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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679 - Discussion paper on complaints: admissibility, preliminary vetting and amicable settlement

During bilateral meetings held between the Presidency and delegations, concerns related to the administrative and procedural burden which the proposed Regulation may entail were raised again. In this context, the option of exploring preliminary vetting and amicable settlement has been put forward by some delegations as a way of facilitating the handling of certain types of complaint, and thus alleviating the possible administrative and procedural burden.

The Presidency therefore invites delegations to discuss specific issues related to the handling of complaints, with a focus on the following three elements:

- Admissibility of complaints
- Preliminary vetting
- Amicable settlement

Admissibility of complaints

The Presidency wishes to hold a discussion on the admissibility of complaints, which is closely linked to the redrafting of Article 3 and the suggested deletion of the Annexe of the Commission proposal. In this context, the Presidency invites delegations to address the following questions:

1. What should be the key conditions for the admissibility of a complaint?
2. Should the conditions for the admissibility of a complaint be left at national level or harmonised at EU level?
3. Should the admissibility of a complaint be determined by the concerned supervisory authority (CSA) with which the complaint was lodged or by the lead supervisory authority (LSA)?

Preliminary vetting

Preliminary vetting for certain types of complaint has been relied upon by some national supervisory authorities in order to provide a swift resolution of complaints for data subjects. The European Data Protection Board (EDPB) has notably addressed this practice in a document aiming at setting common preliminary handling procedures for certain type of complaints¹. Against this background, the Presidency invites delegations to answer the following questions:

4. Does your national supervisory authority rely on the use of preliminary vetting procedure for certain types of complaint?

If yes:

- a) What does preliminary vetting imply in your Member State (Definition, limitation to specific cases, etc...)?
- b) Which percentage of complaint cases are being resolved through preliminary vetting in your Member State?

¹ [Internal EDPB Document 6/2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints](#)

If no:

- c) Could the introduction of a preliminary vetting procedure be considered in your Member State?

Amicable settlement

The GDPR already mentions the possibility to resolve certain types of complaint through amicable settlement, most precisely in its recital 131 which states that “..., *the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of this Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include: specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or processing that has to be assessed taking into account relevant legal obligations under Member State law.*” In addition, the EDPB has adopted guidelines on the practical implementation of amicable settlements².

In this context and taking into account Article 5 of the Commission’s proposal, the Presidency invites delegations to answer the following questions:

5. Does your national supervisory authority rely on amicable settlement to resolve certain types of complaint?

If yes:

- a) What does amicable settlement imply in your Member State (Definition, limitation to specific cases, etc...)?

² [EDPB Guidelines 06/2022 on the practical implementation of amicable settlements](#)

- b) Which percentage of complaint cases are being resolved through amicable in your Member State?

If no:

- c) Could the introduction of an amicable procedure be considered in your Member State?

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