



EU Draft Regulation laying down additional procedural rules relating to the enforcement of GDPR

Position of Alliance Digitale

*Alliance Digitale is the **main industry body for digital marketing in France**. It was born in 2022, when both IAB France and La Mobile Marketing Association France decided to join forces and operate under one single entity. Our main mission is to bring the digital marketing industry forward and promote innovative, responsible, and interoperable solutions by setting industry standards and best practices.*

*With more than 250 diverse companies across the industry representing **Brands, Media, Agencies, retail platforms, gaming companies, and tech companies**, the association brings together most digital marketing players in France.*

Opening remarks

- **Alliance Digitale welcomes the Commission's ambition to further specify procedural rules relating to the enforcement of the General Data Protection Regulation ('GDPR')**. We also welcome this Draft Regulation as a great first step, considering the expected review of the GDPR next year.
- We believe it is also a great opportunity to uphold the fundamental right of defense of the investigated organization consistently at both the national and cooperative stages and throughout the entire procedure.
- We support the overarching goal of harmonizing procedural aspects of the GDPR, which is essential for enhancing cooperation among Data Protection Authorities (DPAs) on cross-border cases. Alliance Digitale firmly believes that aligning procedural rules among national DPAs will not only ensure the proper enforcement of the GDPR, but also provide better clarity and confidence for DPAs, businesses, and data subjects alike.
- Despite the significant efforts made to enhance the effectiveness and enforcement of the GDPR in recent years, it **has not fully realized its potential** due to structural issues. This is mainly due to difficulties in enforcing the regulation when it comes to cross-border cooperation, the lack of clear deadlines for procedural steps in cross-border cases, as well as divergent national procedures.
- **Alliance Digitale would like to highlight some specific aspects that need to be clarified to meet the objectives of the Draft Regulation and make GDPR clearer and simpler for all stakeholders involved.**

I. Maintaining the One-stop-shop mechanism

- **Alliance Digitale stresses the need to maintain the One-stop-shop mechanism as the foundation of GDPR governance**, thus preserving the balance between national and European competences. It is crucial to ensure that Article 10(6) does not excessively encroach upon the investigative powers of the Lead Supervisory Authority (LSA).
- In that sense, we **welcome the preservation of the One-stop-shop system (OSS) in the draft regulation**, by which the authorities in the country where a company is registered automatically retain jurisdiction over the investigation. This approach harmonizes national procedures in cross-border cases while respecting the competences of national supervisory authorities.
- Nevertheless, **we believe the lack of conditions for "failure to reach consensus" risks impacting the LSA's authority and eroding trust in cooperation**. Balancing this is crucial to avoid Member States losing investigative rights on their territory, violating the Subsidiarity principle. **The LSA's unique knowledge role should be preserved, with the EDPB's role limited to resolving disputes and assessing the relevance of objections**. Urgent referrals to the EDPB may disrupt the OSS mechanism and reduce Member States' procedural autonomy, necessitating safeguards like specific criteria for urgent referrals and a detailed supervisory authority consultation process.

Recommendations:

- **Reaffirm the principle of the One-stop-shop mechanism** as the basis of the collaboration of DPAs.
- **Preserve the distinctive LSA's role** in the procedure.

II. Guaranteeing the right to defense

a. **Right to be heard**

- Alliance Digitale **welcomes the various provisions of the Commission's proposal designed to allow defendants to comment at different stages of the procedure** such as the preliminary findings (article 14), the revised draft decision from the lead supervisory authority (Article 17) or the EDPB 'statement of reasons' (article 24.2). The right to be heard and the right of defense are **enshrined under articles 41 and 48 of the Charter of Fundamental Rights**. It guarantees that any person has the right to be heard, before any individual measure which would affect him or her adversely is taken.
- **We believe that this right to be heard should be extended to all stages in the administrative procedure**, to foster certainty for stakeholders. Even though the right is enshrined in article 41

of the Charter of Fundamental Rights, key aspects of procedural rights diverge among member states creating differences of treatment and diverging application when more than one DPA is involved.

- Because the right to be heard is a cornerstone of every democratic justice system, **the right of the defendants should also be reinforced**. Under article 60 of the GDPR which specifies the cooperation between the lead supervisory authority and the other supervisory authorities concerned, there are currently **no clear rules on the right of the parties to access to the file or specifying the scope and timing of the right to be heard**.
- In addition, **we are concerned over the current draft of Article 17(1), highlighting the potential escalation of divergent procedures among member states**. It grants each LSA the freedom to determine if its revised draft decision involves aspects on which defendants can provide comments. This discretionary power for LSAs to consult parties implies that the application of Article 17(1) may differ significantly among member states, contingent upon the approach of supervisory authorities. Consequently, **we call for amending this article to ensure that defendants can express their views on the revised draft decision whenever it introduces new tangible elements compared to the initial version**.

