CIPL Digital Thought Lab

From Individual Rights to Industrial Litigation: The Transformation of GDPR Enforcement

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About the Author

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A prolific academic, he has published extensively on the intersection of law, technology, and behavioural design. He authors the book *Dark Patterns, Deceptive Design and the Law*, which explores the full spectrum of manipulative design techniques and their legal implications—from user interface tactics to deeper systemic architectural forms.

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Executive Summary

The enforcement landscape of the General Data Protection Regulation (hereafter, GDPR)[1] is entering a new phase. Across the European Union (hereafter, the EU), collective redress now rests on a layered legal framework that includes national procedural mechanisms, the Representative Actions Directive[2] and the broader possibility of coordinated or assigned claims in data protection litigation. In this context, collective redress refers to procedures that allow multiple claims arising from the same or similar facts to be pursued together, whether through representative bodies, claimant aggregation, or other forms of procedural consolidation.

Rising complaint volumes, increasingly systemic and AI-mediated data practices, legal uncertainty under Article 82 GDPR, and uneven national implementation of collective redress mechanisms are reshaping how data protection disputes are initiated, escalated, and resolved across the Union. Collective redress has emerged as a prominent feature of this evolving ecosystem. It was designed to aggregate diffuse harms and enhance access to justice where individual enforcement is impractical. In practice, however, its operation now intersects with structural pressures within the GDPR enforcement architecture, raising broader institutional questions.

A Bifurcated Enforcement Architecture

The GDPR operates through two parallel enforcement tracks. On the public side, supervisory authorities investigate complaints and exercise their investigative and corrective powers under the Regulation. Authorities must respond to complaints and cannot simply decline to act, but in practice, cases are often grouped or managed administratively due to resource constraints and cross-border complexity. Cross-border matters are coordinated through the GDPR's One Stop Shop mechanism, under which a lead supervisory authority takes primary responsibility for cross-border processing cases in cooperation with other concerned supervisory authorities.[3]

On the *private* side, courts adjudicate representative actions, damages claims, and injunctive proceedings under national procedural frameworks shaped by Article 80 GDPR and the Representative Actions Directive.[4]

Formal coordination between these tracks remains limited. There is no default sequencing rule, no automatic information flow, and no harmonised admissibility or harm thresholds across Member States. As a result, enforcement signals may diverge. Administrative decisions, judicial findings, and collective proceedings can evolve independently, sometimes in tension with one another. Recent developments in related areas of GDPR adjudication illustrate the broader pattern. Divergent approaches between supervisory authorities and national courts on issues such as international data transfers demonstrate how parallel institutional actors can interpret the same regulatory framework differently. This **institutional bifurcation provides important context for understanding the operation of collective redress.**

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[1] 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) [2016] OJ L119/1.

[2] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L409/1.

[3] See GDPR arts 56 and 60. Where processing is cross border, the supervisory authority of the main establishment usually acts as lead supervisory authority and coordinates with other concerned supervisory authorities. The mechanism is designed to ensure a single primary regulatory process for cross border cases, while preserving participation by other affected authorities. These processes will soon be governed by the recently adopted Regulation (EU) 2025/2518 of the European Parliament and of the Council of 26 November 2025 laying down additional procedural rules on the enforcement of Regulation (EU) 2016/679 OJ L 2025/25218 (GDPR Procedural Regulation).

[4] Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers.

Collective Redress as an Adaptive Mechanism

Collective redress has been implemented differently across EU member states, with a measurable impact on adoption. Some jurisdictions, such as the Netherlands, have adopted opt-out mechanisms, flexible standing rules, and access to third-party funding. These design features facilitate aggregation and enable large claimant groups to be coordinated efficiently. Comparative analysis has characterised such systems as capable of attracting concentrated collective activity.[5] Other jurisdictions retain opt-in models, stricter admissibility requirements, or more restrictive funding environments. Ireland, for example, does not have a structured, general-damages-oriented collective redress mechanism. Representative actions are limited in scope, primarily injunctive in nature, and third-party funding is prohibited.[6] Comparative research suggests that collective activity tends to concentrate in jurisdictions combining three features:

- Procedural permissiveness in aggregation.
- Funding availability.
- Predictable judicial treatment of non-material harm.[7]

Where these features align, collective filings increase. Where funding is constrained or admissibility thresholds are high, activity remains more limited. These patterns are not unique to data protection. They are consistent with broader scholarship on collective litigation and procedural design.

This variation underscores a central reality: collective redress is not monolithic. Its scale and function depend on national procedural ecology. Where public enforcement is slow, resource-constrained, or unable to award compensation, collective mechanisms function as adaptive responses; they aggregate claims, overcome rational disinterest, and can address systemic practices that individual complaints struggle to capture. In this sense, collective redress strengthens enforcement capacity and may enhance deterrence.

Strategic Escalation and Repeat-Player Dynamics

At the same time, the professionalisation of representative litigation introduces structural incentives that merit careful attention. In environments characterised by:

- Prolonged administrative proceedings,
- Doctrinal uncertainty surrounding compensable harm,
- Fragmented procedural regimes,
- and reduced marginal costs of claim initiation,

repeat institutional actors may rationally shift between complaint mechanisms, judicial proceedings, and collective actions to pursue regulatory, strategic, or economic objectives. In certain instances, collective actions have been initiated following adverse administrative or judicial outcomes concerning similar processing practices. From the perspective of regulated entities, this can create a perception of procedural regeneration: even after prevailing before a supervisory authority or court, exposure may persist through scaled representative litigation.

The concern is not that collective redress is *inherently problematic*. Rather, under certain structural conditions, its use may become decoupled from the resolution of demonstrable individual harm and instead function as a mechanism for sustained enforcement pressure. The point is institutional rather than motivational: when procedural design lowers the cost of aggregation and doctrinal thresholds remain unsettled, predictable escalation dynamics can emerge regardless of the specific objectives of the actors involved.

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[5] *Wet afwikkeling Massa Schade in collective Actie* (Act on Redress of Mass Damages in Collective Action) Stb 2019, 130; *Verbraucherrechtedurchsetzungsgesetz* (Consumer Rights Enforcement Act) BGBl I 2023, No 272; *Representative Actions for the Protection of the Collective Interests of Consumers Act 2023* (Ireland); Irish Council for Civil Liberties (ICCL).

[6] Ibid, see also Lena Hornkohl and Alba Ribera Martínez, *Collective Actions and the Digital Markets Act: A Bird Without Wings* (Working Paper) 63.

[7] BEUC, Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe (19 March 2025) https://www.beuc.eu/reports/comparative-legal-study-procedural-rules-and-their-impact-collective-redress-actions-europe accessed 14 April 2026.

European courts have begun grappling with related questions, including whether data subject rights may be invoked strategically to provoke damages claims and whether "loss of control" alone suffices to ground a compensation claim. These judicial signals suggest that the boundary between legitimate aggregation and procedural instrumentalisation is no longer purely theoretical.

Article 82 and Evidentiary Friction

Doctrinal uncertainty under Article 82 GDPR further shapes collective behaviour. While the Court of Justice has clarified that compensation requires actual and certain damage, national courts continue to diverge in their interpretation of the thresholds for non-material harm and the evidentiary standards. Inconsistent approaches to "loss of control," distress, and triviality create unpredictability. This uncertainty influences forum selection and pleading strategy. Where harm thresholds are lower or procedural frameworks are more aggregation-friendly, collective claims are more likely to be concentrated. Article 82 thus operates not only as a remedial provision but also as a structural stressor within the enforcement system.

