google and Alphabet v Commission (Google Shopping)	Rejection–General Court decision confirmed	No
AT.39792	T-433/16	Pometon v Commission	Partial annulment	Yes
	C-440/19 P	Pometon v Commission	Partial annulment	Yes
AT.39813	T-814/17	Lietuvos geležinkeliai v Commission	Partial annulment	Yes
	C-42/21 P	Lietuvos geležinkeliai v Commission	Rejection–General Court decision confirmed	No
AT.39824	T-799/17	Scania and Others v Commission	Rejection–Commission decision confirmed	No
	C-251/22	Scania and Others v Commission	Rejection–General Court decision confirmed	No
AT.39861	T-180/15	Icap and Others v Commission	Partial annulment	Yes
	C-39/18	Commission v Icap and Others	Rejection–General Court decision confirmed	No
AT.40018	T-222/17	Recylex and Others v Commission	Rejection–Commission decision confirmed	No
	C-563/19 P	Recylex and Others v Commission	Rejection–General Court decision confirmed	No
	T-240/17	Campine and Campine Recycling v Commission	Partial annulment	Yes
	C-306/23	Commission v Campine and Campine Recycling	Withdrawal of appeal	N/A
AT.40054	T-93/24	Lantmännen and Lantmännen Biorefineries v Commission	Pending	N/A
AT.40099	T-604/18	Google and Alphabet v Commission (Google Android)	Partial annulment	Yes
	C-738/22 P	Google and Alphabet v Commission (Google Android)	Pending	N/A
AT.40127	T-59/22	Conserve Italia and Conserves France v Commission	Rejection–Commission decision confirmed	No
	C-762/24 P	Conserve Italia and Conserves France v Commission	Pending	N/A
AT.40135	T-84/22	UBS Group and Others v Commission	Pending	N/A
AT.40136	T-341/18	NEC Corporation v Commission	Rejection–Commission decision confirmed	No
	T-342/18	Nichicon Corporation v Commission	Rejection–Commission decision confirmed	No
	C-757/21 P	Nichicon Corporation v Commission	Rejection–General Court decision confirmed	No
	T-343/18	Tokin Corporation v Commission	Rejection–Commission decision confirmed	No
	T-344/18	Rubycon and Rubycon Holdings v Commission	Rejection–Commission decision confirmed	No
	T-363/18	Nippon Chemi-Con Corporation v Commission	Rejection–Commission decision confirmed	No
	C-759/21	Nippon Chemi-Con Corporation v Commission	Rejection–General Court decision confirmed	No
AT.40220	T-235/18	Qualcomm v Commission	Granted–Commission decision annulled	Yes
AT.40324	Joined Cases T-441/21, T-449/21, T-453/21, T-455/21, T-456/21, T-462/21	UBS Group and UBS v Commission (Obligations d'État européennes)	Partial annulment	Yes
AT.40346	Joined Cases T-386/21, T-406/21	Crédit agricole and Crédit agricole Corporate & Investment Bank v Commission () and d'agences)	Partial annulment	No
AT.40401	T-1/25	České dráhy v Commission	Pending	N/A
	T-2/25	ÖBB-Holding and Others v Commission	Pending	N/A
AT.40410	T590/20	Clariant and Clariant International v Commission	Rejection–Commission decision confirmed	No
AT.40411	T-334/19	Google and Alphabet v Commission (Google AdSense for Search)	Granted–Commission decision annulled	Yes
	C-826/24 P	Commission v Google and Alphabet	Pending	N/A
AT.40413	T-172/21	Valve v Commission	Rejection–Commission decision confirmed	No
AT.40437	T-260/24	Apple and Apple Distribution International v Commission	Pending	N/A
AT.40522	T-589/22	Silgan Holdings and Others v Commission	Rejection–Commission decision confirmed	No
	C-845/24 P	Silgan Holdings and Others v Commission	Pending	N/A

Endnotes

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16 Matt Scott, "What's Driving Europe's New Aggressive Stance on Tech," *Politico* (Oct. 27, 2019), https://www.politico.eu/article/europe-digital-technological-sovereignty-facebook-google-amazon-ursula-von-der-leyen/ and *see* Petit et al, *Digital Agenda for Europe*.

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32 Commission, DMA.100185, Decision of 25.03.2024 (Apple–Operating systems–iOS–Art. 6(3)).

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138 Point 15 Guidelines.

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140 Commission, AT.39525, Decision of 22.06.2011 (Telekomunikacja Polska), point 895.

