10.2478/nispa-2023-0017

Procedural Challenges of Cross-border Cooperation and Consistency in Personal Data Protection in the EU

Grega Rudolf[1], *Polonca Kovač*[2]

Abstract:

Data protection is an increasingly important topic in the European administrative field at national and cross-border levels. Such a trend reflects different phenomena in contemporary society, which further leads to a more focused concern for a harmonised elaboration by the Member States despite their autonomy, in principle, regarding EU law implementation. However, as revealed by the Slovenian case in this article, the European Data Protection Board and national supervising authorities, mostly information commissioners, express the need to regulate some issues more decidedly. Interestingly, yet not surprisingly, their focus is on procedural aspects, as according to administrative science and several European Commission documents, procedure strongly influences the results. As a result, the article elaborates on the relevant procedural issues to be addressed to ensure a harmonised enforcement of the General Data Protection Regulation (GDPR) in force since 2018. Various research methods are employed, combining qualitative, normative, and comparative analyses and quantitative approaches, emphasising statistical data obtained from annual reports for 2020, 2021, and 2022. The results show a lack of procedural provisions in several aspects, including the definition of the parties to the procedure and their defence rights, particularly access to the file, to be heard, and complain, as well as one-stop-shop access to legal protection, deadlines, and investigation powers. Such gaps are expected to be covered by procedural institutions enshrined in National Administrative Procedure Acts (APA). However, as suggested by the Slovenian experience, such a solution is

1 Information Commissioner of the Republic of Slovenia, Ljubljana, Slovenia.

2 University of Ljubljana, Faculty of Public Administration, Ljubljana, Slovenia.

minimal due to differing national regulations and relatively low awareness of APA relevance in data protection even among supervising authorities. Hence, the authors argue that there is a need to develop and adopt standard EU rules to regulate such issues.

Points for Practitioners:

The article refers to data protection within theoretical, normative, practical, comparative, and national dimensions. In addition to analysing statistical data regarding procedural issues of cross-collaborative application of GDPR in the Member States – primarily Slovenia – the article provides practical implications of legislative, organisational, and IT adaptations required for harmonising EU-wide enforcement of GDPR. The insights provided herein can support the development of similar solutions in other EU countries. Therefore, the research findings are relevant for practitioners from various European administrations who are in charge of implementing GDPR and, specifically, supervising its implementation, as well as for policymakers and legislators in their respective areas of data protection and administrative procedural law. The findings will also benefit the European Commission when drafting new legislation to enhance cooperation and consistency between Member States in enforcing personal data rights set by GDPR.

Keywords:
administrative procedural law, cross-border cooperation and enforcement, EU law and national autonomy, GDPR, personal data protection

1. Introduction

Personal data protection is one of the pillars of European citizen empowerment and the EU approach to digital transition (European Commission, 2020; Rudolf & Kovač, 2022). Hence, it is one of the most important values enshrined in the highest EU acts, particularly Article 16 of the Treaty on the Functioning of the EU,[3] Article 39 of the Treaty on EU,[4] and Article 8 of the Charter of Fundamental Rights of the EU.[5] The EU acknowledged the importance of personal data protection by adopting the General Data Protection Regulation (GDPR[6]) in May 2016, directly applicable in all Member States and in force since May 2018.

3 EU Charter, Official Journal of the EU C 326/01, 26. 10. 2012.

4 EU Charter, Official Journal of the EU C 326/13, 26. 10. 2012.

5 EU Charter, Official Journal of the EU C 83/389, 30. 3. 2010.

6 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), Official Journal of the EU L 119.

The main purpose of GDPR is threefold: (i) strengthen the fundamental human rights of individuals in the digital era (data protection intrinsically connected to information privacy), (ii) offer clarification and, in some way, a path to standardisation of the rules that companies and public bodies across all Member States (MSs) must comply with, and (iii) end the fragmentation of national systems as well as the administrative cues arising from fundamental human rights (Senatori, 2020, pp. 159–161; Kneuper, 2020, p. 258; Rudolf & Kovač, 2022). GDPR offers a new cooperation and consistency mechanism stipulated chiefly in Chapter 7 to achieve such a purpose. With the one-stop-shop (OSS) mechanism, this new approach to EU-wide enforcement of GDPR serves multiple purposes. First, it eases the administrative burden on the controllers[7] with a mechanism where instead of having to engage with every single personal data authority (SA) in each MS, a controller, when conducting its cross-border processing activity, dealing with only one Data Protection Authority (DPA). Second, it promotes and ensures a consistent application of personal data protection (PDP) rules and enforcement of GDPR by DPAs in every MS. However, not least, it provides individuals with enforceable PDP rights, no matter where in the EU they are located and to which DPA they announce their PDP breach (more in European Commission, 2020; cf. Harlow & Rawlings, 2014; Kuner at el., 2020).

The cooperation and consistency mechanism not only imply a *sui generis* approach to enforcing PDP rights throughout the EU but presents a complex issue of this mechanism serving its initial purpose due to the differences in administrative procedures and practices between MS SAs. As specified in the 2023 Commission's work plan (European Commission, 2022), the procedural issues of PDP rights enforcement, in particular, will be discussed and worked on in the following years to better ensure that the cooperation and consistency mechanism works as intended. However, it is important to consider that national administrative laws, specifically National Administrative Procedure Acts (APA), are also relevant in this context, at least *mutatis mutandis*, as in any administrative matter that involves common EU principles and specific operational procedural rules (Harlow & Rawlings, 2014; Galetta et al., 2015; Kovač, 2016).

The purpose of this article is to analyse the procedural aspects of the cross-border cooperation and consistency mechanism set by GDPR while exploring the procedural challenges that have either arisen in the practice of the SAs or have been deduced from the statements by the European Data Protection Board (EDPB) and the EC or from the relevant case law on PDP enforcement in the EU and in individual countries, with Slovenia selected as an example.

By focusing on the procedural issues and their regulation in the Republic of Slovenia as one of the MSs obliged to ensure the consistent application of GDPR, this

7 According to Article 4(7) of GDPR, a "*controller*" is the legal entity that, alone or jointly with others, determines the purposes and means of the processing of personal data. Conversely, Article 4(8) defines a "*processor*" as an entity that processes personal data on behalf of the controller. These roles are not merely semantic distinctions; they carry specific legal obligations and liabilities.

research aimed to answer the following research question: *Can national law (such as the national PDP act or APA in Slovenia) provide an excellent model to other countries and the EU regarding procedural regulation in the field of data protection to overcome the barriers to cross-border cooperation?* It was hypothesised that the current lack of EU-wide procedural regulation hinders the cooperation and consistency principles set by GDPR while also presuming that the national procedural regulation by the (G)APA only partially offers adequate answers and flexible solutions to procedural challenges.

The legal landscape of data protection has been a subject of extensive scholarly inquiry, particularly since the introduction of GDPR in the EU. Legal scholars and practitioners have delved into various facets of data protection law, ranging from the principles of consent (Utz et al., 2019; Hallinan, 2020; Bergemann, 2018) and transparency (Wulf & Seizov, 2022; Spagnuelo et al., 2019) to enforcement mechanisms (Ruohonen & Hjerppe, 2022; Gentile & Lynskey, 2022) and the role of DPAs (Puljak et al., 2023; Barnard-Wills et al., 2016; Giurgiu & Larsen, 2016). Notable contributions have also been made in understanding the interplay between national laws and GDPR (Molnár-Gábor et al., 2022; Wagner & Benecke, 2016), as well as GDPR's extraterritorial reach and its impact on international data transfers (Drechsler, 2023; Phillips, 2018; Goddard, 2017). However, one area that has received comparatively less attention is the procedural aspects of the OSS mechanism for cross-border data protection enforcement. In the context of the OSS procedure, scholars have explored issues such as whether the OSS provides legal certainty and legitimate expectations (Balboni et al., 2014), the extent of DPAs' powers and roles (Brandão, 2023), and the limitations of procedural data protection (Francis, 2023). Research has also been conducted on potential reforms to GDPR (Hofmann & Mustert, 2023), where the proposed solutions primarily focus on procedural harmonisation and strengthening the role of an independent DPA on the EU level in charge of taking on EU-wide cases while the reform should also focus on improving the allocation of powers between DPAs and ensuring individual procedural rights, thereby enhancing the overall quality and speed of decision-making.