Recommendations:

- **Extend the right to be heard** to all stages of the administrative procedure.
- **Reinforce the rights of the defendants and clarify the position of complainants**.
- **Streamline the way the parties under investigation are heard** during the procedure.
- **Amend Article 17(1) to ensure that defendants can express their views on the revised draft decision whenever it introduces new tangible elements compared to the initial version**.

b. Transparency

- Alliance Digitale supports Article 20 of the Commission's proposal, **ensuring that defendants will have access to the administrative file**. Indeed, it is of **crucial importance that stakeholders have better access to information** to better understand and anticipate investigation or proceedings stages or deadlines. It is also crucial to ensure that supervisory authorities are held accountable for their decisions.
- However, **we believe that transparency could be further improved**, for instance by incorporating correspondence and discussions between supervisory authorities into the administrative file. **We therefore call on the co-legislators to enhance these transparency measures**, while maintaining the necessary degree of confidentiality within the procedure.

Recommendations:

- **Ensure better access to information for stakeholders with increased transparency**.

III. Making procedures easier and clearer

a. Deadlines and time limits

- Under articles 14, 17 and 21, the **Commission introduces a time limit to be determined by the lead supervisor authority (LSA) for different stages in the process. While we welcome these provisions, Alliance Digitale believes these deadlines should be further specified in a reasonable and proportionate way**, depending on the nature of each case to make sure that defendants have necessary time to prepare and share their opinions.
- More specifically, **we believe that deadlines should be precisely set for the various procedural steps necessary to foster cross-border cooperation and for the lead supervisory authority to take a decision.** Similarly, deadlines should also be further specified regarding the handling of a complaint, as well as for the communication of information on the case, the drafting, revision and adoption of a draft decision. **Setting up such proportionate deadlines is essential to give certainty to all parties involved.**
- Besides, the Draft Regulation foresees only one week for the defendant to express its view on the EDPB ‘statement of reasons’ (Article 24). It is clearly not enough to prepare its response, potentially bringing new elements to the EDPB. In that sense, **we believe it should introduce a minimum time limit that may be extended depending on the complexity of the case. This minimum time limit should not be inferior to 30 days.**

Recommendations:

- **Establish and specify clear and proportionate deadlines for several essential aspects of these procedures**, such as for the various procedural steps, the determination of complaint admissibility, the exchange of information, drafting, revising, and adopting draft decisions.
- Regarding the time limit for a defendant to express its view on the statement of reasons: **introduce a reasonable minimum time limit (not inferior to 30 days) to ensure that defendant has enough time to prepare its response and bring new elements.**

b. Amicable settlement

- We **welcome the Commission's proposal to give legal force to amicable settlements** (Article 5), which also constitutes a means to lessen delay and quickly resolve less severe and routine cases. **Encouraging early resolutions would alleviate the workload of supervisory authorities**, allowing them to focus on more critical cases.
- Hence, we **encourage the co-legislators to further clarify Article 5** to specify that the amicable settlement framework is available at all stages of the procedure and to provide DPAs with common and harmonized rules to follow throughout the Member states.

Recommendations:

- **Encourage early resolutions through amicable settlements for less severe cases.**

- **Clarify Article 5 to specify that the amicable settlement framework is available at all stages of the procedure.**

IV. Maintaining the right level of confidentiality

- Finally, **Alliance Digitale welcomes the provisions of the Draft Regulation that aimed at guaranteeing the treatment of confidential information of defendants** (for instance business secrets, intellectual property rights, etc.).
- However, **we believe that the Draft Regulation should introduce a harmonized sanction system** in the event the complainant fails to respect the confidential agreement as foreseen by Article 21.
- This harmonized sanction mechanism would help to protect the confidentiality of information and guarantee that DPAs follow common legal ground for sanctions throughout Member States, in line with the harmonization objectives of the Draft Regulation.

Recommendations:

- **Set up a specific liability regime for breaches of confidentiality rules as per Article 15 and Article 21.**
- **Introduce a harmonized sanction system** in the event the complainant fails to respect the confidential agreement.