



Comments and proposals on the Chapter VIII of the General Data Protection Regulation

Ahead of the trialogue negotiations in October, EDRi, Access, FIPR and Panoptykon would like provide comments on selected key elements of the Chapter VIII on Remedies, liability and sanctions.

When amendments are proposed **bold** and ~~strike-through~~ reflect changes from the Commission proposal.

Introduction

Even when all the available safeguards are put in place to avoid data breaches, these will still occur. In these cases, controllers and processors need to implement the necessary remedies quickly, be liable for any lack of care that might have led to the breach and, subsequently, be sanctioned proportionately to the damages and risks caused.

Furthermore, data subjects need to be able to lodge complaints against a controller or processor (with or without the support of an organisation). Remedies need to be effective, accessible and which do not impose an unnecessary burden on the data subject when lodging the complaint.

Article 73 - Right to lodge a complaint with a supervisory authority

EDPS

Article 74- Right to a judicial remedy against a supervisory authority

1. **Without prejudice to any other administrative or non-judicial remedy**, Each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.
2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act

on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

Article 75 - Right to a judicial remedy against a controller or processor

EDPS

Article 76 - Common rules for court proceedings

EDPS

Article 77 - Right to compensation and liability

EDPS version with some changes

1. Any **natural** person who has suffered **material or immaterial** damage as a result of ~~an unlawful~~ processing operation ~~or of an action incompatible~~ **which is not in compliance** with this Regulation shall have the right to receive compensation from the controller or ~~the~~ processor for the damage suffered.

2. ~~Where more than one~~ **Any controller or processor is** involved in the processing ~~each controller or processor shall be jointly and severally liable for the entire amount of the damage~~ **caused by the processing which is not in compliance with this Regulation. A processor shall be liable for the damage caused by the processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it acted outside or contrary to lawful instructions of the controller.**

3. The controller or the processor may be exempted from this liability, in whole or in part, if the controller or the processor proves that they are not responsible for the event giving rise to the damage.

4. ~~Where more than one controller is involved in the processing, each of those controllers shall be held jointly and severally liable for the entire amount of the damage unless they have an appropriate written agreement determining the responsibilities pursuant to Article 24.~~

5. **Controllers involved in the processing may determine amongst themselves, on the basis of a written agreement, the extent of their liability for the damage. Where a controller or processor has paid compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of liability for the damage.**

Article 78 – Penalties

EDPS

Article 79 - Administrative sanctions

EDPS

Article 79a - Administrative fines

Council text
Article 79 b – Penalties
Council text