2. The Methodological outline

The research carried out relies on an established research process structure, which implies the following phases: definition of the research problem and objectives, development of an analysis plan, collection and analysis of data, and interpretation of results (cf. Kovač & Rudolf, 2022). The definition of research objectives and the study of the relevant literature are followed by normative and dogmatic analysis and the definition of the primary research concepts, after which empirical and comparative insights into the subject are provided.

The research design is based mainly on the relevant scientific literature on data protection, privacy rights, administrative procedures, and MS autonomy, including

articles from scientific journals, monographs, commentaries to regulations, as well as various white papers, proposals and reports of relevant EU and national authorities, field administrative practice and case law. Therefore, the study aims to show the respective developments in cross-border procedural issues of data protection in the European context.

The topic is tackled from the perspectives of political science and administrative law; therefore, normative and dogmatic methods, analysis of scientific literature, sociological and historical analysis, and comparative and axiological methods are used. In order to overcome the complexity and multidisciplinary nature of the topic, as well as the dominantly qualitative nature of the research, the triangulation approach was applied to ensure scientific objectivity. The above means that any main study subject was examined with multiple methods and resources, particularly by combining literature and European white papers analyses and case law.

The main research methods applied were the normative method, with an analysis of EU regulations on administrative procedural law or rather the lack thereof, alongside the comparative method, analysing the specific procedural aspects of the EU-wide issues as mentioned above, specifically in Slovenia with its national APA and PDP act. For an empirical insight, a statistical analysis of the EDPB's and IC's annual reports for 2020, 2021 and 2022 was conducted, combined with an overview of relevant case law regarding the procedural challenges mentioned above and their potential solutions. Therefore, normative, descriptive and dogmatic methods were applied together with methods of content analysis and synthesis. Consequently, based on the research findings, general solutions to cross-border personal data rights enforcement and solutions to other already existing or future cross-border administrative procedures and sectors in general were discussed.

3. Framework of the selected procedural institutions for an efficient personal data protection

3.1 The role of the One-Stop-Shop mechanism in harmonizing data protection across the EU

One of the main objectives of GDPR was undoubtedly to provide a consistent approach and harmonisation of data protection rules at the EU level (van der Sloot, 2018). Aimed at bringing uniformity or at least harmonisation in how PDP rights are exercised and enforced throughout the MSs proves one of the most complex issues of such EU-wide protection. As stated in recital 7 of GDPR, those developments require a strong and more coherent data protection framework backed by strong enforcement, given the importance of creating trust that will allow the digital economy to develop across the internal market.[8] GDPR, therefore, calls for a robust and unified data protection

8 See Recitals 6 and 7 of GDPR, more in Kuner et al., 2020.

framework across all MSs, supported by consistent enforcement measures (cf. Kuner et al., 2020).

To align and facilitate the initial purpose of an EU-wide harmonised PDP, a so-called one-stop-shop mechanism (OSS) was introduced (more in Balboni et al., 2014). It establishes a single point of contact, allowing companies that operate in multiple MSs and conduct cross-border data processing to only work with one Data Protection Authority (DPA). Additionally, this mechanism empowers individuals to more effectively, at least in principle, assert their rights against these controllers. Since the OSS mechanism's primary purpose is to ensure the consistent application of GDPR throughout the EU, one could argue that whenever the enforcement of GDPR differed across MSs, the OSS mechanism could serve as a corrective of such divergence. In other words, the national legislation transposing GDPR into national frameworks may, of course, differ according to the specific national needs but should not deter from the material rights and obligations that GDPR provides for (cf. Balboni et al., 2014; Mali, 2019; CIPL, 2021; Access Now, 2022; EDPS, 2022). Under Article 60 of GDPR, enforcement is primarily led by the lead supervisory authority (LSA). The main task of the LSA is – under the umbrella of EDPB – to coordinate and work with other supervisory authorities, known as concerned supervisory authorities (CSAs), regarding specific PDP supervision. To facilitate consistency in their cooperation across the MSs regarding harmonised enforcement, consistency tools such as EDPB's opinions (Article 64), dispute resolution mechanism (Article 65), urgency procedure (Article 66), and exchange of information procedure (Article 67) could be activated when, as stated in recital 135, "*a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States*". Furthermore, the consistency mechanism may be employed in response to a request by either the Commission or any relevant supervisory authority for the matter to be dealt with using the consistency mechanism.

The OSS mechanism is therefore intended for cases that are "*transnational*", i.e. cross-border processing cases[9] where the impact of such processing could impact more than just one MS citizen (Giurgiu et al., 2015). Consequently, two broad scenarios that could in practice intertwine when the OSS mechanism is initiated are established. First, when a company has at least two establishments in the EU, the supervisory authority of the main establishment shall be competent to act as LSA for the cross-border processing carried out by that controller or processor under the procedure provided for in Article 60. The DPA competent for the other establishment would act as a CSA. Whether there are conflicting views on which of the CSAs is competent for the main establishment, the

9 According to Article 4(23) GDPR (23) 'cross-border processing' means either: (a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.

EDPB would, per Article 65, provide for a binding decision. Second, when a company has just one single establishment in the EU but the processing of personal data substantially affects or is likely to substantially affect individuals in more than one MS, the LSA's tasks are carried out by the DPA competent for the single establishment. The Member State's DPA, where individuals' personal data are processed, acts as the CSA.

After establishing the roles of the LSA and the CSA, the LSA creates the initial decision – the draft decision (DD) – which is then shared with the other CSAs involved in the case. Those CSAs have an opportunity to raise any relevant and reasoned objections to the draft. If objections are raised, and the LSA decides not to act thereon, a consistency mechanism – known as a dispute resolution mechanism – is activated. The dispute is then sent to the EDPB for a binding decision to be issued according to Article 65. The LSA then adopts its final decision based on the EDPB's ruling, which is binding. The controller or the processor must then take all the measures necessary to comply with the decision and notify the LSA of the measures taken. Once a decision has been made, the LSA is responsible for acting against the controller or processor. At the same time, the SAs that received the complaint must inform the complainant per Article 60(7) of GDPR. Throughout the entire process, the SAs are expected to cooperate and, where relevant, with the European Commission. Cross-border cooperation, therefore, serves to attain a public service's intended scope and availability, ensuring harmonised data protection standards across the EU (cf. Molak & Soukopová, 2022. pp. 146–147). Since cooperation seems to be vital to ensure a consistent GDPR enforcement (cf. Balboni et al., 2014; EDPB, 2022b; EDPB, 2020a), the EDPB has called for enhanced cooperation on strategic cases and diversification of cooperation methods used.

In addition to the OSS mechanism on cross-border supervision (Article 60), the consistency and cooperation purpose is further enhanced with the possibility for any SA to request mutual assistance from any other SA[10], such as information requests and supervisory measures, e.g. requests to carry out prior authorisations and consultations, inspections and investigations (Article 61), and a possibility for joint operations of supervisory authorities, where SAs can conduct joint investigations and joint enforcement measures (Article 62, for more see Kuner et al., 2020). Furthermore, the EDPB also issues consistency opinions on certain draft decisions produced by European SAs that have an impact beyond national borders, such as a new set of standard contracts or codes of conduct. The EDPB also has the authority to provide consistent opinions on any matter related to the general application of GDPR or any issue that affects multiple Member States (EDPB, 2020, 2020a). However, in certain exceptional cases, the OSS mechanism can be completely avoided[11].

This new approach to cross-border PDP offering new methods of coordination

10 The mutual assistance mechanism in GDPR incorporates similar provisions as those already provided for in Convention 108, particularly Article 13, as well as Convention 108+.

11 In cases of urgency procedures under Article 66; when processing is done by public or private bodies acting in public interest or as official authorities under Article 55(2); in cases with local impact; in other than cross-border processing cases; if processing stems from a legal obligation, etc.

and consistency tools, therefore establishing a transnational dimension to the supervision procedure, which is generally done solely by national supervision bodies under their substantive and national procedural laws (similarly as in certain fields relevant to the harmonised EU law, cf. Harlow & Rawlings, 2014; Galetta et al., 2015). In such a context, cross-border cooperation serves as an example of a non-hierarchical co-governance tool rooted in the principle of multi-level governance. This approach has been primarily implemented through European integration to foster EU territorial cohesion (cf. Molak & Soukopová, 2022; Ágh 2010)). In its attempt to balance the need for harmonisation across all MSs applying GDPR with effective PDP rights for all EU nationals regardless of their nationality on the one hand and a wish to ease the administrative burden for controllers and processors on the other, the following advantages and disadvantages of the OSS procedure can be distinguished (Table 1).

