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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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 - Preparation for the trilogue

I. INTRODUCTION

1. The European Commission presented in July 2023 a proposal for a regulation, with a view to enhance and streamline the cooperation between national data protection authorities (DPAs) when enforcing the General Data Protection Regulation (GDPR) in cross-border cases.

2. The proposal complements the GDPR, in a targeted way, by specifying procedural rules for the cross-border enforcement procedure already established by Chapter VII GDPR, the so-called cooperation and consistency mechanism or "one-stop-shop". This mechanism requires cooperation between DPAs in 'cross-border' cases, where the 'lead' DPA (the DPA of the main establishment of the entity under investigation) conducts the investigation, and is required to cooperate with other 'concerned' DPAs in other Member States, with a view to reach consensus. The lead DPA must exercise its competence within a framework of close cooperation with DPAs concerned. When there is no consensus in a cross-border case, a dispute resolution mechanism is foreseen within the European Data Protection Board (EDPB), composed of national DPAs, which may adopt a binding decision.

3. While clarifying and codifying certain cooperation mechanism, the Commission proposal does not modify or alter the current enforcement mechanism, but rather complements it. More specifically the proposed regulation includes provisions on the following five main areas:

   – Rules on the submission and handling of complaints

   – Targeted harmonisation of procedural rights in cross border cases, for both parties under investigation and complainants.

   – Cooperation between DPAs in cross-border cases

   – Procedural rules for the dispute resolution procedure between DPAs

   – Rules regarding access to the file and the treatment of confidential information.

4. The Council reached its general approach on a proposal for a Regulation on 13 June 2024

5. The European Parliament adopted its position at first reading during the previous legislature, on 10 April 2024, and the proposal was referred to the Committees on Civil Liberties, Justice and Home Affairs (LIBE) to start interinstitutional negotiations.

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6. Negotiations have been initiated under the Hungarian Presidency, with a first trilogue held on 4 November 2024, followed by 7 Interinstitutional Technical Meetings. A second trilogue took place on 12 December 2025, leading to a provisional agreement on rules on information exchange, confidentiality and access to the file, and a dedicated procedure for the early resolution of complaints. The Presidency insisted on the need to ensure a pragmatic application of the proposed enhanced mechanism and additional rules by fostering cooperation while avoiding unnecessary procedural burden on national authorities. Several key provisions from the Council general approach going in this direction were provisionally accepted.

7. Interinstitutional negotiations resumed under the Polish Presidency, with 14 Interinstitutional Technical Meetings held from January to May 2025. Important progresses were made to secure a future provisional agreement in line with the Council general approach, in relation to the admissibility of complaint, the tools and steps for the cooperations between authorities, the procedure related to the exercise of procedures for the parties under investigation and the complainant, and the rules for the dispute resolution and urgency procedures at EDPB level.

8. During this second phase of negotiations, one of the main element and priority of the Council general approach has been further discussed and secured in a possible overall agreement, with the inclusion of provision for the establishment of a simple cooperation procedure. With a view to provide more flexibility for national authorities and alleviate the procedural burden, a new provision would foresee that for the more straight-forward cases, the lead DPA may decide to apply this simple cooperation and directly present a draft decision on a case without applying certain intermediary steps introduced by the Commission proposal.

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9. Both the Council general approach and the Parliament mandate also addressed procedural rights for the parties under investigations and the complainant, through the common rules proposed with the Regulation. The provisions discussed at technical level and proposed as part of a provisional agreement have reached a balance in ensuring an effective exercise of procedural rights for both the parties under investigation and the complainant.

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II. MAIN ISSUES

10. At the trilogue for 21 May 2025, two main political issues remain to be discussed to be able to reach a possible provisional agreement on the proposed Regulation as a whole.

Time limits for the investigation by the lead DPA

11. The Council general approach and the Parliament position at first reading introduced important clarifications concerning the time limits for the different procedural steps of cooperation between data protection authorities, allowing the overall procedure to deliver a decision in a reasonable time, including with the introduction of additional time limits.