Automation and Scale Asymmetry

Technological change adds a further layer. AI-assisted tools reduce the marginal cost of identifying potential infringements, drafting complaints, and coordinating claims. While such tools can enhance access to justice, they also alter the economics of procedural initiation. If procedural volume scales independently of substantive harm calibration, enforcement pressure may reflect the abundance of procedural triggers rather than the gravity of underlying violations. This risk of scale asymmetry is particularly salient in jurisdictions with permissive collective mechanisms. The analytical distinction between tools that facilitate genuine rights vindication and those that enable leverage independent of harm, becomes increasingly important.

Legitimacy and Rule-of-Law Considerations

The core institutional challenge lies in preserving the coupling between harm, procedure, and remedy. A system in which:

- administrative and judicial tracks operate without structured coordination,
- collective actions can follow adverse rulings without materially new grounds,
- and procedural scale exceeds substantive adjudication,

risks undermining legal certainty and finality.

For companies operating in multiple Member States, divergent interpretations and repeated escalations may lead to a state of perpetual contestability. For individuals, uneven harm standards and fragmented procedures may yield inconsistent outcomes. The tension, therefore, is not between collective redress and corporate interests. It is between two rule-of-law values: robust access to justice and stable, coherent enforcement.

These dynamics reflect a broader structural shift in the enforcement environment. As procedural initiation costs decline and aggregation becomes increasingly efficient, the relationship between harm, procedure, and remedy becomes more difficult to maintain. Parallel enforcement, when operating without structured alignment, may weaken legal certainty, while divergent national thresholds for non-material harm can make forum selection a rational response. These developments do not necessarily reflect improper motive on the part of any particular actor. They arise from the institutional architecture within which GDPR rights are exercised.

Calibration, Not Retrenchment

Collective redress remains an essential component of the EU data protection framework. It aggregates diffuse harms, complements public enforcement, and can enhance accountability. The policy question is not whether collective redress should exist, but how it should be calibrated under conditions of scale, fragmentation, and strategic repetition. Potential calibration avenues include:

- Greater substantive clarity on compensable harm under Article 82;
- Enhanced coordination mechanisms between supervisory authorities and courts;
- Procedural robustness in representative actions, including standing, funding transparency, and admissibility thresholds anchored in demonstrable harm;

- and safeguards against industrialised or purely leverage-driven litigation dynamics.

As GDPR enforcement enters a period shaped by automation, geopolitical complexity, and repeat players, maintaining the legitimacy of enforcement will depend on ensuring that collective mechanisms remain tethered to their justificatory foundations: actual harm, proportionality, and coherent adjudication. The future of collective redress in data protection law will not be determined by its existence, but by the institutional design choices that govern its operation.

Section 1: GDPR Enforcement Design and Emerging Structural Tensions

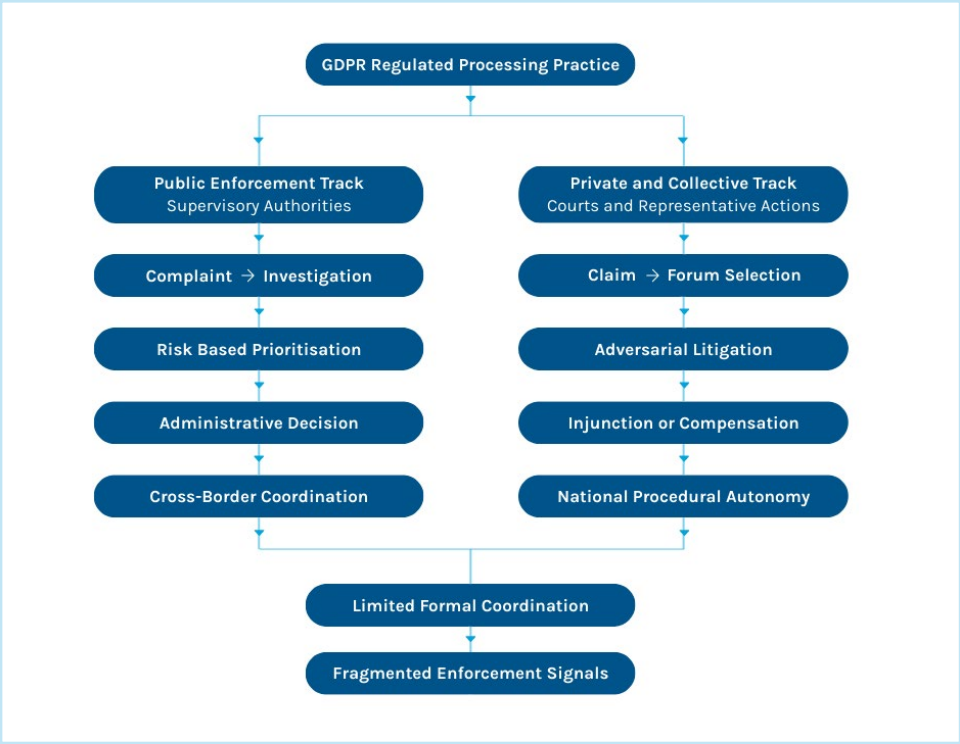
1.1. The GDPR Enforcement Environment

The enforcement architecture of the GDPR was built around a clear institutional logic. A data subject lodges a complaint. A supervisory authority investigates. A decision is issued. Judicial review follows where necessary. Compensation may be pursued before national courts.

The system is complaint-driven, administratively prioritised, and reviewable.[8] In addition, Article 80 GDPR and subsequent representative action regimes provide procedural avenues for aggregation.[9] To understand the dynamics, it is helpful to visualise how enforcement now unfolds in practice.

[8] The GDPR establishes a layered enforcement architecture that combines supervisory oversight with individual judicial protection and compensatory redress. Article 77 gives the data subject the right to lodge a complaint with a supervisory authority. Article 79 preserves a direct right to an effective judicial remedy against controllers and processors. Article 82 adds a right to compensation for material or non-material damage caused by an infringement of the Regulation. The recitals confirm that these routes are cumulative. The Regulation, therefore, does not treat enforcement as the exclusive domain of supervisory authorities. It creates a plural rights architecture in which administrative complaint mechanisms, court-based remedies, and damages actions operate alongside one another.

[9] Article 80 functions as the Regulation's representative action bridge. Article 80(1) allows not-for-profit bodies to act on the basis of a data subject's mandate in relation to complaints, judicial remedies, and, where national law permits, compensation. Article 80(2) permits Member States to go further and allow such entities to act without a mandate where they consider that rights under the Regulation have been infringed. In this way, the GDPR embeds representative enforcement within its wider rights architecture while leaving the fuller procedural design of collective redress to national law and, increasingly, to the parallel framework established by Directive (EU) 2020/1828.



The two tracks operate in parallel. They are connected, but only loosely. Collective redress is not meant to replace public enforcement; it operates alongside it. In some cases, collective proceedings follow supervisory authority investigations. In others, they proceed independently. There is no uniform rule governing whether courts must await administrative findings or whether administrative determinations bind subsequent damages claims. This parallelism can produce complementary effects. Collective actions may surface harms that administrative enforcement has not yet addressed, while administrative findings may provide evidentiary support for collective claims.

At the same time, the absence of structured coordination means that collective proceedings and administrative investigations may unfold on divergent timelines and under different evidentiary standards. There is no default sequencing rule, no harmonised admissibility filter, and no requirement that one process conclude before the other begins. In practice, the same underlying processing activity may therefore be investigated administratively while also being challenged in collective proceedings before a national court. An adverse administrative finding may prompt follow-on litigation, while collective claims may proceed even where administrative enforcement has been inconclusive or slow.

