

## Multimillion-euro German fine slashed

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A German court has heavily reduced a multimillion-euro fine issued last year against telecommunications company 1&1, in a decision that may dent German regulators' confidence in their fine calculations.

The Bonn Regional Court ruled yesterday that the €9.5 million penalty against 1&1 was far too high, and cut it to €900,000. It said that while the decision itself was justified as poor authentication procedures at the telecoms company amounted to a security lapse under the GDPR, such a high fine was not justified for a relatively minor offence.

The German federal data protection authority, which regulates public bodies and telecommunications providers, [fined](#) 1&1 in December last year after a woman was able to access the contact details of a former partner, which she then used to harass him. According to the regulator, she was able to access the details by providing only the man's name and date of birth.

However, the court said yesterday that 1&1 only had a "low" level of fault in relation to the breach. It also noted that the regulator had not previously objected to the authentication procedure, meaning the company was not aware of the problem.

In considering the fine reduction, the court also said that the breach "could not have led to the massive release of data to unauthorised persons".

Julia Zirfas, data protection officer at 1&1, told GDR that the company welcomes the decision. "This is a clear signal that the original fine ... was in no way related to the present individual case. Nevertheless, the amended fine is also a significant amount. We therefore reserve the right to take further legal steps after a detailed examination of the ruling."

"For 1&1, the protection of customer data is a top priority. We are therefore continuously developing our standards in close cooperation with the data protection authorities," Zirfas said.

The case marks the first time that a large GDPR fine has successfully been challenged in court; it was previously one of the top ten highest imposed under the GDPR.

It is a blow to the controversial German fine calculation scheme, which sets starting points for penalties based on companies' turnover and the seriousness of infringements. The judgment may provide hope for German realtor Deutsche Wohnen, which is in the process of appealing against a €14.5 million fine that Berlin's data regulator [ordered](#) it to pay last year.

The decision appears to have followed 1&1's arguments. When the fine was imposed, a company spokesperson told GDR that the GDPR's provisions for assessing fines based on turnover should not be used in this case, as doing so could lead to companies paying "tremendous amounts" for small incidents.

And Philip Kempermann, a partner at Heuking Kühn Lüer Wojtek in Düsseldorf, said at the time that the steep penalty was “the result of our ridiculous calculations scheme”.

Today, Kempermann told GDR that the court has not yet provided a full explanation of its reasoning, but said there seems to be a discrepancy between the way in which German regulators have decided to calculate fines and the GDPR’s penalty provisions, particularly as it relates to company turnover.

“A high number of practitioners consider the calculation method to be unproportional and unconstitutional,” Kempermann said. “I think the decision was somewhat to be expected. Of course, where the courts actually end up in terms of [amount] of the fine is always case specific. But as of right now challenging the height of the fine still seems the way to go for controllers.”

### **Counsel to 1&1**

Morrison & Foerster

Partner Hanno Timmer in Berlin was assisted by Philip Radlanski

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