

# GDPR Enforcement Done Right

Position paper on the EU Proposal for additional procedural rules concerning the General Data Protection Regulation (GDPR)

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This paper represents the joint position of 7 civil society organisations in the EDRI network.



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# 1. Executive Summary

This position paper responds to the acknowledgment within the data protection community that the full potential of the landmark European Union (EU) data protection law, the GDPR, has yet to be fully realised. The GDPR is a vital instrument to protect people's rights - not only to data protection, but to other fundamental rights that can be unduly limited by the unlawful processing of their data. Specifically, this paper addresses the challenges posed by cross-border and national procedures, which often become cumbersome and excessively lengthy, failing to yield positive outcomes and presenting significant hurdles for data subjects seeking to regain control over their information. There is an urgent need to enhance legal certainty and prevent actions that undermine the effectiveness of and trust in GDPR enforcement.

While recognising that the European Commission's Proposal to strengthen GDPR enforcement is a significant opportunity, this paper also acknowledges the text's insufficiencies. As such, we present recommendations aimed at guiding inter-institutional negotiations to shape a Regulation that truly ensures an efficient and rights-respecting GDPR enforcement. These recommendations are focused on the need for clear rules and deadlines for all involved DPAs and parties, with a key aim of fostering transparency and accountability within the regulatory framework.

## 1.1. Recommendations

### **Scope of the Regulation:**

- The Proposal should have harmonised both cross-border and national procedures. At this stage, co-legislators should at a minimum ensure the full harmonisation of cross-border procedures, thereby clearly addressing and governing conflicts of law through the establishment of minimum standards and the equivalence principle.

### **The right to lodge a complaint:**

- The right to lodge a complaint should be fully harmonised for both national and cross-border complaints and the Regulation should provide common standards on how to file and treat a complaint;
- Data subjects should be provided with clear information on how to exercise their right to lodge a complaint in any official European Economic Area (EEA) language of their choosing.

**The right to be heard:**

- Equal rights to be heard should be guaranteed to both parties throughout the entire complaint procedure.

**The right to access files:**

- Both parties should continuously be granted access to documents pertaining to the cases. The Regulation should mandate the creation of a Joint Case File to facilitate this access;
- Any limitation to the right to access files should only be justifiable only if the restrictions are strictly necessary and proportionate;
- The Regulation should not permit the party under investigation to exploit confidentiality in order to undermine the rights of the complainant.

**The right to a reasoned decision:**

- The Regulation should guarantee that a reasoned decision is consistently provided to the parties within a reasonable time-frame;
- The Regulation should grant parties the right to judicial remedy when Supervisor Authorities (SAs) fail to act within a reasonable time;
- SAs must keep parties updated and informed regarding the progress of the case;
- The Regulation should reflect that amicable settlements are mutual agreements reached between the complainant and the party under investigation, with consensus from all parties involved.

**Cooperation, role of the EDPB, and remedies:**

- There is a necessity for enhanced early cooperation among SAs, with a focus on making collaboration more immediate and closely knit;
- Cooperation should be all-encompassing, spanning across all cases, and discretionary pre-eminent powers should not be granted to Lead Supervisory Authorities (LSAs);
- The exchange of information plays a pivotal role in fostering cooperation, which would be improved by the above-mentioned establishment of a Joint Case File;
- Cooperation should also be actively promoted between SAs and other pertinent Member States or EU institutions, especially the European Data Protection Supervisor (EDPS);
- The European Data Protection Board (EDPB) should assume a more central and expanded role beyond the specific actions outlined by the GDPR, in order to sufficiently regulate the new stages of the procedure.

**Timeline and deadlines:**

- The five stages of the procedure should be marked by deadlines, primarily imposed on LSAs. These deadlines could be extended in the presence of justification,

especially in the context of highly-complex cases. For less intricate cases, the overall duration will be restricted, ensuring the rights of the parties are not compromised. See suggestions for deadlines in **Section 8**.

## 2. Acronyms and key terms

- **Charter** – the Charter of Fundamental Rights of the European Union
- **CSAs** - Supervisory Authorities Concerned
- **DPAs** - Data Protection Authorities. See also SAs
- **DPC** – Ireland's Data Protection Commission
- **EC** – European Commission
- **ECHR** – the European Convention on Human Rights
- **EDPB** - European Data Protection Board
- **EDPS** - European Data Protection Supervisor
- **EDPB Wish List** - EDPB Letter to the European Commission on GDPR procedural aspects that could be harmonised at EU level<sup>1</sup>
- **EEA** – European Economic Area
- **EP Report** - European Parliament's Report on the proposal for a regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679
- **EUIs** – European Union institutions
- **GDPR** - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
- **Joint opinion EDPB/EDPS** – the EDPS/EDPB Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of the Regulation (EU) 2016/679<sup>2</sup>
- **LSA** - Lead Supervisory Authority
- **MS** - Member State
- **Proposal** – the European Commission's Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of the GDPR
- **SAs** - Supervisory Authorities: the specific DPA that has jurisdiction over a particular matter.

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1 European Data Protection Board, 'EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level,' available at: [https://www.edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-eu-commission-procedural-aspects-could-be\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-eu-commission-procedural-aspects-could-be_en).

2 European Data Protection Board, 'EDPS/EDPB Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of the Regulation (EU) 2016/679,' available at: [https://www.edpb.europa.eu/our-work-tools/our-documents/edpb-edps-joint-opinion/edpb-edps-joint-opinion-012023-proposal\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/edpb-edps-joint-opinion/edpb-edps-joint-opinion-012023-proposal_en).

### 3. Introduction

In July 2023, The European Commission (**EC**) published its Proposal (the **Proposal**) for a 'Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679' (the General Data Protection Regulation - **GDPR**).<sup>3</sup> With a view to inter-institutional negotiations, the European Parliament (**EP**) adopted in Plenary its 'Report on the regulation of additional procedural rules related to the enforcement of Regulation (EU) 2016/679' (the **EP Report**) on 10th April 2024.<sup>4</sup>

The objective of the proposed piece of legislation (the **Regulation**) is to establish standardised provisions governing procedural aspects within EU Law pertaining to different kinds of cross-border procedures that involve multiple national Data Protection Authorities (**DPA**s): complaints, cases, and investigations (both complaint-based and *ex officio*) under the GDPR. **This initiative stemmed from the acknowledgement that the full potential of the GDPR to respect, protect and fulfill the fundamental rights to privacy and data protection is yet to be fully realised.**

Stakeholders have also observed procedural disagreements among Supervisory Authorities (**SA**s) as defined by Article 4(21) GDPR, particularly between those intervening in cross-border procedures.<sup>5</sup> These Supervisory Authorities, as the specific DPAs that have jurisdiction over a particular matter, apply national procedural rules when enforcing the GDPR. **This - compounded by the broad space for interpretation within the GDPR text - has led to fragmented approaches to the concept of a complaint, impeding the smooth and effective functioning of cooperation and dispute-resolution mechanisms between SAs.** Consequently, **cross-border procedures often become slow and tortuous, and conflicts between SAs sometimes only surface in the late stages of the process when**

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3 European Commission, 'Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC,' available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52023PC0348>.

4 European Parliament, 'Report on the regulation of additional procedural rules related to the enforcement of Regulation (EU) 2016/679,' available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0187\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0187_EN.html).

5 We have carefully considered the following documents in shaping our stance: European Commission, 'Communication from the Commission to the European Parliament and the Council: Data protection rules as a pillar of citizens' empowerment and EU's approach to digital transition - two years of application of the General Data Protection Regulation', available at: [https://commission.europa.eu/document/fae2ab12-3919-4b01-9706-45532d4523b1\\_en](https://commission.europa.eu/document/fae2ab12-3919-4b01-9706-45532d4523b1_en); EDPB, 'Letter to the EU Commission on procedural aspects that could be harmonised at EU level' (EDPB Wish List); EDPS/EDPB, 'Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of the Regulation (EU) 2016/679' (Joint opinion EDPB/EDPS); and EDPS, 'Contribution in the context of the Commission initiative to further specify procedural rules relating to the enforcement of the General Data Protection Regulation', available at: [https://www.edps.europa.eu/system/files/2023-04/23-04-25\\_edps-contribution-procedural-rules-gdpr-enforcement\\_en.pdf](https://www.edps.europa.eu/system/files/2023-04/23-04-25_edps-contribution-procedural-rules-gdpr-enforcement_en.pdf).