Collective redress strengthens access to justice and may enhance deterrence. However, as we will discuss in this paper, recent divergence between supervisory authorities and national courts in adjacent areas of GDPR interpretation illustrates how this institutional bifurcation can produce materially different understandings of risk and compliance.[10]

1.2. The environment is shifting

What has changed is the environment in which it operates. Across the Union, supervisory authorities report persistently high volumes of complaints and complex cross-border investigations that often span several years.[11]

[10] Illustration of institutional divergence and contextual judicial interpretation, including discussion of differing approaches between authorities and courts and the relevance of geopolitics in GDPR adjudication; see Wenlong Li, 'Authorities to the left, German courts to the right: The politics and law of transborder data transfers in the EU' (15 January 2026) IAPP https://iapp.org/news/a/authorities-to-the-left-german-courts-to-the-right-the-politics-and-law-of-transborder-data-transfers-in-the-eu/ accessed 17 February 2026.

[11] Enforcement strain and complaint growth as an ecosystem issue, including mapping of Member State mechanisms and practical operation across jurisdictions. Digital Freedom Fund, Collective redress mapping and report (country reports, including Ireland, Netherlands, Germany, France). See Bayerisches Landesamt für Datenschutzaufsicht, 15. Tätigkeitsbericht 2025 (March 2026) 10–12,

At the same time, data processing itself has evolved. It is no longer primarily discrete and event based. It is infrastructural, continuous, and often mediated by algorithmic systems operating at scale.[12] Large platforms process vast quantities of data through distributed cloud environments. Risk is no longer episodic; rather, it is embedded. This produces structural pressure. The GDPR enforcement model presumes identifiable infringements and articulable harm. Modern data ecosystems generate probabilistic, systemic, and often opaque effects. The mismatch between harm production and enforcement design is increasingly visible.[13]

This produces structural pressure. The GDPR enforcement model presumes identifiable infringements and articulable harm. Modern data ecosystems generate probabilistic, systemic, and often opaque effects. The mismatch between harm production and enforcement design is increasingly visible. The following sections examine how this structural tension interacts with collective redress, compensation doctrine, and procedural fragmentation across the Union.

reporting 9,746 complaints and control prompts in 2025, a 61 per cent increase on the previous year, and stating that the rapid spread of AI, especially LLMs, materially contributed to the rise by lowering the barriers to filing complaints; Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit, 'Extremer Anstieg der Beschwerdezahlen beim HmbBfDI' (8 January 2026), reporting that complaints rose from 2,607 in 2024 to 4,220 in 2025, an increase of 62 per cent, and identifying increased public use of AI tools as one reason for the surge; and CNIL, 'Sanctions et mesures correctrices: la CNIL présente le bilan 2025' (9 February 2026), reporting 83 sanctions, 143 formal notices, and cumulative fines of €486,839,500 in 2025, including action concerning cookies, employee surveillance, data security, and applications and online games used by minors. The CNIL source, however, does not appear to provide comparable complaint-volume figures, so it supports a broader point about heightened enforcement pressure rather than a quantified rise in complaints.

[12] See Regulation (EU) 2024/1689 (AI Act), recitals explaining that AI systems operate by inferring from machine and human based inputs to generate outputs that influence physical or virtual environments; European Data Protection Board, *Opinion 28/2024 on certain data protection aspects related to the processing of personal data in the context of AI models* (17 December 2024) noting that the development and deployment of AI models raises 'systemic, abstract and novel issues'; and EDPB, *AI Privacy Risks & Mitigations: Large Language Models (LLMs)* (April 2025) discussing the risks arising from the large scale processing of high volumes of personal data.

[13] See European Data Protection Board, Annual Report 2024 (23 April 2025) noting that the GDPR enforcement system must address 'complex data protection challenges' through coordinated cross border cooperation, and European Commission, Impact Assessment Report accompanying the proposal for a Directive on representative actions for the protection of the collective interests of consumers SWD(2023) 335 final (17 October 2023) stating that collective redress mechanisms are designed to address 'systemic breaches' and provide remedies to all affected persons, thereby illustrating the limits of a purely individual complaint model where harms are diffuse, large scale, and structurally embedded.

Section 2: Mapping the Operation of Collective Redress in Data Protection

Collective redress under the GDPR does not operate within a single, harmonised procedural framework. Although Article 80 GDPR provides for representative actions and the Representative Actions Directive introduced certain common elements for consumer protection, the practical operation of collective proceedings remains shaped by national procedural law. Understanding how collective redress functions in practice is therefore essential before assessing its structural effects.

2.1 Formal Legal Basis

Article 80 of the GDPR permits data subjects to mandate not-for-profit bodies to lodge complaints and to exercise judicial remedies on their behalf. In some Member States, representative bodies may initiate proceedings without an individual mandate where national law so provides. The Representative Actions Directive further enables qualified entities to seek injunctive and other remedial measures for consumer law infringements, including those relating to data protection, which have been incorporated into national law. However, the Directive does not create a unified damages regime for GDPR claims. Member States retain discretion in implementing collective mechanisms. The result is a layered framework:

- GDPR-based representative standing,
- National civil procedure rules,
- Consumer collective action regimes,
- Sector-specific procedural adaptations.

The practical shape of collective redress depends on how these layers interact.

2.2 Procedural Diversity Across Member States

As mentioned above, member States differ significantly in their collective litigation architecture. This divergence is not merely theoretical, as recent case law from jurisdictions with more permissive architectures illustrates how courts are beginning to operationalise admissibility constraints in response to large-scale, model-driven claims. A recent comparative dataset reports that the Netherlands averaged 22 collective actions per year after 2020, recorded 89 cases in 2020 to 2023, and had 9.3 collective action cases per million inhabitants in 2008 to 2023, placing it among the most active collective redress jurisdictions in Europe.[14]

Against this background, the interlocutory decision of the *Rechtbank Amsterdam in Stichting Data Bescherming Nederland v X Corp* provides a particularly sharp illustration of how WAMCA admissibility requirements operate as structural filters on large-scale GDPR claims.[15] The court refused to admit the action on the basis of both insufficient representativity and lack of sufficient commonality, emphasising that a "real" constituency must be demonstrated rather than inferred from low-friction online sign-ups, that alleged harm must be substantiated rather than asserted at scale, and that claims must be framed in a way that is procedurally manageable and aligned with the actual legal dispute. It was particularly critical of attempts to aggregate heterogeneous practices across tens of thousands of apps, noting that such claims do not lend themselves to collective adjudication, and highlighted the importance of aligning the remedy with an existing, addressable problem rather than a historic or diffuse grievance. More broadly, the decision reflects an explicit judicial sensitivity to the risk of funder-driven or industrialised litigation models, reinforcing the principle that collective actions must remain anchored in the interests of a genuinely affected group rather than in abstract mass harm.

These developments demonstrate that even in jurisdictions designed to facilitate aggregation, collective redress remains subject to active judicial calibration rather than operating as an unbounded mechanism for scale. Between these poles sit hybrid systems in which collective proceedings are possible but procedurally demanding. Funding, cost-shifting rules, disclosure obligations, and admissibility thresholds vary across jurisdictions. This diversity means that collective redress in the EU cannot be described as uniform. It is better understood as a procedural spectrum.

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[14] See Xandra Kramer, Ianika Tzankova, Jos Hoevenaars and Karlijn van Doorn, Financing Collective Actions in the Netherlands: Towards a Litigation Fund? (Boom Uitgevers 2024) 82–83, 91. https://pure.eur.nl/ws/portalfiles/portal/155567615/Financing_Collective_Actions_in_the_Netherlands.pdf accessed 8 April 2026.

[15] Rechtbank Amsterdam, 13 January 2026, ECLI: NL: RBAMS:2026:155 (criminal conviction for complicity in large scale 'hulpvraagfraude').

2.3 Types of Claims and Remedies

In practice, collective data protection proceedings have tended to focus on three categories of issues:

1. Systemic processing practices, including real-time bidding architectures and large-scale advertising models.
2. Data breach incidents affecting significant numbers of individuals.
3. Transfer and international processing compliance issues.

