



INDIVIDUAL RIGHTS AND REMEDIES ACCORDING TO THE GDPR

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CLASS OVERVIEW



Data subject rights of the GDPR



Data subject rights and EU
fundamental rights



Exercising data subject rights



Enforcing data subject rights



1. DATA SUBJECT RIGHTS OF THE GDPR

Defining data subject rights

Data subject rights are individual rights granted to data subject rights to exercise some level of “control” over their personal data.

They are to be exercised in the first place against the controller but are also enforceable.

DATA SUBJECT RIGHTS IN THE GDPR

GDPR

Right to withdraw consent (Art. 7(3))

Right of access (Art. 15)

Right to rectification (Art. 16)

Right to erasure (Art. 17)

Right to restriction of processing (Art. 18)

Right to data portability (Art. 20)

Right to object (Art. 21)

Right to obtain human intervention, express one's point of view and to contest a decision in the context of permitted automated decision-making (Art. 22(3) and (4))

Confirmation of processing (Art. 15(1))

Individualised information about the processing (Art. 15(1)(a)-(h)); (2)

Access to personal data (Art. 15(1))

Copy of personal data (Art. 15(3))

Transparency about the concrete processing of personal data

Right(s) of access

A has taken the professional exam to become an accountant. The exam consisted of open-ended questions to which A needed to provide answers. A has not passed the exam.

Can A use the right of access to gain access to the exam corrections?

(A) Yes

(B) No

“The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.” (Art. 16 GDPR)

Control for the data subject over the accuracy of the data

Rectification

A has taken the professional exam to become an accountant. The exam consisted of open-ended questions to which A needed to provide answers. A has not passed the exam.

Can A use the right to rectification to correct wrong exam answers?

(A) Yes

(B) No

Erasure (“Right to be forgotten”)



Breach of one of the core data protection principles (Art. 17(1) GDPR) + no exception applies (Art. 17(3) GDPR) = Erasure of all personal data

Control for the data subject over compliance with core data protection principles

A search engine scraps the internet to provide answers to search queries typed into its search bar. When the name of X is typed in there, a number of results appear referring to old newspaper articles in which it is mentioned that X has unpaid debts towards the state.

Can X use the right to erasure?

