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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 - Presidency proposal

Delegations will find in the Annex a Presidency proposal with a view to redraft the Commission's proposal, more particularly regarding Articles 3, 5, 8, 9, 10 and 14. The proposal builds upon the thematic discussions held within the Working Party on improving efficiency in reaching consensus (ST 17028/23) and on complaints (ST 5426/24), also taking into account the written comments and contributions already received from delegations on the related articles.

#### **Article 3**

The Presidency proposes to clarify the scope of this article by amending its title and refer to “complaints relating to cross-border processing”.

Following the outcome of the discussion within the Working Party on the admissibility of complaints, the Presidency proposes:

- to maintain the harmonisation of the information required for the admissibility of complaint relating to cross-border processing at EU level (paragraph 1).
- that no additional information shall be required for a complaint to be admissible (paragraph 1bis),
- that the supervisory authority with which the complaint was lodged (paragraph 1bis):
  - decides on the admissibility of a complaint,
  - may ask formal requirements for the admissibility of complaints under national law,
  - may facilitate submission of complementary information.

The Presidency proposal on Article 3 is accompanied by several explanatory recitals (Recitals 4 to 4c) which aim at bringing clarification to the implementation of the Article's redrafted provisions.

*Nb: The Presidency did not propose any redrafting of paragraph 5, which will be further addressed as part of an overall discussion and redrafting on the issue of confidentiality.*

## **Article 5**

Following the outcome of the discussion within the Working Party on preliminary vetting and amicable settlement, the Presidency proposes:

- to introduce provisions allowing supervisory authorities receiving a complaint or the lead authority to consider that the object of a complaint does no longer exist during a preliminary vetting phase, and under specific circumstances and conditions;
- to clarify procedural steps to be taken by the concerned supervisory authority or the lead supervisory authority as a follow up to the early resolution of a complaint.

The Presidency proposal on Article 5 is accompanied by several explanatory recitals (Recitals 9 to 9b) which aim at bringing clarification to the implementation of the Article's redrafted provisions.

## **Article 8**

Given the overall support for the aim and spirit of this Article during the discussion within the Working Party, the Presidency suggests:

- to maintain the overall structure of the Article as proposed by the Commission, while adding up new elements or clarification to the list of relevant information under paragraph 2 as proposed by delegations where necessary;
- to complement this Article by two new recitals (Recital 12a and 12b) allowing for a proportionate and continuous approach in the provision of relevant information by the lead supervisory authority, depending on the specificity of the case being investigated and providing examples of the type of information covered by the elements listed under paragraph 2.

The exchange of information between concerned supervisory authorities and the lead supervisory authority is also clarified, and the Presidency suggests that modalities for such exchange may be further specified by the Board in its rules of procedure (See also Presidency proposal on Article 9, paragraph 5).

## **Article 9**

Following the discussion held within the Working Party on 23rd January, the Presidency proposal mainly aims at clarifying and explaining the conditions under which the identification of legal and technological assessment and the preliminary identification of potential corrective measures (Paragraph 1, c) and d)) may have to be included in the summary of key information depending on the specificity of a case, with a dedicated new recital 12c.

In addition, the Presidency proposal intends to clarify the procedure for the provision and circulation of comments that may be provided on the summary of key issues and the follow up to be given by the lead supervisory authority (new paragraph 4), while leaving to the Board the opportunity to further specify the modalities and requirements for the format and provision of such comments (deletion of paragraph 4 and new paragraph 5).

## **Article 10**

The Presidency suggests moving paragraph 6 of Article 9 under Article 10, with a view to clearly distinguish in this article the two possible outcomes of the comments received on the summary of key issues pursuant to Article 9:

- Cases where none of the supervisory authorities concerned provided comment on the summary and cases where the lead supervisory authority agrees with the comment provided (paragraph 1a): the Presidency suggests that a preliminary draft decision pursuant to Article 14 shall be communicated within 9 months, with an opportunity for the lead supervisory authority to extend this period (the number of months is to be determined and will be addressed as part of an overall discussion and proposal on timelines).
- Cases where the lead supervisory authority does not follow the comment provided or where a supervisory authority disagrees with the assessment of the lead supervisory authority (paragraph 1): the Presidency suggests that a supervisory authority makes a request to the lead supervisory authority pursuant to Article 61 or 62 of the GDPR.

As suggested by several delegations, the Presidency proposals now includes the possibility for a supervisory authority concerned to request an urgent binding decision by the Board (paragraph 4) and specifies further the documents to be provided when requesting such a decision (paragraph 5).

The Presidency may consider amending the related recitals, or proposing new recitals, at a later stage in order to further clarify the provision under this article.

## **Article 14**

The Presidency proposes, with a view to ensure consistency with the procedure already existing under the GDPR, to align terminology and to refer to “preliminary draft decision” instead of “preliminary findings”.

In addition to the alignment of this new terminology throughout the text of this Article and of related Articles, the Presidency proposals includes a new provision so that the preliminary draft decision is first notified to the supervisory authority concerned, which may provide comments, prior to being notified to the parties under investigations.

The Presidency proposal on paragraph 4 and 6 aims at allowing the lead supervisory authority to hear the views of the parties under investigation in writing or orally.

The Presidency may consider amending the related recitals, or proposing new recitals, at a later stage in order to further clarify the provision under this article.

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2023/0202 (COD)

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>3</sup> establishes a decentralised enforcement system which aims to ensure the consistent interpretation and application of Regulation (EU) 2016/679 in cross-border cases. In cases concerning cross-border processing of personal data, this system requires cooperation between supervisory authorities in an endeavour to reach consensus and, where supervisory authorities cannot reach consensus, provides for dispute resolution by the European Data Protection Board (the Board).
- (2) In order to provide for the smooth and effective functioning of the cooperation and dispute resolution mechanism provided for in Articles 60 and 65 of Regulation (EU) 2016/679, it is necessary to lay down rules concerning the conduct of proceedings by the supervisory authorities in cross-border cases, and by the Board during dispute resolution, including the handling of cross-border complaints. It is also necessary for this reason to lay down rules concerning the exercise of the right to be heard by the parties under investigation prior to the adoption of decisions by supervisory authorities and, as the case may be, by the Board.
- (3) Complaints are an essential source of information for detecting infringements of data protection rules. Defining clear and efficient procedures for the handling of complaints in cross-border cases is necessary since the complaint may be dealt with by a supervisory authority other than the one to which the complaint was lodged.

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<sup>3</sup> 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) (OJ L 119, 4.5.2016, p. 1).

- (4) In order to be admissible a complaint should contain certain specified information. **No additional information should be required for a complaint relating to cross-border processing to be deemed admissible.** Therefore, in order to assist complainants in submitting the necessary facts to the supervisory authorities, a complaint form should be provided. ~~The information specified in the form should be required only in cases of cross-border processing in the sense of Regulation (EU) 2016/679, though the form may be used by supervisory authorities for cases that do not concern cross border processing. The form may be submitted electronically or by post. The submission of the information listed in that form should be a condition for a complaint relating to cross-border processing to be treated as a complaint as referred to in Article 77 of Regulation (EU) 2016/679.~~ **Formal requirements for the admissibility of complaints under the national law of the supervisory with which a complaint is lodged, such as language, specific template or signature, could apply.** No additional information should be required for a complaint to be deemed admissible.
- (4a) The information required includes the contact details of the person, or entity, filling the complaint, which could include postal address, email address, residence, etc. Supervisory authorities should endeavour to acknowledge receipt of complaints that have been submitted electronically.**
- (4b) Supervisory authorities should facilitate the submission of all required information by the complainant and, where some of the strictly necessary information for the complaint is missing, could contact the complainant in order to obtain the missing information where feasible. Only the supervisory authority with which the complaint is lodged should decide on its admissibility.**



- (4c) Where, following receipt of a complaint relating to cross-border processing from a supervisory authority concerned, the lead supervisory authority requires additional information from the complainant in order to investigate the complaint, the supervisory authority with which the complaint was lodged should assist the lead supervisory authority, including by contacting the complainant to seek the required information and translate documents, if needed. The lead supervisory authority should not contest the admissibility of a complaint relating to cross-border processing.**
- (4d)** It should be possible for supervisory authorities to facilitate the submission of complaints in a user-friendly electronic format and bearing in mind the needs of persons with disabilities, as long as the information required from the complainant corresponds to the information required by the form and no additional information is required in order to find the complaint admissible.
- (5) Supervisory authorities are obliged to decide on complaints within a reasonable timeframe. What is a reasonable timeframe depends on the circumstances of each case and, in particular, its context, the various procedural steps followed by the lead supervisory authority, the conduct of the parties in the course of the procedure and the complexity of the case.