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144 GC, T-208/08 and T-209/08, Gosseling Group and stichting Administratiekantoor Portielje/ Commission, ECLI:EU:T:2011:287, point 145; T-214/06, Imperial Chemical Industries Ltd./ Commission, ECLI:EU:T:2012:275, point 43.

145 See GC, T-299/08, Elf Aquitaine/Commission, ECLI:EU:T:2011:217, point 314.

146 GC, T-395/09, Gigaset/Commission, ECLI:EU:T:2014:23, points 170-177.

147 Commission, AT.39904, Decisions of 12.12.2016 (Rechargeable Batteries), point 91.

148 Point 25 in combination with point 22 Guidelines.

149 Kienapfel/Miersch, in: Schröter/Klotz/von Wendland (ed.), Europäisches Wettbewerbsrecht, 3rd ed. 2024, p. 1278, point 105.

150 Point 25 Guidelines.

151 Point 28, Guidelines.

152 Commission, AT.38121, 20.09.2006 (Fittings), point 779 seq, confirmed by GC, T-384/06, IBP and International Building Products France/ Commission, ECLI:EU:T:2011:113.

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154 Commission, AT.38589, Decision of 11.11.2009 (Heat Stabilisers), point 719.

155 See Commission AT.39396, Decision of 22.07.2009 (Calcium Carbide), point 309 et seq. on 100% aggravation; Commission, AT.39920, Decision of 21.02.2018 (Braking Systems), point 107 on 50% aggravation.

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158 For different product markets: GC, T-161/05, Hoechst/Commission, ECLI:EU:T:2009:366, point 146; for different geographical markets: GC, T-203/01, Michelin/Commission, ECLI:EU:T:2003:250, points 286-288, confirming the decision Commission, AT.36041, Decision of 20.06.2001 (PO/Michelin), point 362.

159 Commission, AT.38121, Decision of 20.09.2006 (Fittings), point 785.

160 Commission, AT.36490, Decision of 18.07.2001 (Graphite electrodes/PO), points 209 et seq., confirmed in GC, Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, Tokai Carbon and others/Commission, ECLI:EU:T:2004:118, points 310, 318.

161 Commission, AT.36490, Decision of 18.07.2001 (Graphite electrodes/PO), points 209 et seq., confirmed in GC, Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, Tokai Carbon and others/Commission, ECLI:EU:T:2004:118, points 160 et seq., 187 et seq., 209 et seq.

162 GC, T-384/06, IBP and IBP France/Commission, ECLI:EU:T:2011:113, points 108 and 114.

163 GC, T-384/06, IBP and IBP France/Commission, ECLI:EU:T:2011:113, point 109.

164 CJEU, C-189/02, Dansk Rorindustri and others/ Commission, ECLI:EU:C:2005:408, point 353: CJEU, C-298/98 P, Finnboard/Commission, ECLI:EU:C:2000:634, point 58.

165 CJEU, C-510/06, ADM/Commission, ECLI:EU:C:2009:166, point 149.

166 Commission, AT.39839, Decision of 23.01.2013 (Telefónica/Portugal Telecom), point 500. Upon appeal, the Commission decision with respect to the mitigating factor was upheld (see GC, T-216/13, Telefónica/Commission, ECLI:EU:T:2016:369, points 330-340) and the Court of Justice (CJEU, C-487/16 P, Telefónica SA/Commission, ECLI:EU:C:2017:961). As some other aspects were annulled, the Commission rendered a new decision upholding its original findings concerning the reduction due to mitigating factors (Commission, AT.39839, Decision of 25.01.2022 (Telefónica and Portugal Telecom), points 7, 519).

167 Commission, AT.38511 of 19.05.2010 (DRAMs), point 109.

168 Commission, AT.38511 of 19.05.2010 (DRAMs), point 110.

169 GC, T-103/08, Deutsche Telekom/Commission, ECLI:EU:T:2012:686, points 315 et seq.

170 Points 30 and 31 Guidelines; Commission, AT.40547, Decision of 28.11.2022 (Styrene Monomer); AT.40028, Decision of 27.01.2016 (Alternators and Starters); AT.39960, Decision of 08.03.2017 (Thermal Systems); AT.40299, Decision of 29.09.2020 (Closure Systems); AT.40411, Decision of 20.03.2019 (Google Search AdSense); AT.40346, Decision of 28.04.2021 (SSA Bonds); AT.39740, Decision of 27.06.2017 (Google Search Shopping); AT.39904, Decision of 12.04.2017 (Rechargeable Batteries); AT.40136, Decision of 21.03.2018 (Capacitors); Commission, AT.40135, Decision of 02.12.2012 (Forex); AT.40135, Decision of 16.05.2019 (Forex).