**they could have been solved earlier.** This can severely impede people's access to remedy and justice in the case of abuse of data.

Over the past 6 years we have closely examined and followed the issues arising from the enforcement of the GDPR. Access Now, has produced an annual Report on the implementation and enforcement of the text. The first year report assessed the state of play and implementation of the law, while the second year delved deeper into enforcement issues.<sup>6</sup> The third and fourth reports honed in on precise problems hindering effective enforcement of the law and offered suggestions for resolution.<sup>7</sup> The fifth report, in anticipation of the Commission's Proposal, provided detailed guidance on how to make the GDPR a success, including a proposal for comprehensive procedural harmonisation.<sup>8</sup> Concurrently, the EDRI network and its members have diligently monitored the enforcement process, providing input to the EC and its stakeholders through various channels, including written contributions to bodies such as the Commission and the European Data Protection Board (**EDPB**), meetings with decision-makers, and GDPR complaints before DPAs.

These reports highlight that GDPR procedures are excessively lengthy, failing to deliver timely and satisfying outcomes for data subjects – meaning both non-governmental organisations under Article 80 GDPR representing them and individual complainants – and indirectly incentivising data controllers and processors to continue participating in infringements. This not only results in legal uncertainty for all parties involved, but notably in unpredictability for rights-bearers. **Consequently, there is a pressing need to enhance legal certainty and prevent actions that could undermine the effectiveness of and trust in GDPR enforcement.**<sup>9</sup>

These reports evaluating in-depth the enforcement of the GDPR, together with the advocacy work we have conducted in coalition with member and partner NGOs in the past years, serve, as the main basis of this position paper. Among several initiatives advocating for better enforcement rules in order to make the GDPR a success, our letters of September 2022 and June 2023 have been the most significant.<sup>10</sup> These letters

6 Access Now, 'One Year Under GDPR Report', available at: <https://www.accessnow.org/wp-content/uploads/2019/07/One-Year-Under-GDPR-report.pdf>; 'Two Years Under GDPR', available at: <https://www.accessnow.org/wp-content/uploads/2020/05/Two-Years-Under-GDPR.pdf>.

7 Access Now, 'Three Years Under GDPR Report', available at: <https://www.accessnow.org/wp-content/uploads/2021/05/Three-Years-Under-GDPR-report.pdf>; 'GDPR 4 year report', available at: <https://www.accessnow.org/wp-content/uploads/2022/07/GDPR-4-year-report-2022.pdf>.

8 Access Now, 'GDPR 5 Year report', available at: <https://www.accessnow.org/wp-content/uploads/2023/05/GDPR-5-Year-report-2023.pdf>.

9 The suggestions provided in this Position Paper should be considered in light of the fact that the Regulation will complement – and not 'reopen' – the GDPR. It thus should not entail revisiting the GDPR's core principles, rights, and obligations, foundational elements that remain essential for safeguarding personal data and should not be subject to renegotiation. Furthermore, we are aware that the Regulation will not serve as a cure-all for addressing all enforcement shortcomings, as it cannot resolve MS' responsibilities, such as inadequate funding for DPAs, and its scope does not encompass substantive GDPR ambiguities.

10 EDRI, 'Letter to EDPB on GDPR procedural issues,' available at: <https://edri.org/wp-content/uploads/2022/09/EDRI-LETTER-TO-EDPB-Meeting-13-September-on-GDPR->

specifically called on the EDPB to take into account, when creating a wish-list for a future GDPR Procedural Harmonisation law, the specific procedural aspects that we identified should be harmonised to ensure more consistent and effective enforcement of the GDPR. These recommendations were then included in the **EDPB Wish List**.<sup>11</sup>

The EDRI network welcomes the EC's initiative to strengthen and enhance GDPR enforcement, recognising it as **a significant opportunity to ensure the overall success of the GDPR**. We endorse the endeavour to address enforcement deficiencies through this new Regulation. This position paper puts forth recommendations aimed at enhancing and clarifying the Proposal, organised into nine sections. It will initially touch upon the debates concerning the Regulation's scope. Subsequently, it will address the right to lodge a complaint and then tackle the importance of guaranteeing the procedural rights of the parties in the future text (right to be heard, to access files to a reasoned decision). The paper will then delve into how to resolve a crucial contributing factor to key challenges with the enforcement of the GDPR — the lack of specificity in both the GDPR and the Proposal regarding the functioning of cooperation among involved SAs. Lastly, it will present recommendations for addressing another shortcoming in the Proposal, namely, the absence of a clear time-frame for the actions of the SAs, parties and, in some cases, the EDPB.

In the last five years, the GDPR has given individuals and civil society actors power to fight back against abuses of our personal data that can have devastating consequences. Thanks to the rules established in the GDPR, Homo Digitalis was able to secure an admonishment on Greek authorities who were unlawfully surveilling asylum seekers – a clear example of how data protection harms are often unevenly distributed against minoritised people in the most vulnerable situations.<sup>12</sup> Similarly, the Irish Council for Civil Liberties (ICCL), Panoptikon Foundation and Bits of Freedom have been able to contest hyper-targeted online adverts, which have been shown to perpetuate racial and gender discrimination, among many other harms.<sup>13</sup> And noyb has fought back against abusive 'cookie banners' whose aim is to make privacy a hassle for users.<sup>14</sup> These achievements

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[PROCEDURAL-ISSUES-.pdf](#); BEUC, 'Civil society letter on upcoming procedural harmonisation proposal,' available at: [https://edri.org/wp-content/uploads/2023/06/BEUC\\_Ccivil-society-letter-on-upcoming-GDPR-procedural-harmonisation-proposal.pdf](https://edri.org/wp-content/uploads/2023/06/BEUC_Ccivil-society-letter-on-upcoming-GDPR-procedural-harmonisation-proposal.pdf).

- 11 European Data Protection Board, 'EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level,' available at: [https://www.edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-eu-commission-procedural-aspects-could-be\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-eu-commission-procedural-aspects-could-be_en).
- 12 EDRI, 'Greek Ministry of Asylum and Migration face a record-breaking €175,000 fine for the border management systems KENTAUROS & HYPERION,' available at: <https://edri.org/our-work/greek-ministry-of-asylum-and-migration-face-a-record-breaking-e175000-fine-for-the-border-management-systems-kentauros-hyperion/>;
- 13 EDRI, 'Europe's highest court delivers landmark judgment against IAB Europe in GDPR consent spam pop-ups case,' available at: <https://edri.org/our-work/europes-highest-court-delivers-landmark-judgment-against-iab-europe-in-gdpr-consent-spam-pop-ups-case/>; EDRI, 'Targeted Online: An industry broken by design and by default,' available at: <https://edri.org/wp-content/uploads/2021/03/Targeted-online-An-industry-broken-by-design-and-by-default.pdf>.
- 14 EDRI, 'noyb aims to end "cookie banner terror" and issues more than 500 GDPR complaint', available at: <https://edri.org/our-work/noyb-aims-to-end-cookie-banner-terror-and-issues-more-than-500-gdpr->

have been realised despite the limitations targeted by the Regulation. Regarding these limitations, several troubling procedures stemming from both civil society and individuals filing complaints have been brought to our attention. These procedures have highlighted the years-long lack of opportunity for these complainants to fully exercise their rights, revealing the extent of vulnerability experienced by these parties. These examples highlight just **how important it is that we can rely on consistent, fair and accessible procedures to truly empower people to address infringements on their right to data protection in a way that does not put undue burden upon them.**

*Please note that specific references to articles or chapters in the Proposal where we see specific opportunities for improvement are highlighted in **bold blue text**.*

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complaint/.

