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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

1 - Due process for parties under investigation and role of the complainant

Complainants

- Should the regulation include provisions harmonising the procedure to hear the views of the complainants?
- On which elements of the investigation should the complainant be able to make his views heard?
 - On the preliminary findings
 - Also on the views of the party under investigation regarding the preliminary findings
 - On any other element

- At what time of the procedure should the views of the complainant be heard?
 - At the preliminary draft decision
 - At a different time

Parties under investigations

- At what time of the procedures should the views of the parties be heard?
 - On the preliminary findings
 - Also on the views of the complainant regarding the preliminary findings
 - On any other element

2 - Confidentiality and access to the file (art 19, 20 and 21)

Article 19 : content of the administrative file

Art 19 §2

- Should this paragraph be deleted from the Regulation?
- Should this paragraph be maintained in the Regulation?

Art 19 §2bis (new paragraph)

- Can the LSA decide alone to include or exclude a document of the administrative file?
- Can the LSA and CSA decide together to include or exclude a document of the administrative file?

Art 19 §3

- Shall the right of access include the correspondence and exchange of views between the LSA and CSA?
- Shall the right of access include the correspondence and exchange of views between the LSA and CSA, unless the LSA considers that this undermines the ongoing procedure?
- Shall the right of access include the correspondence and exchange of views between the LSA and CSA, unless the LSA and/or CSA consider that this undermines the ongoing procedure?

Article 20 : Access to the file and use of the document

Article 20 §1

- Should the Regulation extend the complainant's access to the administrative file?
 - Yes
 - No
- When should this access be granted?
 - At any stage of the procedure
 - After the preliminary findings
 - Following the national law
- Should the access to the administrative file be granted on the request of the parties? Or does the LSA communicate ex officio the content of the file to the parties?
- In the latest case, does the LSA communicate the complete file or only some key documents?

Art 20 §2

- Should this paragraph be deleted?
- Should this paragraph be maintained? If maintained, do delegations see an added value to article 19 §1?

Art 20 §3

- Should this provision be transferred to a new article concerning the final decision?
 - Yes
 - No

Art 20 §4

Shall the document obtained through access to the administrative file be used:

- By DPAs:
 - only for the purpose of the judicial or administrative proceedings for the application of the GDPR in the specific case for which such documents were provided?
 - for the purpose of the judicial or administrative proceedings for the application of the GDPR?
 - also for other purposes in accordance with national law?
- By the parties under investigation:
 - only for the purpose of the judicial or administrative proceedings for the application of the GDPR in the specific case for which such documents were provided?
 - for the purpose of the judicial or administrative proceedings for the application of the GDPR?
 - also for other purposes in accordance with national law?

Article 21: identification and protection of confidential information

Art 21 §1

Should the information collected or obtained by a supervisory authority in cross-border cases not be communicated or made accessible by the supervisory authority in so far it contains:

- business secrets and other confidential information?
- only business secrets and leaving to national law the regulation of confidentiality for other information?

Art 21 §2

Any information collected or obtained by a supervisory authority in cross-border cases is excluded from the access requests under laws of public access to official documents:

- as long as the proceedings are ongoing?
- as long as the lead DPA considers that the access can undermine the ongoing procedure?
- as long as the lead DPA and CSA consider that the access can undermine the ongoing procedure?

Art 21 §3

- Should this paragraph be deleted?
- Should this paragraph be maintained? If yes, how?

Art 21 §4 – art 21 §7

- Who takes the final decision concerning the identification of confidential information?