- (6) Each complaint handled by a supervisory authority pursuant to Article 57(1), point (f), of Regulation (EU) 2016/679 is to be investigated with all due diligence to the extent appropriate bearing in mind that every use of powers by the supervisory authority must be appropriate, necessary and proportionate in view of ensuring compliance with Regulation (EU) 2016/679. It falls within the discretion of each competent authority to decide the extent to which a complaint should be investigated. While assessing the extent appropriate of an investigation, supervisory authorities should aim to deliver a satisfactory resolution to the complainant, which may not necessarily require exhaustively investigating all possible legal and factual elements arising from the complaint, but which provides an effective and quick remedy to the complainant. The assessment of the extent of the investigative measures required could be informed by the gravity of the alleged infringement, its systemic or repetitive nature, or the fact, as the case may be, that the complainant also took advantage of her or his rights under Article 79 of Regulation (EU) 2016/679.
- (7) The lead supervisory authority should provide the supervisory authority with which the complaint was lodged with the necessary information on the progress of the investigation for the purpose of providing updates to the complainant.
- (8) The competent supervisory authority should provide the complainant with access to the documents on the basis of which the supervisory authority reached a preliminary conclusion to reject fully or partially the complaint.
- (9) In order for supervisory authorities to bring a swift end to infringements of Regulation (EU) 2016/679 and to deliver a quick resolution for complainants, supervisory authorities should endeavour, where a complaint relates to the exercise of rights of the complainant under Chapter III of Regulation (EU) 2016/679 appropriate, to apply a procedure allowing for its early resolution, provided that such resolution results in the satisfaction of the complainant's request. ~~resolve complaints by amicable settlement.~~

- (9a) The early resolution of a complaint may be particularly useful in expeditiously resolving disputes concerning data subject rights to the satisfaction of the complainant. Such outcome should allow the supervisory authority with which the complaint was lodged, or the lead supervisory authority, to consider that the object of the complaint ceased to exist and that the complainant is satisfied.**
- (9b) The ~~fact~~ circumstance that an individual complaint has been resolved through an amicable settlement a procedure allowing for its early resolution** does not prevent the competent supervisory authority from pursuing an *ex officio* case, ~~for example~~ **in particular** in the case of systemic or repetitive infringements of Regulation (EU) 2016/679.
- (10) In order to guarantee the effective functioning of the cooperation and consistency mechanisms in Chapter VII of Regulation (EU) 2016/679, it is important that cross-border cases are resolved in a timely fashion and in line with the spirit of sincere and effective cooperation that underlies Article 60 of Regulation (EU) 2016/679. The lead supervisory authority should exercise its competence within a framework of close cooperation with the other supervisory authorities concerned. Likewise, supervisory authorities concerned should actively engage in the investigation at an early stage in an endeavour to reach a consensus, making full use of the tools provided by Regulation (EU) 2016/679.
- (11) It is particularly important for supervisory authorities to reach consensus on key aspects of the investigation as early as possible and prior to the communication of allegations to the parties under investigation and adoption of the draft decision referred to in Article 60 of Regulation (EU) 2016/679, thereby reducing the number of cases submitted to the dispute resolution mechanism in Article 65 of Regulation (EU) 2016/679 and ultimately ensuring the quick resolution of cross-border cases.
- (12) Cooperation between supervisory authorities should be based on open dialogue which allows concerned supervisory authorities to meaningfully impact the course of the investigation by sharing their experiences and views with the lead supervisory authority, with due regard for the margin of discretion enjoyed by each supervisory authority, including in the assessment of the extent appropriate to investigate a case, and for the varying traditions of the Member States.

**(12a) In this context, relevant information to be exchanged between the lead supervisory authority and supervisory authorities concerned is an important element to support the spirit of effective and sincere cooperation. The list of relevant information to be provided by the lead supervisory authority will depend on the specificity of the case being investigated and should be considered in a proportionate manner. Such exchange of relevant information, and the timely provision of specific elements of relevant information by the lead supervisory authority, should be understood as a continuous process throughout the course of an investigation and may vary in terms of documents and details required, depending on the complexity of the case being investigated. For example, depending on the advancement and the circumstances of a case, such relevant information may progressively include, among others, the correspondence with the data controller or the data subject on the subject of a complaint or investigation, the preparatory documents for an audit or inspection, or preliminary technical or legal assessment being considered by the lead supervisory authority as a result of a specific step in its investigation.**

**(12b) While the lead supervisory authority should provide any relevant information to the supervisory authorities concerned as soon as the information becomes available, concerned supervisory authorities should also proactively make available any relevant information deemed useful to assess the legal and technical circumstances of a case. The exchange of relevant information should support the swift and effective functioning of the cooperation between supervisory authorities and may, in certain cases, be supported by summary or extracts of documents in order to facilitate a swift understanding of a case, while allowing for supplementary information to be provided where further elements become necessary. In order to facilitate an effective and proportionate exchange of information between the lead supervisory authority and supervisory authorities concerned, the Board may specify in its rules of procedure the modalities and requirements for the exchange of such information.**

**(12c)** ~~For this purpose~~ **As part of the relevant information**, the lead supervisory authority should provide concerned supervisory authorities with a summary of key issues setting out its preliminary view on the main issues in an investigation. It should be provided at a sufficiently early stage to allow effective inclusion of **the views to be provided by** supervisory authorities concerned but at the same time at a stage where the lead supervisory authority **has sufficient elements to form its** views on the case ~~are sufficiently mature,~~ **where necessary by means of preliminary analysis and possible initial investigative measures.** **While the summary of key issues should always include the main relevant facts, the preliminary identification of the scope of future investigations and the provision of Regulation (EU) 2016/679 concerned by the alleged infringement which will be investigated, other additional elements should be provided in the summary of key issues depending on their availability and their relevance in order to facilitate the substantial assessment by supervisory authorities concerned and the formulation of their respective views. Such additional elements could include the identification of legal and technical issues deemed relevant for the investigation, in particular where such issues appear more complex. The summary of key issue could also include the preliminary identification of potential corrective measures in cases where the lead supervisory authority has sufficient elements to form a preliminary view on the matter, in particular when the provision of Regulation (EU) 2016/679 concerned by the alleged infringement can be easily circumscribed and identified at an early stage.**

**(12d)** Concerned supervisory authorities should have the opportunity to provide their comments **on the summary of key issues, including** on a broad range of questions, such as the scope of the investigation, **the identification of alleged infringement** and the identification of ~~complex factual and legal assessments~~ **issues which are relevant for the investigation**. Given that the scope of the investigation determines the matters which require investigation by the lead supervisory authority, supervisory authorities should endeavour to achieve consensus as early as possible on the scope of the investigation.

- (13) In the interest of effective inclusive cooperation between all supervisory authorities concerned and the lead supervisory authority, the summary of key issues and the comments of concerned supervisory authorities should be concise and worded in sufficiently clear and precise terms to be easily understandable to all supervisory authorities. The legal arguments should be grouped by reference to the part of the summary of key issues to which they relate. The summary of key issues and the comments of supervisory authorities concerned may be supplemented by additional documents. However, a mere reference in the comments of a supervisory authority concerned to supplementary documents cannot make up for the absence of the essential arguments in law or in fact which should feature in the comments. The basic legal and factual particulars relied on in such documents should be indicated, at least in summary form, coherently and intelligibly in the comment itself.
- (14) Cases that do not raise contentious issues do not require extensive discussion between supervisory authorities in order to reach a consensus and could, therefore, be dealt with more quickly. When none of the supervisory authorities concerned raise comments on the summary of key issues, the lead supervisory authority should communicate the preliminary findings provided for in Article 14 within nine months.
- (15) Supervisory authorities should avail of all means necessary to achieve a consensus in a spirit of sincere and effective cooperation. Therefore, if there is a divergence in opinion between the supervisory authorities concerned and the lead supervisory authority regarding the scope of a complaint-based investigation, including the provisions of Regulation (EU) 2016/679 the infringement of which will be investigated, or where the comments of the supervisory authorities concerned relate to an important change in the complex legal or technological assessment, the concerned authority should use the tools provided for under Articles 61 and 62 of Regulation (EU) 2016/679.