(A) Yes

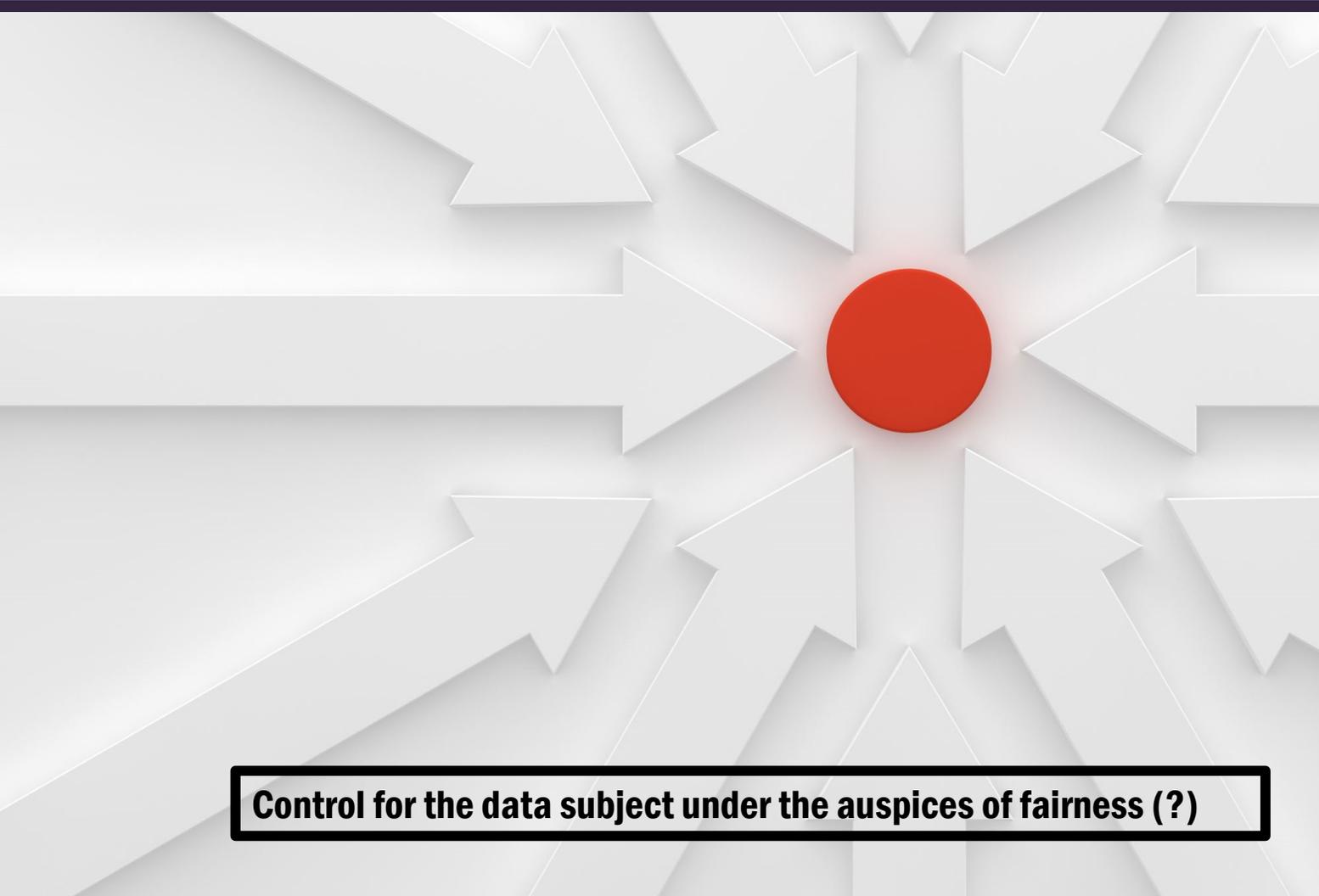
(B) No

Right(s) to object

Object to all processing based on public interest or legitimate interest of the controller (Controller can counter with compelling interest in processing) (Art. 21(1) GDPR)

Object to all processing for the purpose of direct marketing (Art. 21(2) GDPR)

Counter-balance to the broad justifications of public interest/legitimate interest under lawfulness & protection of privacy



**RIGHT TO OBTAIN HUMAN
INTERVENTION, EXPRESS
ONE'S POINT OF VIEW, AND
CONTEST A DECISION IN THE
CONTEXT OF AUTOMATED
DECISION-MAKING (ART.
22(3) AND (4) GDPR)**

Control for the data subject under the auspices of fairness (?)

**Data subject
rights are not
absolute – three
types of
restrictions**

Scope of data subject right inherently limited (e.g. right to erasure – Art. 17(3))

Member State or Union law imposed restrictions in line with Article 23 GDPR (fundamental right conditions)

Abuse of rights (Art. 12(5) GDPR – manifestly unfounded/excessive)