Table 1:

Pros & Cons of the OSS procedure

PROS	***CONS***
– Facilitates cooperation and coordination among SAs. – Provides for easier and less burdensome compliance of organisations that operate in multiple EU Member States. – Can reduce costs. – The cross-border decisions are more robust and efficient. – Promotes consistency in the application of GDPR. – Improves the effectiveness and efficiency of PDP enforcement – Enhances predictability and legal certainty. – Increases efficiency.	– The pros of the mechanism rely heavily on the LSAs' proactive stance and CSAs' proactive cooperation. – Cross-border procedures take additional time and resources. – Can be burdensome for SAs. – In case no agreement between the SAs is reached, the OSS could lead to delays in enforcement. – Can decrease the accessibility of legal remedies for individuals. – Can create confusion and uncertainty.

Source: Authors' own, 2023.

However, the (dis)advantages of the OSS or any harmonisation of such dimension in the EU closely relate to the issue of EU law autonomy in the Member States. In such regard, it is vital to understand when rule-making falls within the responsibility of national authorities and when the latter act (only) as administrative bodies in single-case decision-making, as the principles and rules that match the one or the other role of

state bodies and the associated type of procedure (regulatory or administrative or punitive) differ. As a result, the Court of Justice of the European Union (CJEU) usually ties its arguments to reference procedural guarantees as part of the general principles of EU law.[12] However, the dilemma of further respect for national autonomy is growing, given the global nature of business. In addition, there is the question of the spill-over effect of GDPR beyond the EU (cf. Roth, 2017; Ryngaert & Taylor, 2020).

3.2 EU procedural standards and national autonomy under GDPR

The GDPR aims to harmonise PDP regulations across the EU. However, harmonisation has yet to be fully implemented even more than five years since its entry into force.

Protecting personal data represents one of the fundamental rights of EU citizens in ensuring a democratic society (Kovač & Rudolf, 2021). In contrast, GDPR ensures the substantial legal guarantees to be the same or at least harmonised through national legal implementations in all MSs. Even though all MSs are bound by EU law, there may be variations in how each national legal system ensures effective protection, which could be attributed to the distinct legal tradition and the specific characteristics of the legal system and governing bodies within each country.

While GDPR may include certain procedural provisions (such as those granting powers to SAs), national procedural law applies when EU law does not establish specific procedural rules. GDPR, therefore, leaves the implementation of PDP rights up to national procedural legislation, which draws from the procedural autonomy prerogative of the EU MSs. The national procedural autonomy, therefore, permits the MSs to establish their procedures for enforcing the regulation within their jurisdictions, allowing for a more tailored enforcement of GDPR in the specific legal and cultural context of each MS, all to ensure effective and efficient application of the regulation within their jurisdictions. Therefore, the principle of national procedural autonomy dictates that, in the absence of direct regulation in EU primary or secondary law, MSs retain the authority to independently legislate on procedural matters. However, this autonomy is limited by the requirement that the procedural solutions adopted by the MSs are aligned with the principles of effectiveness and equivalence, with the fundamental principles of administrative law in the region, and with the existing traditional legal system in a MS. Concerning GDPR, this means that national procedural laws may not result in fragmentation and impede consistent handling of procedures throughout the EU. To safeguard the subjective legal rights of individuals, directly applicable provisions of EU law must therefore have full, complete, and uniform effect within the legal systems of the MSs, regardless of any internal rule or practice. The

12 For example, Soprope, C-349/07, 18. 12. 2008, Pelati, C-603/10, 18. 10. 2012, Sabou, C-276/12, 22. 10. 2013, C-73/16, Puškar, 27. 9. 2017. More in Galetta, 2010, or various literature regarding EU v. MSs autonomy, especially in tax matters. For data protection specifically, see the case mentioned below, such as C-132/21, 12. 1. 2023.

classic Simmenthal rule[13] – recently reiterated in the CJEU case C-34/21 – states that national provisions in conflict with directly applicable EU law must be deemed inapplicable and disregarded. It is, therefore, essential to guarantee that national legislation, which establishes specific rules on data processing, aligns with GDPR and does not diminish the protection provided to data subjects.

Specifically, enforcing GDPR must, therefore, adhere to the principles of equivalence and effectiveness. In contrast, EU law should be treated the same as national law (equivalence) and the exercise of rights conferred by EU law should not be rendered excessively difficult or practically impossible (effectiveness) (EDPB, 2021, pp. 10–11; Kovač, 2019).

National procedural autonomy strives to achieve legal consistency across the EU in hopes that every procedural legislation of the EU would offer an efficient manner or tool to apply GDPR's rights in their respective Member State. It presumes that national procedural regulation would allow, on the one hand, a procedure tailored to specific Member States' needs and, on the other, an effective tool to achieve the harmonised application of the law (van der Sloot, 2018, Balboni et al., 2014, Hijmans, 2018).

In the EU legal system, the principle of subsidiarity seems like a vital tenet that promotes decision-making decentralisation and limits the Union's competence to areas the MSs cannot effectively achieve. If the MSs themselves cannot better achieve the objectives of EU regulation, one could argue that EU-wide regulation is necessary – even if that entails regulation of the procedure itself, regardless of the procedural autonomy of the MSs.

Moreover, even when an EU regulation identifies the rights of natural persons, the MSs still preserve a certain degree of autonomy, as set out in paragraph 129 of the preamble to GDPR.[14] However, the MSs do not have identical legal systems to ensure equally effective protection. The differences lie in their legal tradition and individual countries' systemic features of law and authority. This is evident from the wording of paragraph 129 where, after highlighting equality, there is an explicit indication that "investigatory powers as regards access to premises should be exercised in accordance with specific requirements in Member State procedural law" (Kovač, 2019). After that, some minimum requirements are defined, such as demonstrated competence of the orders issued or the need for judicial review of the legality of the measures taken by the

13 According to the CJEU decision in C-106/77 Simmenthal, which can be found on page 641, decision section 7(a), "directly applicable Community provisions must, notwithstanding any internal rule or practice whatsoever of the Member States, have full, complete and uniform effect in their legal systems in order to protect subjective legal rights created in favour of individuals".

14 In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the SAs should have in each MS the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, and without prejudice to the powers of prosecutorial authorities under MS law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings.

supervisory authority, followed by the clause that "this should not preclude additional requirements pursuant to Member State procedural law". However, other provisions, such as Article 58 of GDPR, offer MSs additional procedural requirements and supervision to be carried out as defined by national procedural law. In Slovenia, that implies subsidiary use of the GAPA.

In a recent CJEU case – NoC-132/21, 12. 1. 2023, *Nemzeti Adatvédelmi és Információszabadság Hatóság* – the CJEU addressed the question of balance between respecting national procedural autonomy on the one hand and ensuring that national procedures do not undermine the harmonisation objectives of EU legislation on the other. In this case, the CJEU clarified the boundaries of a MS's procedural autonomy in data protection similarly as in other administrative (e.g. tax) matters, which should always be determined by EU principles of equivalence and effectiveness, sincere cooperation among MSs, and the protection of the fundamental right to effective judicial protection as outlined in the EU Charter. Therefore, when exercising their procedural autonomy, MSs must always ensure that their arrangements of the various national rules across the EU do not hinder or compromise the exercise of the rights provided for in GDPR.

The balance of procedural autonomy vis-à-vis effective insurance of PDP rights could, therefore, be dependent on the following criteria:

- principles of effectiveness and equivalence;
- other EU principles, especially rights to good administration (pursuant to Article 41 of the EU Charter on Fundamental Rights, e. g. access, to be heard, and the like);
- fundamental principles of administrative law in the region;
- existing traditional national legal systems in the Member States.