## 4. Scope of the Regulation

- **Summary: The Proposal missed a key opportunity to harmonise both cross-border and national procedures. At this stage, the co-legislators must, at a minimum, ensure for full harmonisation of cross-border procedures, thereby addressing and governing conflicts of law through the establishment of minimum standards and the equivalence principle.**

The scope of the Regulation is one of the main issues at stake. Recognising that the Proposal concentrates solely on enforcement regulations for cross-border procedures, we argue that this Regulation should not be restricted to cross-border cases, as specified in the second paragraph of Article 56 GDPR, but should also encompass instances brought before an SA in a single Member State (**MS**) that do not trigger a cross-border effect. The EU has the power and competence to clarify the application of specific data protection procedural regulations under Article 16 of the Treaty on the Functioning of the European Union (**TFEU**), ensuring the coherent enforcement of EU law and fundamental rights in line with the EU Charter of Fundamental Rights (**Charter**). This includes the competence to provide further specifications regarding national complaints. Restricting the scope of this Regulation exclusively to cases involving SAs from multiple MS, as in the Proposal, establishes two distinct processes for implementing the same EU law. **This will lead to inconsistencies, heightened legal uncertainty, and an unequal distribution of rights.** By adopting this approach, which creates a two-tier system, there will be varying levels of rights depending on the nature of the complaint, resulting in unequal access to good administration and disparate levels of data protection for individuals. This approach will thus fail to resolve current discrepancies in how DPAs address issues based on differences in national administrative laws.

Moreover, it is unclear whether the Proposal is aiming for full or partial harmonisation of cross-border GDPR procedures. Either way, the text lacks provisions either to clearly regulate this important matter or to govern the conflicts of law, insufficiencies that this position paper attempts to address. For the sake of clarity and robust enforcement of the GDPR, the Regulation must enforce both enhanced cooperation among SAs and also the harmonisation of aspects of national procedural law. In this regard, **the Proposal represents a serious missed opportunity to extend the rights of complainants across the European Economic Area (EEA).** Therefore, while national procedures govern interactions between each national SA and any national party, we recommend that this Regulation establishes minimum standards and an equivalence principle. Data subjects should be able to exercise their fundamental rights in a fair and non-discriminatory manner, and

harmonising rules should not negate the application of more favourable national rules for data subjects.

One of the most severe examples of a right that could be jeopardised due to the fragmentation inherent in the Commission's Proposal is the right to lodge a complaint (see Section 5). It's crucial to emphasise that, as per the scope limitation explained above, some issues will remain unharmonised. In these cases, the procedural rules of MS will still apply. In this regard, the Regulation should ensure that complainants retain the procedural rights they enjoy under national law, on top of those already derived from the right to good administration of the Charter. Furthermore, we would like to emphasise the importance of incorporating principles and standards of procedural law derived directly from Article 41 of the Charter into the Regulation. These principles should serve to guide and inform the procedures effectively and in line with EU Law and CJEU case law. We therefore strongly recommend the establishment of minimum standards and the principle of equivalence, mandating that where procedures ensuring the protection of individuals' rights under EU norms must not be less favourable than those applied in similar actions within the domestic procedural framework

The Regulation should also be consistent with the GDPR and should therefore make a clear distinction between the three different types of procedures, being: (I) complaint procedures (Article 77 GDPR); (II) ex officio procedures (Article 57(1)(a) GDPR); and (III) penal procedures (Article 83 GDPR). The Regulation should include separate rules for each of these three types of procedures.

## 5. The right to lodge a complaint

- **Summary: The right to lodge a complaint should be fully harmonised for both national and cross-border complaints and the Regulation should provide common standards on how to file and treat a complaint;**
- **Data subjects should be provided with clear information on how to exercise their right to lodge a complaint in any official EEA language of their choosing.**

Article 77 GDPR sets out the right for individuals to lodge a complaint. It is the most important article for complainants, as it allows them to pursue legal or administrative remedies in the event of a violation of their rights. It is a cornerstone provision setting the basis for the entire GDPR enforcement system and gives people the power to fight back against the exploitation of their personal data. Given the importance of this provision, the new Regulation must ensure that there is **a common harmonised standard to operationalise the right to lodge a complaint**. This right should be the same regardless of the member state in which an individual experiences a violation of their rights and subsequently decides to lodge a complaint. No person should be afforded a weaker or less comprehensive right to lodge a complaint simply because of the country in which they choose to file said complaint.

Article 57 GDPR offers general guidance on managing complaint submissions but lacks a precise definition of what constitutes a 'complaint.' This deficiency has posed a significant challenge to exercising the right to lodge a complaint,<sup>15</sup> exacerbated by the absence of detailed explanations regarding the requirement for DPAs to 'facilitate submissions'. **It is therefore imperative that the notion of complaint is defined in the Regulation to ensure equivalent standards across the EU**. Without a common notion of complaint, some people will be disproportionately burdened by excessively complicated submission procedures, hampering their right to lodge a complaint. Given that this will be experienced disproportionately in some EU MS, and not others, there is also a risk of the discriminatory distribution of this unequal access.

Our recommendation is that a complaint should encompass any instance initiated by an individual concerning their rights under the GDPR and should meet the following cumulative requirements

- **Lodging a complaint:**At present, complaints are submitted using specific forms in only certain countries only, with variations among them. The Regulation should **require SAs to offer a standardised complaint form, available in all EEA languages,**

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15 Access Now, 'GDPR Complaint study,' available at: <https://www.accessnow.org/wp-content/uploads/2022/07/GDPR-Complaint-study.pdf>.

**establishing a uniform set of required information for complaint acceptance.** This form should adhere to the standards suggested by the EDPB, and be provided by SAs to complainants irrespective of whether the complaint triggers a cross-border effect. We also recommend that the form be deliverable via email as well as postal mail and easily accessible on each SA's website. Any complaint submitted through a different method, but containing the same information as required by the form, should still be considered acceptable and admissible;

- **Supplementary information:** The handling of supplementary information should be specified by the Regulation. Any additional information provided with the form or during complaint submission should not be made obligatory for admissibility. Furthermore, the Regulation should emphasise that while the complaint form should always be made available to a complainant, **its use should not be mandatory in itself.** The form should therefore serve as a guide for essential information (minimum standards) to ensure a harmonised understanding of the requirements for admissibility;
- **Obligations on SAs:** Next to these requirements, **SAs should have some common obligations that further elaborate on the concept of 'facilitate submissions' deriving from Article 57 GDPR.** Precise obligations to inform the complainant, and at which stage this should be done, should be specified in the Regulation. These obligations should include a harmonised set of duties, with a specific timeline in which complainants will receive a confirmation of receipt, a case number and a case handler, as well as to provide the complainant with all the necessary information on how to exercise or waive their rights. This must include how the Joint Case File works, the right to be heard, and to receive relevant information to ensure their informed participation in the complaint procedure. This timeline will be further specified in Section 8 of this paper, with the Section 6 detailing also the duties and information responsibilities on each SA;
- **Accessibility and non-discrimination:** the above-mentioned information and procedures must respect the right to non-discrimination, guaranteeing equal and equitable access to information and submission tools for everyone. In particular, the information and tools must be accessible and understandable for people with disabilities;
- **Burden of admissibility:** Complainants should always be given the **opportunity to provide missing information before a complaint is deemed inadmissible.** We emphasise that failing to do so may discourage them from pursuing their rights and so it is vital that they are afforded this step.

## 6. Procedural rights of the parties and Article 41 of the Charter

Article 41 of the Charter sets out the right to good administration, which has long been acknowledged as a fundamental principle of EU law. The text states that:

1. *Every Person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
2. *This right includes:*
  - a) *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
  - b) *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
  - c) *the obligation of the administration to give reasons for its decisions.*

Currently the prevailing European standard in most MS is that parties have procedural rights in a GDPR complaint procedure. However, **there is no official EU harmonised guidance on the precise implementation of this right within the GDPR framework**. The GDPR text itself delegates to MS the interpretation and application of procedural rights. This results in significant gaps and discrepancies across different EU countries in the provision of this right. Consequently, this variance has significant consequences upon data subjects' access to good administration, resulting in varying levels of protection of rights among MS, contributing to a fragmented approach to human rights.

