ASSOCIATION FOR INTERNET PROGRESS

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SPIR Comments on EDPB Guidelines 04/2026 on Administrative Fines and Other Corrective Powers under the GDPR

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About SPIR

For over 25 years, the Association for Internet Progress (SPIR) represents the most important players of the Czech Internet economy from among media publishers, media agencies and technology companies with an annual turnover of more than 37 billion Czech crowns (1,5 billion EUR). The services offered by SPIR members are used by over 90% of the population of the Czech Republic. Member companies pay 3 billion Czech crowns (120 million EUR) a year in taxes and other fees to the state budget and employ 7,500 people throughout the Czech Republic. SPIR operates the only official measurement of Czech Internet traffic NetMonitor, monitoring of Internet advertising AdMonitoring and provides expert analyses of the development of the Czech Internet market. SPIR is a member of IAB Europe (Interactive Advertising Bureau), Europe's largest professional organization covering companies in digital marketing and advertising ecosystems.

General position

The Association for Internet Progress (SPIR) welcomes the European Data Protection Board (EDPB)'s efforts to harmonise the decision-making practices of supervisory authorities when imposing administrative fines and exercising other corrective powers under the General Data Protection Regulation (GDPR).

SPIR has consistently supported a predictable and consistent interpretation of EU regulation that ensures effective protection of individuals' rights while duly taking into account the legitimate interests of businesses, the proportionality of regulatory interventions and the economic realities of digital markets.

In line with its previous positions on the interpretation of the GDPR and regulatory enforcement, SPIR considers it essential that the new guidelines do not lead to de facto automatic sanctioning and that they strengthen legal certainty for businesses. Against this background, SPIR submits the following comments.

1. Legal certainty and the assessment of negligence where GDPR requirements are open to interpretation

Relevant provisions: paragraphs 47–53 and Example 4 of the draft Guidelines.

The draft Guidelines explain that, when assessing negligent infringements of the GDPR, it may be relevant whether the controller or processor could have been aware that its conduct was unlawful.

SPIR is particularly concerned about the wording of paragraph 50, according to which the existence of EDPB guidelines always means that an error of law was avoidable.

The mere existence of interpretative guidelines does not necessarily eliminate legal uncertainty. Digital services, online advertising and the use of user data frequently involve legally and technically complex situations in which more than one reasonable interpretation may be available.

Moreover, EDPB guidelines are not, in themselves, legally binding legislation. It is therefore important to distinguish between a business knowingly disregarding an unambiguous legal obligation and one that has demonstrably sought to comply with the law but adopted a reasoned interpretation subsequently rejected by a supervisory authority.

Proposed amendment

SPIR calls for the deletion of the following sentence in paragraph 50: "However, where EDPB Guidelines exist, an error is always to be considered avoidable and therefore at least negligent." The mere existence of EDPB guidelines should not, by itself, conclusively establish that an error of law was avoidable or that negligence has been proven. The assessment of culpability must remain consistent with the CJEU judgments in Deutsche Wohnen (C-807/21) and Nacionalinis visuomenės sveikatos centras (C-683/21), which require an intentional or negligent infringement before an administrative fine may be imposed.

In its assessment, a supervisory authority should consider, in particular, the clarity and accessibility of the applicable guidance at the relevant time, any inconsistencies in regulatory practice, and documented steps taken by the controller or processor to ensure compliance with the GDPR.

In particular, guidance should be assessed by reference to the period of the conduct: a text adopted after the conduct, a draft guideline, conflicting national supervisory interpretations or guidance that does not clearly address the use case should not be treated as conclusive evidence of foreseeability. The existence, finality and relevance of EDPB guidance should be assessed as one factor among others, rather than as a binding or irrebuttable presumption. EDPB guidance is non-binding and ultimately subject to interpretation by the Court of Justice of the European Union. Documented legal advice and a reasoned compliance assessment should be evaluated as evidence of due diligence, without constituting an automatic defence to liability.

The objective is not to exclude responsibility for infringements, but to ensure that negligence is assessed on a case-by-case basis in accordance with EU law.

2. Proportionality of sanctions and the use of alternative corrective measures

Relevant provisions: paragraphs 25–30, 55–58 and 108–120 of the draft Guidelines.