- (16) If the use of those tools does not enable the supervisory authorities to reach a consensus on the scope of a complaint-based investigation, the lead supervisory authority should request an urgent binding decision of the Board under Article 66(3) of Regulation (EU) 2016/679. For this purpose, the requirement of urgency should be presumed. The lead supervisory authority should draw appropriate conclusions from the urgent binding decision of the Board for the purposes of preliminary findings. The urgent binding decision of the Board cannot pre-empt the outcome of the investigation of the lead supervisory authority or the effectiveness of the rights of the parties under investigation to be heard. In particular, the Board should not extend the scope of the investigation on its own initiative.
- (17) To enable the complainant to exercise her or his right to an effective judicial remedy under Article 78 of Regulation (EU) 2016/679, the supervisory authority fully or partially rejecting a complaint should do so by means of a decision which may be challenged before a national court.
- (18) Complainants should have the opportunity to express their views before a decision adversely affecting them is taken. Therefore, in the event of full or partial rejection of a complaint in a cross-border case, the complainant should have the opportunity to make her or his views known prior to the submission of a draft decision under Article 60(3) of Regulation (EU) 2016/679, a revised draft decision under Article 60(4) of Regulation (EU) 2016/679 or a binding decision of the Board under Article 65(1), point (a), of Regulation (EU) 2016/679. The complainant may request access to the non-confidential version of the documents on which the decision fully or partially rejecting the complaint is based.

- (19) It is necessary to clarify the division of responsibilities between the lead supervisory authority and the supervisory authority with which the complaint was lodged in the case of rejection of a complaint in a cross-border case. As the point of contact for the complainant during the investigation, the supervisory authority with which the complaint was lodged should obtain the views of the complainant on the proposed rejection of the complaint and should be responsible for all communications with the complainant. All such communications should be shared with the lead supervisory authority. Since under Article 60(8) and (9) of Regulation (EU) 2016/679 the supervisory authority with which the complaint was lodged has the responsibility of adopting the final decision rejecting the complaint, that supervisory authority should also have the responsibility of preparing the draft decision under Article 60(3) of Regulation (EU) 2016/679.
- (20) The effective enforcement of Union data protection rules should be compatible with the full respect of the parties' rights of defence, which constitutes a fundamental principle of Union law to be respected in all circumstances, and in particular in procedures which may give rise to penalties.
- (21) In order to effectively safeguard the right to good administration and the rights of defence as enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'), including the right of every person to be heard before any individual measure which would affect him or her adversely is taken, it is important to provide for clear rules on the exercise of this right.
- (22) The rules regarding the administrative procedure applied by supervisory authorities when enforcing Regulation (EU) 2016/679 should ensure that the parties under investigation effectively have the opportunity to make known their views on the truth and relevance of the facts, objections and circumstances put forward by the supervisory authority throughout the procedure, thereby enabling them to exercise their rights of defence. The preliminary findings set out the preliminary position on the alleged infringement of Regulation (EU) 2016/679 following investigation. They thus constitute an essential procedural safeguard which ensures that the right to be heard is observed. The parties under investigation should be provided with the documents required to defend themselves effectively and to comment on the allegations made against them, by receiving access to the administrative file.



- (23) The preliminary findings define the scope of the investigation and therefore the scope of any future final decision (as the case may be, taken on the basis of a binding decision issued by the Board under Article 65(1), point (a) of Regulation (EU) 2016/679) which may be addressed to controllers or processors. The preliminary findings should be couched in terms that, even if succinct, are sufficiently clear to enable the parties under investigation to properly identify the nature of the alleged infringement of Regulation (EU) 2016/679. The obligation of giving the parties under investigation all the information necessary to enable them to properly defend themselves is satisfied if the final decision does not allege that the parties under investigation have committed infringements other than those referred to in the preliminary findings and only takes into consideration facts on which the parties under investigation have had the opportunity of making known their views. The final decision of the lead supervisory authority is not, however, necessarily required to be a replica of the preliminary findings. The lead supervisory authority should be permitted in the final decision to take account of the responses of the parties under investigation to the preliminary findings, and, where applicable, the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, and the Article 65(1), point (a), decision resolving the dispute between the supervisory authorities. The lead supervisory authority should be able to carry out its own assessment of the facts and the legal qualifications put forward by the parties under investigation in order either to abandon the objections when the supervisory authority finds them to be unfounded or to supplement and redraft its arguments, both in fact and in law, in support of the objections which it maintains. For example, taking account of an argument put forward by a party under investigation during the administrative procedure, without it having been given the opportunity to express an opinion in that respect before the adoption of the final decision, cannot *per se* constitute an infringement of defence rights.

- (24) The parties under investigation should be provided with a right to be heard prior to the submission of a revised draft decision under Article 60(5) of Regulation (EU) 2016/679 or the adoption of a binding decision by the Board pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679.
- (25) Complainants should be given the possibility to be associated with the proceedings initiated by a supervisory authority with a view to identifying or clarifying issues relating to a potential infringement of Regulation (EU) 2016/679. The fact that a supervisory authority has already initiated an investigation concerning the subject matter of the complaint or will deal with the complaint in an ex officio investigation subsequent to the receipt of the complaint does not bar the qualification of a data subject as complainant. However, an investigation by a supervisory authority of a possible infringement of Regulation (EU) 2016/679 by a controller or processor does not constitute an adversarial procedure between the complainant and the parties under investigation. It is a procedure commenced by a supervisory authority, upon its own initiative or based on a complaint, in fulfilment of its tasks under Article 57(1) of Regulation (EU) 2016/679. The parties under investigation and the complainant are, therefore, not in the same procedural situation and the latter cannot invoke the right to a fair hearing when the decision does not adversely affect her or his legal position. The complainant's involvement in the procedure against the parties under investigation cannot compromise the right of these parties to be heard.
- (26) The complainants should be given the possibility to submit in writing views on the preliminary findings. However, they should not have access to business secrets or other confidential information belonging to other parties involved in the proceedings. Complainants should not be entitled to have generalised access to the administrative file.
- (27) When setting deadlines for parties under investigation and complainants to provide their views on preliminary findings, supervisory authorities should have regard to the complexity of the issues raised in preliminary findings, in order to ensure that the parties under investigation and complainants have sufficient opportunity to meaningfully provide their views on the issues raised.

- (28) The exchange of views prior to the adoption of a draft decision involves an open dialogue and an extensive exchange of views where supervisory authorities should do their utmost to find a consensus on the way forward in an investigation. Conversely, the disagreement expressed in relevant and reasoned objections pursuant to Article 60(4) of Regulation (EU) 2016/679, which raise the potential for dispute resolution between supervisory authorities under Article 65 of Regulation (EU) 2016/679 and delay the adoption of a final decision by the competent supervisory authority, should arise in the exceptional case of a failure of supervisory authorities to achieve a consensus and where necessary to ensure the consistent interpretation of Regulation (EU) 2016/679. Such objections should be used sparingly, when matters of consistent enforcement of Regulation (EU) 2016/679 are at stake, since every use of relevant and reasoned objections postpones the remedy for the data subject. Since the scope of the investigation and the relevant facts should be decided prior to the communication of preliminary findings, these matters should not be raised by supervisory authorities concerned in relevant and reasoned objections. They may, however, be raised by supervisory authorities concerned in their comments on the summary of key issues pursuant to Article 9(3), before preliminary findings are communicated to the parties under investigation.
- (29) In the interest of the efficient and inclusive conclusion of the dispute resolution procedure, where all supervisory authorities should be in a position to contribute their views and bearing in mind the time constraints during dispute resolution, the form and structure of relevant and reasoned objections should meet certain requirements. Therefore, relevant and reasoned objections should be limited to a prescribed length, should clearly identify the disagreement with the draft decision and should be worded in sufficiently clear, coherent and precise terms.
- (30) Access to the administrative file is provided for as a part of the rights of defence and the right to good administration enshrined in the Charter. Access to the administrative file should be provided to the parties under investigation when they are notified of preliminary findings and the deadline to submit their written reply to the preliminary findings should be set.