We therefore contend that **the Regulation should fully respect and uphold the right to good administration and its derived rights** (further explored in the subsequent Sections 6.1. - 6.3.), for both the complainant and the party under investigation.<sup>16</sup> Since both parties can be adversely affected by decisions made by the SAs, they have a legitimate claim to the rights derived from Article 41 of the Charter. In support to this argument, we can refer to the recent *Schufa* case where a German SA (HBDI) attempted to argue that GDPR complaints are 'mere petitions' and thus afford fewer rights to complainants.<sup>17</sup>

However, following a request for a preliminary ruling from the German Administrative Court, the CJEU stated, contrary to the argument of HBDI, that 'the right to lodge a complaint, provided for in Article 77(1) GDPR, is not conceived solely as a right of petition

<sup>16</sup> A complainant is the data subject, non-profit organisation, or association that has lodged a complaint under Article 77 GDPR and is therefore a party to the proceedings. The party or parties under investigation are the controllers/processors complained about or investigated for alleged infringement of the GDPR.

<sup>17</sup> Judgement of the Court of Justice in Joined Cases C-26/22 and C-64/22| SCHUFA Holding, para 58.



but is designed as a mechanism capable of effectively safeguarding the rights and interests of data subjects'. Consequently this CJEU judgement reinforced that data subjects are also parties to procedures concerning their own rights, and underlined that SAs do have a duty to investigate complaints, distinguishing a complaints procedure from a 'mere petition'.

Moreover, adhering to procedural fairness is crucial as it boosts trust in public authorities and promotes fair decision-making. This is achieved by encouraging democratic participation in decision-making processes and ensuring impartiality from public authorities toward all parties involved in a dispute.<sup>18</sup> Compliance with these procedural guarantees is crucial for ensuring that decisions made are in line with applicable laws, thereby providing legal clarity and equal access to rights across the EU.

Additionally, adhering to the Charter expedites and streamlines processes. Procedural guarantees mandate input from involved parties and reasoned explanations at specific stages, preventing decision-making bodies from reaching conclusions without essential information. Failure to meet these guarantees could force parties to restart complaint procedures, prolonging resolution times. Therefore, compliance with Article 41 of the Charter allows for reasoned and detailed inputs, ensuring parties can effectively contribute to the process and achieve fast and clear resolutions to complaints.

## 6.1. The right to be heard

- **Summary: Equal rights to be heard should be guaranteed to both parties throughout the entire complaint procedure.**

In accordance with the right to good administration, **both the complainant and the party under investigation should have the right to be heard by the LSA and when necessary by the EDPB**. The right should afford parties the chance to express their perspectives effectively.<sup>19</sup> Several arguments further underscore the necessity of aligning with the Charter in this regard:

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18 Gentile G, Lynskey O. DEFICIENT BY DESIGN? THE TRANSNATIONAL ENFORCEMENT OF THE GDPR. *International and Comparative Law Quarterly*. 2022;71(4):799-830. doi:10.1017/S0020589322000355

19 Paragraphs 195-197, General Court of the Court of Justice of the EU, Case T-481/17, Ruling of 1st June 2022. <https://curia.europa.eu/juris/document/document.jsf?text=&docid=260162&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=594089>.

- 22 countries within the EEA already recognise the right to be heard in their national administrative legislation, and even in countries lacking specific procedural laws, this right is still upheld.<sup>20</sup> Additionally, the General Court of the CJEU has consistently emphasised that this right cannot be excluded or restricted;<sup>21</sup>
- Furthermore, not hearing the complainant in a GDPR complaint system, and consequently excluding them from the procedure, contradicts the objective of the system, which aims to effectively identify and redress violations of rules protecting personal data. This is particularly crucial for complaints directly related to fundamental rights under Articles 7 and 8 (privacy and data protection rights) of the Charter,<sup>22</sup>
- Additionally, guaranteeing the right to be heard to both parties at appropriate stages enhances the overall system by reducing the likelihood of authorities needing to rectify mistakes or inaccuracies, as both parties will have sufficient opportunities to address such issues. This would also decrease the number of decisions appealed before the Courts due to factual misinterpretations (Article 78 GDPR).<sup>23</sup> Involving data subjects in the enforcement procedure therefore ensures an opportunity to obtain an effective remedy for GDPR violations.

**Specifically, we advocate for the Regulation to incorporate clear provisions regarding the right to be heard, ensuring equal access for both parties throughout the entire complaint procedure.** This right should be guaranteed at multiple stages, as outlined in the Section 8, to enhance legal clarity, and contribute to the quality and accuracy of the complaint mechanism. Clarifying the specific stages where this right can be exercised will not only strengthen the procedure but also ensure fairness and transparency.

In addition to the aforementioned requirements, we argue that **the Regulation should embody the principle that minimum standards must always be upheld.** This ensures, as explained in the Section on scope above, that all conflicts of law are addressed and resolved under this harmonising regulation. Applying this concept to the right to be heard means that if MS provide more specific rights regarding the right to be heard to the parties, they will retain the ability to do so, and will not be mandated by EU Law to lower their higher standards of human rights. This approach aligns with the EDPB Guidelines on Article 60 GDPR,<sup>24</sup> which aim to address procedural issues faced by DPAs. These

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20 <https://www.accessnow.org/wp-content/uploads/2023/03/Access-Now-GDPR-Procedural-Rules-Consultation-March-2023-.pdf>

21 General Court of the Court of Justice of the EU, Case T-481/17, Ruling of 1st June 2022.  
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=260162&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=594089>

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23 The article stipulates that MS must offer remedies sufficient to ensure effective legal protection in the fields covered by Union law. This norm directly expresses the rule of law in the EU, one of its founding values.

24 EDPB, Article 60 Guidelines, available at:  
[https://www.edpb.europa.eu/system/files/2022-03/guidelines\\_202202\\_on\\_the\\_application\\_of\\_article\\_60\\_gdpr\\_en.pdf](https://www.edpb.europa.eu/system/files/2022-03/guidelines_202202_on_the_application_of_article_60_gdpr_en.pdf)

guidelines emphasise that the LSA should ensure that the draft decision it produces adheres completely to the domestic law provisions concerning the right of the parties involved in the proceedings to be heard.

It should be underlined that the right to be heard cannot be subject to the discretion of LSAs. Furthermore, the Regulation should ensure that the right to be heard should be equally guaranteed to both parties at the EDPB dispute resolution level.

One important point to highlight is that **parties should have a right, not a duty, to be heard**. Therefore, they should be informed at the appropriate time with specific information on how they can exercise their rights, including information on how to waive them if they choose to do so. In accordance with this principle, we oppose any strict restriction placed on the complainant's right to be heard, which could hinder and discourage individual participation in the procedure. Additionally, strict deadlines should be imposed on SAs, while complainants should be allotted a fixed but sufficient amount of time to provide their inputs, as further detailed in Section 8 of this paper.

**The only instance when the complainant's right to be heard can be limited is when corrective measures are provided to the party under investigation.** As the complainant will not be adversely affected by these measures, the right to be heard at this specific stage will be reserved for the party under investigation.

## 6.2. The right to access files (Chapter IV of the Proposal)

- **Summary: Both parties should continuously be granted access to documents pertaining to the cases. The Regulation should mandate the creation of a Joint Case File to facilitate this access;**
- **Any limitation to the right to access files should only be justifiable if the restrictions are strictly proportionate to the limitation put on the right;**
- **The Regulation should not permit the party under investigation to exploit confidentiality in order to undermine the rights of the complainant;**

In accordance with the right to good administration,<sup>25</sup> and to ensure the right to be heard, **access to documents must be always equally guaranteed**. Compliance with this right will ensure that both parties have a genuine opportunity to be heard, if they so wish, and will facilitate the contribution of accurate responses by the parties, thereby advancing the case with clarity and efficiency.

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<sup>25</sup> See also Article 41, 47 and 11 of the Charter; CJEU 6 June 2013, C-536/11.