12. In general, the Parliament is insisting on setting short time limits. The Presidency has argued throughout the negotiations that the time limits must be realistic and allow the DPA to effectively conduct robust investigations and ensure the respect of procedural rights, both in straight forward cases and more complex investigations, which may for example relate to complex processing of personal data undertaken by large online platforms.

13. The discussion in trilogue is expected to focus on the maximum time limit for the lead DPA to submit its draft decision on a case to the other DPA, which corresponds to the duration of the investigation to be carried out and the subsequent procedural steps, including the hearing of the parties under investigation. A provision has been drafted in order to include such an overall time limit for investigation, including a mechanism for a possible extension, and also clarifying the consequences in circumstances where such a time limit would not be met. The draft provision foresees that in such a case, the condition of urgency shall be presumed to be met and another concerned DPA may adopt a provisional measure in accordance with the urgency procedure laid down under the GDPR.

14. The Presidency intends to advocate for longer time limits which reflect the experience of DPAs, the challenges of investigating large actors of the digital economy, and the need to guarantee the integrity and validity of the overall procedure leading to a final decision, which may include possible corrective measures and significant fines for the important cases.

– On the basis of the Council general approach, the Presidency considers that for the enhanced cooperation procedure foreseen by the Regulation, the initial time limit for the conduct of an investigation and submission of a draft decision shall be 18 months, with a possible extension allowing of thorough investigation for cases which are more complex and would require further proceedings. This seems necessary given the additional procedural steps and the need to ensure a robust investigation and legal certainty. While the Parliament will most probably ask for much shorter time limits, the Presidency considers that for this type of investigations, the initial time limit should in principle not be reduced significantly, and a possible extension should at least be set for 12 months.

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– As the possibility to use simple procedure has been provisionally agreed, the Presidency also considers that in case this simple cooperation procedure is applied, any time limit should remain pragmatic and realistic, considering the current workload and resources of DPAs. Given the nature of the cross-border cases to be dealt with under the simple cooperation procedure, in line with the Council general approach, the Presidency considers as a starting point that an overall time limit may not be necessary. However, the Parliament is expected to insist on a time limit much shorter than the one set for the enhanced cooperation procedure. The Presidency will therefore aim at reaching an agreement on a time limit as long as possible, and in principle no shorter than 12 months or with a possible extension in specific cases.

15. The Presidency highlights that the Parliament has so far been very reluctant to consider any further extension of time limits, in particular when it comes to the simple cooperation procedure.

Judicial remedies for complainants

16. As part of its position at first reading, the Parliament has introduced a dedicated provision on judicial remedies, which significantly expanded the scope and opportunities of judicial remedies against authorities for the parties under investigation and the complainant, adding three new avenues for judicial remedies. The Presidency has always argued against the inclusion of the new article as originally proposed by the Parliament, which goes beyond and may even interfere with the provision on judicial remedies already provided under the GDPR. Furthermore, the Presidency considers that the provision as originally proposed by the Parliament would open significant new avenues for litigation, which would not benefit the swift and effective enforcement of the GDPR.

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17. The Presidency suggests to limit this provision to the right to an effective judicial remedy for the complainant in case the DPA would miss certain time limits and where, as a result, the complaint would not be handled. The Presidency considers indeed that not all time limits shall be considered as conferring a right to a judicial remedy for the complainant and that any provision in this regard shall be limited to procedural steps that are essential for the handling of a complaint, such as the submission of a draft decision and the adoption of a final decision, and, potentially transmitting the complaint to the relevant authority. The Presidency also considers that any provision related to judicial remedies should remain with the remits of Article 78 GDPR, in order to avoid any interference with the current legal framework and existing remedies for complainants.

18. Finding an acceptable agreement on the issue of time limits and judicial remedies seems necessary to avoid, as part of a compromise package, the provision proposed by the Parliament on binding requests for ex officio investigation, which the Council has strongly opposed since the beginning of the interinstitutional negotiations.

III. CONCLUSION

19. Having regard to the above, the Permanent Representatives Committee is therefore invited to confirm the proposed approach described above.

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