- (31) When granting access to the administrative file, supervisory authorities should ensure the protection of business secrets and other confidential information. The category of other confidential information includes information other than business secrets, which may be considered as confidential, insofar as its disclosure would significantly harm a controller, a processor or a natural person. The supervisory authorities should be able to request that parties under investigation that submit or have submitted documents or statements identify confidential information.
- (32) Where business secrets or other confidential information are necessary to prove an infringement, the supervisory authorities should assess for each individual document whether the need to disclose is greater than the harm which might result from disclosure.
- (33) When referring a subject-matter to dispute resolution under Article 65 of Regulation (EU) 2016/679, the lead supervisory authority should provide the Board with all necessary information to enable it to assess the admissibility of relevant and reasoned objections and to take the decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679. Once the Board is in receipt of all the necessary documents listed in Article 23, the Chair of the Board should register the referral of the subject-matter in the sense of Article 65(2) of Regulation (EU) 2016/679.
- (34) The binding decision of the Board under Article 65(1), point (a), of Regulation (EU) 2016/679 should concern exclusively matters which led to the triggering of the dispute resolution and be drafted in a way which allows the lead supervisory authority to adopt its final decision on the basis of the decision of the Board while maintaining its discretion.
- (35) In order to streamline the resolution of disputes between supervisory authorities submitted to the Board under Article 65(1), points (b) and (c), of Regulation (EU) 2016/679, it is necessary to specify procedural rules regarding the documents to be submitted to the Board and on which the Board should base its decision. It is also necessary to specify when the Board should register the submission of the matter to dispute resolution.

- (36) In order to streamline the procedure for the adoption of urgent opinions and urgent binding decisions of the Board under Article 66(2) of Regulation (EU) 2016/679, it is necessary to specify procedural rules regarding the timing of the request for an urgent opinion or urgent binding decision, the documents to be submitted to the Board and on which the Board should base its decision, to whom the opinion or decision of the Board should be addressed, and the consequences of the opinion or decision of the Board.
- (37) Chapters III and IV concern cooperation between supervisory authorities, the procedural rights of parties under investigation and the involvement of complainants. To ensure legal certainty, those provisions should not apply to investigations already under way at the time this Regulation enters into force. They should apply to *ex officio* investigations opened after the entry into force of this Regulation and to complaint-based investigations where the complaint was lodged after the entry into force of this Regulation. Chapter V provides procedural rules for cases submitted to dispute resolution under Article 65 of Regulation (EU) 2016/679. Also for reasons of legal certainty, this Chapter should not apply to cases that have been submitted to dispute resolution prior to the entry into force of this Regulation. It should apply to all cases submitted to dispute resolution after the entry into force of this Regulation.
- (38) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42(2) of Regulation (EU) 2018/1725 and delivered a joint opinion on [ ],

HAVE ADOPTED THIS REGULATION:

## Chapter I

### General provisions

#### *Article 1*

#### *Subject matter*

This Regulation lays down procedural rules for the handling of complaints and the conduct of investigations in complaint-based and *ex officio* cases by supervisory authorities in the ~~cross-border~~ enforcement of Regulation (EU) 2016/679 **for cross-border processing**.

#### *Article 2*

#### *Definitions*

For the purposes of this Regulation the definitions in Article 4 of Regulation (EU) 2016/679 shall apply.

The following definitions shall also apply:

- (1) ‘parties under investigation’ means the controller(s) and/or processor(s) investigated for alleged infringement of Regulation (EU) 2016/679 related to cross-border processing;
- (2) ‘summary of key issues’ means the summary to be provided by the lead supervisory authority to supervisory authorities concerned identifying the main relevant facts and the lead supervisory authority’s views on the case;

- (3) ‘preliminary findings’ means the document provided by the lead supervisory authority to the parties under investigation setting out the allegations, the relevant facts, supporting evidence, legal analysis, and, where applicable, proposed corrective measures;
- (4) ‘retained relevant and reasoned objections’ means the objections which have been determined by the Board to be relevant and reasoned within the meaning of Article 4(24) of Regulation (EU) 2016/679.

## Chapter II

### Submission and handling of complaints

#### *Article 3*

#### *~~Cross-border~~ Complaints relating to cross-border processing*

**1.** ~~1.~~—A complaint on the basis of Regulation (EU) 2016/679 that relates to cross-border processing shall provide the **following** information: ~~required in the Form, as set out in the Annex.~~

**(a) name of person or entity filing the complaint;**

**(b) where the complaint is submitted by a body referred to in Article 80 of Regulation (EU) 2016/679, proof that the body has been properly constituted in accordance with the law of a Member State;**

**(c) where the complaint is submitted on the basis of Article 80(1) of Regulation 2016/679, proof that the body lodging the complaint is acting on the basis of the mandate of a data subject;**

**(d) contact details of the person or entity filing the complaint;**

(e) identification of the controller or processor which is the subject of the complaint;

(f) explanation of the alleged infringement of Regulation (EU) 2016/679.

**1bis. The supervisory authority with which the complaint was lodged shall decide on the admissibility of the complaint within one month, pursuant to the following :**

a) ~~No additional~~ **Only** information **under paragraph 1** shall be required in order for the complaint **relating to cross-border processing** to be admissible.

b) **Formal requirements for the admissibility of a complaint under the national law of the supervisory authority with which the complaint is lodged may apply.**

c) **Supervisory authorities may facilitate the submission of supplementary information by complainants.**

2. The supervisory authority with which the complaint was lodged shall establish whether the complaint relates to cross-border processing **and which supervisory authority can be assumed as acting as a lead supervisory authority in accordance with Article 56, paragraph 1 of Regulation (EU) 2016/679, or whether the case may be handled in accordance with Article 56, paragraph 2 of Regulation (EU) 2016/679 .**

~~3. The supervisory authority with which the complaint was lodged shall determine the completeness of the information required by the Form within one month.~~

4. ~~Upon assessment of the completeness of the information required~~ **Where a complaint that relates to cross-border processing is admissible** ~~by the Form,~~ the supervisory authority with which the complaint was lodged shall transmit the complaint to the lead supervisory authority, **unless a procedure allowing for its early resolution pursuant to Article 5 of this Regulation applies.**



- {5. Where the complainant claims confidentiality when submitting a complaint, the complainant shall also submit a non-confidential version of the complaint.}
- ~~6. The supervisory authority with which a complaint was lodged shall acknowledge receipt of the complaint within one week. This acknowledgement shall be without prejudice to the assessment of admissibility of the complaint pursuant to paragraph 3.~~

#### *Article 4*

##### *Investigation of complaints*

While assessing the extent appropriate to which a complaint should be investigated in each case the supervisory authority shall take into account all relevant circumstances, including all of the following:

- (a) the expediency of delivering an effective and timely remedy to the complainant;
- (b) the gravity of the alleged infringement;
- (c) the systemic or repetitive nature of the alleged infringement.

Article 5

~~Amicable settlement~~ **Procedure for the early resolution of complaints relating to cross-border processing**

- 1. A complaint relating to cross-border processing which concerns the exercise of rights of the complainant under Chapter III of Regulation (EU) 2016/679 may be resolved through a procedure allowing for its early resolution when the supervisory authority with which the complaint was lodged, prior to the transmission of the complaint to the lead supervisory, or the lead supervisory authority, considers that the controller or processor has duly complied with the request for the exercise of right to the satisfaction of the complainant.**
- 2. The early resolution of a complaint pursuant to paragraph 1 of this Article may only apply when the supervisory authority with which the complaint was lodged, or the lead supervisory authority as the case may be, has obtained supporting evidence from the controller or processor confirming that it has already complied with the request of the complainant or that it envisages to do so in a short timeframe and when, owing to the satisfaction of the complainant's request, the supervisory authority can determine that the object of the complaint does no longer exist.**

by amicable settlement between the complainant and the parties under investigation. Where the supervisory authority considers that an amicable settlement to the complaint has been found, it shall communicate the proposed settlement to the complainant. If the complainant does not object to the amicable settlement proposed by the supervisory authority within one month, the complaint shall be deemed withdrawn
- 3. Where the supervisory authority with which the complaints was lodged considers that a complaint can be resolved through a procedure allowing for its early resolution in accordance with paragraph 1 of this Article, it shall inform the lead supervisory authority.**

- 4. Where the lead supervisory authority considers that a complaint can be resolved through a procedure allowing for its early resolution in accordance with paragraph 1 of this Article, it shall inform the supervisory authority with which the complaint was lodged.**