2. DATA SUBJECT RIGHTS AND EU FUNDAMENTAL RIGHTS

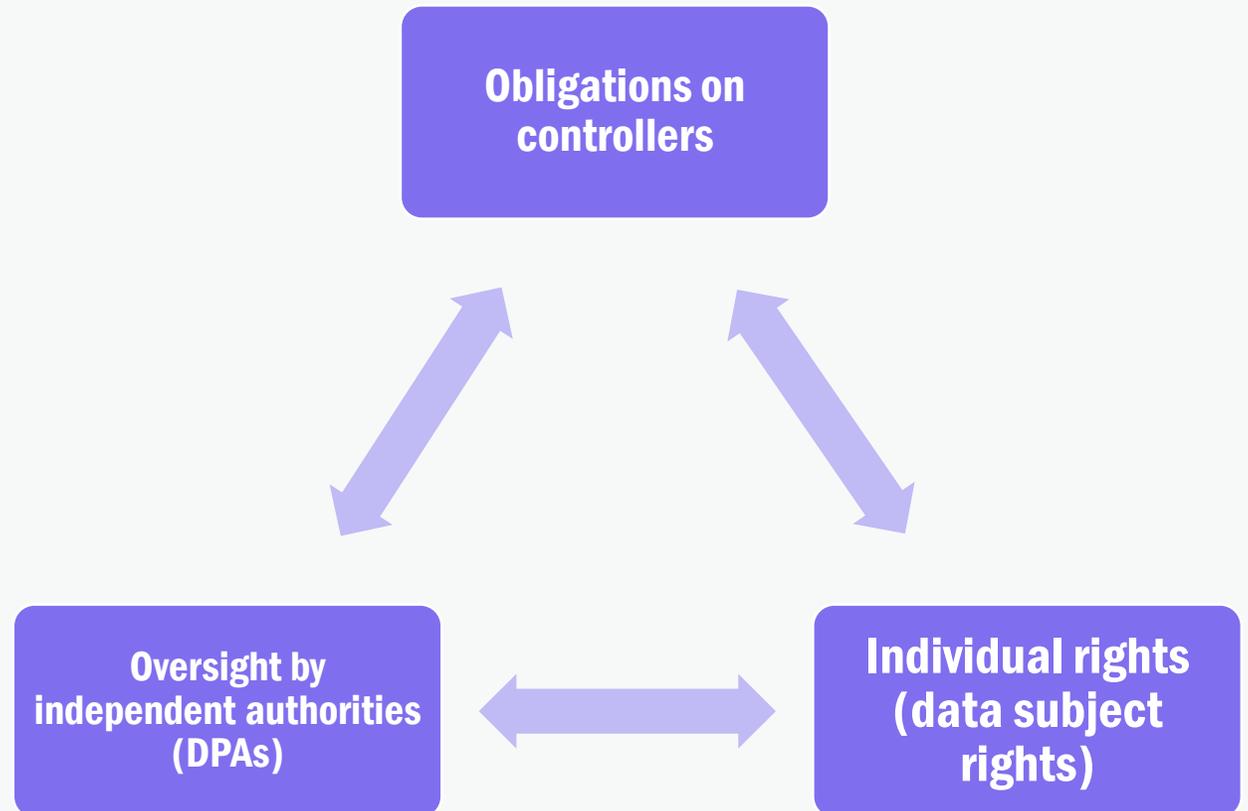
Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

**DATA SUBJECT RIGHTS AS VESSELS FOR INDIVIDUALS TO PROTECT THEIR
FUNDAMENTAL RIGHTS – EXTENDED SCOPE OF FUNDAMENTAL RIGHTS
CONSIDERATIONS**

The tripartite structure of EU data protection law



Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

THE FUNDAMENTAL RIGHT TO PERSONAL DATA PROTECTION (ARTICLE 8 CHARTER)

**Fundamental
rights and data
subject rights**

Personal data
protection (Article
8 Charter)

Privacy (Article 7
Charter)

Non-Discrimination
(Article 21
Charter)

Effective judicial
protection (Article
47 Charter)



3. EXERCISING DATA SUBJECT RIGHTS

**The exercising of
data subject
rights depends
on:**

**1. Transparency of the
processing**

**2. Behaviour of the
controller**

Information obligations for controllers (Transparency principle)

Information to be provided to the data subject <i>ex ante</i> under the GDPR				
Who is processing personal data? (Controller, representative, DPO)	What personal data are collected? (Categories of data, sources of data)	Why are personal data processed? (Purpose, further processing for compatible purpose, legal basis of processing, illegitimate interest)	How are personal data being used? (Storage period, disclosure to third parties, data transfers, automated decision-making and profiling, contractual requirements)	What are the rights of the data subject? (Access, rectification, erasure, restriction of processing, object, portability, withdraw consent, complaint to DPA)

Information obligations:

**When personal data was collected directly from data
subject → Art. 13 GDPR**

**When personal data was obtained elsewhere → Art. 14
GDPR**

Article 12

Transparent information, communication and modalities for the exercise of the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

**DATA PROTECTION NOTICE: DESIGN AS IMPORTANT AS
CONTENT**

Transparency requirements of Art. 12(1) GDPR



'Concise, transparent, intelligible and easily accessible form' (Quality of information)



'using clear and plain language' (Comprehensibility)



'information shall be provided in writing, or by other means, including, where appropriate, by electronic means' (Form)



Are the examples below best or worst practice examples?

We may use your personal data to develop new services.

We may use your personal data for research purposes.

We may use your personal data to offer personalised services.



Are the examples below best or worst practice examples?

We will retain your shopping history and use details of the products you have previously purchased to make suggestions to you for other products which we believe you will also be interested in.

