

DA.036 Access to dispute settlement

Authors:

Last update: 2023-08-05 22:56:43 | By: Aline Blankertz

Created at: 2022-02-24 22:34:38

Art. 10 Data Act - Trialogue Agreement

Dispute settlement

1. Users, data holders and data recipients shall have **access to dispute settlement** bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the fulfilment of the data holder's obligation to make data available to the data recipient as well as to the fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Article 5(8), this Chapter and Chapter IV.

1a. Dispute settlement bodies **shall make the fees**, or the mechanisms used to determine the fees, **known** to the parties concerned before those parties request a decision.

1b. Users and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to Articles 4(3b) and 5(8b).

1c. For disputes referred to in paragraph 1b, where the dispute settlement body decides the dispute in favour of the user or the data recipient, the **data holder shall bear all the fees** charged by the dispute settlement body, and **shall reimburse** that user or data recipient for any other reasonable **expenses** that it has paid in relation to the dispute settlement. If the dispute settlement body decides the dispute in favour of the data holder, the **user or data recipient shall not be required to reimburse any fees or other expenses** that the data holder paid or is to pay in relation to the dispute settlement, unless the dispute settlement body finds that the user or data recipient manifestly acted in bad faith.

1d. Customers and providers of data processing services shall have access to dispute settlement bodies, certified in accordance with paragraph 2, to settle disputes in relation to breaches of the rights of customers and the obligations of providers of data processing services, in accordance with Chapter VI.

2. The Member State where the dispute settlement body is established shall, at the request of that body, **certify the body**, where the body has demonstrated that it meets all of the following conditions:

(a) it is impartial and independent, and it will issue its decisions in accordance with clear, non-discriminatory and fair rules of procedure;

(b) it has the necessary expertise, in particular in relation to the determination of fair, reasonable and non-discriminatory terms, including compensation, for and the transparent manner of making data available, allowing the body to effectively determine those terms;

(c) it is easily accessible through electronic communication technology;

(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the Union.

3. Member States shall **notify** to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.

5. Dispute settlement bodies shall **refuse to deal** with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.

6. Dispute settlement bodies shall **grant the parties the possibility**, within a reasonable period of time, **to express their point of view** on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.

7. Dispute settlement bodies shall **issue their decision** on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.

7a. Dispute settlement bodies shall make publicly available **annual activity reports**. The annual report shall include in particular the following general information:

(b) an aggregation of the outcomes of those disputes;

(c) the average time taken to resolve the disputes;

(d) the most common reasons that lead to disputes between the parties.

7b. In order to facilitate the exchange of information and best practices, the public dispute settlement body may decide to include **recommendations** as to how such problems can be avoided or

resolved.

8. The decision of the dispute settlement body shall only be **binding on the parties** if the parties have explicitly consented to its binding nature prior to the start of the dispute settlement proceedings.

9. This Article does not affect the right of the parties to **seek an effective remedy** before a court or tribunal of a Member State.