To address harmonisation challenges, in 2013 and 2016, the European Parliament passed Resolutions with recommendations for the Commission to create a Law of Administrative Procedure for EU institutions and outlines nine basic principles that such a law should adhere to. There have been notable efforts by the EU Ombudsman, the European Parliament, and a group of experts known as ReNEUAL that have significantly contributed to the development of an EU-wide APA, relevant also in the field of PDP. This proposed legislation aims to create a harmonised APA consistent across the EU while considering the different legal cultures among MSs. However, it should be noted that this proposal is intended to be applicable solely to EU authorities and not directly to the MSs per se, which raises questions about the effectiveness of this solution in addressing the challenges faced in PDP regarding cross-border procedures (Kovač, 2016). Furthermore, special procedural rules can always be included in a substantive law overriding the general APA, as is the case of the Slovenian Personal Data Protection Act (PDP Act) in force since January 2023.

4. Analysis of cross-border cases in the EU and Slovenia – results

In order to assess the effectiveness of cooperation and consistency mechanisms in the field of data protection, an analysis of the number of cross-border cases handled by DPAs is conducted using statistical data from the annual reports of the EDPB and the Information Commissioner of the Republic of Slovenia (IC) for the years 2020, 2021 and 2022, alongside additional relevant EDPB's reports and letters.

Based on the normative analysis of the duty to cooperate under GDPR to ensure the consistent application of PDP laws, research on the number of cooperation and consistency procedures was conducted, particularly concerning cross-border procedures carried out by all DPAs obliged to cooperate under GDPR (SAs of the European Economic Area, i.e. EU-27 plus Iceland, Norway and Liechtenstein). The analysis begins with EDPB's annual reports to determine how many cooperation and consistency tools were utilised in 2020 and 2021, followed by an analysis of IC's annual report on cross-border cooperation work. Additionally, a request under Regulation (EC) 1049/2001[15] was made to obtain data for 2022 and other specific information not available in the EDPB's annual report. This data is derived from the Information Management Instrument (IMI) system, which facilitates cross-border cooperation among SAs, enabling the exchange of relevant information in the context of cooperation, mutual assistance and joint operations, and the consistency mechanism (Articles 60, 61, 62 and Chapter VII of GDPR).

For the indicators specified below, the percentage growth or decline over the years was explored to provide a better insight into the changes observed. Table 2 presents an overview of the EDPB's annual reports, while Table 3 presents the annual reports of the Slovenian SA (IC) for 2020, 2021, and 2022.

15 Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission.

Table 2:

Number of selected cooperation and consistency procedures in the years 2020, 2021, and 2022 and trends (EDPB)

	2020	***2021***	***2022***	***% 2021 v. 2020***	***% 2022 v. 2021***	***% 2022 v. 2020***
Issued general guidance documents	15	14	11	-7	-21	-27
Binding decisions under A65(1)	1	1	4	0	+300	+300
Urgency decision under A66(2)	0	1	0	+100	-100	0
No. of issued Draft Decisions (DD)	203	209	384	+3	+84	+89
No. of issued Final Decisions (FD)	93	141	330	+52	+134	+255
No. of mutual assistance procedures[16]	2,504	2,661	3,172	+6	+19	+27
-Formal mutual assistance procedures	246	243	248	-1	+2	+1
-Voluntary mutual assistance procedures	2,258	2,418	2,924	+7	+21	+29

Source: EDPB annual reports for 2020, 2021, 2022.

Table 3:

Number of consistency and cooperation procedures in the years 2020, 2021, and 2022 and trends (Slovenian SA)

	2020	***2021***	***2022***	***% 2021 v. 2020***	***% 2022 v. 2021***	***% 2022 v. 2020***
SI SA mutual assistance procedures	123	154	196	+25	+27	+59
-SI SA formal mutual assistance procedures	7	3	4	-57	+33	-43
Out of those: SI SA responses on other SAs requests	3	3	0	0	-100	-100
Out of those: Requests made by SI SA	4	0	4	-100	+400	0

16 Covering all the information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections, and investigations. In this regard, two types of mutual assistance requests can be distinguished: formal mutual assistance requests – with a legal deadline of one month to reply – and voluntary mutual assistance requests without a legal deadline. Both mutual assistance procedures can be used for cross-border cases subject to the OSS procedure, either as part of the preliminary phase, to gather the necessary information before drafting a decision, or for national cases with a cross-border component.

-SI SA voluntary mutual assistance procedures	116	151	192	+30	+27	+66
Out of those: requests for information and clarification by other SAs	*50*	*53*	175	+6%	+230	+250
Out of those: notifications from other SAs about specific ongoing cases	*43*	*80*	55	+86	-31	+28
Out of those: requests made by the SI SA	*23*	*18*	17	-22	-6	-26
SI SA A60 procedures[17]	77	62	190	-19	+206	+146

Source: IC annual reports 2020, 2021, 2022.

In 2020, the EDPB issued 15 guidelines to the SAs to ensure the consistent application of GDPR across the EEA. The topics covered in the guidelines for 2020 mostly entailed the requirements for the COVID-19 pandemic (cf. Rudolf & Kovač, 2022), new technologies such as connected vehicles, targeting of social media users, personal data transfers, and the meaning of specific terms in GDPR such as consent, controller and processor, criteria on relevant and reasoned objections, and others.

In 2021, the EDPB issued 14 additional general guidance documents covering various data protection requirements. These documents addressed topics such as data breach notifications, codes of conduct as data transfer tools, storing credit card data, virtual voice assistants, and interpreting specific terms in GDPR. In 2022, EDPB issued 11 more general guidance documents, including guidance on data subject rights, the application of Article 60 regarding cooperation between the LSA and other SAs concerned, amicable settlements, and the like.

In 2020 and 2021, the EDPB issued a total of two binding decisions; in 2022, it issued four binding decisions to settle disputes between SAs. The rise in the number of binding decisions issued by the EDPB in 2022 may indicate a growing need to address and harmonise contentious issues before they escalate into concrete cross-border procedures. This approach streamlines the process and promotes a more unified and harmonised approach to data protection enforcement (EDPB, 2022b; European Commission, 2020, pp. 5; provide further discussion on this topic).

In 2021, the EDPB issued its first urgency decision based on Article 66 of GDPR. Upon analysing the draft decisions, there was a 3% increase in their issuance in 2021 compared to the previous year. However, 2022 witnessed a significant 84% surge. A similar trend can be observed in the number of final decisions issued. In 2021, there was a 52% increase in final decisions compared to 2020, and this growth continued in 2022 with a 134% increase. Comparing 2020 and 2022 directly, the rise in final decisions issued amounts to a substantial 255% growth.

17 In addition to ongoing procedures already initiated. In this regard, it should also be noted that the Slovenian SA sometimes opens a case file to follow the A60 procedure before a DD is issued (after the identification of the LSA and CSAs). Consequently, there may be instances where no OSS procedure is initiated at all.

Furthermore, the number of mutual assistance procedures has also been analysed, both at the level of the EDPB in general and specifically from the Slovenian SA's annual reports. The number of mutual assistance procedures has increased in both contexts by over 27% at the EDPB level (from 2,504 in 2020 to 3,172 in 2022) and 59% at the level of the Slovenian SA (from 123 in 2020 to 196 in 2022). In both cases, the increase stems from the rise in voluntary mutual assistance procedures that are not bound by the exact legal deadlines specified in A61 but instead involve clarifications, notifications regarding ongoing procedures, and similar voluntary actions undertaken by the SAs. In 2021, compared with the year before, the Slovenian SA's participation in A60 procedures was down by 19%, but saw a staggering increase of 206% in 2022 (190 procedures vs 62 procedures in 2021).