We will retain and evaluate information on your recent visits to our website and how you move around different sections of our website for analytics purposes to understand how people use our website so that we can make it more intuitive.

Do you find the information presented by the EDPB in line with the requirements of Article 12(1) GDPR? (quality of information, comprehensibility, form)

Your personal data and our website

The EDPB website is our most important communication tool. Here we communicate our work such as our guidelines, recommendations, best practices, advises, opinions and decisions. In addition, we communicate data protection news and information about data protection topics to the general public as well as our more expert audiences.

Some of the services offered on our website require the processing of your personal data.

We processed personal data collected on our website for the following purposes:

- to enable you to have access to our website. We only use technical session cookies to detect if the user supports JavaScript or not, and
- when you send us a request or a complaint through our website or by other means, only for the purpose of the management of this request of complaint;

We do not reuse the information for another purpose that is different to the one stated. We will never divulge your personal data for direct marketing purposes.

Under certain conditions outlined in law, we may disclose your information to third parties, (such as the European Anti-Fraud Office, the Court of Auditors, or law enforcement authorities) if it is necessary and proportionate for lawful, specific purposes.

As a rule, we do not keep your personal information for longer than necessary for the purposes for which we collected it. We may keep your personal data for a longer period for historical or scientific purposes with the appropriate safeguards in place.

Behaviour of the controller

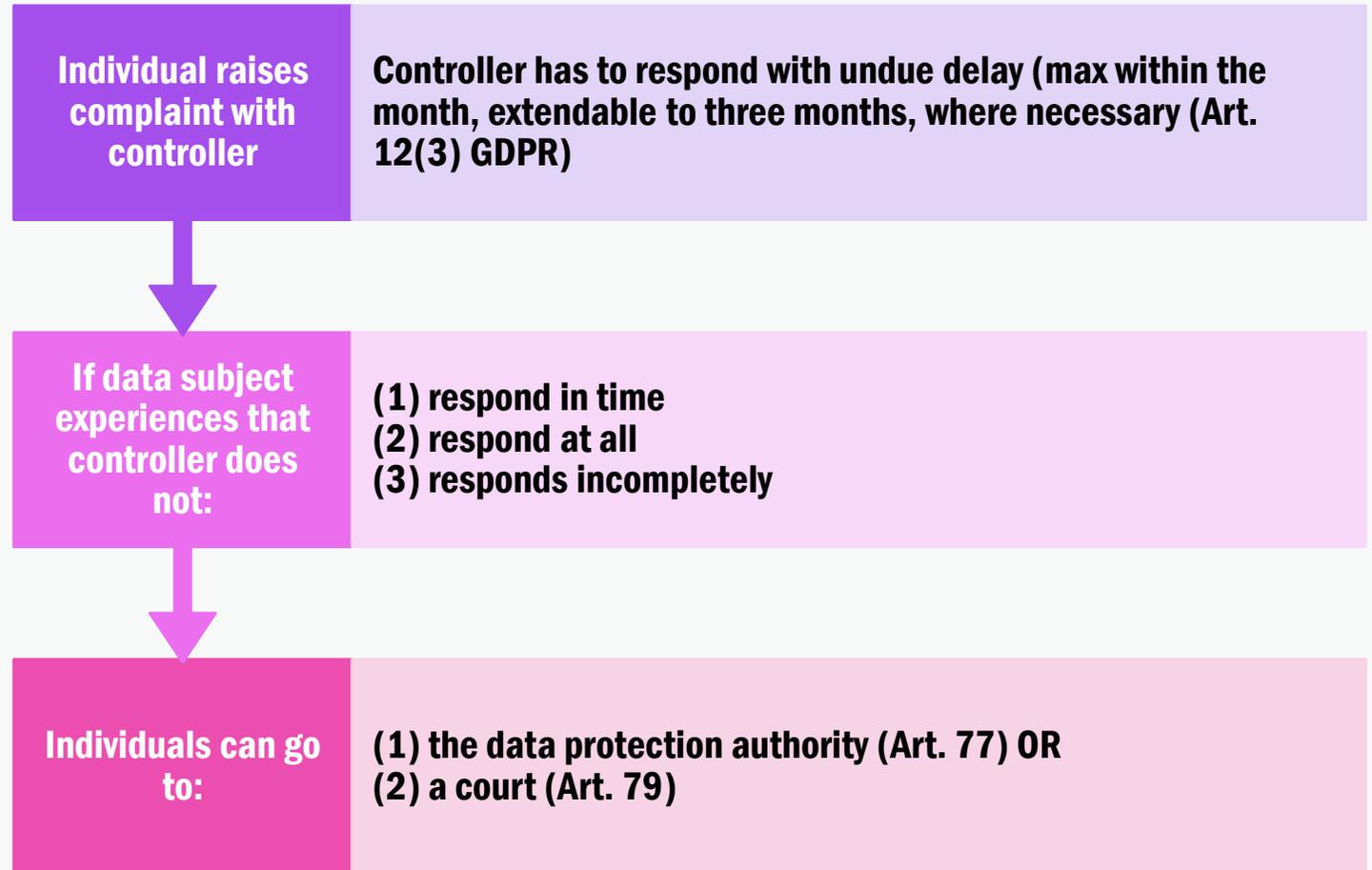
Close relationship between core data protection principles and data subject rights (“obligations meet rights”).

