



Council of the European Union
General Secretariat

Brussels, 25 October 2024

**Interinstitutional files:
2023/0202 (COD)**

WK 13488/2024 INIT

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| From: | General Secretariat of the Council |
| To: | Delegations |
| N° Cion doc.: | ST 11657 2023 INIT + 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 by the Presidency (EDPB Statement) |

Following the meeting of the Working Party on Data Protection of 24 October 2024, delegations will find in the annexe the presentation made by the Presidency on the EDPB Statement on the recent legislative developments on the Draft Regulation laying down additional procedural rules for the enforcement of the GDPR.

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STATEMENT OF THE EDPB ON THE RECENT LEGISLATIVE DEVELOPMENTS ON THE DRAFT REGULATION LAYING DOWN ADDITIONAL PROCEDURAL RULES FOR THE ENFORCEMENT OF THE GDPR

Presentation by 

24 October, 2024

OVERVIEW



- ❑ General comments of the Statement
- ❑ Specific recommendations
 1. Complaints, preliminary vetting and amicable settlements
 2. Access to the administrative file / joint case file
 3. Cooperation procedure and consensus finding
 4. Procedural deadlines
 5. Request that the LSA conduct an ex officio procedure
 6. Right to an effective judicial remedy against a supervisory authority
 7. Procedural determinations by the EDPB
 8. Dispute resolution procedure
 9. Urgent opinions and urgent binding decisions

GENERAL COMMENTS OF THE STATEMENT

- ❑ translations
 - **Council's proposal to delete Article 6**

- ❑ the entry into force and application, evaluation and review
 - **Articles 29bis and 31 of the Council position**

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1. COMPLAINTS, PRELIMINARY VETTING AND AMICABLE SETTLEMENTS



Complaints and rights of complainants

Concept of complainant, rights of the complainant

recital 3a of the Council position

Preliminary vetting

legal basis

Article 3(2) of the EP and Council position

binding determination of admissibility on LSA

Article 3(2)(c)(i) of the EP position

early resolution

Article 5(1)(a) of the Council position

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1. COMPLAINTS, PRELIMINARY VETTING AND AMICABLE SETTLEMENTS



Amicable settlements

implementation

EP and Council amendments introduced in Article 5

condition, definition and procedure

Recommends amicable settlements not to be dependent on national law and harmonising definition and procedure of amicable settlements

timing of amicable settlements and role of SAs

Article 5(1) of the EP position

explicit agreement /complainant's objection

Article 5(1)(a) of EP position

recital 9b and Article 5(3)b of the Council position

finalisation by a draft decision, possibility for a simplified draft decision, relevant and reasoned objections against draft decisions

Article 5(1b) of the EP position, Article 5(5) of the Council position, recital 9c of the Council position

Article 18(1)(c) of the Council position

2. ACCESS TO THE ADMINISTRATIVE FILE / JOINT CASE FILE



Access to the file / non-disclosure of confidential information

complainant's access to non-confidential relevant documents
Article 21(1) of the Council position

Concept of the joint case file

Article 2(2f) of the EP position

Legal and technical implications, require complex changes to the document management and communication systems.

Continuous access would raise confidentiality aspects, extra burden, likelihood of data breaches and information leaks.

Implementation would need extra time and additional resources.

3. COOPERATION PROCEDURE AND CONSENSUS FINDING

Request for urgency procedure by any SA concerned

Article 10(4) of the EP and the Council position

Possibility for any SA concerned to comment on preliminary findings

Article 14(2bis) of the Council position

use of Articles 61 and 62 GDPR before urgency procedures

„unnecessary detour”

Article 10(1b) of the Council position

Article 10(3) of the EP position

regular update of the SKI to reflect changes

Art. 9(2a) of the EP position

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3. COOPERATION PROCEDURE AND CONSENSUS FINDING

new preliminary findings if LSA intends to deviate from previous case

Articles 9(5) and 14(8) of the Council position

EDPB recalls need for LSA to cooperate with CSAs in the context of national administrative appeal procedures and need for clarifying „subsequent domestic procedure”

Application of enhanced cooperation (Opt-out from Chapter III of the Proposal)

Article 6bis of the Council Position, recital 10b

Article 6bis(2) Council Position

EDPB suggests specifying „*mutatis mutandis as provided in ...*”

4. PROCEDURAL DEADLINES

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- **introduction of additional deadlines by the Council**
- **possibility to remain flexible where appropriate and extend certain deadlines on account of the complexity of the cases**
- **such extensions, where applicable, should not be for an indefinite period of time**
- **need for sufficient clarity on the total duration of the procedure**