SPIR welcomes the draft Guidelines' recognition that corrective measures other than administrative fines may be appropriate and that the circumstances of each case must be assessed individually.

At the same time, the document establishes a strong presumption in favour of imposing an administrative fine where an infringement is not considered minor. Although exceptions are acknowledged, the circumstances in which another corrective measure may be more appropriate should be explained in greater detail.

For small and medium-sized enterprises and specialised European providers of digital services in particular, the choice of sanction may have a significant impact on business operations.

Proposed amendment

SPIR calls for the deletion of the clause in paragraph 57 stating that "if the infringement is not considered minor, there is a strong presumption to impose an administrative fine." The choice between a fine and other corrective powers must remain subject to the supervisory authority's case-specific assessment; a non-minor infringement can still warrant an effective and proportionate non-monetary response. SPIR also recommends providing more detailed criteria for deciding when alternative corrective measures may be appropriate even in cases that are not classified as minor infringements.

When a supervisory authority selects a compliance order under Article 58(2)(d) GDPR, the order should identify the processing activity concerned, the concrete outcome or changes required and an appropriate implementation period. Generic instructions simply to "bring processing into compliance" can leave organisations, particularly SMEs, uncertain about how to satisfy the order. The authority should also consider whether the organisation has already brought the relevant processing into compliance.

The assessment should expressly consider the actual scope and consequences of the infringement, the removal of its underlying causes, the risk of recurrence and whether another corrective measure is capable of ensuring effective compliance with the GDPR.

SPIR would also welcome a practical example from an ordinary business context demonstrating a situation in which effective remediation can be achieved without an administrative fine, even though the infringement has not been classified as minor.

Such an example would help enhance the predictability of enforcement and the consistent application of the principle of proportionality across Member States.

Where a fine is imposed, the decision should explain, with reference to the facts of the case, why non-monetary corrective measures alone would not suffice and why the chosen response is necessary and proportionate. This would complement the existing duty to give reasons acknowledged in paragraph 12 of the draft Guidelines.

3. Recognition of demonstrable compliance efforts and voluntary remediation

Relevant provisions: in particular paragraphs 77, 90 and 99, as well as paragraphs 73–88, 89–91 and 101–107 of the draft Guidelines.

SPIR welcomes the recognition in the draft Guidelines that active cooperation with supervisory authorities, voluntary remedial action and the use of approved codes of conduct can be relevant when determining the appropriate corrective response.

However, the Guidelines should provide clearer guidance on how supervisory authorities should assess documented steps taken by businesses that invest in data protection and the prevention of compliance risks on an ongoing basis.

In the digital sector, such efforts may include regular audits, internal control systems, technical measures limiting personal data processing, specialist legal assessments and adherence to relevant industry standards.

Compliance with existing legal obligations should not automatically lead to a fine reduction. However, Article 83(2)(d), (f) and (i) GDPR expressly requires supervisory authorities to take account of the degree of responsibility, the degree of cooperation and compliance with measures previously ordered under Article 58(2). The practical quality and effectiveness of these factors should be assessed on their merits, rather than ruled out in advance or treated as relevant only in exceptional cases.

Proposed amendment

SPIR recommends revising paragraphs 77, 90 and 99 to avoid wording that categorically precludes or unduly restricts the mitigating relevance of technical and organisational measures, cooperation with supervisory authorities and compliance with previously ordered corrective measures. These factors should be assessed individually in accordance with Article 83(2)(d), (f) and (i) GDPR. This does not mean that routine fulfilment of a legal duty must automatically reduce a fine: the significance of each factor should depend on its actual nature, quality and effectiveness in the circumstances of the case.

In particular, paragraph 77 should not limit the relevance of effective measures under Articles 25 and 32 GDPR to "exceptional circumstances" only. Paragraph 90 should allow the degree and concrete contribution of cooperation to be considered, without automatically assigning mitigating weight to every instance of legally required cooperation. Paragraph 99 should not state categorically that compliance with previous corrective measures "does not have any weight"; instead, it should explain when timely, effective implementation is relevant to the individual assessment and how to avoid double counting.

It would also be useful to clarify how effective industry standards and control mechanisms that are not formally approved codes of conduct under Article 40 GDPR may be considered when assessing the level of responsibility or other relevant circumstances.

