



Council of the European Union
General Secretariat

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WORKING DOCUMENT

From:	Presidency
To:	Delegations
N° Cion doc.:	ST 11657 2023 + ADD 1
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 - Presentation

Following the meeting of the Working Party on Data Protection of 22 July 2024, delegations will find in annexe the presentation by the Presidency concerning the position of the European Parliament (as adopted at its Plenary on 10 April 2024).

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THE EP REPORT AT FIRST GLANCE

22 July 2024



GROUPING THE EP REPORT'S AMENDMENTS

- Deleted Articles
- New Articles
- Amended Articles



DELETED ARTICLES

- Article 6 – Translations (transferred to the new Article 2d)
- Article 11, 12, 13, - Hearing of complainant prior to full or partial rejection of a complaint
- Article 15 – Transmission of preliminary findings to complainants
- Article 17 – Right to be heard in relation to revised draft decision
- Article 19, 20, 21 – Access to the administrative file and treatment of confidential information
- Article 23 – Registration in relation to a decision under Article 65(1), point (a), of Regulation (EU) 2016/679
- Article 24, 25 – Statement and procedure in relation to a decision under Article 65(1), point (b), of Regulation (EU) 2016/679
- Article 29 – Beginning of time periods and definition of working day



NEW ARTICLES

- Article 2a – Applicable Procedural Law
- Article 2b – Common procedural standards
- Article 2c – Cooperation between supervisory authorities
- Article 2d – Use of Languages and Translations
- Article 5a – Request for an ex officio procedure
- Article 10a – Cooperation with other relevant authorities
- Article 26a – Procedural determinations by the Board
- Article 26b – Right to an effective judicial remedy against a supervisory authority
- Article 28a – Remedies against procedural determinations
- Article 28b – Enforcement Statistics

ARTICLE 2A

APPLICABLE PROCEDURAL LAW

- Specifies that:
 - The **procedural law applicable before a supervisory authority** shall govern all direct interactions between that supervisory authority and the parties
 - Member States **may legislate on additional matters** not covered by the Regulation
 - This Regulation and Regulation (EU) 2016/679 shall govern the interaction between the supervisory authorities
 - The complainant **have the right to communicate exclusively with the supervisory authority with which the complaint is lodged**

ARTICLE 2B

COMMON PROCEDURAL STANDARDS

- Specifies the principles of procedural law
 - **Rights of the parties**
 - Fair procedure
 - Right to be heard
 - Procedural transparency (which can be limited according to Article 2b(4))
 - The lead supervisory authority shall **inform and hear the parties at appropriate stages of the procedure**
 - The content of the **joint case file**
 - Supervisory authorities **always have access to the confidential version of all documents**
 - **Limits the length** of submissions by the parties to not more than **50 pages**

ARTICLE 2C

COOPERATION BETWEEN SUPERVISORY AUTHORITIES



- Specifies the rules of cooperation between supervisory authorities:
- The lead supervisory authority
 - **Structures, coordinates and manages the case**
 - **Maintains a list of supervisory authorities concerned**
- Any supervisory authorities concerned which **receives relevant information** about the case, shall inform the lead within 1 week
- All written documents shall be provided by **electronic means** and in **a concise, transparent, intelligible and easily accessible form**, using **clear and plain language**

ARTICLE 2D

USE OF LANGUAGES AND TRANSLATIONS



Parliament

- **Deleted Article 6**, but the rules of translations have been transferred to the new Article 2d
 - **Board determines the language of cooperation**
 - Translations are needed – inter alia – when supervisory authorities share relevant information
 - Lead supervisory authority provides submissions **into the joint case file in the original language, and provide translations into the cooperation language**
 - In any direct interaction supervisory authorities shall provide information in the original language
 - They may use automated translations

Comission

- The supervisory authority with which the complaint was lodged
 - Translates the **complaints and the views of complainants** into the language used by the lead
 - Translates the documents provided by the lead into the language used for communication with the complainant
- The **Board shall determine the procedure for the translation of comments or relevant and reasoned objections for languages other than the language used by the lead**

ARTICLE 5A

REQUEST FOR AN EX OFFICIO PROCEDURE



- The supervisory authority concerned may request an ex officio procedure. The request contain:

- A **declaration to be a supervisory authority concerned**
- **Summary of key issues**

- The lead supervisory authority within three weeks:

- Inform the supervisory authority concerned that **opened an ex officio procedure**
- Inform the supervisory authority concerned that **doesn't intend to handle the case**
- **Reject the request**, if
 - If it is not the lead supervisory authority
 - There is no violation of Regulation (EU) 2016/679

In this case, the supervisory authority concerned can submit a request or request a determination on the opening of the procedure by the Board

- If the lead supervisory authority opens an ex officio procedure, it has to deliver **a draft decision without delay, but no later than 9 months**. The deadline can be extended by:
 - Eight weeks, if there is a need for an updated summary of key issues or when the supervisory authority **intends to issue fines or other penalties**
 - Or by the Board (Article 26a)

ARTICLE 10A

COOPERATION WITH OTHER RELEVANT AUTHORITIES



- Supervisory authorities **have to communicate non-personal information to national and EU supervisory authorities competent**
 - Competition law
 - Financial services
 - Energy
 - Telecommunications
 - Consumer protection
 - Digital services
 - Artificial intelligence

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ARTICLE 26A

PROCEDURAL DETERMINATIONS BY THE BOARD



- Supervisory authority request from the Board to take an **urgent binding decision** in the form of a **procedural determination on any procedural dispute arising between the supervisory authorities**
- When the lead supervisory authority **cannot possibly comply with a deadline** pursuant Article 4(1b) or Article 5a(3) request from the Board **an urgent binding decision an extension of the deadline**
- **Request contain:**
 - The facts and evidence
 - The legal grounds for the request
 - The determination or the deadline extension that the authority or party requests from the Board
- Board determine the matter based on the information or reject the request (within two weeks)