More specifically, **the Regulation should specify that full access to documents includes at minimum (but not limited to)** access to the preliminary findings, to the summary of key issues and facts, and to any evidence provided by the parties.

Moreover, we contend that **access to files should be facilitated through the establishment of a Joint Case File**, as suggested by the EP Report, where all relevant information is gathered and accessible to parties, CSAs, LSAs and the EDPB. This would enable continuous and updated access to information.

Additionally, **the Regulation should provide for a notification system**, akin to the one proposed for LSAs when updating CSAs on new issues or documents, to also be available to parties. Further details regarding access to documents for efficient and effective cooperation between SAs are addressed later in the document (Section 7).

### **6.2.1. Confidentiality (Arts. 3.5, 11 & 21 of the Proposal)**

There are nuances regarding confidentiality that need to be taken into account. We are concerned that the current Proposal imports a problematic approach of stamping every document 'confidential', which could lead to the abuse of confidentiality claims by controllers and processors. **A list of all documents accessible by parties should be included in the Regulation, to ensure clarity over what will be able to be accessed.**

Confidentiality should not strategically limit access to the file for data subjects. Data subjects should be able to raise evidence in their favour when challenging a (partial) rejection of their complaint by the SA in accordance with Article 47 of the Charter (the right to an effective remedy and to a fair trial) or while bringing a closely-related civil litigation under Article 82 GDPR.<sup>26</sup> In principle, everything should be accessible, apart from specific communications between SAs, and necessary and proportionate redaction of parts of files. While acknowledging valid interests in confidentiality, professional secrecy, and business confidentiality for the party under investigation, we emphasise that such claims must be justified on a case-by-case basis, rather than as a blanket approach. **Any decision on confidentiality should be reached through consensus among all SAs, and in case of disagreement, the EDPB should make the final determination.**

**We urge negotiators on the Regulation to refrain from keeping corrective measures confidential**, as doing so would essentially negate the right to be heard.

Additionally, contrary to a predominant interpretation where confidentiality is perceived to apply solely to controllers/processors and their 'trade secrets', it extends to both parties involved. **We propose that the text allows complainants, such as whistle-blowers, to exercise their right to confidentiality when submitting a complaint.**

<sup>26</sup> Cf. CJEU 6 June 2013, C-536/11.

## 6.3. The right to a reasoned decision

- **Summary: The Regulation should guarantee that a reasoned decision is provided to the parties within a reasonable time-frame;**
- **The Regulation should grant parties the right to judicial remedy when SAs fail to act within a reasonable time;**
- **SAs ought to keep parties updated and informed regarding the progress of the case;**
- **The Regulation should reflect that amicable settlements are mutual agreements reached between the complainant and the party under investigation, with consensus from all parties involved.**

The GDPR lacks a definition of 'decision' and the standards to be respected in order to reach the threshold of a decision. Although it is clear that the GDPR complaint procedure should result in an 'outcome,' what constitutes that outcome is not specified. This ambiguity has been shown to have a profoundly detrimental effect on the right to lodge a complaint. **Therefore, the Regulation should include definitions of decisions within GDPR procedures to ensure that the outcome of complaints or ex-officio proceedings always allows for an appeal according to Article 47 of the Charter.** In this regard, three different types of decisions can be identified deriving from the GDPR enforcement system: formal decisions, amicable settlements (addressed separately in another point in the next page), and the dismissal or rejection of a complaint.

Furthermore, SAs have frequently cited that a complaint is 'being handled',<sup>27</sup> as a reason for delaying responses, leaving data subjects' claims of rights infringement unanswered for years. This delay has resulted in a violation of their right to an effective remedy under the Charter. The Regulation should therefore ensure compliance with the right to good administration and the EDPB Guidelines by stipulating that **SAs must provide these decisions 'within a reasonable time,' thus adhering to specific timeframes and deadlines to ensure reasonable compliance** (see Section 8 below). In this regard, to ensure full guarantee of the right to a reasoned decision, the Regulation should include **a right to judicial remedy for the complainant if the SA fails to act.**

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<sup>27</sup> Access Now, 'GDPR Complaint Study,' available at: <https://www.accessnow.org/wp-content/uploads/2022/07/GDPR-Complaint-study.pdf>, page 11.

To adhere to the procedural standards of the right to good administration, the Regulation should also specify that **SAs must provide detailed explanations for all decisions in a manner that enables both parties to exercise their right to an effective remedy.** Consistent with Article 41 of the Charter and the EDPB Guidelines, the decision should encompass a description of relevant facts, thorough reasoning, and a proper legal assessment, enabling relevant parties to determine whether to challenge the decision before a court.<sup>28</sup>

Finally, in line with the principle of reasonable time, there should be an **obligation to update and inform parties about the progress of the case.** Therefore, establishing a Joint Case File with a notification system and imposing a duty on CSAs to keep complainants informed will be crucial in preventing individuals from waiting excessively for a decision. This also serves to mitigate the risk of individuals being hindered from seeking judicial remedy (as explained in Section 7.3. below).

### **6.3.1. Amicable settlements (Art. 5 of the Proposal)**

SAs can facilitate a resolution process early in the procedure. This can be a favourable outcome in non-contentious cases, provided it adheres to certain safeguards. **Amicable settlements should always result from a mutual agreement** between the complainant and the party under investigation. Moreover, the SA must ensure the **complainant's explicit and genuine agreement** if such settlements are incorporated into national laws. An amicable settlement should not preclude SAs from initiating an *ex officio* investigation into the same matter.

### **6.3.2. Harmonised recording and publishing standards**

Six years since the GDPR came into effect, we still lack a comprehensive overview of the number of cases, complaints or decisions made, due to inconsistencies in reporting duties and the absence of a standardised method for counting or structuring statistics, despite EDPB's efforts to collect as much data as possible.<sup>29</sup>

By equipping SAs with tools for gathering all relevant data and information regarding decisions, better cooperation among SAs could ensue. This would enable them to use insights from decisions in similar cases across MS for handling new cases. Additionally, it would empower the EDPB to identify privacy threats and trends, detect abuse of amicable settlements, and gain transparent insights into issues, facilitating the early identification of systemic problems encountered by data subjects. Consequently, this

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29 EDPB, 'Final One Stop Shop Decisions', available at: [https://www.edpb.europa.eu/our-work-tools/consistency-findings/register-for-article-60-final-decisions\\_en](https://www.edpb.europa.eu/our-work-tools/consistency-findings/register-for-article-60-final-decisions_en).

would allow for more frequent and timely guidance to controllers/processors on better GDPR enforcement.

Therefore, **the Regulation should mandate all MS to publish and communicate all decisions of three types** (amicable settlements, formal decisions, and dismissals and rejections of complaints) on their national websites. **This publishing should be obligatory, even if it involves the same party being investigated for the same infringed right in different complaints.** To ease the burden on DPAs, the EDPB could facilitate this process by providing a centralised platform for uploading these decisions.

## 7. Cooperation, role of the EDPB, and remedies

- **Summary: There is a necessity for enhanced early cooperation among SAs, with a focus on making collaboration more immediate and closely knit;**
- **Cooperation should be all-encompassing, spanning across all cases, and discretionary pre-eminent powers should not be granted to LSAs;**
- **The exchange of information plays a pivotal role in fostering cooperation, which would be improved by the establishment of a Joint Case File;**
- **Cooperation should also be actively promoted between SAs and other pertinent Member States or EU authorities, especially the EDPS;**
- **The EDPB should assume a more central and expanded role, exceeding the specific actions outlined by the GDPR, to address the new stages of the procedure.**

### 7.1. Cooperation

The Regulation's provisions governing the rights of the complainants and the parties under investigation will be both influenced by, and dependent on, the provisions related to cooperation among SAs, including both the LSA and the CSAs. The GDPR mandates SAs to collaborate in cross-border cases, with the goal of reaching a consensus by utilising the means provided in the text, such as mutual assistance. In cases where consensus is not achievable, the text outlines the process for dispute resolution through the EDPB ([Art. 10 Proposal](#)).