*Article 6*

*Translations*

- ~~1. The supervisory authority with which the complaint was lodged shall be responsible for:~~
- ~~(a) translation of complaints and the views of complainants into the language used by the lead supervisory authority for the purposes of the investigation;~~
  - ~~(b) translation of documents provided by the lead supervisory authority into the language used for communication with the complainant, where it is necessary to provide such documents to the complainant pursuant to this Regulation or Regulation (EU) 2016/679.~~
- ~~2. In its rules of procedure, the Board shall determine the procedure for the translation of comments or relevant and reasoned objections expressed by supervisory authorities concerned in a language other than the language used by the lead supervisory authority for the purposes of the investigation.~~

## **Chapter III**

### **Cooperation under Article 60 of Regulation (EU) 2016/679**

#### **SECTION 1**

#### **REACHING CONSENSUS WITHIN THE MEANING OF ARTICLE 60(1) OF REGULATION (EU) 2016/679**

##### *Article 7*

##### *Cooperation between supervisory authorities*

While cooperating in an endeavour to reach a consensus, as provided for in Article 60(1) of Regulation (EU) 2016/679, supervisory authorities shall use all the means provided for in Regulation (EU) 2016/679, including mutual assistance pursuant to Article 61 and joint operations pursuant to Article 62 of Regulation (EU) 2016/679.

The provisions in this section concern the relations between supervisory authorities and are not intended to confer rights on individuals or the parties under investigation.

## Article 8

Relevant information to be exchanged between the lead supervisory authority and supervisory authorities concerned-within the meaning of Article 60(1) and (3) of Regulation (EU) 2016/679

1. The lead supervisory authority shall regularly update the other supervisory authorities concerned about the investigation and provide the other supervisory authorities concerned, ~~at the earliest convenience,~~ with all relevant information ~~once~~ as soon as it becomes available.
2. **In the course of the investigation, the lead supervisory authority and the supervisory authority concerned shall exchange r**Relevant information within the meaning of Article 60(1) and (3) of Regulation (EU) 2016/679, **which** shall include, where applicable **and as soon as available:**
  - (a) information on the opening of an investigation of an alleged infringement of Regulation (EU) 2016/679;
  - (b) requests for information pursuant to Article 58(1), point (e) of Regulation (EU) 2016/679 **and related documents resulting from these requests;**
  - (c) information of the use of other investigative powers referred to in Article 58(1) of Regulation (EU) 2016/679 **and related documents resulting from the exercise of these powers;**
  - (d) in the case of envisaged rejection of complaint, the lead supervisory authority's reasons for rejection of the complaint;

**(dd) the possible early resolution of the complaint pursuant to Article 5 of this Regulation;**

- (e) summary of key issues in an investigation in accordance with Article 9;
- (ee) information on the scope of investigation, including developments or findings which may lead to the modification of the scope of investigation or the opening of a new investigation;**
- (f) information concerning steps **and legal analysis** aiming to establish an infringement of Regulation (EU) 2016/679 prior to the preparation of preliminary ~~findings~~ **draft decision**;
- (g) preliminary ~~findings~~ **draft decision**;
- (h) the response of the parties under investigation to the preliminary ~~findings~~ **draft decision**;
- (i) the views of the complainant on the **non-confidential version of the** preliminary ~~findings~~ **draft decision**;
- (j) in the case of rejection of a complaint, the written submissions of the complainant;
- (k) any relevant steps taken by the lead supervisory authority after receiving the response of the parties under investigation to the preliminary findings and prior to submission of a draft decision in the sense of Article 60(3) of Regulation (EU) 2016/679<sub>;</sub>:-
- (l) any other information deemed useful and relevant for the purpose of the investigation.**

## Article 9

### Summary of key issues

1. Once the lead supervisory authority has **sufficient elements to** formed a preliminary view on the main issues in an investigation **{and no later than X months after the opening of an investigation of an alleged infringement of Regulation (EU) 2016/679}**, it shall draft a summary of key issues for the purpose of cooperation under Article 60(1) of Regulation (EU) 2016/679, **which shall include the following elements:**

~~2. The summary of key issues shall include all of the following elements:~~

- (a) the main relevant facts;
- (b) ~~a preliminary~~ identification of the scope of the investigation, in particular the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement which will be investigated;
- (c) **where applicable,** identification of ~~complex~~ legal and technological ~~assessments~~ **issues** which are relevant for preliminary orientation of their assessment;
- (d) **where applicable,** preliminary identification of potential corrective measure(s).

**The summary of key issues shall be communicated to the supervisory authorities concerned without delay.**

3. The supervisory authorities concerned may provide comments on the summary of key issues. Such comments must be provided within four weeks of receipt of the summary of key issues. **{Upon request of the lead supervisory authority, the period may be extended by another four weeks on account of the complexity of the case}.**

**4. In cases where the supervisory authorities concerned provided comments under paragraph 3, they should be shared with all other supervisory concerned.**

4. ~~Comments provided pursuant to paragraph 3 shall meet the following requirements:~~
- ~~(a) language used is sufficiently clear and contains precise terms to enable the lead supervisory authority, and, as the case may be, supervisory authorities concerned, to prepare their positions;~~
  - ~~(b) legal arguments are set out succinctly and grouped by reference to the part of the summary of key issues to which they relate;~~
  - ~~(c) the comments of the supervisory authority concerned may be supported by documents, which may supplement the comments on specific points.~~
5. The Board may specify in its rules of procedure **the modalities and requirements for the exchange of relevant information between supervisory authorities referred to in Article 8 of this Regulation, and for the provision of comments by supervisory authorities concerned on the summary of key issues referred to in paragraph 3 of this Article.** ~~restrictions on the maximum length of comments submitted by supervisory authorities concerned on the summary of key issues.~~
6. ~~Cases where none of the supervisory authorities concerned provided comments under paragraph 3 of this Article shall be considered non-contentious cases. In such cases, the preliminary findings referred to in Article 14 shall be communicated to the parties under investigation within 9 months of the expiry of the deadline provided for in paragraph 3 of this Article.~~



Article 10

Use of means to reach consensus within within the meaning of Article 60(1) of Regulation (EU) 2016/679

- 1a. In cases where none of the supervisory authorities concerned provided comments under Article 9, paragraph 3, of this Regulation, or in cases where consensus was found following comments received, the preliminary draft decision referred to in Article 14 shall be communicated to the parties under investigation {within 9 months of the expiry of the deadline provided for in Article 9, paragraph 3, of this Regulation. Upon request of the lead supervisory authority, the period may be extended by another X months on account of the complexity of the case}.**
- 1b. In cases where a supervisory authority concerned disagrees with the lead supervisory authority, the**~~A supervisory authority concerned shall make~~a request to the lead supervisory authority under Article 61 of Regulation (EU) 2016/679 or under~~Article 62 of Regulation (EU) 2016/679, or both, where, following the comments of supervisory authorities concerned pursuant to Article 9(3), a supervisory authority concerned disagrees with the assessment of the lead supervisory authority~~**in order to reach consensus** on:
- (a) the scope of the investigation in complaint-based cases, including the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement which will be investigated;
  - (b) ~~preliminary orientation in relation to complex~~**the** legal assessments ~~issues~~ identified by the lead supervisory authority pursuant to Article 9(2), point (c), **where applicable**;
  - (c) ~~preliminary orientation in relation to complex~~**the** technological assessments ~~issues~~ identified by the lead supervisory authority pursuant to Article 9(2), point (c), **where applicable**.