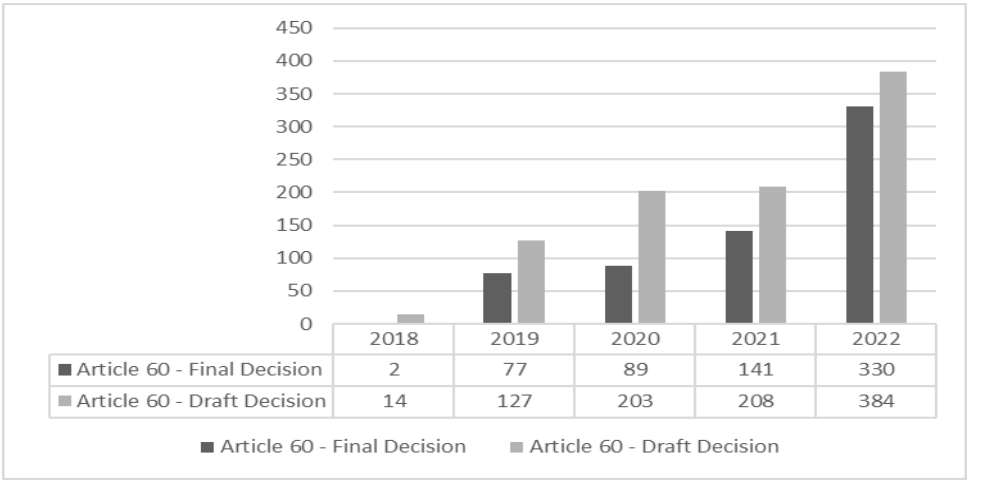
Additionally, a request was made to the EDPB to access statistics on the number of OSS and consistency procedures under Regulation (EC) No 1049 to gather the latest data available as of January 2023. The statistics provided by the EDPB were generated from the information and communications system IMI, which facilitates the exchange of information between SAs to support the cooperation procedures and consistency mechanism of GDPR. To properly analyse the results, it is important to note that these statistics represent cumulative data since establishing the EDPB on 25 May 2018. Additionally, the IMI system functions as an information-sharing tool rather than a case management system that serves to create repository entries and initiate workflows by SAs under various headings. This distinction is reflected in the analysed statistics. In that regard, the reference to case register entries in the statistics do not have a 1-to-1 correlation with the number of cross-border cases handled per SA. Multiple cases may be bundled together under a single-case register entry, meaning that one entry can pertain to multiple cross-border cases.

Furthermore, the statistics related to Article 60 draft decisions, revised draft decisions, and final decisions only capture the number of cross-border cases resolved by an SA per the cooperation procedure outlined in Article 60 of GDPR. Depending on the legislation of MSs, SAs may have handled complaints outside of the A60 procedure per national law (such as in the case of amicable settlements). Also, a consensus has been reached only with the adoption of the EDPB's work on amicable settlements,[18] and all future amicable settlements will be registered as Article 60 final decisions. Additionally, based on Article 60, paragraph 8, if a complaint is dismissed or rejected, the supervisory authority with which the complaint was filed must adopt a decision, notify it to the complainant, and inform the controller thereof. In this regard, it is also possible that a final decision following a draft decision is adopted by the SA where the complaint was filed rather than the LSA.

18 For further information on the topic refer to EDPB's Guidelines 06/2022 on the practical implementation of amicable settlements.

Figure 1:

No. of OSS procedures 2018-2022



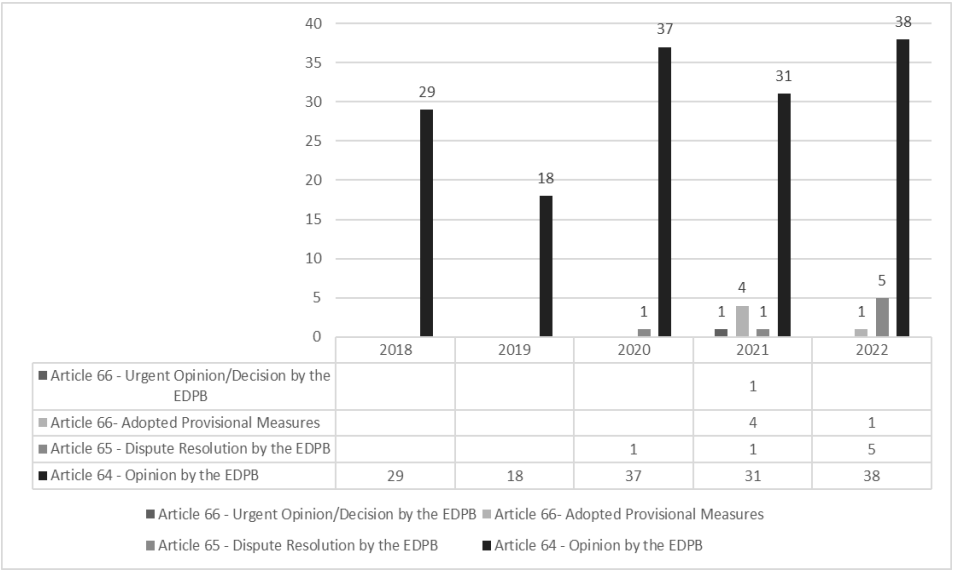
Source: IMI statistics, EDPB's state of play as of 31.12.2022.

Based on the figure above, it is evident that since the entry into effect of GDPR in 2018, the number of OSS procedures dealing with cross-border PD supervision has rapidly risen. The data shows a clear upward trend in issued final and draft decisions from 2018 to 2022. In 2018, only two final decisions and 14 draft decisions were issued, while in 2022, the numbers rose significantly to 384 draft decisions and 330 final decisions recorded in the IMI. The most prominent increase occurred between 2021 and 2022, with final decisions rising from 141 to 330, representing a 134% growth. The substantial increase in draft and final decisions can be attributed to several factors. Firstly, as GDPR has been in effect for over four years, some cases may have gradually reached a resolution (cf. the average time to formally decide on a case – EDPB, 2021b, p. 21). Another possible explanation is the EDPB's stance following the issuance of guidelines No. 06/2022 on the practical implementation of amicable settlements.

Similarly, the number of draft decisions issued increased yearly, with the most substantial increase observed from 2021 to 2022. The number of draft decisions rose from 208 to 384, an 84.62% increase compared to the previous year. When comparing 2022 to 2020, there was an 89% increase in draft decisions issued. However, procedural inconsistencies within these procedures can make them (i) more complex and/or (ii) time consuming. In this regard, procedural harmonisation of cross-border PD supervision offers a possible solution to ensure that procedures are conducted more efficiently and harmoniously (further discussed in European Commission, 2020, pp. 5–8).

Figure 2:

No. of consistency procedures 2018-2022



Source: IMI statistics, EDPB's state of play as of 31.12.2022.

Based on the data presented, there seems to be an increasing trend in consistency procedures that complement cross-border supervision in recent years. The EDPB's opinions under Article 64 of GDPR, which outlines the circumstances in which the EDPB must issue an opinion, have shown growth. These circumstances include cases when a SA intends to adopt measures such as establishing a list of processing operations requiring a data protection impact assessment, assessing draft codes of conduct, approving accreditation and certification requirements, determining standard data protection clauses, authorising contractual clauses, or approving binding corporate rules. In 2018, the EDPB issued 29 such opinions, which increased to 38 in 2022. Regarding provisional measures under Article 66 of GDPR, which allows an SA to take urgent action to protect the rights and freedoms of data subjects, four such measures were adopted in 2021 and one in 2022.

Furthermore, a single urgent opinion was issued by the EDPB in 2021. The EDPB also issued seven decisions related to the dispute resolution mechanism set out in Article 65 of GDPR between 2020 and 2022, with the highest number of decisions issued in 2022. Overall, the data suggest that the EDPB has been actively working to ensure consistent enforcement of GDPR through the tools provided in Chapter VII of GDPR. The increasing number of consistency procedures each year indicates a growing need

for harmonisation of SAs PDP enforcement practices, as discussed within EDPB[19] (cf. European Commission, 2020; EDPB, 2022, 2022b) and in the following section.

5. Discussion & critical assessment of procedural issues and their possible solutions

As cross-border procedures become increasingly important in enforcing PDP across the EU, it is crucial to ensure that they are conducted efficiently and effectively. The rules of GDPR can be exceptionally limited within certain frameworks under specific conditions outlined in Article 23 of GDPR. However, any limitations must be accompanied by justified legal regulation at the national level (more on this also Kuner et al., 2020, pp. 550 et seq.). While national autonomy remains relevant, it is significantly limited in the context of the most relevant procedural principles developed within the common European administrative space (Galetta et al., 2015; Kovač, 2016).

However, several challenges arise in the procedural implementation of the cross-border OSS mechanism, which we address in this paragraph. One such challenge is variation in the procedure for filing complaints, including different ways of filing and submitting complaints, different languages used in the procedure and in filing the complaint, and the like. Another issue arises when a similar complaint filed in one MS may be accepted by one SA but rejected by another SA on grounds such as lack of residency, failure to send a pre-complaint request to the controller, and insufficient legal identification of the complaint and the like, which can adversely affect the universal right to good administration for complainants under the EU Charter. Differences regarding the submission of complaints can also be seen in technical approaches. For example, the Belgian and Italian SAs allow forms to be submitted to the SA by mail or uploaded to their websites. Conversely, the Polish SA requires data subjects to lodge their complaints orally, physically, or online (only) via the national public portal using a general form not specifically designed for GDPR purposes (thus not by e-mail). Consequently, the requirements for lodging complaints in Belgium, Italy, and Poland are inconsistent and can lead to confusion where cross-border submissions are involved (Fuster et al., 2022).