5. REQUEST THAT THE LSA CONDUCT AN EX OFFICIO PROCEDURE



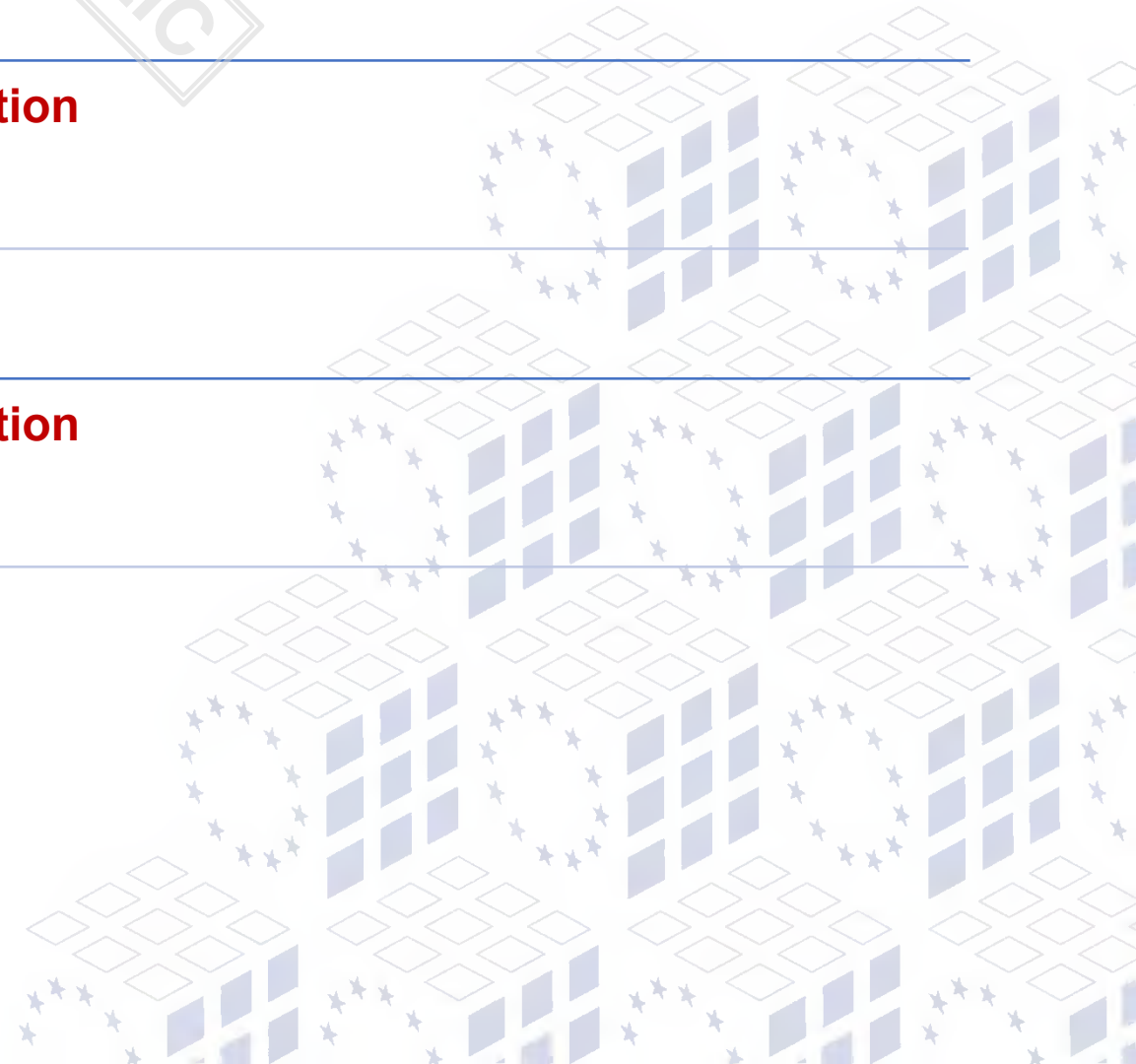
possibility for each CSA to request an ex officio procedure by LSA

Article 5a(1) of the EP position

requirement for LSAs to take concrete actions within a strict deadline

Article 5a(2) of the EP position

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6. RIGHT TO AN EFFECTIVE JUDICIAL REMEDY AGAINST A SUPERVISORY AUTHORITY



Right to an effective judicial remedy for each party to the procedure in three specific scenarios

Article 26b(1)(a)-(c) of the EP position
EDPB recalls Article 78 of the GDPR
clarifications needed on „powers”

Court power to order SA to take the necessary action

Article 26b(3) of the EP position
clarifications needed on „court”

7. PROCEDURAL DETERMINATIONS BY THE EDPB



Procedural determinations
by the Board

Article 26a of the EP position

should not be linked to Art. 66 of the GDPR, should be a *sui generis* procedure, details to be determined by the EDPB

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8. DISPUTE RESOLUTION PROCEDURE



Relevant and reasoned objections (RROs)

Deletion of Article 18 of the Proposal

alternatively, Article 18 of the Council position

it should be possible for CSAs to raise objections on all factual and legal elements of the file

Right to be heard

Article 2b of the EP position

Article 24(1) of the Council position

Article 24(1bis) of the Council position

9. URGENT OPINIONS, URGENT BINDING DECISIONS



Urgent binding decisions addressed to LSA and all CSAs

Article 28(2) of the EP position

Assessment by the EDPB

Article 28(1ter) of the Council position



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FOR YOUR KIND ATTENTION!



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