Remedies sought include:

- Injunctions requiring cessation or modification of processing.
- Declarations of unlawfulness.
- Compensation for material and non-material damage.

While injunctive relief remains central in several jurisdictions, compensation claims under Article 82 have become increasingly prominent. The doctrinal openness of Article 82 has created space for strategic pleading around non-material harm, particularly in breach and systemic processing contexts. The availability of compensation, even at modest individual levels, can alter the economics of aggregation where large claimant groups are involved.

2.4 Collective Redress as Adaptive Response

Viewed descriptively, collective redress under the GDPR functions as an adaptive mechanism within a strained enforcement system. It responds to:

- The scale of contemporary data processing.
- The evidentiary difficulty faced by individual claimants.
- Administrative capacity constraints.
- The limits of individualised complaint resolution.

Section 3: Article 82 as a Structural Stress Point

3.1 The Structure of Harm

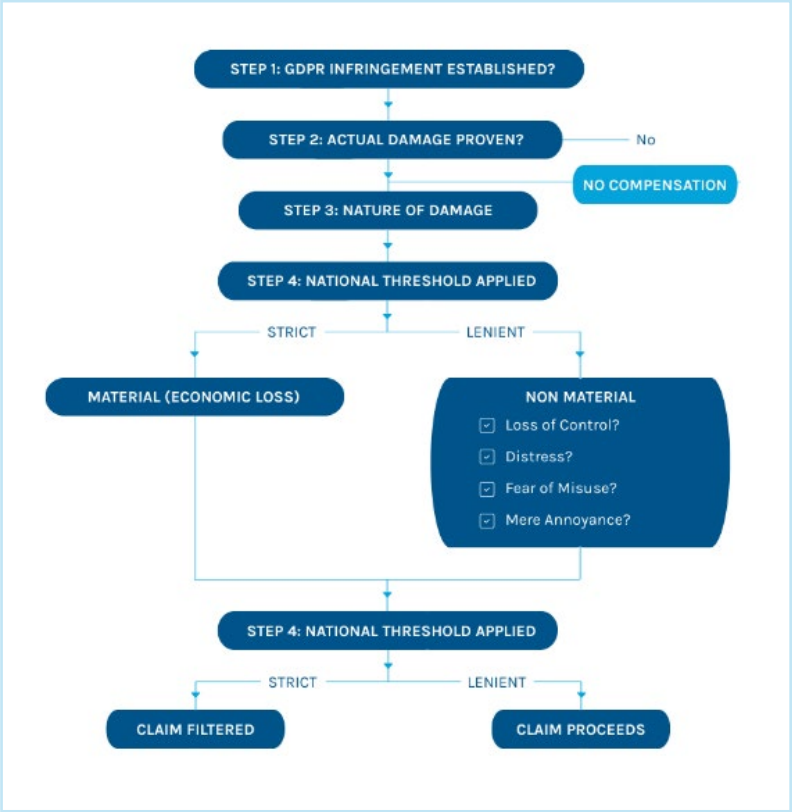
Compensation under Article 82 GDPR occupies a pivotal position within the enforcement architecture. Formally, it is remedial. In practice, it also operates as an incentive variable. Article 82 provides that any person who has suffered material or non-material damage as a result of an infringement of the Regulation has the right to receive compensation. The Court of Justice has clarified that damage must be actual and certain and that infringement alone does not automatically entitle a claimant to compensation.[16] However, it did not prescribe a uniform quantitative or qualitative threshold for non-material damage. The Court in *Natsionalna agentsia za prihodite* further clarified that fear of misuse may qualify where sufficiently substantiated.[17] Despite this clarification, significant variability persists across Member States. National courts continue to diverge in their interpretation of:

- What constitutes non-material damage,
- Whether loss of control suffices,
- Whether fear of misuse qualifies,
- What evidentiary threshold applies,
- Whether trivial interference is compensable[18].

These divergences have practical consequences. The way courts interpret compensable harm and evidentiary sufficiency shapes the economic viability of aggregation and the attractiveness of particular jurisdictions for collective claims. Where harm thresholds are perceived as lower or evidentiary burdens more claimant-friendly, aggregation becomes more attractive. Comparative research on collective litigation shows that damage quantification, disclosure rules, and funding arrangements strongly influence the viability and concentration of collective claims.

This creates the structural incentive variable within the enforcement system. Compensation doctrine does not simply resolve disputes ex post; it also shapes enforcement behaviour ex ante by influencing how actors assess the relationship between infringement, recovery, and procedural scale.

[16]. Case C-340/21 *VB v Natsionalna agentsia za prihodite* EU:C:2023:986.
[17] Ibid paras 32–42.
[18] Empirical and comparative research demonstrates that national courts apply differing standards when assessing low-value data breach claims. In England and Wales, for example, the High Court has dismissed claims as abusive where no real damage could be demonstrated. In other jurisdictions, modest awards for loss of control have been granted in breach cases without demonstrable financial loss.



In jurisdictions with more permissive procedural design, including opt-out mechanisms, limited cost exposure, and access to litigation funding, aggregation has expanded significantly.[19] In others, collective redress remains narrower, largely confined to injunctive or declaratory relief with limited opportunities for damages recovery.[20] Article 82, therefore, functions not only as a remedial provision but as a structural stress point within the enforcement system: where harm thresholds are perceived as lower, aggregation becomes more attractive, whereas stricter judicial filtering tends to reduce claim volume.

Incentive Effects of Doctrinal Variability[21]

Variable	High Threshold Jurisdiction	Low Threshold Jurisdiction
Evidentiary Burden	Significant	Moderate
Non-Material Damage Recognition	Narrow	Broader
Aggregation Attractiveness	Limited	Increased
Settlement Pressure	Lower	Higher
Litigation Concentration Risk	Reduced	Elevated

[19] Procedural ecology and litigation concentration dynamics in the Netherlands, including opt out design, funding, and settlement pressure. ECIPE policy brief on Dutch collective action system. T.J. McIntyre, *Collective Redress: Country Reports. Ireland* (Digital Freedom Fund, 1 November 2024), available at http://hdl.handle.net/10197/28872 accessed 17 February 2026.

[20] Ireland as a structurally constrained configuration, including the limitations of representative actions, absence of damages, and funding constraints; See British Institute of International and Comparative Law, *Collective Redress: Ireland* (Civil Justice Programme of the European Union, updated in collaboration with Aston University).

[21] The table does not advance a value judgment about whether stricter or more permissive approaches to non-material damage are preferable. It illustrates how doctrinal variability interacts with procedural architecture to alter risk calculations, forum selection strategies, and the likelihood of aggregation at scale.

This divergence matters because collective redress in the EU is mediated through national procedural ecology.[22] In its access to justice function, collective redress seeks to overcome rational apathy, information asymmetry, and the practical disincentives that often make individual enforcement unreal. Yet its effectiveness depends on the procedural environment in which it operates. Standing rules, funding arrangements, cost exposure, certification thresholds, and representative mechanisms all influence whether diffuse claims can be consolidated and pursued at scale. Variation in approaches to non-material damage, therefore, has consequences beyond liability doctrine. It shapes litigation incentives, forum selection, and the practical feasibility of aggregation across jurisdictions. Small individual harms that would not justify standalone litigation can be aggregated.[23] Deterrence may be strengthened. From this perspective, collective mechanisms complement public enforcement.

3.2 Repeat Players and Doctrinal Arbitrage

At the same time, doctrinal elasticity under Article 82, when combined with procedural asymmetry, creates incentives for strategic forum selection and scaled claims.