Duty to “facilitate the exercise of data subject rights” (Art. 12(2) GDPR).



4. ENFORCING DATA SUBJECT RIGHTS

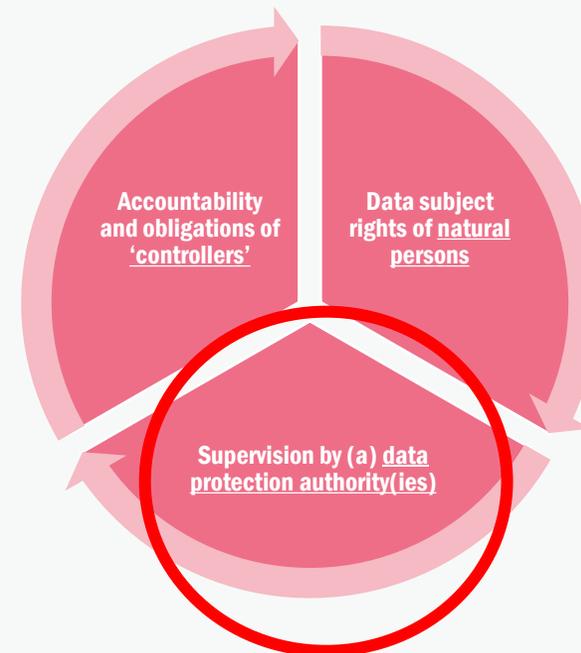
Enforcement (of data subject rights) under the GDPR



The tripartite structure of the GDPR

“Effective protection of personal data throughout the Union requires strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States”