2. The request under paragraph 1 shall be made within two months of the expiry of the period referred to in Article 9(3).
3. The lead supervisory authority shall engage with the supervisory authorities concerned on the basis of their comments on the summary of key issues, and, where applicable, in response to requests under Article 61 and 62 of Regulation (EU) 2016/679, in an endeavour to reach a consensus. The consensus shall be used as a basis for the lead supervisory authority to continue the investigation and draft the preliminary findings or, where applicable, provide the supervisory authority with which the complaint was lodged with its reasoning for the purposes of Article 11(2).
4. Where, in a complaint-based investigation, there is no consensus between the lead supervisory authority and one or more concerned supervisory authorities on the matter referred to in Article 9(2), point (b), of this Regulation, **any supervisory authority concerned or** the lead supervisory authority shall request an urgent binding decision of the Board under Article 66(3) of Regulation (EU) 2016/679. In that case, the conditions for requesting an urgent binding decision under Article 66(3) of Regulation (EU) 2016/679 shall be presumed to be met.
5. When requesting an urgent binding decision of the Board pursuant to paragraph 4 of this Article, the lead **requesting** supervisory authority shall provide all of the following:
  - (a) the documents referred to in Article 9(2), points (a) and (b);
  - (b) the comments of the supervisory authority concerned that disagrees with the lead supervisory authority's preliminary identification of the scope of the investigation.
  - (c) **further exchanges between the lead supervisory authority and the supervisory authorities concerned under Article 9(4), 9(5) and 10(3);**
  - (d) **any other relevant document or information, as requested by the Board.**

6. The Board shall adopt an urgent binding decision on the scope of the investigation on the basis of the comments of the supervisory authorities concerned and the position of the lead supervisory authority on those comments.

**6bis. Following the implementation of the urgent binding decision referred to under paragraph 6 by the Board, the lead supervisory authority shall continue to cooperate with the concerned supervisory authorities under Article 60 of Regulation (EU) 2016/679 to continue handling the case.**

**{The preliminary draft decision referred to in Article 14 shall be communicated to the parties under investigation within X months. Upon request of the lead supervisory authority, the period may be extended by another X months on account of the complexity of the case}.**

## SECTION 2

### FULL OR PARTIAL REJECTION OF COMPLAINTS

#### *Article 11*

##### *Hearing of complainant prior to full or partial rejection of a complaint*

1. Following the procedure provided for in Article 9 and 10, the lead supervisory authority shall provide the supervisory authority with which the complaint was lodged with the reasons for its preliminary view that the complaint should be fully or partially rejected.
2. The supervisory authority with which the complaint was lodged shall inform the complainant of the reasons for the intended full or partial rejection of the complaint and set a time-limit within which the complainant may make known her or his views in writing. The time-limit shall be no less than three weeks. The supervisory authority with which the complaint was lodged shall inform the complainant of the consequences of the failure to make her or his views known.
3. If the complainant fails to make known her or his views within the time-limit set by the supervisory authority with which the complaint was lodged, the complaint shall be deemed to have been withdrawn.
4. The complainant may request access to the non-confidential version of the documents on which the proposed rejection of the complaint is based.

5. If the complainant makes known her or his views within the time-limit set by the supervisory authority with which the complaint was lodged and the views do not lead to a change in the preliminary view that the complaint should be fully or partially rejected, the supervisory authority with which the complaint was lodged shall prepare the draft decision under Article 60(3) of Regulation (EU) 2016/679 which shall be submitted to the other supervisory authorities concerned by the lead supervisory authority pursuant to Article 60(3) of Regulation (EU) 2016/679.

## *Article 12*

### *Revised draft decision fully or partially rejecting a complaint*

1. Where the lead supervisory authority considers that the revised draft decision within the meaning of Article 60(5) of Regulation (EU) 2016/679 raises elements on which the complainant should have the opportunity to make her or his views known, the supervisory authority with which the complaint was lodged shall, prior to the submission of the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, provide the complainant with the possibility to make her or his views known on such new elements.
2. The supervisory authority with which the complaint was lodged shall set a time-limit within which the complainant may make known her or his views.

## *Article 13*

### *Decision fully or partially rejecting a complaint*

When adopting a decision fully or partially rejecting a complaint in accordance with Article 60(8) of Regulation (EU) 2016/679, the supervisory authority with which the complaint was lodged shall inform the complainant of the judicial remedy available to him or her in accordance with Article 78 of Regulation (EU) 2016/679.

## SECTION 3

### DECISIONS ADDRESSED TO CONTROLLERS AND PROCESSORS

#### Article 14

##### *Preliminary ~~findings~~ draft decision and reply*

1. When the lead supervisory authority intends to submit a draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679 to the other supervisory authorities concerned finding an infringement of Regulation (EU) 2016/679, it shall draft a preliminary findings draft decision.
2. The preliminary ~~findings~~ draft decision shall include the main findings of the investigation and present allegations raised in an exhaustive and sufficiently clear way to enable the parties under investigation to take cognisance of the conduct investigated by the lead supervisory authority. In particular, they must set out clearly all the facts and the entire legal assessment raised against the parties under investigation, so that they can express their views on the facts and the legal conclusions the lead supervisory authority intends to draw in the draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679, and list all the evidence it relies upon.

The preliminary ~~findings~~ draft decision shall indicate, based on the information available at that stage and without prejudice to the views of the parties, corrective measures the lead supervisory authority ~~intends to use~~ considers using.

Where the lead supervisory authority, **based on the information available at that stage and without prejudice to the views of the parties,** ~~intends to impose~~**considers imposing an administrative fine in accordance with Article 83 of Regulation (EU) 2016/679,** it shall list in the preliminary ~~findings~~**draft decision** the relevant elements on which it relies while calculating the fine. In particular, the lead supervisory authority shall list the essential facts and matters of law which may result in the imposition of the fine and the elements listed in Article 83(2) of Regulation (EU) 2016/679, including any aggravating or mitigating factors it will take into account.

**2bis. The preliminary draft decision shall be transmitted to the supervisory concerned, which may provide comments to the lead supervisory authorities {within XX weeks}.**

3. **The lead supervisory authority shall notify preliminary ~~findings~~draft decision, where relevant amended to take into account comments received by the supervisory authorities concerned,** to each of the parties under investigation.
4. The lead supervisory authority shall, when notifying the preliminary findings to the parties under investigation, set a time-limit within which these parties may provide their views in writing**, or hold a hearing within the same time-limit in order to hear the views of the parties orally**. The lead supervisory authority shall not be obliged to take into account written views received after the expiry of that time-limit.
5. When notifying the preliminary findings to the parties under investigation, the lead supervisory authority shall provide those parties with access to the administrative file in accordance with Article 20.

6. The parties under investigation may, in their written *for oral* reply to preliminary findings, set out all facts and legal arguments known to them which are relevant to their defence against the allegations of the lead supervisory authority. They shall attach any relevant documents as proof of the facts set out. The lead supervisory authority shall, in its draft decision, deal only with allegations, including the facts and the legal assessment based on those facts, in respect of which the parties under investigation have been given the opportunity to comment.

## *Article 15*

### *Transmission of preliminary findings to complainants*

1. Where the lead supervisory authority issues preliminary findings relating to a matter in respect of which it has received a complaint, the supervisory authority with which the complaint was lodged shall provide the complainant with a non-confidential version of the preliminary findings and set a time-limit within which the complainant may make known its views in writing.
2. Paragraph 1 shall apply also when a supervisory authority, where appropriate, treats several complaints jointly, splits the complaints in several parts or in any other way exercises its discretion concerning the scope of the investigation as set out in preliminary findings.
3. Where the lead supervisory authority considers that it is necessary for the complainant to be provided with documents included in the administrative file in order for the complainant to effectively make known her or his views on the preliminary findings, the supervisory authority with which the complaint was lodged shall provide the complainant with the non-confidential version of such documents when providing the preliminary findings pursuant to paragraph 1.
4. The complainant shall be provided with the non-confidential version of the preliminary findings only for the purpose of the concrete investigation in which the preliminary findings were issued.



5. Before receiving the non-confidential version of preliminary findings and any documents provided pursuant to paragraph 3, the complainant shall send to the lead supervisory authority a confidentiality declaration, where the complainant commits himself or herself not to disclose any information or assessment made in the non-confidential version of preliminary findings or to use those findings for purposes other than the concrete investigation in which those findings were issued.

## *Article 16*

### *Adoption of final decision*

After submitting the draft decision to supervisory authorities concerned pursuant to Article 60(3) of Regulation (EU) 2016/679 and where none of the supervisory authorities concerned has objected to the draft decision within the periods referred to in Article 60(4) and (5) of Regulation (EU) 2016/679, the lead supervisory authority shall adopt and notify its decision under Article 60(7) of Regulation (EU) 2016/679 to the main establishment or single establishment of the controller or processor, as the case may be, and inform the supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds.

## *Article 17*

### *Right to be heard in relation to revised draft decision*

1. Where the lead supervisory authority considers that the revised draft decision within the meaning of Article 60(5) of Regulation (EU) 2016/679 raises elements on which the parties under investigation should have the opportunity to make their views known, the lead supervisory authority shall, prior to the submission of the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, provide the parties under investigation with the possibility to make their views known on such new elements.