The Guidelines should expressly discuss effective privacy-enhancing technologies, including pseudonymisation and data minimisation, where these demonstrably reduce residual risks to individuals. Such tools should not automatically be treated as mitigating circumstances merely because they are deployed; their implementation, effectiveness and relevance to the specific infringement should determine their weight.

Such mechanisms should not automatically exempt businesses from liability. Nevertheless, their demonstrable use may contribute to a more objective assessment of the measures actually implemented.

SPIR further recommends that the timeliness and effectiveness of voluntary remediation be duly taken into account, particularly where an organisation has identified and remedied an infringement before intervention by a supervisory authority.

When previous infringements are assessed under Article 83(2)(e) GDPR, the Guidelines should make especially clear how their age, similarity, procedural status and relevance affect the weight assigned to them. A remote or unrelated past infringement should not be weighted in the same way as recent repetition of similar conduct. This clarification can build on paragraphs 79–88 without creating a rigid limitation period.

4. Assessment of responsibility in complex digital services ecosystems

Relevant provisions: paragraphs 40–43 and 75–78, and Example 7 of the draft Guidelines.

SPIR considers it important that the Guidelines adequately reflect the nature of the digital advertising and technology ecosystem when assessing the circumstances of individual cases.

Digital services are often delivered through several interconnected entities that play different roles in the processing of personal data. These may include a website operator, an advertising technology provider, an analytics service provider or an external platform.

SPIR therefore welcomes Example 7, which addresses the use of third-party tracking technology and insufficient technical and organisational measures at a smaller company.

Further clarification would nevertheless be helpful on how supervisory authorities should take into account the actual roles of the parties involved, the extent of their respective responsibilities and their practical ability to influence the processing activity when choosing a corrective measure.

Proposed amendment

SPIR recommends adding a practical example involving the processing of personal data by multiple interconnected digital service providers.

The example should demonstrate how the allocation of duties among the relevant parties, their actual ability to control the processing, the preventive safeguards implemented and the seriousness of the specific infringement are taken into account when assessing possible sanctions.

The proposed example should also explain the interaction between paragraphs 42 and 43: when a processor acts for its own purposes or outside the framework determined by the controller, that conduct may no longer be attributable to the original controller; a separate finding against that controller for inadequate security or governance measures must nonetheless be substantiated on its own facts. The separate legal bases for liability should not be conflated.

This clarification should not call into question the responsibilities of controllers and processors under the GDPR. Rather, it should help ensure that corrective decisions reflect the actual circumstances of each case.

5. Context-sensitive assessment of the gravity of infringements

Relevant provisions: paragraphs 92–93 and 105–107 of the draft Guidelines.

SPIR agrees that the nature, volume and sensitivity of the personal data concerned may be relevant to the seriousness of an infringement. However, paragraph 93 appears to suggest a general increase in gravity as the amount of data per individual grows, while paragraph 92 lists broad categories such as location and financial data without consistently distinguishing the potential risks across different contexts.

For digital media, audience measurement and advertising services, the impact of a processing activity depends on the identifiability of individuals, the precision and sensitivity of the data, the possibilities for linkage and profiling, the nature of the infringement and the reasonably foreseeable harm. Pseudonymous identifiers may still constitute personal data and create significant risks; conversely, the mere quantity of low-risk data points should not automatically be equated with greater harm.

Proposed amendment

SPIR recommends clarifying paragraphs 92–93 to require a contextual assessment of actual and potential impact rather than reliance on data volume or a broad data label alone. In particular, the precision of location data, ability to associate records with individuals, potential for sensitive inferences and realistic consequences of disclosure or misuse should be considered.

For paragraph 106, SPIR suggests clarifying that any economic gain relevant to the decision to fine must be attributable to the infringement under examination, rather than inferred merely from the commercial nature of a digital service. Where quantification is possible, the authority should explain the causal connection between the infringement and the benefit obtained.

Conclusion

SPIR supports the harmonisation of enforcement practices among European supervisory authorities and the effective application of personal data protection rules.

At the same time, SPIR considers it essential that the methodology for imposing administrative fines be based on the individual circumstances of each case, respect the principle of proportionality and provide businesses with an adequate degree of legal certainty.

In SPIR's view, the proposed clarifications could contribute to more predictable enforcement, better recognition of the realities of the digital economy and stronger incentives for businesses to prevent and remedy GDPR infringements.

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