ARTICLE 26B

RIGHT TO AN EFFECTIVE JUDICIAL REMEDY AGAINST A SUPERVISORY AUTHORITY

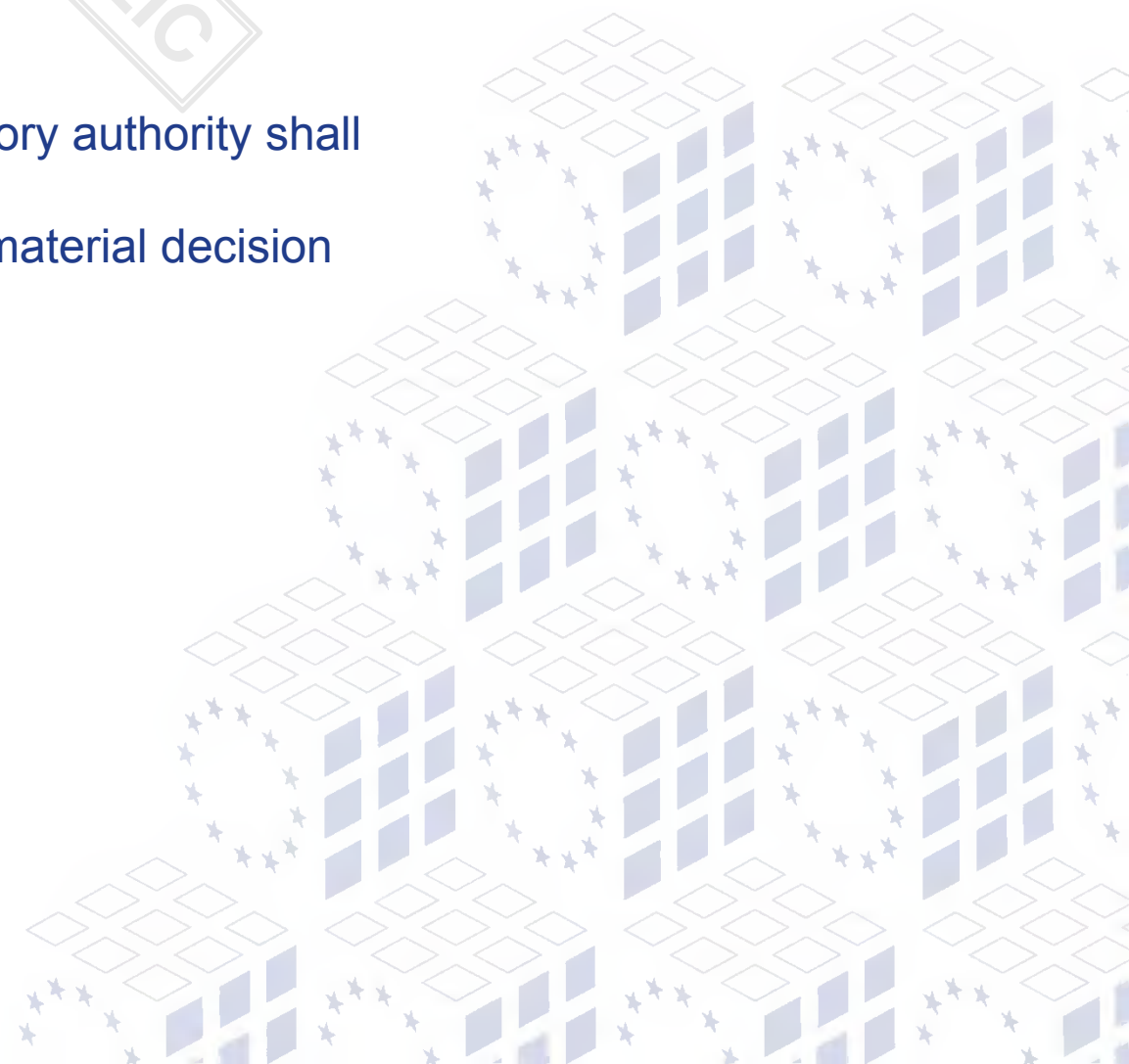


- Each party have the **right to an effective judicial remedy**:
 - The supervisory authority with which the complaint has been lodged **doesn't ensure that another supervisory authority progresses the procedure**
 - The lead supervisory authority **doesn't comply with the deadlines**
 - The supervisory authority **doesn't comply with a binding decision of the Board**
 - In this case not only the parties have a right, but not-for-profit bodies under Article 80 of Regulation (EU) 2016/679, if it considers that the rights of a data subject have been infringed
- If the court finds that a supervisory authority has not fulfilled its duties, it **can order that supervisory authority to take the necessary act**

ARTICLE 28A

REMEDIES AGAINST PROCEDURAL DETERMINATIONS

- Remedies against procedural determinations by a supervisory authority shall only be brought together with the remedy against the final material decision



ARTICLE 28B

ENFORCEMENT STATISTICS

- Supervisory authorities **shall report the following in their activity report** under Article 59 of Regulation (EU) 2016/679
 - The numbers of **ex officio investigations** (initiated by the supervisory authority and by other supervisory authority)
 - The number of the **complaints received**
 - The number of **legally binding decision** currently on appeal
 - The number and **average duration** of **open and decided procedures**
 - The number of **each type of measure taken** in accordance with Article 58(2)
 - The number and the amount of **fines issued and collected** under Article 83 and 84
 - The **annual budget** and **the number of staff**



AMENDED ARTICLES

- Article 2 – Definitions
- Article 3 – Cross border complaints
- Article 4 – Investigation of complaints
- Article 5 – Amicable settlement
- Article 16 – Adoption of final decision
- Article 22 – Referral to dispute resolution under Article 65 of Regulation (EU)

2016/679

ARTICLE 2 DEFINITIONS



Parliament

- Several **new definitions**:
 - Complainant and party
 - National procedural law
 - Complaints procedure
 - Ex officio procedure (with the new Article 5a)
 - Joint case file
 - Confidential and non-confidential version of a document

Council

- Retained the Comission's proposal:
 - Parties under investigation
 - Summary of key issues
 - Preliminary findings
 - Retained relevant and reasoned objection

ARTICLE 3

CROSS BORDER COMPLAINTS



Parliament

- Deleted the word „form”, using the word „template” instead
 - Minimum information
 - Use of a sample is optional
- **New paragraphs on procedural steps to be taken after a complaint has been lodged**, the supervisory authority shall
 - Acknowledge receipt and admissibility of the complaint (within 2 weeks)
 - Attribute a case number
- **New paragraphs on procedural steps to be taken when a complaint is admissible**, the supervisory authority shall
 - Establish the complaint relates to cross-border processing
 - Establish which supervisory authority is the lead supervisory authority
 - Transfer or handle the complaint
- **Article 3(3)-(6) deleted**