In an environment of variability, repeat institutional actors may rationally select jurisdictions that offer:

- Procedural permissiveness
- Lower non-material damage thresholds
- Favourable cost exposure
- Aggregation efficiency

Comparative research across the Union confirms that procedural design materially affects the concentration of claims.[24] As discussed above, jurisdictions that combine opt-out design, limited cost shifting, and funding availability experience higher collective filing activity.[25].

3.3 Judicial Signals on Abuse and Strategic Invocation

The tension is now visible in litigation. In *Brillen Rottler*, the referring German court asked whether an information request may be refused when made with the intention of provoking claims for damages.[26] The reference explicitly infers that rights under Articles 12 and 15 GDPR can be strategically invoked to generate compensation claims. The Advocate General's Opinion situates this within the broader EU principle that rights cannot be relied upon for abusive or fraudulent ends.[27]

The reference in *Brillen Rottler* thus raises the question of whether data subject rights may be

[22] Cross Member State divergence in mechanisms and remedies for digital rights litigation and collective redress, including national differences and procedural constraints. See Note 11, Supra.
[23] Rational apathy and collective action rationale in EU representative actions discourse and national implementation discussions; See Oscar Guinea, Dyuti Pandya and Vanika Sharma, Collective Action in the Netherlands: Why It Matters for the Transposition of the Product Liability Directive (ECIPE Policy Brief No 11/2025, European Centre for International Political Economy 2025) available at https://hdl.handle.net/10419/322155 accessed 17 February 2026.

[26] Case C-526/24 *Brillen Rottler GmbH & Co KG v TC* Request for Preliminary Ruling.

[27] Opinion of AG Szpunar in Case C-526/24 *Brillen Rottler* (2025).

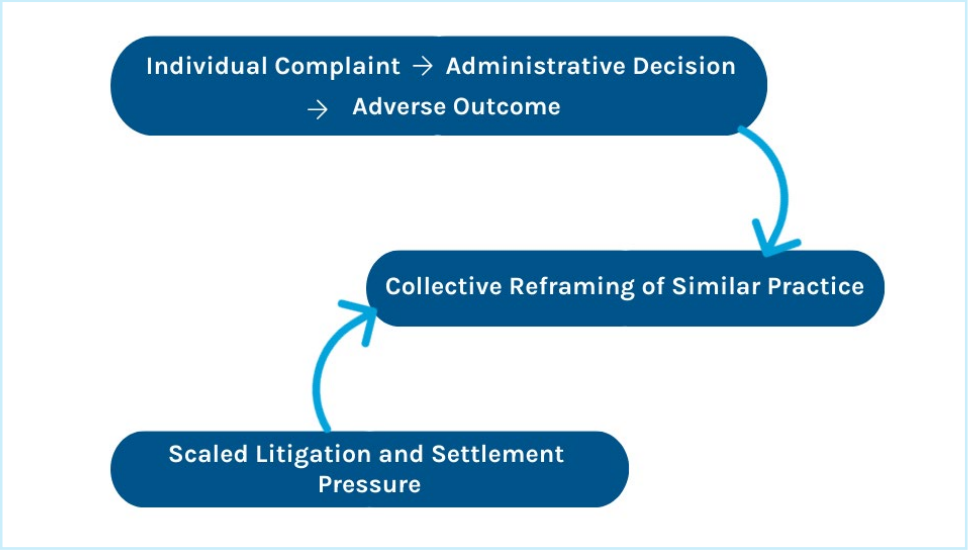
exercised in a manner amounting to an abuse when claims are pursued primarily to provoke liability for damages. Such judicial attention reflects a developing awareness that enforcement design can shape incentives.

This indicate that courts may be increasingly attentive to the possibility that procedural rights can be deployed beyond their original remedial function. The very fact that such questions are now being formally articulated seems to reflect an awareness of a potential structural evolution in the enforcement landscape rather than an isolated curiosity.

When collective proceedings are anchored in identifiable and systemic harm, they function as a corrective mechanism that enhances both access to justice and regulatory coherence. However, where aggregation outpaces substantiated injury and procedural volume becomes an end in itself, the risk is that enforcement signals become shaped more by scale than by substance. The relevant dividing line, therefore, lies not in whether Article 82 provides a right to compensation, but in how that right is operationalised through doctrinal interpretation and procedural control.

3.4 Collective Redress as Structural Adaptation

Collective redress also operates within a broader set of structural incentives. Where administrative proceedings are prolonged, compensation doctrine remains unsettled, and harm thresholds are uneven, representative actors may rationally shift between enforcement tracks. If an individual complaint does not yield a satisfactory regulatory outcome, escalation through judicial or collective routes may follow. Where similar practices are scaled up, regulated entities may remain exposed to further litigation even after an adverse administrative or judicial outcome regarding an individual claimant. Under current structural conditions, however, the relationship between demonstrable harm and procedural escalation remains sufficiently tight. To illustrate the dynamic, consider the following stylised sequence:



Not every case follows this path. Many collective actions address genuinely systemic harms that were never fully resolved through administrative means. However, where this pattern does occur, and collective redress is instrumentalised to replace rather than complement public enforcement, questions of legal certainty and finality arise. The point is structural rather than motivational. In an environment characterised by procedural fragmentation, doctrinal uncertainty, and scalable aggregation mechanisms, representative litigation may generate regulatory, strategic, and sometimes economic incentives for escalation beyond the resolution of individual disputes.

Section 4: Fragmentation, Forum Selection, and Enforcement Concentration

As mentioned, the expansion of collective redress in data protection law does not occur within a harmonised procedural space. Although the Representative Actions Directive introduced certain common elements, the underlying architecture of collective litigation remains shaped by national procedural autonomy.[28] The result is fragmentation.

Differences in standing rules, cost exposure, and evidentiary thresholds translate into different risk calculations for claimants and defendants alike. Where procedural design lowers aggregation costs and evidentiary barriers, collective claims are more likely to concentrate. Where funding is prohibited or damages unavailable, escalation takes different forms, often through injunction-focused proceedings or test cases.[29] In such an environment, litigation patterns are unlikely to be evenly distributed. They will tend to cluster where procedural conditions are perceived as more favourable. The Union, therefore, presents a procedural map rather than a uniform system. The absence of procedural uniformity creates structural asymmetry across Member States.

4.1 Forum Selection as Rational Behaviour

When procedural design, evidentiary thresholds, and cost allocation are combined in a particular configuration, actors will respond in ways that reflect those incentives. In the context of collective data protection litigation, this dynamic manifests most clearly through *forum selection*. In such an environment, forum selection becomes a predictable and rational response. Where non-material damage thresholds are interpreted more permissively, or where cost exposure is comparatively limited, representative actors may concentrate litigation in those jurisdictions. Comparative analysis of the Dutch system demonstrates for example how opt-out design, funding structures, and settlement flexibility have contributed to its role as a focal point for collective proceedings in the European context.[30]

This concentration effect is not unique to data protection. It is a recurring feature of collective litigation systems marked by procedural asymmetries. Empirical scholarship on transnational mass claims and repeat player litigation has long shown that when jurisdictional gateways combine permissive standing, manageable cost exposure, and predictable judicial treatment of harm, certain fora exert a gravitational pull for complex collective disputes. In such settings, litigation patterns are shaped not only by the substantive field of law, but also by the procedural infrastructure that lowers aggregation friction, stabilises recovery expectations, and creates favourable conditions for strategic claimants, funders, and repeat players. The key driver is therefore structural, even if the opportunities created by that structure are then actively exploited by sophisticated actors.

