



24 MARCH 2023

Fostering cooperation in GDPR enforcement across Europe

Executive summary

DIGITALEUROPE welcomes the European Commission's initiative to facilitate more harmonised procedural cooperation in cross-border enforcement of the General Data Protection Regulation (GDPR).¹ We believe these efforts will greatly contribute to a reinforced one-stop-shop (OSS) mechanism, which we deem crucial for both businesses and data subjects.²

For harmonised enforcement to work in practice, we recommend that the new rules should:

- ▶ Facilitate amicable settlements, with a reinforced role for lead supervisory authorities (LSAs);
- ▶ Better define the rights and roles of complainants, their representatives and the parties under investigation in proceedings;
- ▶ Require hearings before a draft decision is prepared and shared, including as part of the European Data Protection Board's (EDPB) dispute-resolution proceedings;
- ▶ Improve transparency about the information shared between authorities, including the elements to establish the LSA; and
- ▶ Set procedural deadlines that safeguard due process and allow parties to exercise their procedural rights.

We encourage the Commission and the EDPB to continue open stakeholder involvement in the preparation of this legislative proposal.

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13745-Further-specifying-procedural-rules-relating-to-the-enforcement-of-the-General-Data-Protection-Regulation_en.

² DIGITALEUROPE, *Two years of GDPR: A report from the digital industry*, available at https://www.digitaleurope.org/wp/wp-content/uploads/2020/06/DIGITALEUROPE_Two-years-of-GDPR_A-report-from-the-digital-industry.pdf.



Table of contents

- **Executive summary** 1
- **Table of contents**..... 2
- **Tools to promote cooperation early in the process** 3
- **Status of parties to administrative proceedings** 3
- **Right to a hearing and good administration** 3
- **Information shared about the investigation**..... 4
- **Procedural deadlines** 4



Tools to promote cooperation early in the process

We welcome the EDPB's recognition of the role amicable settlements can play in the OSS procedure.³ Amicable settlements are described in Recital 131 GDPR, and should be facilitated in cross-border cases.

Non-contentious case resolutions allow space for trusted and constructive agreements between parties. They can lead to faster case resolution, and remove some of the burden from DPAs and the parties involved.

We would further welcome reinforcement of LSAs' role in amicable settlements as part of the OSS.



Status of parties to administrative proceedings

Each party's procedural rights before DPAs should be further defined. Complainants, their representatives and the parties under investigation should have clearly defined, active roles in proceedings.

Having clearly defined rights and obligations would increase the parties' trust and collaboration in resolving cases. It would also help avoid the burden of further litigation before national courts. In this context, the right to a hearing is of particular importance, as discussed below. It can provide key information over different cases, avoid biases and ensure stronger collaboration with authorities.

Additionally, we support the EDPB's recommendation to clarify which part of a file parties should be allowed to access. To this end, it is key that confidential files, which may contain information covered by intellectual property rights or trade secrets, or entail cybersecurity considerations, should be kept highly confidential. Rules for careful assessment, involving the party under investigation, are necessary to avoid economic harm and damages. The inclusion of such confidential information in rules around DPAs' investigative powers would be further welcomed.



Right to a hearing and good administration

The right of parties under investigation to be heard should be recognised and balanced with those of complainants.

Hearings help to inform DPAs' decision-making process. We strongly support the EDPB's recommendation that an obligation be set for hearings to take place before a draft decision is prepared and shared with concerned DPAs. The EDPB's decision-making process should include the results from hearings. For

³ EDPB letter to the European Commission on procedural aspects that could be harmonised at EU level and EDPB Guidelines 02/2022.

hearings to inform the decision-making process, they should also be part of dispute-resolution proceedings under Art. 65.

The scope, modalities and timing, as described by the EDPB, should be clarified so as to allow for sufficient time to prepare. A level of flexibility should be in place, for instance as to whether the hearing should be in written or in oral form.⁴ Summaries of the hearings should be provided to the parties, in the interest of transparency.



Information shared about the investigation

Transparency about the information shared between authorities is key, particularly in cross-border investigations. The elements taken into account to establish which DPA should take the lead should be clear to the parties involved.



Procedural deadlines

We welcome the introduction of more granular procedural deadlines. However, new cross-border rules should remain adaptable to different cases and levels of complexity. Decisions should not be rushed, which may lead to increased litigation. Procedural deadlines should safeguard due process and allow parties to exercise their procedural rights.

Extensions should be available to authorities, and the parties' rights, e.g. the right to be heard, should be taken into account in setting new procedural deadlines.

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⁴ EDPB Guidelines 03/2021.

About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies, as well as international policies that have an impact on Europe's digital economy. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 102 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

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