Council

- Deleted the „form”
- Article 3(1) defines **only the minimum** information
- **Article 3(3), (5)-(6) deleted**

ARTICLE 4

INVESTIGATION OF COMPLAINTS



Parliament

- Handling of a complaint shall **always lead to a legally binding decision**, which can be subject to a **legal remedy (in accordance with the new Article 28a)**
- The supervisory authority has to deliver **a draft decision without delay, but no later than 9 months.**

The deadline can be extended by:

- Eight weeks, if there is a need for an updated summary of key issues or when the supervisory authority **intends to issue fines or other penalties**
- Or by the Board (Article 26a)

This paragraph shall not apply if the case is submitted to the consistency mechanism

Council

- Retained the original proposal with minor technical modifications



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ARTICLE 5

AMICABLE SETTLEMENT

Parliament

- Doesn't regulate **preliminary vetting**
- Defines the **rules of the amicable settlement**
 - It can be at any stage of the proceeding
 - If there is an explicit agreement
 - Submitting a draft decision (within one month)
 - Whether the conditions of an amicable settlement are fulfilled
 - Whether to open an ex officio investigation
- **Ex officio investigation shall be open by a lead authority, if**
 - The party under investigation is a repeat offender
 - The party under investigation has been subject of a large number of other amicable settlements
 - Large number of data subjects, long duration or serious nature of the infringement
 - Required to ensure effective, proportionate and dissuasive enforcement of the Regulation (EU) 2016/679

Council

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- A large, light blue, tilted rectangular stamp with the word "PUBLIC" in a bold, sans-serif font, positioned diagonally across the top left of the Council section.
- Determines the rules of **preliminary vetting**
 - Allows the Member States to decide – in accordance with their national law – what kind of **early resolution** they apply

ARTICLE 16

ADOPTION OF FINAL DECISION

Parliament

- If the supervisory authority concerned has objected the **draft decision the lead supervisory authority**
 - **Intends to follow the objection, submit a revised draft decision** (within 4 weeks)
 - **Doesn't intend to follow, submit the matter to the consistency mechanism** (within 4 weeks)
- Draft decision or final decision **shall be issued in writing, using short, concise, transparent, intelligible form and clear and plain language**, and contains the following:
 - The name of the supervisory authority and the date
 - The impartial summary of the relevant facts
 - The legal grounds for the decision
 - The exercised corrective powers, penalties
 - Information about the right to an effective judicial remedy



Council

- New paragraph: the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of the complaint, a separate decision shall be adopted



ARTICLE 16

ADOPTION OF FINAL DECISION

Parliament

- Draft or the final decision have to rely on **factual findings**, which the **parties under investigation had the opportunity to make their views known** (right to be heard)
- The information provided to the parties under investigation has to **include copy of the binding decision and information about a judicial remedy**
- Supervisory authorities **have to publish all legally binding decisions without delay**, but no longer than three months after adoption



Council

- New paragraph: the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of the complaint, a separate decision shall be adopted

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ARTICLE 22

REFERRAL TO DISPUTE RESOLUTION UNDER ARTICLE 65 OF REGULATION (EU) 2016/679



Parliament

- If the lead supervisory authority doesn't follow the relevant and reasoned objections, it has to **submit the subject-matter to the dispute resolution mechanism** within four weeks. Relevant and reasoned objections that have been received after the deadline cannot be taken into consideration
- The lead supervisory authority shall provide
 - Summary of key issues
 - Summary of relevant facts
 - Views made in writing by the parties
 - Relevant and reasoned objections
 - The reasons why the lead supervisory authority didn't follow or rejected the objections
 - Access to the joint case file

Council

- Within three months the lead supervisory authority shall either
 - Submit a **revised draft decision**
 - Refer the subject-matter to the Board for **dispute resolution**



THANK YOU
FOR YOUR KIND ATTENTION!