4.2 Interaction with Public Enforcement

Fragmentation also affects the relationship between private collective actions and supervisory authorities. Collective proceedings may:

- run in parallel to administrative investigations
- follow administrative findings
- predate regulatory decisions
- or address related but differently framed aspects of the same processing practice

In the absence of structured coordination, the risks of duplication and inconsistency increase. A supervisory authority may apply a specific evidentiary threshold in assessing harm, while a national court may adopt a different standard in compensation proceedings. This dynamic is familiar in other areas of EU law where administrative enforcement coexists with private damages actions. In EU competition law, for example,

[28] Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers [2020] OJ L 409/1.
[29] Ibid.
[30] One Dutch study of the WAMCA register identified 83 registered cases corresponding to 66 underlying disputes by 22 December 2023. In the most available data (July 2023), 9 were privacy related. A recent comparative dataset reports that the Netherlands averaged 22 collective actions per year after 2020, recorded 89 cases in 2020 to 2023, and had 9.3 collective action cases per million inhabitants in 2008 to 2023, placing it among the most active collective redress jurisdictions in Europe; See Xandra Kramer, Ianika Tzankova, Jos Hoevenaars and Karlijn van Doorn, Financing Collective Actions in the Netherlands: Towards a Litigation Fund? (Boom Uitgevers 2024) 82–83, 91 https://pure.eur.nl/ws/portalfiles/portal/155567615/Financing_Collective_Actions_in_the_Netherlands.pdf accessed 8 April 2026.

infringement decisions adopted by the European Commission or national competition authorities frequently serve as the basis for follow-on damages claims before national courts, illustrating how public enforcement and private litigation can operate in tandem while still raising coordination questions about evidentiary weight and procedural sequencing. Scholarship on competition law and financial regulation has shown that such parallel tracks can generate both complementary deterrence and destabilising divergence depending on the degree of institutional alignment.[31] Where administrative findings do not carry structured evidentiary weight in subsequent civil proceedings, or where civil courts are not required to take account of regulatory prioritisation decisions, the potential for normative drift increases. This dynamic can generate:

- inconsistent findings on similar factual matrices
- divergent interpretations of harm
- procedural inefficiencies
- and regulatory uncertainty

Over time, such divergence may affect not only case outcomes but also compliance incentives, as regulated entities calibrate their behaviour against multiple, potentially inconsistent risk signals. The literature on regulatory pluralism cautions that, where enforcement authority is dispersed without a coordination architecture, legitimacy depends less on formal competence allocation and more on the predictability of interactions among institutions. The issue is not institutional conflict as such. The GDPR intentionally preserves both public and private remedies. The issue is the absence of design mechanisms that align sequencing, evidentiary standards, and information exchange. In complex regulatory environments, coherence is rarely the product of hierarchy; it is the product of procedural alignment.

4.3 Strategic Escalation in a Fragmented System

In a fragmented system, escalation pathways multiply. A complainant dissatisfied with administrative progress may initiate judicial proceedings. A representative body may aggregate similar claims across data subjects. Where national procedural rules permit, such aggregation may occur in jurisdictions perceived as more favourable. Recent comparative scholarship on collective enforcement in digital markets underscores how private actors can function as ***quasi-regulatory enforcers*** in contexts where public capacity is limited or selective.[32] The same structural logic applies in data protection.

This development is a predictable consequence of the institutional architecture within which GDPR rights are exercised and may often be entirely legitimate. However, where fragmentation permits repeated reframing of

[31] Wouter P J Wils, 'Private Enforcement of EU Antitrust Law and Its Relationship with Public Enforcement: Past, Present and Future' (2016) 40 *World Competition* 3.
[32] Hornkohl and Ribera Martínez (n 6).

similar issues across procedural tracks without structured coordination, the risk of enforcement decoupling increases and the overall effectiveness of enforcement may become sub-optimal. Legal certainty becomes harder to maintain when similar factual constellations produce divergent outcomes across jurisdictions.

Section 5: Public and Private Enforcement: Coordination and Legitimacy

The GDPR deliberately preserves both administrative and judicial pathways. Supervisory authorities exercise investigative and sanctioning powers in the public interest. Courts provide remedies, including compensation, in response to individual or collective claims. Neither track is subordinate to the other.

The difficulty arises not from their coexistence but from the absence of structured coordination. The coexistence of public and private enforcement is a familiar feature of modern regulatory governance, particularly in areas such as competition law, financial regulation, and consumer protection, where private litigation supplements administrative oversight. In those domains, the effectiveness of parallel enforcement depends less on the mere availability of dual tracks and more on the clarity of their interaction. Where sequencing rules, evidentiary deference, or institutional communication mechanisms are defined, parallelism can enhance deterrence and reinforce regulatory coherence. Where they are absent, the same dual structure may generate fragmentation.

The GDPR's design reflects an intentional pluralism. It distributes enforcement authority across independent supervisory bodies and national courts while embedding substantive rights directly into Union law. Yet it does not articulate how these actors should interact when confronted with materially overlapping disputes. As a result, courts and supervisory authorities may apply different evidentiary logics, prioritisation frameworks, and remedial philosophies to the same underlying processing practice.

This structural openness has advantages. It allows flexibility and respects institutional autonomy. At the same time, it creates the possibility that enforcement signals diverge, that findings are reached on partially different factual records, or that legal certainty is weakened by sequential or parallel escalation. In complex, large-scale regulatory environments, legitimacy depends not only on the existence of multiple enforcement avenues but also on the predictability of their relationships. The challenge, therefore, is not to privilege one track over the other, but to ensure that their interaction does not undermine the system's overall coherence.

5.1 Parallelism Without Sequencing

At present, collective proceedings may:

- Precede administrative investigation,
- Run concurrently,
- Follow administrative decisions,
- Or address adjacent aspects of the same processing practice.

There is no default mechanism requiring a court to stay collective damages proceedings pending a supervisory authority's decision. Nor is there a harmonised rule governing the evidentiary weight of administrative findings in subsequent private litigation.[33] This institutional openness creates flexibility. It also introduces risk. Where proceedings are parallel and independent, similar factual constellations may be assessed under different procedural logics. A supervisory authority may focus on systemic compliance and proportional sanctioning. A court may concentrate on individualised harm and evidentiary sufficiency. The two analyses are not identical in purpose or structure.

Recent jurisprudence demonstrates that courts are willing to scrutinise the strategic invocation of procedural rights in compensation contexts.[34] At the same time, supervisory authorities may adopt interpretations that reflect risk aversion, political context, or geopolitical considerations.[35] The result is a system in which enforcement signals may diverge.

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[33] See also discussion in this report on the structural absence of coordination mechanisms between supervisory enforcement and private litigation under the GDPR, including the risks of duplicative proceedings, inconsistent findings, repeated reframing of the same underlying facts, and forum shopping across national collective redress systems.

[34] Case C-526/24 *Brillen Rottler*, Request for Preliminary Ruling.

[35] See *Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems* (Schrems II) (Case C-311/18) EU: C:2020:559, which made international transfers a central site of judicial control, and compare the ensuing administrative enforcement record, including the Irish DPC's Meta transfers decision of 12 May 2023 and the EDPB's Binding Decision 1/2023 of 13 April 2023, which exposed disagreement within the supervisory system over the adequacy of corrective measures, fines, and suspension orders in the EU US transfer context. Together, these materials illustrate both divergence between courts and supervisory authorities in transfer governance and the extent to

5.2 Finality and Perpetual Contestability

Legal certainty requires that disputes reach a meaningful conclusion. In a system where administrative or judicial outcomes may be followed by collective proceedings directed at materially similar practices, finality becomes attenuated. For regulated entities, success in one forum does not necessarily conclude exposure. For claimants, administrative delay, selectivity, or limited remedial reach may create incentives to seek redress through collective litigation instead. The tension is structural. The question is not whether additional proceedings are lawful. They may be entirely lawful. It is whether the system sufficiently distinguishes between:

- unresolved systemic harm
- circumvention of slow or incomplete administrative pathways
- repeated procedural reframing of issues already substantially settled

5.3 Institutional Trade-Offs and the Question of Finality

The GDPR enforcement system embodies two commitments that sit in productive but sometimes uneasy tension. On the one hand, it guarantees robust access to justice. Data subjects are entitled to lodge complaints with supervisory authorities, seek judicial review, and claim compensation for harm suffered. On the other hand, it presumes a degree of regulatory coherence and legal certainty. Compliance must be capable of assessment. Decisions must carry weight. Legal risk must be intelligible.