Chapter VII GDPR encompasses cooperation and consistency mechanisms, providing the legal foundation for the Proposal's recommendation for rules aimed at streamlining cooperation between SAs from the outset of the process ([Art. 7 Proposal](#)). However, Chapter VII GDPR lacks specificity in providing SAs with more concrete and practical rules concerning the procedure and timeline (as detailed in Section 8) for cooperation in instances falling within the frameworks specified in Articles 60 (cooperation between LSA and other CSAs) and 65 (dispute resolution) GDPR.

The LSA is tasked with efficiently organising, coordinating, and managing cases to ensure an effective and prompt resolution, ultimately culminating in a timely remedy - the final decision. The Regulation should emphasise that **all SAs should be obligated to intervene diligently, comprehensively, and with a thorough consideration of the specifics of a case.** The Proposal's approach seeks to propel the process forward, leading to the adoption of decisions within a reasonable time-frame. While we think that the Proposal moves in the right direction, it is essential to address certain inconsistencies, particularly regarding



unresolved questions and practical impediments,<sup>30</sup> the need to distinguish procedural decisions from final decisions, and the need to address procedural disagreements through early resolutions. There is also a need for clearer procedural rules and definitions, with a specific focus on defining 'meaningful cooperation' as outlined in Article 60 GDPR (SA cooperation).

One of our primary concerns is that the Proposal seeks to curtail the authority granted to CSAs and the EDPB by current Guidelines on Article 65 to take action against the possibly problematic decisions of LSAs.<sup>31</sup> **One of the strengths of the Proposal, however, is its recognition of the need for earlier cooperation among SAs**, although some modifications and fine-tuning of the text would be beneficial, particularly when it comes to **the need to remove obstacles to efficient cooperation and the scope and content of that cooperation**, as emphasised in the Joint Opinion EDPB/EDPS. We also argue that **the text should make it explicit that cooperation encompasses all cases, not just complaint-based procedures (Art. 10.4 Proposal).**

One of our primary concerns is that the Proposal scarcely tackles the extremely limited leeway for CSAs to either address LSA inactivity or effectively exercise their powers as outlined in the GDPR one-stop-shop mechanism (a cooperation mechanism between national SAs). **The Regulation must make sure that promoting meaningful, closer, swifter, and earlier cooperation among SAs does not have the effect of undermining the independent judgement of any of those SAs.** While some advocate for the LSA to hold a privileged position marked by significant discretionary authority (**Art. 9.1 Proposal**), there is no textual basis in the GDPR justifying such a wide margin of discretion. LSAs and CSAs should receive more equitable treatment concerning the right of initiative or the ability to influence the course of the investigation meaningfully.

Effective cooperation should also require the LSA to comply with any requests from another CSA. The discretionary latitude de facto granted so far has contributed to numerous enforcement challenges in recent years. In order to avoid some of these challenges, we argue that the centralisation associated with the one-stop-shop mechanism in the GDPR should not mean that the LSA has a favourable status and impedes CSAs from exercising action separately from the LSA. In fact, most of these arguments align with industry interests,<sup>32</sup> which prefer perceived 'friendly' DPAs to have a

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30 e.g. about translation of documents. In this regard, The Regulation should draw on Article 8 of Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007R1393>, which allows for the provision of documents in any language that the recipient understands (**Art. 6 of the Proposal**).

31 EDPB, 'Guidelines 03/2021 on the application of Article 65(1)(a) GDPR', available at: [https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-032021-application-article-651a-gdpr\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-032021-application-article-651a-gdpr_en).

32 IAB, 'IAB Europe Expresses Strong Concerns on The European Parliament's Draft Report on GDPR Procedural Regulation', available at: <https://iabeuropa.eu/iab-europe-expresses-strong-concerns-on-the-european-parliaments-draft-report-on-gdpr-procedural-regulation/>.

prevalent role, confusing 'independence' with hierarchical discretionary powers. In this regard, **the Regulation should emphasise that LSAs must wield their powers 'impartially, fairly, and within a reasonable time,'** as stated in Recital 129 of the GDPR.

**The exchange of information is another crucial aspect of cooperation between SAs.** According to Article 60(1) and (3) GDPR, the LSA is obligated to cooperate and to share information with CSAs. Unfortunately, the Proposal (**Art. 21**) lacks clarity in this regard, particularly concerning the need for harmonisation of the content and procedures of information sharing and cooperation at all stages, especially in the earlier phases.

To address this, **the Regulation should establish an efficient communication mechanism to enable swift and secure information sharing from the early stages and continuously throughout the process,** both when it comes to the LSA updating CSAs and sharing documents, and to CSAs providing documents and resources. As mentioned earlier, **a Joint Case File, as proposed in the EP Report, would greatly facilitate this kind of exchange.**

One additional area where both the GDPR and the Proposal lack clarity is in defining the scope of the term 'relevant' information.<sup>33</sup> (**Art. 8 Proposal**) While some perspectives suggest that the LSA should decide on this aspect, we contend that, in the interest of transparency and maximising cooperation potential, **the Regulation should provide a specific list of major documents falling under this category,** as emphasised also in the EDPB Wish List. **The text should also leave room for other types of information, including details on significant procedural steps.** Additionally, we argue that the exchange of information should occur throughout the procedure at appropriate moments, notably when new information and evidence come to light.

Below are our specific recommendations regarding the particulars of cooperation between SAs at each of the identified five stages of the procedure:

### **7.1.1. First stage: admissibility and handling of the complaint**

- As outlined in the Proposal (**Art. 3**), the initial assessment responsibility before the case reaches the LSA as part of the one-stop-shop mechanism should rest with the SA where the complaint originated. This SA should, however, also be empowered to conduct preliminary inquiries regarding the cross-border aspects of complaints (Joint Opinion EDPB/EDPS Paragraph 20);
- Any SA should be empowered to express its concern on a procedure, elucidating why it qualifies as a CSA (**Arts. 9 & 10 Proposal**). The ultimate decision should rest with the EDPB;

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<sup>33</sup> In the Proposal, various slightly different terms are being used (e.g., 'main relevant facts,' 'relevant facts,' 'all facts known to the party,' etc.), which leads to unnecessary confusion.

- The duty to determine the appropriate level of investigation for a complaint (**Art. 4 Proposal**) should be assigned to the CSA and the LSA, with the EDPB intervening if no consensus is reached. Adjusting the scope of the investigation later on, in the event of disagreement, might be too late or highly challenging.;
- As mentioned in Section 6, if it is decided that the preliminary investigation should not lead to a fully-fledged investigation, an appealable decision should be issued;
- The LSA is obligated to provide other CSAs with unrestricted and continuous remote access to the Joint Case File mentioned above, encompassing all relevant information (**Art. 19 Proposal**); and
- The Proposal (**Art. 9**) introduces **a pivotal step for cooperation that we support, as it is crucial for SAs to achieve consensus on key aspects of the case in the early stages - the 'Summary of Key Issues'**. This document should be an integral part of the Joint Case File and maintained as a dynamic document, allowing all SAs to contribute updates and provide comments. It should encompass issues requiring determination for case resolution, and also potential corrective measures. While the LSA is responsible for drafting it, the CSA that received the complaint may also submit a draft of their own. Aligning with the EP report, we assert that **CSAs should have the right to disagree with the assessment on specific issues** (including measures), and the LSA should incorporate this feedback as a basis for drafting preliminary findings. If not, any SA should be able to invoke the need for dispute resolution.

### 7.1.2. Second stage: investigation and preliminary findings (**Arts. 14 & 15 Proposal**)

- **The Proposal adds an additional step that is fundamental for cooperation: the Preliminary Findings, which must also be part of the Joint Case File.** This will be drafted by the LSA which intends to submit a draft decision finding an infringement of GDPR, and should indicate the corrective measures that are considered. We believe it is vital for CSAs to have access to that file before the parties, in line with the Joint Opinion EDPB/EDPS. The LSA should be tasked with reaching consensus, and if this is not possible, ask the EDPB to intervene via the urgency procedure. Any other CSA should be able to ask the EDPB to intervene.