Due to language barriers, some individuals may also face difficulties submitting a complaint to a DPA in a different MS than where they live or work. While some websites provide information in English, others may not offer details about submitting complaints in English, as is the case in Italy. Additionally, in countries like Poland, Lithuania, and Belgium, it may not be possible to file a complaint in a language other than one of the national languages. The Austrian DPA explicitly requires complaints to

19 See, in particular, the letter of 10.10.2022 (EDPB, 2022) identifying 14 proposals of rules in four groups of procedural issues to be harmonised in a regulatory or at least collaborative manner, such as status of the party to the procedure and their rights, deadlines, investigative powers, and complaints management.

be submitted in German (Fuster et al., 2022).

Moreover, disharmony arises in the practical implementation of complainants' rights to be heard and to participate in the procedure. Specifically, different MSs have varying legislations regarding the active roles of the complainants in administrative procedures before SAs (compare especially European Commission, 2020; EDPB, 2021, pp. 12; 2021b & EDRI 2022). For example, individuals filing complaints in Austria, Cyprus, Greece, Ireland, Lithuania, Luxembourg, Spain, Latvia, Poland, and Slovenia[20] have active roles in their procedures based on national procedural legislation, particularly before CSAs are consulted on the draft decision. In contrast, the practice of the Bulgarian SA provides that CSAs need to be consulted before the complainants are granted the right to be heard, or at least in parallel. The practice is again different in Finland and Portugal, where the right to be heard is granted after sharing the draft decision. In Malta and the Netherlands, parties are heard at the investigation stage but not before the decision is issued.

In contrast, Czech, French, and Swedish national laws do not grant complainants the status of a party to the procedure, thereby excluding their right to be heard. In Spain, the status of complainants as active parties in a case depends on whether the outcome could potentially affect their legal status, which must be evaluated on an individual basis. However, in all proceedings involving the protection of personal data, complainants in Spain are typically regarded as parties (EDPB, 2022, pp. 1–4). Harmonising the principle of the right to be heard is necessary to establish a unified approach regarding its scope, modalities, and timing (for more see EDPB, 2021b, pp. 23–29). For example, SA legislations vary regarding whether envisaged sanctions and corrective measures are included in ensuring the right to be heard. Additionally, depending on the MS, the right to be heard may cover only facts and not legal arguments. Therefore, the 'right to be heard' should also be harmonised.

Considering the good administration principle provision under Article 41 of the Charter and Recital 129 of GDPR, SAs must always exercise their powers within a reasonable time. Firstly, Article 60(3) of GDPR does not specify a substantive deadline for LSAs to submit their draft decisions to CSAs. In particular, this Article states that "*…shall communicate the relevant information…to other SAs concerned…without due delay*" (EDPB, 2022, pp. 33). In this regard, it should be emphasised that a timely submission of the DD to the SA protects the fundamental rights and freedoms of the complainants by ensuring that corrective measures are undertaken in due time to prevent further data infringements on complainants. Additionally, the EDPB (2022, p. 33) notes that despite this provision, the terms "*without due delay*" are vague and subjective and may not be taken to explicitly push for a substantive deadline in LSAs'

20 The Slovenian case seems to be even more complicated as complainants can be granted the status of parties to the procedure only when the procedure is started based on their complaint regarding the breach of their rights. If the procedure is started ex officio, then they do not hold *locus standi* and, therefore, are not granted the right to be heard (Article 26 and others of the PDP Act, in force since January 2023; see the previous section, cf. Kovač, 2019; Rudolf & Kovač, 2022).

duty to submit procedural drafts to SAs. Without a substantive, maximum deadline, LSAs could find excuses for delaying the submission of drafts to CSAs, which means that the complainant's data infringements are likely to proceed.

Other variations in cross-border deadlines relate to the admissibility of complaints, the transfer of complaints to LSAs, starting investigations, and legal deadlines for handling complaints. For example, Austria has a legal deadline of 6 months, Bulgaria and Slovenia 3 months, Italy 9 months with a possibility of further extension up to 12 months based on national laws, while Belgium, Cyprus, Finland, and France, among others, do not have specific provisions in their national law regarding such deadlines (EDPB, 2021b, p. 22). These variations pose challenges to timely resolution of cross-border complaints. The first possible solution to tackle them is to eliminate the vagueness surrounding procedural deadlines by establishing substantive, maximum deadlines for LSAs to submit draft decisions. Second, specific provisions could be introduced to address the failure by LSAs to meet its maximum deadline. The third solution could be standardising the legal deadlines to handle complaints.

There are also discrepancies regarding the grounds for dismissal or rejection of a complaint. While some MSs reject complaints due to insufficient supporting evidence, others reject them based on the complainants' failure to respond within a reasonable timeframe (EDPB, 2022, p. 8). According to EDPB Guidelines 02/2022 (para 225), dismissal of a complaint involves a situation where the LSA found no cause of action regarding a complaint and, thus, no actions are possible under GDPR towards the controller. Since GDPR does not clarify the stage/scope/situations when a SA should dismiss or reject a complaint, SAs interpret the conditions for dismissal/rejection based on their national procedural laws which differ across the MSs. Several measures for harmonisation are needed to avoid differences across the EU.

Regarding judicial remedies in OSS procedures, the CJEU just recently issued decision No. T-709/21**21** pronouncing the controller's application for the annulment of a binding decision by the EDPB under A65 inadmissible. This important ruling clarifies that the EDPB's binding decisions are primarily directed towards SAs to resolve their internal conflicts and, therefore, serve as intermediate or preparatory rulings that do not close the procedure themselves, and the national DPA retains discretion in determining the content of its final decision. The ruling, therefore, explains that the EDPB's binding decision cannot be challenged before the court since the applicant (controller) is not directly concerned by the contested decision of the EDPB, within the meaning of the criteria for *locus standi*, as the applicant's legal position is not directly affected by this act. It states that the validity of the contested decision of the EDPB may only be examined by a national court in relation to the subsequent final decision of the national DPA that closes the procedure at the national level. It is then up to the national court to review the legality of the national final decision by the national DPA. If it doubts about the validity of the EDPB's decision, it may refer a question for a preliminary ruling to

21 See Official Journal of the EU, C 2/50, 3. 1. 2022.

the CJEU.

Challenges also arise concerning amicable settlements. According to recital 131 of GDPR, SAs are often required to resolve conflicts with controllers through amicable settlements, which aim to restore or resolve the rights of the complainants outside formal procedures. However, there are significant cross-border inconsistencies in this regard. Notably, the EDPB (2022, pp. 9–10) notes that some SAs, such as those in Ireland, Italy and Austria, have opted to resolve complaints through amicable settlements per their respective national laws. In contrast, amicable settlements are not possible in countries like Cyprus, the Czech Republic, Denmark, Estonia, Finland, and Slovenia (EDPB, 2022a, p. 22). Despite the guidelines provided by the EDBP for harmonising '*amicable settlements' case resolutions*', several MSs have already outlined that such settlements are not applicable under their procedural laws and have therefore indicated their intention not to abide by these guidelines as they conflict with their national legislation.

Based on the analysis above, the initial hypothesis is confirmed that the lack of EU-wide procedural regulation hinders cooperation and consistency principles set by GDPR. As the number of cross-border procedures and mutual assistance procedures continues to rise, the need for harmonisation is becoming increasingly prominent and needed across the EU.

To summarise, the existence of different national procedural legislations makes cross-border procedures increasingly complex and inconsistent (cp. Kuner et al., 2020, pp. 976, 1153–1154 et seq.; Balboni et al., 2014; Mali, 2019, pp. 309 et seq.). Procedural harmonisation is greatly needed to ensure an efficient and equal procedure across all MSs. However, it is still undecided whether to pursue a lower level of collaboration by issuing EDPB guiding recommendations *et smile* or initiating the GDPR amendment procedure. As shown by this study's normative and empirical part, the first solution is rather partial. Recommendations such as proposals or reports lack the necessary direct binding effect, which is particularly crucial in countries where the gap between open procedural issues and practice is most evident.