2. The lead supervisory authority shall set a time-limit within which the parties under investigation may make known their views.

## SECTION 4

### RELEVANT AND REASONED OBJECTIONS

#### *Article 18*

##### *Relevant and reasoned objections*

1. Relevant and reasoned objections within the meaning of Article 4(24) of Regulation (EU) 2016/679 shall:
- (a) be based exclusively on factual elements included in the draft decision; and
  - (b) not change the scope of the allegations by raising points amounting to identification of additional allegations of infringement of Regulation (EU) 2016/679 or changing the intrinsic nature of the allegations raised.
2. ~~The form and structure of relevant and reasoned objections shall meet all of the following requirements:~~
- ~~(a) the length of each relevant and reasoned objection and the position of the lead supervisory authority on any such objection shall not exceed three pages and shall not include annexes. In cases involving particularly complex legal issues, the maximum length may be increased to six pages, except if specific circumstances justifying a longer length are accepted by the Board;~~

- ~~(b) the disagreement of the supervisory authority concerned with the draft decision shall be stated at the beginning of the relevant and reasoned objection and shall be worded in sufficiently clear, coherent and precise terms to enable the lead supervisory authority, and as the case may be, supervisory authorities concerned, to prepare their positions and to enable the Board to efficiently resolve the dispute;~~
- ~~(c) legal arguments shall be set out and grouped by reference to the operative part of the draft decision to which they relate. Each argument or group of arguments shall generally be preceded by a summary statement.~~

## **Chapter IV**

### **Access to the administrative file and treatment of confidential information**

#### *Article 19*

##### *Content of the administrative file*

1. The administrative file in an investigation concerning an alleged infringement of Regulation (EU) 2016/679 consists of all documents which have been obtained, produced and/or assembled by the lead supervisory authority during the investigation.
2. In the course of investigation of an alleged infringement of Regulation (EU) 2016/679, the lead supervisory authority may return to the party from which they have been obtained documents which following a more detailed examination prove to be unrelated to the subject matter of the investigation. Upon return, these documents shall no longer constitute part of the administrative file.

3. The right of access to the administrative file shall not extend to correspondence and exchange of views between the lead supervisory authority and supervisory authorities concerned. The information exchanged between the supervisory authorities for the purpose of the investigation of an individual case are internal documents and shall not be accessible to the parties under investigation or the complainant.
4. Access to relevant and reasoned objections pursuant to Article 60(4) of Regulation (EU) 2016/679 shall be provided in accordance with Article 24.

## *Article 20*

### *Access to the administrative file and use of documents*

1. The lead supervisory authority shall grant access to the administrative file to the parties under investigation, enabling them to exercise their right to be heard. Access to the administrative file shall be granted after the lead supervisory authority notifies the preliminary findings to the parties under investigation.
2. The administrative file shall include all documents, inculpatory and exculpatory, including facts and documents which are known to the parties under investigation.
3. The conclusions of the lead supervisory authority in the draft decision under Article 60(3) of Regulation (EU) 2016/679 and the final decision under Article 60(7) of Regulation (EU) 2016/679 may only rely on documents cited in the preliminary findings or on which the parties under investigation had the opportunity to make their views known.
4. Documents obtained through access to the administrative file pursuant to this Article shall be used only for the purposes of judicial or administrative proceedings for the application of Regulation (EU) 2016/679 in the specific case for which such documents were provided.

## Article 21

### *Identification and protection of confidential information*

1. Unless otherwise provided in this Regulation, information collected or obtained by a supervisory authority in cross-border cases under of Regulation (EU) 2016/679, including any document containing such information, shall not be communicated or made accessible by the supervisory authority in so far as it contains business secrets or other confidential information of any person.
2. Any information collected or obtained by a supervisory authority in cross-border cases under Regulation (EU) 2016/679, including any document containing such information, is excluded from access requests under laws on public access to official documents as long as the proceedings are ongoing.
3. When communicating preliminary findings to parties under investigation and providing for access to the administrative file on the basis of Article 20, the lead supervisory authority shall ensure that the parties under investigation to whom access is being given to information containing business secrets or other confidential information treat such information with utmost respect for its confidentiality and that such information is not used to the detriment of the provider of the information. Depending on the degree of confidentiality of the information, the lead supervisory authority shall adopt appropriate arrangements to give full effect to the rights of defence of the parties under investigation with due regard for the confidentiality of the information.
4. An entity submitting information that it considers to be confidential shall clearly identify the information which it considers to be confidential, giving reasons for the confidentiality claimed. The entity shall provide a separate non-confidential version of the submission.

5. Without prejudice to paragraph 4, the lead supervisory authority may require the parties under investigation, or any other party which produces documents pursuant to Regulation (EU) 2016/679, to identify the documents or parts of documents which they consider to contain business secrets or other confidential information belonging to them and to identify the parties for which these documents are considered to be confidential.
6. The lead supervisory authority may set a time-limit for parties under investigation and any other party raising a confidentiality claim to:
- (a) substantiate their claims for business secrets and other confidential information for each individual document or part of document, statement, or part of statement;
  - (b) provide a non-confidential version of the documents and statements, in which the business secrets and other confidential information are redacted;
  - (c) provide a concise, non-confidential, description of each piece of redacted information.
7. If the parties under investigation or any other party fails to comply with paragraphs 4 and 5, the lead supervisory authority may assume that the documents or statements concerned do not contain business secrets or other confidential information.

## Chapter V

### Dispute resolution

#### *Article 22*

##### *Referral to dispute resolution under Article 65 of Regulation (EU) 2016/679*

1. If the lead supervisory authority does not follow the relevant and reasoned objections or is of the opinion that the objections are not relevant or reasoned, it shall submit the subject-matter to the dispute resolution mechanism set out in Article 65 of Regulation (EU) 2016/679.
2. When referring the subject-matter to dispute resolution, the lead supervisory authority shall provide the Board with all of the following documents:
  - (a) the draft decision or revised draft decision subject to the relevant and reasoned objections;
  - (b) a summary of the relevant facts;
  - (c) the preliminary findings;
  - (d) view made in writing by the parties under investigation, as the case may be, pursuant to Articles 14 and 17;
  - (e) views made in writing by complainants, as the case may be, pursuant to Articles 11, 12, and 15;
  - (f) the relevant and reasoned objections which were not followed by the lead supervisory authority;

- (g) the reasons on the basis of which the lead supervisory authority did not follow the relevant and reasoned objections or considered the objections not to be relevant or reasoned.
3. The Board shall within four weeks of receiving the documents listed in paragraph 2 identify retained relevant and reasoned objections.

### *Article 23*

#### *Registration in relation to a decision under Article 65(1), point (a), of Regulation (EU) 2016/679*

The Chair of the Board shall register the referral of a subject-matter to dispute resolution under Article 65(1), point (a), of Regulation (EU) 2016/679 no later than one week after having received all of the following documents:

- (a) the draft decision or revised draft decision subject to the relevant and reasoned objections;
- (b) a summary of the relevant facts;
- (c) view made in writing by the parties under investigation, as the case may be, pursuant to Articles 14 and 17;
- (d) views made in writing by complainants, as the case may be, pursuant to Articles 11, 12 and 15;
- (e) the retained relevant and reasoned objections;
- (f) the reasons on the basis of which the lead supervisory authority did not follow the retained relevant and reasoned objections.



*Article 24*

*Statement of reasons prior to adoption of decision under Article 65(1), point (a), of Regulation (EU) 2016/679*

1. Prior to adopting the binding decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679, the Chair of the Board shall, through the lead supervisory authority, provide the parties under investigation and/or, in the case of full or partial rejection of a complaint, the complainant, with a statement of reasons explaining the reasoning the Board intends to adopt in its decision. Where the Board intends to adopt a binding decision requiring the lead supervisory authority to amend its draft decision or revised draft decision, the Board shall decide whether such statement of reasons should be accompanied by the retained relevant and reasoned objections on the basis of which the Board intends to adopt its decision.
2. The parties under investigation and/or, in the case of full or partial rejection of a complaint, the complainant, shall have one week from receipt of the statement of reasons referred to in paragraph 1 to make their views known.
3. The deadline in paragraph 2 shall be extended by one week where the Board extends the period for adoption of the binding decision in accordance with Article 65(2) of Regulation (EU) 2016/679.
4. The period for adoption of the binding decision of the Board provided for in Article 65(2) of Regulation (EU) 2016/679 shall not run during the periods provided for in paragraphs 2 and 3.