### 7.1.3. Third stage: draft decision and summary of findings (**Art. 12 Proposal**)

- In accordance with Articles 60.3 (communications from LSA to other SAs) and 7 (conditions for consent) GDPR, the LSA will present a draft decision to CSAs, accompanied by a summary of findings. The Regulation should open the door for

- the draft decision to vary based on the unique circumstances of the case and the progression of the procedure, potentially diverging from the preliminary findings;
- Embracing the ethos of meaningful cooperation, the Regulation should allow CSAs to play a role in drafting the decision, especially concerning the CSA where the complaint originated and the particulars of its national procedural law; and
  - Crucially, **CSAs must have the authority to raise objections - objections that the LSA must duly consider - as outlined in Article 60 GDPR**. While we concur with the EP Report (Article 18) on the necessity of establishing requirements for the content and form of these objections, we are concerned that the Proposal (**Art. 18**) unduly limits the scope of these objections. This limitation contradicts the principles of meaningful cooperation and equal footing.

#### 7.1.4. Fourth stage: final decision (**Art. 16 of the Proposal**)

- We align with the EDPB Wish List and other documents advocating for 'strategic cases' that prioritise cooperation between SAs (see Section 8).

#### 7.1.5. Fifth stage: enforcement of decisions

- We also propose including in the Regulation a form of mutual assistance for enforcing SAs decisions. We remain concerned that the Proposal does not address current issues of certain SAs simply ignoring requests from other SAs or EDPB decisions. One option to solve this would be to **empower the EDPB to initiate procedures before national courts, or to bring lawsuits against SAs that do not comply with EDPB decisions**.

## 7.2 Cooperation between SAs and other relevant institutions

A notable oversight in the Proposal when specifying rules for cooperation is its **failure to address cooperation between SAs and other relevant MS or EU institutions** (EUIs), a critical aspect for the future of the EU digital landscape.<sup>34</sup> In this context, we argue that the Regulation should provide avenues for diverse forms of cooperation, particularly regarding the exchange of information. This responsibility should be vested in SAs when they become aware of potential violations under legislation falling within the jurisdiction of these authorities, enabling them to conduct investigations effectively. Aligned with the Joint Opinion EDPB/EDPS, the enhanced benefits of substantial collaboration with other

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34 EDRI, 'Civil society letter on upcoming GDPR procedural harmonisation proposal,' available at: [https://edri.org/wp-content/uploads/2023/06/BEUC\\_Ccivil-society-letter-on-upcoming-GDPR-procedural-harmonisation-proposal.pdf](https://edri.org/wp-content/uploads/2023/06/BEUC_Ccivil-society-letter-on-upcoming-GDPR-procedural-harmonisation-proposal.pdf)

authorities also encompass the cooperation between national Supervisory Authorities (SAs) and the European Data Protection Supervisor (EDPS).

### 7.3. Dispute Resolution and Role of the EDPB (Chapters V & VI of the Proposal)

The EDPB plays a crucial role in guaranteeing the accurate and uniform implementation of the GDPR. In specific instances, early engagement with the EDPB could prove advantageous in bolstering the efficiency of the GDPR's cooperation and consistency mechanisms, preventing the potential for disagreement at a later stage. This intervention would not represent unwarranted interference with the independence of the SAs, which was instituted not to bestow a 'special status' upon them, but rather to fortify the safeguarding of individuals and entities impacted by their determinations.<sup>35</sup>

The Proposal, however, currently restricts the EDPB's capacity to address issues at restricted stages of the procedure. We align with the EP Report and argue that **the EDPB should not be reserved as a last resort for exceptional cases only; instead, the EDPB should be endowed with a more clearly-defined role, and granted enhanced authority to intervene earlier by making determinations essential for the procedure to effectively progress at any stage.** In order to alleviate the administrative burden, in certain contexts requiring fewer strategic decisions (more on that in Section 8), the EDPB should additionally have the option to delegate its role to a sub-body if deemed advisable by the DPAs.

In this context, discussing cooperation between SAs inevitably involves considering the potential use of the dispute resolution mechanism outlined in Chapter VII GDPR.<sup>36</sup> While the Proposal emphasises streamlining the GDPR's dispute resolution mechanism as a critical objective, it falls short in certain aspects. For example, **in adherence to the principle of meaningful cooperation, SAs should be granted the flexibility to approach the EDPB in instances where independence from the LSA is crucial.** This option should be available if the LSA fails to cooperate; in situations of inactivity by another SA; or in cases of diverging views regarding the scope or procedural issues, pertinent facts, or the CSAs' objections after the presentation of the draft decision. **The EDPB should additionally possess discretionary authority regarding the hearing of parties;** in any scenario where it chooses to conduct a hearing, it should be required to listen to both parties.

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<sup>35</sup> CJEU Commission v Germany, C-518/07, ECLI:EU:C:2010:125, paragraph 25.

<sup>36</sup> For the sake of brevity, this position paper will not extensively explore the procedures before the EDPB.

In accordance with the spirit of the GDPR, **the EDPB should thus play a vital role by making decisions regarding any procedural disputes, opinions, and urgent decisions.** These decisions are directed towards and should remain legally binding on all SAs. This contrasts with the Proposal's unjustified restriction of the territorial scope for applying the urgency procedure. Consistent with the goal of simplifying and expediting the process, the EDPB should aim to make a final decision promptly, preferably within one month of receiving the case. **However, the option to extend the process should be permitted based on its complexity. In these cases, a wider involvement should be allowed for SAs.** In line with the considerations in the next sections, **a specific time-frame is essential for the LSA to execute time-sensitive decisions made by the EDPB.**

## 7.4. Remedies

Our experience with GDPR enforcement points to **the importance of ensuring an effective and expeditious remedy for the complainant in order to uphold genuine, fair, and objective enforcement of data protection as a fundamental right.** This primarily involves providing the complainant with a remedy at the conclusion of the process - the right to a decision following a thorough and diligent process (as outlined in Arts. 3 & 4 of the Proposal and specified above). The decision, aimed at ensuring compliance with Article 47 of the Charter (right to an effective remedy), should be subject to challenge before a national court, and thus guarantee an effective judicial remedy as outlined in Article 78 GDPR. **Access to judicial recourse should be ensured when deadlines outlined in the Regulation pass without action and where SAs provide no valid justification for their inactivity.** It is crucial to note that various remedies for GDPR violations can be pursued simultaneously and independently, in accordance with CJEU case law,<sup>37</sup> contrary to the stance presented in Recital 6 of the Proposal, and which should be corrected by the co-legislators.

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<sup>37</sup> CJEU *Budapesti Elektromos Művek* C-132/21.

## 8. Timelines and deadlines

- **Summary: The five stages of the procedure should be marked by deadlines, primarily imposed on LSAs. These deadlines could be extended in the presence of justification, especially in the context of highly complex cases;**
- **For less intricate cases, the overall duration will be restricted, ensuring the rights of the parties are not compromised. See suggestions for deadlines in Section 8.1.**

Article 6 of the ECHR (right to a fair trial), along with Articles 41 and 47 of the Charter and Recital 129 GDPR, collectively stipulate **the requirement for a reasonable overall duration of procedures**.<sup>38</sup> This is essential for ensuring legal certainty and facilitating quicker and more efficient access to the rights indicated above. Despite the GDPR specifying certain deadlines, there is excessive discretion for SAs in interpreting aspects of the complaint resolution process, leading to varying timelines for decisions. Additionally, significant divergence exists among national regulations, such as the moment when decisions can be published.

The Proposal's deadlines are limited and do not compel the LSA to take action. As mentioned earlier, the Proposal introduces two additional stages to the procedure: the Summary of Key Issues and the Preliminary Findings. It also establishes common deadlines for cross-border cooperation and dispute resolution, aiming to prevent inaction and disparities in case handling. However, **we emphasise the need for introducing specific deadlines**, as most tasks and responsibilities of LSAs in the Proposal lack specified time-frames, including those related to draft and final decisions. While the Joint Opinion EDPB/EDPS underscores the necessity of providing LSAs and CSAs with more equitable treatment concerning procedural deadlines, **we advocate against imposing overly-strict deadlines on CSAs and, even more so, on complainants**. We also emphasise the necessity for harmonisation and clarification of deadlines.