Furthermore, procedural law and procedures conducted in real life situations are of major importance if we speak of efficient substantive norms (more in Kovač, 2019; Harlow & Rawlings, 2014). Certain countries, such as Slovenia (cf. Rudolf & Kovač, 2022), lack sufficient general procedural law or deny the usage of (G)APA in the data protection field. While there will always be some unanswered questions that are not covered by legislation but arise from real-life situations, it is evident that many fundamental principles and rights of good administration require more unified and explicit protection, especially in areas such as defining who is recognised as a party and attributing fundamental rights and legal protection to *locus standi*. Under these circumstances, supplementing GDPR with procedural provisions would have a much-desired impact on harmonisation and full enforcement despite the decreasing level of the otherwise well-established concept of EU law autonomy of MSs.

6. Conclusion

Procedural principles and rules play a crucial role in upholding the values and guarantees provided by substantive regulations. Therefore, a well-designed procedural law and its proper implementation in practice are necessary to protect individuals' rights as defined by GDPR. However, when it comes to cross-border enforcement of personal data protection rights, the separate national procedural legislations of MSs pose a challenge to the purpose of GDPR harmonisation rules across Europe. These procedural frameworks need to be regulated, interpreted, and enforced in a unified manner to achieve harmonisation.

In light of the research question—whether national laws such as Slovenia's Personal Data Protection (PDP) Act or General Administrative Procedure Act (GAPA) could serve as models for procedural regulation in the field of data protection—the study confirms the initial hypothesis that the absence of a unified EU-wide procedural framework hampers effective cross-border cooperation. While Slovenia's national procedural regulations offer some solutions to these challenges, they are not comprehensive enough to serve as a panacea for the EU. The study reveals that the lack of harmonised procedural rules across MSs leads to inconsistencies in complaint handling, variations in the right to be heard, and divergent approaches to procedural deadlines, among other issues, while such inconsistencies undermine the principles of cooperation and consistency set forth by GDPR.

In summary of the above findings, it is only through appropriate procedural law and its implementation that the true meaning and content of rights at the same regulatory level can be realised. Hence, it seems appropriate to reconsider the EU law procedural autonomy, at least in data protection. The above would ensure the enforcement of democratic values in line with the European tradition. Thus, there is an open call to upgrade GDPR at this level to address these procedural inconsistencies. Not surprisingly, personal data protection and its cross-border enforcement is continuously evolving. Recognising the need for procedural harmonisation, the European Commission (2023) has already taken steps to address these issues. On July 4, 2023, the Commission tabled the Proposal for a Regulation laying down additional procedural rules relating to enforcing GDPR, aiming to rectify some procedural inconsistencies and challenges, specifically in cross-border procedures addressed in this study. Namely, there is no right without a legal definition of procedural issues and implementation per a pre-defined procedure. Procedure should be regulated proportionally so that the level of detail is balanced by the extent of conflicts of legally relevant interests or stakeholders in a given relationship.

Acknowledgment

This article is a result of the basic research programme "Development of an Efficient and Effective Public Administration System" (P5-0093). The authors acknowledge the financial support of the Slovenian Research Agency.

References

Access Now. (2022). *Four years under the EU GDPR. How to fix its enforcement.* https://www.accessnow.org/wp-content/uploads/2022/07/GDPR-4-year-report-2022.pdf

Ágh, A. (2010). Europeanization and Democratization in ECE: Towards Multi-Level and Multi-Actor Governance. *Nispacee Journal of Public Administration and Policy*, *3*(1). https://doi.org/10.2478/v10110-010-0001-1

Amministrazione delle Finanze v Simmenthal SpA, *Case C-106/77.* (1978). CJEU. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A61977CJ0106

Balboni, P., Pelino, E., & Scudiero, L. (2014). Rethinking the one-stop-shop mechanism: Legal certainty and legitimate expectation. *Computer Law & Security Review*, *30*(4), 392–402. https://doi.org/10.1016/j.clsr.2014.05.007

Barnard-Wills, D., Chulvi, C. P., & De Hert, P. (2016). Data protection authority perspectives on the impact of data protection reform on cooperation in the EU. *Computer Law & Security Review*, *32*(4), 587–598. https://doi.org/10.1016/j.clsr.2016.05.006

BE v Nemzeti Adatvédelmi és Információszabadság Hatóság, Case C-132/21. (2023). CJEU. https://curia.europa.eu/juris/liste.jsf?num=C-132/21

Bergemann, B. (2018). The Consent Paradox: Accounting for the prominent role of consent in data protection. In *IFIP advances in information and communication technology* (pp. 111–131). https://doi.org/10.1007/978-3-319-92925-5_8

Brandão, D. M. (2023). The one-stop-shop and the European Data Protection Board's role in combatting data supervision forum shopping. *International Data Privacy Law*. https://doi.org/10.1093/idpl/ipad014

CIPL. (2021). *GDPR Enforcement Cooperation and the One-Stop-Shop Learning from the First Three Years.* https://www.informationpolicycentre.com/cipl-white-papers.html

Drechsler, L. C. (2023). Individual Rights in International Personal Data Transfers Under the General Data Protection Regulation. In *Review of European Administrative Law* (Vol. 16, Issue 1, pp. 35–56). Europa Law Publishing.

EDPB. (2020). *Article 65 FAQ.* https://edpb.europa.eu/system/files/2021-09/20201110_art65_faq_en.pdf

EDPB. (2020a). *The EDPB: Guaranteeing the same rights for all.* https://edpb.europa.eu/system/files/2021-06/2020_06_22_one-stop-shop_leaflet_en.pdf

EDPB. (2021). *Internal EDPB Document 02/2021 on SAs duties in relation to alleged GDPR infringements.* https://edpb.europa.eu/system/files/2022-07/internal_edpb_document_022021_on_sas_duties_in_relation_to_alleged_gdpr_infringements_en.pdf

EDPB. (2021a). *One-Stop-Shop Leaflet.* https://edpb.europa.eu/system/files/2021-06/2020_06_22_one-stop-shop_leaflet_en.pdf

EDPB. (2021b). *Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities.* https://edpb.europa.eu/system/files/2021-08/edpb_report_2021_overviewsaressourcesandenforcement_v3_en_0.pdf

EDPB. (2021c). *EDPB Annual Report 2020.* https://edpb.europa.eu/system/files/2021-06/edpb_aar_2020_final_27.05.21.pdf

EDPB. (2022). *EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level.* https://edpb.europa.eu/system/files/2022-10/edpb_letter_out2022-0069_to_the_eu_commission_on_procedural_aspects_en_0.pdf

EDPB. (2022a). *Guidelines 06/2022 on the practical implementation of amicable settlements.* https://edpb.europa.eu/system/files/2022-06/edpb_guidelines_202206_on_the_practical_implementation_of_amicable_settlements_en.pdf

EDPB. (2022b). *Statement on enforcement cooperation.* https://edpb.europa.eu/system/files/202204/edpb_statement_20220428_on_enforcement_cooperation_en.pdf

EDPB. (2022c). *Annual report 2021.* https://edpb.europa.eu/system/files/2022-05/edpb_annual_report_2021_en.pdf

EDPB. (2023). *EDPB Annual Report 2022.* https://edpb.europa.eu/system/files/2023-04/edpb_annual_report_2022_en.pdf

EDPS. (2022). *EDPS Conference report. The future of data protection: Effective enforcement in the digital world.* https://edps.europa.eu/system/files/2022-11/22-11-10-edps-conference-report-2022_en.pdf

EDRI. (2022). *Civil society call and recommendations for concrete solutions to GDPR enforcement shortcomings.* https://edri.org/wp-content/uploads/2022/03/EDRi-recommendations-for-better-GDPR-enforcement.pdf

European Commission. (2020). *Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0264

European Commission. (2022). *Commission work programme 2023.* European Commission https://commission.europa.eu/document/download/51991f3f-a49b-4f4d-811e-c854449169d8_en?filename=com_2022_548_3_en.pdf

European Commission. (2023). *Proposal for a Regulation laying down additional procedural rules relating to the enforcement of GDPR.* European Commission. https://commission.europa.eu/document/download/2069ca27-1935-46e0-b857-2e7c4495d20f_en