Collective redress strengthens the first commitment. It lowers barriers to entry, aggregates dispersed harms and ensures that the practical limits of individual litigation do not insulate systemic practices. In doing so, it enhances accountability and may improve deterrence. In an environment characterised by large-scale processing and information asymmetry, this function is significant.

However, the second commitment becomes more complex, where enforcement unfolds across parallel tracks without structured alignment. If materially similar processing practices are assessed sequentially or simultaneously in different fora, and if adverse outcomes in one setting do not meaningfully stabilise expectations in another, the system risks attenuating finality.

Finality does not require uniform outcomes across institutions. It requires that legal determinations meaningfully reduce uncertainty. Where proceedings can be repeatedly reframed at scale, particularly through collective aggregation following individual disputes, the perception may arise that compliance conclusions are provisional rather than determinative.

The availability of judicial recourse is a core feature of the rule of law and not inherently problematic, nor are collective actions inherently destabilising. Many such actions address harms that were never fully resolved administratively. The concern instead is structural: in the absence of sequencing mechanisms or coordination frameworks, the distinction between unresolved systemic harm and repeated procedural reframing may become blurred.

5.4 From Parallelism to Alignment

The coexistence of public and private enforcement was a deliberate legislative choice. The GDPR did not establish a hierarchy between supervisory authorities and national courts. Nor did it create a unified compensation regime at the Union level. Instead, it preserved national procedural autonomy while layering Union rights on top. This design delivered flexibility. It also produced asymmetry.

As collective litigation expands in certain jurisdictions and remains constrained in others, enforcement intensity may become uneven across the Union.

Alignment does not require subordinating courts to supervisory authorities, nor does it constrain representative standing. It requires mechanisms that preserve the connection between substantive harm, evidentiary sufficiency, and procedural scale. This could include greater transparency regarding ongoing administrative

which transfer enforcement has become entangled with wider geopolitical disputes over surveillance, adequacy, and transatlantic data flows.

investigations, clearer articulation of harm thresholds, or procedural doctrines that prevent relitigating of materially identical issues absent new grounds. The objective is to reduce incoherence without diminishing access. In this respect, calibration is a systemic exercise rather than a behavioural one. It is not concerned with the motives of particular actors. It addresses the incentive architecture within which those actors operate. Where design features produce predictable patterns of escalation, refinement of those features is a matter of institutional stewardship.

The GDPR enforcement ecosystem is entering a phase in which scale, automation, and professionalised representation interact with fragmented procedural regimes. Preserving legitimacy will depend on ensuring that these interactions reinforce rather than destabilise the system's overall coherence.

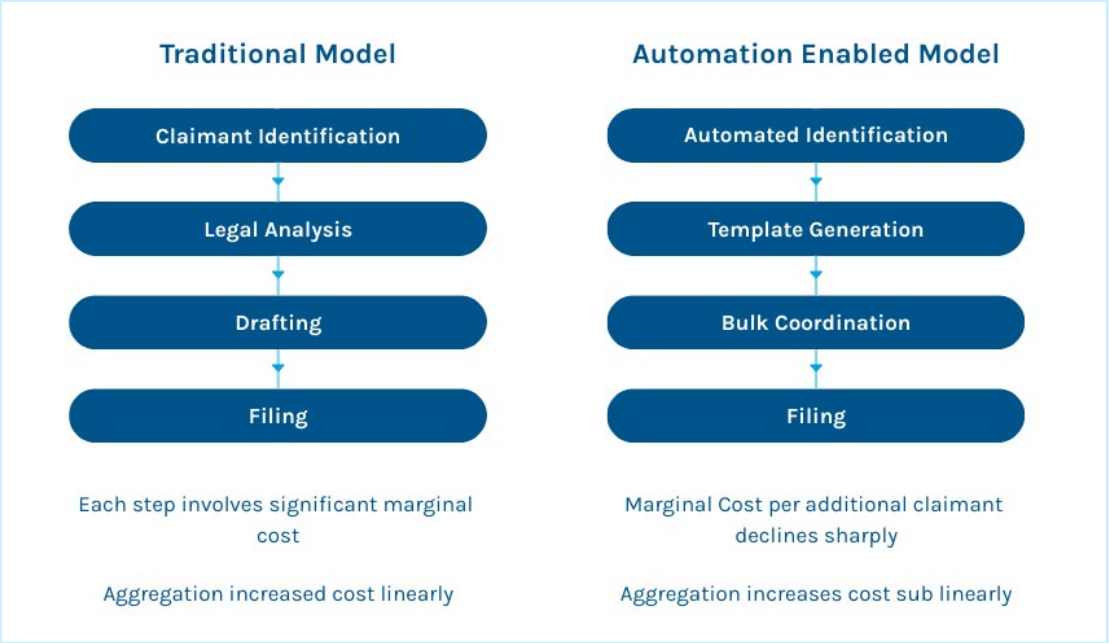
Section 6: Scale, Automation, and the Industrialisation of Enforcement Inputs

The final structural variable reshaping collective redress in data protection law is scale. Scale is not new. Large digital platforms have long operated at a scale that challenges traditional regulatory design. What is new is the interaction between technological and procedural scale. Historically, initiating a legal claim has been a friction-filled process. Identification of potential infringement required manual review. Complaint drafting required legal expertise. Coordination among similarly situated claimants required communication infrastructure and time. Each additional claimant increases the cost and administrative burden. That marginal cost curve is shifting.

AI-assisted tools can now identify patterns in privacy policies, detect inconsistencies in transfer mechanisms, generate structured complaint templates, and coordinate claimant groups across jurisdictions with minimal incremental cost. These tools do not alter the substance of rights under the GDPR. They alter the economics of initiating proceedings. Where initiation costs decline while potential recovery remains constant or uncertain, the incentive structure changes. This development has two dimensions.

First, automation can enhance access to justice. Data subjects who lack technical literacy or legal resources may benefit from tools that surface potential infringements and facilitate the exercise of their rights. In this respect, automation can reduce informational asymmetry and strengthen enforcement.

Second, automation may increase procedural volume independently of substantive calibration. If large numbers of claims can be generated at low cost, courts and supervisory authorities may face an increased flow of formally valid but evidentially variable cases. The distinction between scalable rights assistance and scalable leverage becomes more difficult to maintain. The relevant concern is not that claims are numerous. The scale may outpace filtering capacity.



In the second model, the relationship between volume and effort is altered. Where effort does not increase in proportion to volume, the potential for industrialised filing rises. This phenomenon is not unique to data protection. Similar dynamics have been observed in other areas of collective litigation where procedural design interacts with funding structures and technological coordination tools.[36] The Dutch experience with mass claims, for example, demonstrates how permissive aggregation, combined with external funding, can produce

[36] Peter Rott and others, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe* (BEUC 2025).

concentrated litigation activity in particular jurisdictions.[37] It is precisely at this point that **Case C-526/24 *Brillen Rottler*** becomes significant, as it introduces a constraint on the conversion of such volume-driven dynamics into systematic compensation strategies by reasserting the functional limits of Article 15 GDPR.