Recognising that setting a deadline for the entire procedure is crucial, we acknowledge **the importance of allowing for extensions in circumstances beyond the control of SAs**. SAs should have the flexibility to provide justifications for the inability to meet deadlines. Our recommendations for deadlines at various stages of the procedure are provided below. Any amicable settlement could influence the timeline as long as the requirements (see Section 6.3.1) are met.

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38 This encompasses judicial remedies as specified above, a crucial aspect given the prolonged nature of obtaining remedies for GDPR infringements when some controllers frequently manage to prolong the process through appeals and litigation. Our stance aligns with the EP Report (Recital 17) in emphasising that judicial remedies should not be subjected to prohibitive delays, along with other constraints.

## 8.1. Table of deadlines

In line with the five stages discussed in Section 7.1., we propose that the following set of deadlines should be stipulated by the Regulation in order to meet the rights of all parties:

<b>Stage</b>	<b>Action</b>	<b>Actor</b>	<b>Deadline</b>
<b>First stage: admissibility and handling of the complaint</b>	<b>Acknowledgment of the receipt of the complaint</b>	SA with which a complaint was lodged	One week from receipt of the complaint
	<b>Admission of the complaint</b>	SA with which a complaint was lodged	One month from receipt of the complaint  Possibility for extension (two weeks) – if justified by complexity of the case Opportunity for complainant to amend complaint
	<b>Preliminary view warranting full or partial dismissal</b>	SA with which a complaint was lodged	One month from receipt of the complaint
	<b>Right to be heard</b>	Parties (i.e. complainant and party under investigation)	One week from notification of admission of the complaint
	<b>Establish whether the complaint relates to cross-border processing</b>	SA with which a complaint was lodged	One month from receipt of the complaint
	<b>Summary of Key Issues</b>	CSA and LSA	Four weeks from receipt of the complaint Possibility for extension (two weeks) – if justified by complexity of the case
	<b>Objection in relation to the competence of assumed LSA or handling of a complaint</b>	Parties or assumed LSA	Three weeks from receipt of Summary of Key Issues
	<b>Right to be heard</b>	Parties	Three weeks from receipt of Summary of Key Issues
	<b>Decision on objection</b>	SA with which a complaint was lodged	Two weeks from when objections are raised Can lead to procedural



			determination by the EDPB
	<b>Request a procedural determination of the EDPB if no consensus</b>	LSA or a CSA	Four weeks from deadline for comments
	<b>Access to the Joint Case File</b>	LSA	Immediate
<b>Second stage: investigation and preliminary findings</b>	<b>Communication of preliminary findings to CSAs and parties</b>	LSA	Five months from the opening of the investigation Possibility for extension (one month) – if justified by complexity of the case
	<b>Comment on Preliminary Findings</b>	CSAs	Two months from receipt of the Preliminary Findings
	<b>Right to be heard</b>	Parties	Two months from receipt of the Preliminary Findings
<b>Third stage: draft decision and summary of findings</b>	<b>Draft decision and summary of findings</b>	LSA	Ten months from receipt of the complaint Period may be prolonged (exceptionally, proportionately, in selected contexts and just once)
	<b>Right to be heard</b>	Parties	Two months from the submission of the draft decision
	<b>Relevant and reasoned objections to the draft decision</b>	CSAs	Four weeks (imposed by GDPR) from the submission of the draft decision
	<b>Submit revised draft decision to other CSAs for opinion (if it intends to consider the objections)</b>	LSA	Two weeks (imposed by GDPR) from the receipt of objections
	<b>Relevant and reasoned objections to the revised draft decision</b>	CSAs	One month from the submission of the revised draft decision
	<b>Right to be heard</b>	Parties	One month from submission of revised draft decision
	<b>Fourth stage – final decision</b>	<b>Adoption and notification of final decision</b>	LSA

	<b>Adoption and notification of final decision (if no objections)</b>	LSA	One month from the end of the deadline for objections
	<b>Publication of decisions</b>	SAs	Two months from adoption of a decision
<b>Fifth stage - enforcement and mutual recognition</b>	<b>Reply to request of mutual recognition or mutual assistance for enforcing decisions</b>	SAs	One month from receipt of the request
<b>Horizontal – at all stages</b>	<b>Share relevant information with LSA</b>	CSAs	One week from receipt of information
	<b>Provision of factual or legal comments or any update on the Summary of Key Issues</b>	CSAs	Four weeks from receipt of (or update to) Summary of Key Issues
	<b>Sharing and notification of information with CSAs</b>	LSA	One week from receipt or production of information
	<b>Inclusion of new relevant information in the Joint Case File</b>	LSA	One week from receipt or production of information
	<b>Reply to request of mutual assistance</b>	SAs	One month (imposed by GDPR) from receipt of request

We recognise that different types of cases, some with minimal similarities besides their cross-border elements, should result in varying timelines. In line with the concept that SAs can provide justifications for extending deadlines under certain circumstances, **we propose that the EDPB could identify cases requiring longer deadlines due to their complexity.** We also recognise that procedures are not always 'linear' and that it is important that options remain for SAs to react to results of investigations or submissions. This could also mean that some steps must be taken more than once.

Similarly, we acknowledge the **existence of simpler procedures** where CSAs have not contested the Summary of Key Issues or raised factual or legal objections. The EP Report refers to these as 'non-contentious cases' and establishes a deadline of three months from the receipt of the complaint to issue a draft decision, a time-frame we agree with, considering the principle of good administration. However, **this should not compromise the rights of the complainant, who should willingly agree to undergo this expedited procedure.** Rather than skipping certain steps (and in that case, both the right to be heard and the opportunity for CSAs to decide not to skip them, should still be respected), a more suitable approach might be to shorten them. The decision-making responsibility

should rest with both the LSA and CSAs before the investigation begins, with the flexibility to reconsider if new facts emerge. The EDPB can also provide guidance by identifying cases where sufficient decisions have already been made at the EU level, allowing SAs to apply consistent findings.

## 9. Conclusion

In conclusion, this position paper underscores the critical need for enhancing the enforcement mechanisms of the GDPR to fully realise its potential. **Acknowledging the adverse consequences of the procedural disagreements among SAs, this paper emphasises the urgent requirement to streamline cooperation and dispute-resolution mechanisms.** The current fragmented approaches to complaints have resulted in slow and cumbersome cross-country procedures, jeopardising the rights of data subjects and fostering legal uncertainties.

While recognising the European Commission's initiative to strengthen GDPR enforcement as a significant opportunity, this paper also highlights the insufficiencies in the Commission's Proposal. Therefore, we present comprehensive recommendations aimed at addressing key challenges and enhancing clarity in the enforcement process. From defining the scope of the regulation, to ensuring procedural rights of all parties involved, including the right to lodge a complaint and access to files, **this paper advocates for clear and harmonised standards that can still respect some margin of manoeuvre at the MS level.** Additionally, we emphasise the necessity of specificity in delineating the functioning of cooperation among SAs, with an increased role of the EDPB in the process, and establishing clear time-frames for actions, ensuring efficiency and transparency throughout the enforcement process.

By providing a structured framework of recommendations beyond political considerations, **this position paper aims to guide inter-institutional negotiations towards shaping a Regulation that upholds the shared goals of efficient and rights-respecting GDPR enforcement.** We call for rules and deadlines that provide clarity to SAs and parties alike, fostering trust and confidence in the GDPR framework and ultimately safeguarding the privacy and data protection rights of individuals across the EU and wider EEA.

Ensuring the promptness, reliability, and consistency of decisions in resolving GDPR complaints hinges on establishing transparent, uniform regulations and ensuring equitable participation in the process. We rely on those involved in shaping legislation to fulfill these aims, thereby securing access to justice and upholding the fundamental right to personal data protection.