Francis, J. (2023). The Battle for the Soul of the GDPR: Clashing Decisions of Supervisory Authorities Highlight Potential Limits of Procedural Data Protection. *Minnesota Law Review: Headnotes, 107.* https://minnesotalawreview.org/article/the-battle-for-the-soul-of-the-gdpr-clashing-decisions-of-supervisory-authorities-highlight-potential-limits-of-procedural-data-protection/

Fuster, G. G., Ausloos, J., Bons, D., Bygrave, L. A., Da Rosa Lazarotto, B., Drechsler, L., Gkotsopoulou, O., Hristov, C., Irion, K., Jasmontaite, L., Kroese, C., Lynskey, O., & Magierska, M. (2022). *The right to lodge a data protection complaint : ok, but then what? : an empirical study of current practices under the GDPR.* Access Now. https://www.accessnow.org/wp-content/uploads/2022/07/GDPR-Complaint-study.pdf

Galetta, D. (2010). Procedural autonomy of EU Member States: Paradise lost? In *Springer eBooks*. https://doi.org/10.1007/978-3-642-12547-8

Galetta, D. U., Hofmann, H. C. H., Puigpelat, O. M., & Ziller, J. (2015). *The General Principles of EU Administrative Procedural Law.* European Parliament. https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA%282015%29519224_EN.pdf

Gentile, G., & Lynskey, O. (2022). Deficient by design? The transnational enforcement of the GDPR. *International and Comparative Law Quarterly, 71*(4), 799–830. https://doi.org/10.1017/s0020589322000355

Giurgiu, A., & Larsen, T. A. (2016). Roles and powers of National Data Protection Authorities. *European Data Protection Law Review*, *2*(3), 342–352. https://doi.org/10.21552/edpl/2016/3/9

Giurgiu, A., Boulet, G., & De Hert, P. (2015). EU's One-Stop-Shop Mechanism: Thinking Transnational. *Privacy Laws & Business*, *137*, 16–18. https://biblio.vub.ac.be/vubirfiles/18304338/pdh_aggbOnestopshopPL_B_International_137.pdf

Goddard, M. (2017). The EU General Data Protection Regulation (GDPR): European Regulation that has a Global Impact. *International Journal of Market Research*, *59*(6), 703–705. https://doi.org/10.2501/ijmr-2017-050

Hallinan, D. (2020). Broad consent under the GDPR: an optimistic perspective on a bright future. *Life Sciences, Society and Policy*, *16*(1). https://doi.org/10.1186/s40504-019-0096-3

Harlow, C., & Rawlings, R. (2014). *Process and procedure in EU administration*. Hart Publishing. https://doi.org/10.5040/9781474201087

Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium v Minister des Hessischen Kultusministeriums, Case C-34/21. (2023a). CJEU. https://curia.europa.eu/juris/document/document.jsf;jsessionid=00DDB1D5FF48D3766374432684703CC2?text=&docid=272066&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3052141

Hijmans, H. (2018). Discussion · How to enforce the GDPR in a strategic, consistent and ethical manner? *European Data Protection Law Review*. https://doi.org/10.21552/edpl/2018/1/10

Hofmann, H. F., & Mustert, L. (2023). Procedures Matter – What to Address in GDPR Reform and a new GDPR Procedural Regulation. *Social Science Research Network*. https://doi.org/10.2139/ssrn.4492662

Informacijski pooblaščenec RS. (2021). *Letno poročilo 2020*. https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/LetnoPorocilo2020_koncano.pdf

Informacijski pooblaščenec RS. (2022). *Letno poročilo 2021*. https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/LetnoPorocilo2020_koncano.pdf

Informacijski pooblaščenec RS. (2023). *Letno poročilo 2022*. https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/LetnoPorocilo2020_koncano.pdf

Kneuper, R. (2020). Translating Data Protection into Software Requirements. *Proceedings of the 6th International Conference on Information Systems Security and Privacy (ICISSP2020)*, 257–264. https://doi.org/10.5220/0008873902570264

Kovač, P. (2016). The requirements and limits of the codification of administrative procedures in Slovenia according to European trends. *Review of Central and East European Law*, *41*(3–4), 427–461. https://doi.org/10.1163/15730352-04103007

Kovač, P. (2019). Procedural dilemmas in implementing GDPR at national level. In *EGPA Conference Belfast 11-13 September 2019.*

Kovač, P., & Rudolf, G. (2022). Social aspects of Democratic safeguards in privacy Rights: a Qualitative study of the European Union and China. *Central European Public Administration Review*, *20*(1), 7–32. https://doi.org/10.17573/cepar.2022.1.01

Kuner, C., Bygrave, L. A., Docksey, C., & Drechsler, L. (2020). *The EU General Data Protection Regulation (GDPR) : a commentary.*

Mali, P. (2019). *GDPR Articles With Commentary & EU Case Laws.* https://www.free-ebooks.net/law-textbooks/GDPR-Articles-With-Commentary-EU-Case-Laws

Molak, M. W., & Soukopová, J. (2022). Can institutionalization be considered a trap in defining functional cross-border areas? Coopetition and local public services in borderlands. *Nispacee Journal of Public Administration and Policy*, *15*(2), 122–153. https://doi.org/10.2478/nispa-2022-0016

Molnár-Gábor, F., Sellner, J., Pagil, S., Slokenberga, S., Tzortzatou, O., & Nyström, K. (2022). Harmonization after the GDPR? Divergences in the rules for genetic and health data sharing in four member states and ways to overcome them by EU measures: Insights from Germany, Greece, Latvia and Sweden. *Seminars in Cancer Biology*, *84*, 271–283. https://doi.org/10.1016/j.semcancer.2021.12.001

Phillips, M. (2018). International data-sharing norms: from the OECD to the General Data Protection Regulation (GDPR). *Human Genetics*, *137*(8), 575–582. https://doi.org/10.1007/s00439-018-1919-7

Puljak, L., Mladinić, A., & Koporc, Z. (2023). Workload and procedures used by European data protection authorities related to personal data protection: a cross-sectional study. *BMC Research Notes*, *16*(1). https://doi.org/10.1186/s13104-023-06308-z

Roth, P. (2017). "Adequate level of data protection" in third countries post-Schrems and under the general data protection regulation. *Journal of law, information and science*, *25*(1), 49–67.

Rudolf, G., & Kovač, P. (2022). Personal data protection and the role of Information Commissioner in the Covid-19 circumstances in Slovenia. V: Crises, vulnerability and resilience in public administration. In *30th NISPAcee Annual Conference.* NISPAcee.

Ruohonen, J., & Hjerppe, K. (2022). The GDPR enforcement fines at glance. *Information Systems*, *106*, 101876. https://doi.org/10.1016/j.is.2021.101876

Ryngaert, C., & Taylor, M. (2020). The GDPR as *Global* Data Protection Regulation? *AJIL Unbound*, *114*, 5–9. https://doi.org/10.1017/aju.2019.80

Senatori, I. (2020). The European Framework Agreement on Digitalisation: a Whiter Shade of Pale? *Italian Labour Law e-Journal*, *13*(2), 159–175. https://doi.org/10.6092/issn.1561-8048/12045

Spagnuelo, D., Ferreira, A., & Lenzini, G. (2019). Accomplishing Transparency within the General Data Protection Regulation. *ICISSP*, 114–125. https://doi.org/10.5220/0007366501140125

Utz, C., Degeling, M., Fahl, S., Schaub, F., & Holz, T. (2019). (Un)informed Consent. *Proceedings of the 2019 ACM SIGSAC Conference on Computer and Communications Security*. https://doi.org/10.1145/3319535.3354212

van der Sloot, B. (2018). Legal consistency after the General Data Protection Regulation and the Police Directive. *European Journal of Law and Technology*, *9*(3), 1–18.

Wagner, J., & Benecke, A. (2016). National Legislation within the Framework of the GDPR. *European Data Protection Law Review*, *2*(3), 353–361. https://doi.org/10.21552/edpl/2016/3/10

WhatsApp Ireland v European Data Protection Board, Case T-709/21. (2022). CJEU. https://curia.europa.eu/juris/liste.jsf?num=T-709/21&language=EN

Wulf, A. J., & Seizov, O. (2022). "Please understand we cannot provide further information": evaluating content and transparency of GDPR-mandated AI disclosures. *AI & SOCIETY*. https://doi.org/10.1007/s00146-022-01424-z