Recital 11 GDPR



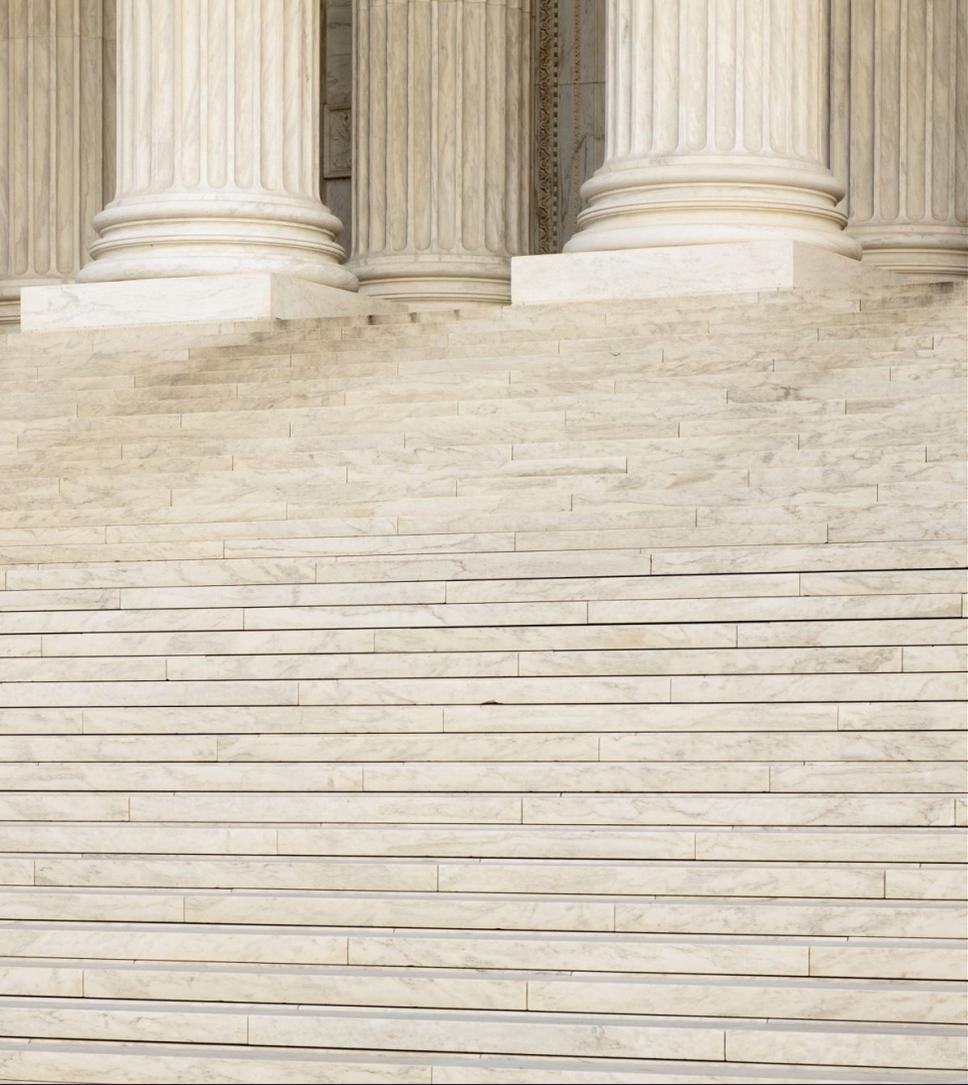
Data protection authorities (DPAs): the enforcer of the GDPR?

ARTICLE 51 PARAGRAPH 1 GDPR

“Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of the natural persons in relation to processing and to facilitate the free flow of personal data within the Union (‘supervisory authority’)”

ARTICLE 8 PARAGRAPH 3 CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

“Compliance with these rules shall be subject to control by an independent authority.”



Powers of DPAs

1. **Investigative powers: information orders, audits, access to personal data...)**
2. **Corrective powers: warnings, order to comply, e.g. order to delete personal data, ban of processing, administrative fines**
3. **Advisory powers: opinions on legislative plans of national government, authorise data protection model contracts**
4. **CJEU power: have the power to bring an infringement to the attention of the CJEU**

DPAs can act based on a complaint of a natural person or of their own initiative.

Administrative fines under the GDPR can be EUR 20 million or 4% of annual worldwide turnover (whichever is higher) (Article 83 paragraph 5 GDPR)

Facebook owner Meta fined €1.2bn for mishandling user information

Penalty from Ireland's privacy regulator is a record for breach of EU data protection regulation

● [**Business live - latest updates**](#)



Enforcement of the GDPR: Uneven, slow, too dependent on Ireland?

FROM POLITICO PRO

What's wrong with the GDPR?

European Data Protection Supervisor Wojciech Wiewiórowski wants Brussels to break the silence on flawed enforcement of the bloc's flagship privacy rulebook.



Further specifying procedural rules relating to the enforcement of the General Data Protection Regulation

[Have your say](#) > [Published initiatives](#) > [Further specifying procedural rules relating to the enforcement of the General Data Protection Regulation](#)

In preparation

Call for evidence

Feedback period

24 February 2023 - 24 March

2023

FEEDBACK: CLOSED

About this initiative

Summary

This initiative will streamline cooperation between national data protection authorities when enforcing the General Data Protection Regulation (GDPR) in cross-border cases. To this end, it will harmonise some aspects of the administrative procedure the national data protection authorities apply in cross-border cases. This will support a smooth functioning of the GDPR cooperation and dispute resolution mechanisms.

Topic

Justice and fundamental rights

Type of act

Proposal for a regulation

Private enforcement of the GDPR via the courts: the courts as the enforcer of the GDPR?

RIGHT TO “COLLECTIVE REDRESS”

Article 80

Representation of data subjects

1. The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to exercise the rights referred to in Articles 77, 78 and 79 on his or her behalf, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

RIGHT TO COMPENSATION

Article 82

Right to compensation and liability

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.





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