## Article 25

### *Procedure in relation to decision under Article 65(1), point (b), of Regulation (EU) 2016/679*

1. When referring a subject-matter to the Board under Article 65(1), point (b), of Regulation 2016/679, the supervisory authority referring the subject-matter regarding the competence for the main establishment shall provide the Board with all of the following documents:
  - (a) a summary of the relevant facts;
  - (b) the assessment of these facts as far as the conditions of Article 56(1) of Regulation (EU) 2016/679 are concerned;
  - (c) views made by the controller or processor whose main establishment is the subject of the referral;
  - (d) the views of other supervisory authorities concerned by the referral;
  - (e) any other document or information the referring supervisory authority considers relevant and necessary in order to find a resolution on the subject-matter.
2. The Chair of the Board shall register the referral no later than one week after having received the documents referred to in paragraph 1.

## Article 26

### *Procedure in relation to decision under Article 65(1), point (c), of Regulation (EU) 2016/679*

1. When referring a subject-matter to the Board under Article 65(1), point (c), of Regulation 2016/679, the supervisory authority referring the subject-matter or the Commission shall provide the Board with all of the following documents:
  - (a) a summary of the relevant facts;

- (b) the opinion, as the case may be, issued by the Board pursuant to Article 64 of Regulation (EU) 2016/679;
- (c) the views of the supervisory authority referring the subject-matter or the Commission as to whether, as the case may be, a supervisory authority was required to communicate the draft decision to the Board pursuant to Article 64(1) of Regulation (EU) 2016/679, or a supervisory authority did not follow an opinion of the Board issued pursuant to Article 64 of Regulation (EU) 2016/679.

2. The Chair of the Board shall request the following documents:

- (a) the views of the supervisory authority alleged to have breached the requirement to communicate a draft decision to the Board or to have failed to follow an opinion of the Board;
- (b) any other document or information the supervisory authority considers relevant and necessary in order to find a resolution on the subject-matter.

If any supervisory authority declares a need to submit its views on the referred subject-matter, it shall submit those views within two weeks of the referral referred to in paragraph 1.

3. The Chair of the Board shall register the referral no later than one week after having received the documents referred to in paragraphs 1 and 2.

## Chapter VI

### Urgency procedure

#### *Article 27*

#### *Urgent opinions under Article 66(2) of Regulation (EU) 2016/679*

1. A request for an urgent opinion of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks prior to the expiry of provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679 and shall contain all of the following items:
  - (a) a summary of the relevant facts;
  - (b) a description of the provisional measure adopted on its own territory, its duration and the reasons for adopting it, including the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;
  - (c) a justification of the urgent need for final measures to be adopted on the territory of the Member State of the requesting supervisory authority, including an explanation of the exceptional nature of circumstances requiring the adoption of the measures concerned.
2. The urgent opinion of the Board shall be addressed to the supervisory authority that submitted the request. It shall be similar to an opinion within the meaning of Article 64(1) of Regulation (EU) 2016/679 and enable the requesting authority to maintain or amend its provisional measure in line with the obligations of Article 64(7) of Regulation (EU) 2016/679.

## Article 28

### *Urgent decisions under Article 66(2) of Regulation (EU) 2016/679*

1. A request for an urgent decision of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks prior to the expiry of provisional measures adopted under Articles 61(8), 62(7) or 66(1) of Regulation (EU) 2016/679. That request shall contain all of the following items:
  - (a) a summary of the relevant facts;
  - (b) the provisional measure adopted on the territory of the Member State of the supervisory authority requesting the decision, its duration and the reasons for adopting the provisional measures, in particular the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;
  - (c) information on any investigatory measures taken on its own territory and replies received from the local establishment of the parties under investigation or any other information in the possession of the requesting supervisory authority;
  - (d) a justification of the urgent need for final measures to be adopted on the territory of the requesting supervisory authority, bearing in mind the exceptional nature of circumstances requiring the adoption of the final measure, or proof that a supervisory authority failed to respond to a request under Article 61(3) or 62(2) of Regulation (EU) 2016/679;
  - (e) where the requesting authority is not the lead supervisory authority, the views of the lead supervisory authority;

- (f) where applicable, the views of the local establishment of the parties under investigation against which provisional measures were taken pursuant to Article 66(1) of Regulation (EU) 2016/679.
2. The urgent decision referred to in paragraph 1 shall be addressed to the supervisory authority that submitted the request and shall enable the requesting authority to maintain or amend its provisional measure.
  3. Where the Board adopts an urgent binding decision indicating that final measures should be adopted, the supervisory authority to which the decision is addressed shall adopt such measures prior to the expiry of the provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679.
  4. The supervisory authority that submitted the request referred to in paragraph 1 shall notify its decision on the final measures to the establishment of the controller or processor on the territory of its Member State and inform the Board. Where the lead supervisory authority is not the requesting authority, the requesting authority shall inform the lead supervisory authority of the final measure.
  5. Where the urgent binding decision indicates that final measures do not urgently need to be adopted, the lead and supervisory authorities concerned shall follow the procedure in Article 60 of Regulation (EU) 2016/679.

## Chapter VII

### General and final provisions

#### *Article 29*

##### *Beginning of time periods and definition of working day*

1. Time-limits provided for in or fixed by the supervisory authorities pursuant to Regulation (EU) 2016/679 shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council<sup>4</sup>.
2. Time periods shall begin on the working day following the event to which the relevant provision of Regulation (EU) 2016/679 or this Regulation refers.

#### *Article 30*

##### *Transitional provisions*

Chapters III and IV shall apply to *ex officio* investigations opened after the entry into force of this Regulation and to complaint-based investigations where the complaint was lodged after the entry into force of this Regulation.

Chapter V shall apply to all cases submitted to dispute resolution under Article 65 of Regulation (EU) 2016/679 after the entry into force of this Regulation.

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<sup>4</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

*Article 31*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



*Complaint submitted on the basis of Article 3<sup>5</sup>*

*Part A: Mandatory information*

**1. Identification of person or entity filing the complaint**

Where the complainant is a natural person, submit a form of identification.<sup>6</sup>

Where the complaint is submitted by a body referred to in Article 80 of Regulation (EU) 2016/679, submit proof that the body has been properly constituted in accordance with the law of a Member State.

Where the complaint is submitted on the basis of Article 80(1) of Regulation 2016/679, proof that the body lodging the complaint is acting on the basis of the mandate of a data subject.

**2. Contact details<sup>7</sup>**

Where the complaint is submitted electronically, email address.

Where the complaint is submitted by post, postal address.

Telephone number.

**3. Entity whose processing of your personal data infringes Regulation (EU) 2016/679**

Provide all information in your possession to facilitate the identification of the entity which is the subject of your complaint.

**4. Subject of complaint**

Please set out the facts from which, in your opinion, there is or was processing of your personal data which infringes Regulation (EU) 2016/679 (the GDPR). Indicate in particular the context in which your personal data were processed.

<sup>5</sup>— The complaint should be completed and submitted electronically or completed and submitted to the supervisory authority by post.

<sup>6</sup>— For example, passport, driving licence, national ID.

<sup>7</sup>— In the case a complaint is submitted by a body referred to in Article 80 of Regulation (EU) 2016/679, all of the information in point 2 should be provided.

*Part B: Supplementary information*

If possible, indicate the provisions of Regulation (EU) 2016/679 (the GDPR) which you consider have been breached by the entity processing your personal data.

Please specify whether you have contacted the entity mentioned in point 3 of Part A prior to your complaint and outline the result of any such actions. If possible, please attach any relevant correspondence between you and the entity.

Please specify whether you have started other administrative and/or judicial proceedings regarding the subject matter of your complaint. If so, please provide an explanation of the status, and, where relevant, outcome of such actions.

Submit all documentation in your possession relating to the facts set out in the complaint (for example, copy of the documents attesting the relationship with the data controller (e.g. invoices, contracts); copy of any marketing messages or e-mails; pictures, photographs or screenshots; expert reports; witness reports; inspection reports).

*Part C: Declaration and signature*

Please confirm that the information given in this form is given entirely in good faith.

Date and signature.

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