

Dear Member of the European Parliament,

IAB Europe, representing a diverse membership of digital marketing, digital advertising and media companies, would like to express their strong concerns to the draft [report](#) on the GDPR procedural regulation by the Civil Liberties, Justice and Home Affairs (LIBE) Committee. If implemented as it is, the draft report will fall short of the initial ambitions to harmonise procedural rules, and ensure that the GDPR complaints process is consistent, predictable and fair for all organisations and results in simple, fast and efficient resolution for consumers.

As the LIBE Committee is looking to agree on a common position on the GDPR procedural regulation, IAB Europe encourages MEPs to consider the recommendations below.

1. Cross-border complaints should remain an administrative procedure

The new rights of 'equality of arms' and 'to be heard' for complainants¹, introduced by the draft report, increase the risk of turning what has been an administrative procedure into an adversarial one instead. While the draft report proposes to align some of the procedural protections to "all parties", it also reinforces the rights of the complainants² while at the same time hollowing out some of the procedural protections proposed in the initial draft to the investigated parties³. The combination of all these proposals makes the draft report imbalanced leading to a flagrant absence of the rights of defence for any investigated party.

This approach will slow down the process to the detriment of all parties and will fall short of the initial ambition of the legislation to make the cross-border complaints process more consistent, swift and efficient. This will also undermine the independence of Lead Supervisory Authorities (LSA) as enshrined in the GDPR.

2. The legislation must respect the existing GDPR governance model

The draft report provides the EDPB with new powers to weigh in on disputes regarding procedural issues⁴ and to carry out factual investigations under the dispute resolution procedure⁵. It also allows the EDPB to adopt binding decisions under the urgency procedure, which would be applicable to all member states⁶. These proposals are in direct conflict with the role and authority of the LSA under articles 56 and 60 of the GDPR and this cannot be supplanted. We urge the co-legislators to reject these proposals which could further undermine the GDPR's cornerstone one-stop-shop mechanism by redistributing decision-making and administrative competence from the LSA to the EDPB.

3. The defendant's right to be heard should be harmonised across Europe

¹ Amendments 29 and 59 of the draft report

² See articles 3 and 4

³ See article 14 (3) to (5) or article 17

⁴ Amendment 196 of the draft report

⁵ Amendment 193 of the draft report

⁶ Amendment 202 of the draft report

The European Commission's proposal sets out clear opportunities for the defendant to express their views during the administrative procedure. However, the LIBE draft report, which would give a right to be heard to parties 'before any measure is taken that would adversely affect'⁷ the parties, is unclear. The text also allows supervisory authorities to limit this right to be heard under their national procedural law⁸. Potential restrictions on the right to be heard at national level and vague concepts, such as "adversely affect", will create legal uncertainty and increase the risk of diverging interpretation and application across member states. IAB Europe urges the legislators to respect the defendant's right to be heard as a fundamental right to defence during clearly defined stages in the process⁹, to ensure a fair, predictable and harmonised procedure. Furthermore, the proposed deletion of Article 24 would remove a key requirement for parties to be heard before the European Data Protection Board (EDPB)¹⁰.

4. Defendants should be able to effectively exercise their right to be heard

The draft report requires the supervisory authorities to set "reasonable" time limits for providing views, which should not exceed four weeks¹¹. While the introduction of "reasonable" time limits is very welcome, we advise against a strict deadline, which will not be flexible enough to accommodate complex cases. Time limits should be proportionate depending on the complexity of each case. This is key to ensure that defendants have enough time to share their views, especially when the case is complex.

5. Business information confidentiality is key to ensure the integrity of the administrative procedure

The draft report deletes all measures from the Commission proposal to protect defendants' confidential information¹². In particular, the text grants complainants full access to all documents about the case except 'internal deliberations'¹³. It also removes the provision that would prevent complainants from using the preliminary findings for purposes other than the concrete investigation¹⁴.

These proposals would increase the risk of media leaks, which could influence the decisions from supervisory authorities, and therefore undermine their independence and the overall integrity of the administrative procedure. We urge the co-legislators to respect current practices regarding defendants' confidentiality and ensure, as far as possible, the effectiveness of sanction mechanisms across Europe in case of confidentiality breaches.

6. The regulation should enable all forms of early resolution

⁷ Amendment 59 of the draft report

⁸ Amendment 61 of the draft report

⁹ See section 6 of IAB Europe [position paper](#) on GDPR procedural regulation

¹⁰ Amendment 192 of the draft report

¹¹ Amendment 62 of the draft report

¹² Amendments 160, 174 and 176 of the draft report

¹³ Amendment 59 of the draft report

¹⁴ Amendments 160, 174 and 176 of the draft report

The draft report increases transparency and opportunities for organisations to receive complaints at an early stage in the process and directly resolve them. This is very welcome. However, the report proposes stricter conditions for the parties to settle unresolved cases via the amicable resolution process¹⁵. In cases where the organisation and the complainant agree, the text would require the supervisory authority to launch its own investigation under broad and vague conditions and with no clear threshold for initiating the investigation¹⁶. This proposal introduces uncertainty and unpredictability and could result in arbitrary decisions. We urge the co-legislators to remove these barriers to the use of amicable settlements in non-contentious cases that do not pose systemic threats to EU citizens' fundamental rights. This approach would ensure that LSAs focus their resources on the most pressing and egregious cases.

Thank you for considering these concerns and taking the arguments mentioned above into account, in order to harmonise and streamline GDPR procedural rules in cross-border cases.

Sincerely,

IAB Europe

¹⁵ Amendment 111 of the draft report

¹⁶ Amendment 113 of the draft report