171 Kienapfel/Miersch, in: Schröter/Klotz/von Wendland (ed.), Europäisches Wettbewerbsrecht, 3rd ed. 2024, p. 1278, point 139.

172 The Commission applied in eight decisions a multiplier of 1.1 (for Denso, Melco, Magna, HSBC, Continental, Mitsubishi UFJ Financial Group, Inc. and MUFG Bank, Ltd. (combined), Mondelēz and Deutsche Bank), in ten decisions a multiplier of 1.2 (for INEOS, Denso, Hitachi, Crédit Agricole, Sony, Bosch, Citigroup and three decisions concerning Panasonic), three times a multiplier of 1.3 (for J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase Bank, N.A. and JPMorgan Chase & Co. (combined), Google and Bank of America Merrill Lynch) and once a multiplier of 1.5. (for Google in the Google in the Google AdSense case).

173 Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006; Whish/Bailey, 11th ed. 2024, p. 304 seq.

174 Point 8 Leniency Notice.

175 Point 10 and 11 Leniency Notice.

176 Points 23 and 24 Leniency Notice

177 Point 26 Leniency Notice.

178 Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, OJ C 167, 2.7.2008, see Article 1 Settlement Notice.

179 Point 1 Settlement Notice.

180 Under the so-called cooperation procedure, e.g., Commission, AT.39759, Decision of 20.09.2016 (ARA Foreclosure) AT.40632, Decision of 23.05.2024 (Mondelez trade restrictions), both related to abuse of dominance; AT.40882, Decision of 24.06.2024 (IFF-deletion of data), related to the obstruction of an investigation.

181 Point 5 Settlement Notice.

182 Point 14 Settlement Notice.

183 Points 28 and 29 Settlement Notice.

184 Commission, AT.40135, Forex, Decision of 16.05.2019 (settlement), AT.40135, Decision of 02.12.2021 (settlement), AT.40135, Decision of 02.02.2021 (prohibition); AT.40127, Canned Vegetables, Decisions of 27.09.2019 (settlement), AT.40127, Decision of 19.11.2021 (prohibition); AT.39824, Trucks, Decision of 19.07.2016 (settlement), AT.39824, Decision of 27.09.2017 (prohibition); AT.40054, Ethanol benchmarks, Decision of 10.12.2021 (settlement), AT.40054, Decision of 07.12.2023 (prohibition).

185 See point 6 Settlement Notice.

186 Von Köckritz/Wessely, in: Schröter/Klotz/von Wendland (ed.), Europäisches Wettbewerbsrecht, 3rd ed. 2024, p. 539, point 465 and point 466.

187 Von Köckritz/Wessely, in: Schröter/Klotz/von Wendland (ed.), Europäisches Wettbewerbsrecht, 3rd ed. 2024, p. 539, point 465; European Parlamentary Research Service, EU and U.S. competition policies, 27.03.2014, p. 4.

188 Article 83 (1) and (2) of the GDPR.

189 Guidelines 04/2022 on the calculation of administrative fines under the GDPR, available at: https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-042022-calculation-administrative-fines-under_en.

190 Article 74 of the DSA.

191 Article 74(4) of the DSA.

192 Article 52(3) of the DSA.

193 Article 51(6) of the DSA.

194 Article 52(2) of the DSA; For more details on the interpretation of the notions of “effective”, “dissuasive” and “proportionate”, see the analysis under Section 1.1.2.5.

195 Recital (116) of the DSA.

196 For more information on the notion of “prohibited AI practices” see Article 5 of the AI Act.

197 Article 99(3) of the AI Act.

198 For more information on the definitions of provider, deployer, importer, distributor and authorized representative, see Article 3(3)-(7) of the AI Act.

199 For more information on the notion of “high-risk AI system” see Article 6 of the AI Act.

200 For more information on the notion of “AI systems subject to specific transparency obligations” see Article 50 of the AI Act.

201 Article 99(4) of the AI Act.

202 Article 99(5) of the AI Act.

203 Article 101(1) of the AI Act.

204 Article 101(3) AI Act; For more details on the interpretation of the notions of “effective”, “dissuasive” and “proportionate”, see the analysis under Section 1.1.1.5.

205 Article 101(6) of the AI Act.

206 Article 99 of the AI Act.

207 Article 99(1) of the AI Act; For more details on the interpretation of the notions of “effective”, “dissuasive” and “proportionate” see the analysis under Section 1.1.1.5.

208 Article 99(7) of the AI Act.

U.S. Chamber of Commerce

1615 H St, NW
Washington, DC 20062
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