In Case C-526/24, the Court of Justice clarified that the concept of an "excessive" request under Article 12(5) GDPR must be assessed from a qualitative, not merely quantitative, perspective, and explicitly anchored in the general EU law principle prohibiting abuse of rights. The Court requires both objective circumstances showing that the purpose of the GDPR has not been achieved and a subjective intention to obtain an advantage by artificially creating the conditions for it, thereby distinguishing between access requests aimed at awareness and verification and those deployed as part of a strategy to generate compensation claims. By emphasising contextual factors such as timing, conduct, and purpose, while imposing a high evidentiary threshold of "unambiguous" proof, *Brillen Rottler* introduces a targeted constraint on the instrumentalisation of Article 15 without undermining its core function. This clarification does not eliminate the structural drivers of scale, but it sharpens the conditions under which large-volume enforcement remains normatively justified within the GDPR framework.

In data protection, these dynamics are intensified by the structure of the rights themselves. Alleged infringements often arise from standardised processing practices affecting large populations, making them inherently amenable to aggregation once identified. The central institutional question is therefore one of proportionality. Where harm is systemic and demonstrable, large-scale enforcement is justified. Where harm is diffuse or uncertain, scale risks distort the enforcement signal. In this setting, the filtering role of courts and supervisory authorities becomes decisive. Doctrines relating to harm, admissibility, and abuse of rights operate as necessary constraints on volume-driven escalation that is disconnected from substantive injury.

Recent judicial engagement with the strategic invocation of GDPR rights reflects a growing recognition that procedural mechanisms do not operate in isolation but interact with underlying incentive structures.[38] That sensitivity will only become more important as automation further reduces the costs of initiating claims. The question is not whether technology should facilitate enforcement. It should. The question is whether the enforcement architecture can distinguish between facilitation and amplification.

Where AI lowers marginal initiation costs and collective procedures remain uneven across Member States, there is a clear risk that enforcement activity expands more rapidly than institutional capacity to assess it coherently. Maintaining legitimacy in such an environment depends on calibration rather than restriction. The aim is not to curtail collective redress or technological support, but to ensure that procedural scale remains anchored to demonstrable harm and that filtering mechanisms function effectively across jurisdictions.

[37] Liubomir Nikiforov, *Closing the EU Collective Redress Gap: GDPR, RAD and the AI Act for Algorithmic Harms and Digital Fairness* (Preprint, Vrije Universiteit Brussel); Emilia Mišćenić and Marina Širola, 'The Road Ahead: Challenges to the Effective Enforcement of the EU Representative Actions Directive' (2025) *Annals of the Faculty of Law in Belgrade*.

[38] Kirsten Henckel, 'The Brussels Ibis Reform, Third State Defendants and the Dutch Experience' (2025) *NIPR*; See also Luuk Stoffel, *Examining the Effectiveness of Article 82 GDPR in Awarding Compensation for GDPR Breaches* (LLM thesis, Vrije Universiteit Amsterdam 2023).

Section 7: Calibration, Legitimacy, and the Future of Collective Redress

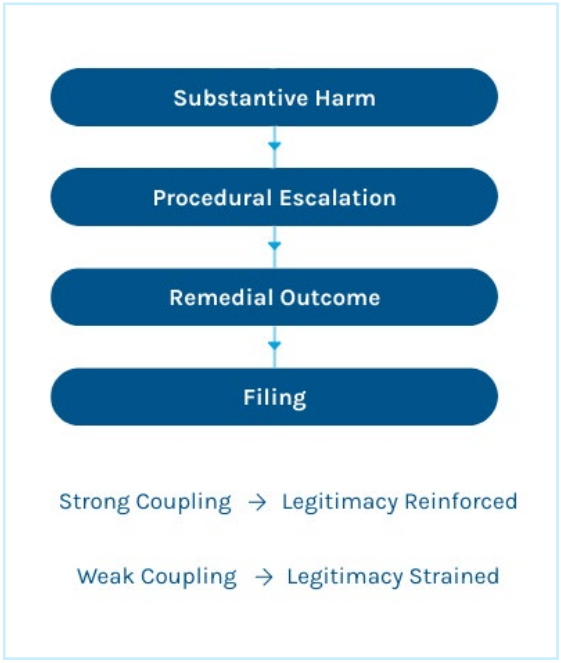
The preceding analysis does not suggest that collective redress is inherently problematic. Nor does it imply that strategic behaviour is inevitable or dominant. It demonstrates something more structural: that the interaction between variability, procedural fragmentation, parallel enforcement tracks, and technological scale produces predictable incentive effects. Collective redress emerged as an adaptive mechanism within an enforcement system under pressure. It aggregates diffuse harm, reduces rational apathy, and strengthens deterrence in contexts where individual litigation would be impractical. These functions remain normatively compelling. At the same time, scale alters equilibrium.

When procedural initiation costs decline and aggregation becomes increasingly efficient, the relationship between harm, procedure, and remedy must be examined more carefully. Where parallel tracks operate without structured alignment, legal certainty may become attenuated. Where thresholds vary significantly across jurisdictions, forum selection becomes rational. Where adverse outcomes in one forum do not meaningfully stabilise expectations in another, finality becomes provisional. None of these dynamics requires imputing improper motive to any particular actor. They arise from architecture.

The core institutional challenge, therefore, is calibration. Calibration does not mean retrenchment. It does not require constraining collective rights or subordinating courts to supervisory authorities. It requires ensuring that procedural scale remains proportionate to demonstrable harm and that enforcement signals remain coherent across institutions. This can be conceptualised as preserving the coupling between three variables:

- Substantive harm
- Procedural pathway
- Remedial outcome

Where these elements remain aligned, collective redress strengthens legitimacy. Where they become decoupled, tension increases.



The purpose of calibration is to maintain strong coupling between harm, procedure, and remedy. That coupling becomes particularly important where collective proceedings are initiated following adverse administrative or judicial outcomes concerning materially similar practices.

If a supervisory authority has investigated a processing activity and reached a determination, or if a national court has adjudicated a claim and rejected it on substantive grounds, the subsequent initiation of large-scale collective proceedings targeting the same or closely related conduct raises a structural question. The question is not whether such proceedings are formally permissible. They may be entirely lawful within the current framework. The question is whether the enforcement architecture provides sufficient safeguards to distinguish between genuinely unresolved systemic harm and the *procedural re-litigation of settled issues*.

Calibration may, therefore, require more than clarity on non-material harm under Article 82. It may require clearer rules on sequencing and on the interaction between supervisory authorities and courts in evidentiary matters. It may require a structured consideration of prior determinations when materially identical factual and legal issues are raised at a collective scale. It may also require admissibility filters capable of identifying when aggregation serves corrective justice and when it functions primarily as leverage following an adverse decision. These measures are not directed at particular organisations or claimants. They address institutional effects. In a system that permits parallel escalation routes, it is rational for actors to use those routes. The responsibility for preserving coherence lies with system design rather than with individual motivation.

Preserving legitimacy in data protection law, therefore, requires recognising that scale is no longer peripheral to enforcement. It is now central to it. The defining task for the next phase of GDPR collective redress falls to Union institutions, courts, national legislatures, and supervisory authorities alike: to build an enforcement architecture in which collective mechanisms remain available for genuinely unresolved harm, but do not become instruments for functionally neutralising prior determinations, bypassing administrative pathways as a matter of routine, or endlessly reframing materially similar disputes.

Key Recommendations

- Clarify the relationship between administrative enforcement and follow on collective compensation claims.
- Develop clearer principles on finality, duplication, and the treatment of materially similar disputes across forums.
- Reduce national fragmentation in collective redress design, especially on standing, funding, and aggregation rules.
- Ensure that access to justice remains available where administrative enforcement is delayed, partial, or non-compensatory.
- Improve institutional coordination between supervisory authorities, courts, and collective redress mechanisms.