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WORKING DOCUMENT

From: Presidency
To: Delegations

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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
- Updated compromise proposal on Article 5 (early resolution)

In view of the meeting of the JHA Counsellors on data protection of 5th December, delegations will find in the annex an updated compromise proposal on Article 5 (early resolution).

Changes compared to the version circulated in WK 14835/24 are highlighted in **bold underlined** and ~~strikethrough~~.

Article 5
Early resolution

1. *A complaint relating to cross-border processing which concerns the exercise of the rights of the data subject under Regulation (EU) 2016/679, may be resolved, where appropriate, through a procedure allowing for its early resolution by:*
 - a) *the supervisory authority with which the complaint was lodged, after determining by way of preliminary conclusion that the complaint relates to cross-border processing and prior to the possible transmission of the complaint to the lead supervisory authority,*

or
 - b) *the lead supervisory authority to which the complaint has been transmitted, at any time before the submission of the preliminary findings to supervisory authorities concerned pursuant to Article 14 of this Regulation.*

Supervisory authorities may encourage and facilitate such early resolution and communicate with the controller or the complainant for this purpose, as appropriate.
2. *For the purpose of early resolution, a complaint shall be considered devoid of purpose where the supervisory authority has established, based on supporting evidence, that the alleged infringement has been brought to an end.*
3. *The supervisory authority shall inform the complainant of the finding under paragraph 2 and of the consequences of the early resolution, using clear and plain language, including of the possibility that he or she may submit an objection within [four weeks] of receiving such information.*
- 3a. *Where the complainant objects **to the finding under paragraph 2**, the supervisory authority shall not resolve the complaint pursuant to this article.*
4. *In a procedure before the supervisory authority with which the complaint was lodged, where the complainant does not object within the deadline set out in paragraph 3, the supervisory authority shall establish that the complaint has been resolved and inform the relevant parties [within X weeks], and, where applicable, the lead supervisory authority thereof.*
5. *In a procedure before the lead supervisory authority to which the complaint has been transmitted, where the complainant does not object within the deadline set out in paragraph 3, the authority shall submit a draft decision in accordance with Article 60(3) of Regulation (EU) 2016/679 [within X weeks], with a view to adopting a final decision in accordance with Article 60(7) of Regulation (EU) 2016/679 establishing that the complaint has been resolved.*
6. *The early resolution of a complaint shall be without prejudice to the exercise by the lead supervisory authority of its powers in accordance with Article 58 of Regulation (EU) 2016/679 on the same subject matter.*

Corresponding draft recitals:

- (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 appropriate, to resolve complaints by ~~a~~ the procedure for early resolution in accordance with this regulation. Such procedure should establish whether the infringement alleged in the complaint has been brought to an end in a manner rendering the complaint devoid of purpose. Member States are not required to introduce new procedures under national law to allow supervisory authorities to resolve a complaint through early resolution in accordance with this Regulation.

- (9a) *A procedure for the early resolution of a complaint should only be concluded where the complainant has not submitted a timely objection to the finding that the alleged infringement has been brought to an end. The early resolution of a complaint should therefore apply to cases where the complainant is duly able to assess the proposed outcome.*
- (9aa) *The early resolution of a complaint may be particularly useful in expeditiously resolving disputes concerning infringements of data subject rights to the satisfaction of the complainant's request. Such outcome should allow the supervisory authority with which the complaint has been lodged or the lead supervisory authority to establish, on the basis of preliminary engagement with the data controller and provided that supporting evidence has been obtained, that the complaint is devoid of purpose.*
- (9b) *The circumstance that an individual complaint has been resolved through a procedure allowing for its early resolution should be without prejudice to the exercise by the lead supervisory authority of its powers in accordance with Regulation (EU) 2016/679 on the same subject matter, for example in the case of systemic or repetitive infringements of Regulation (EU) 2016/679.*
- (9c) *Where the lead supervisory authority to which the complaint has been transmitted considers that a complaint can be resolved through early resolution, a draft decision pursuant to Article 60(3) of Regulation (EU) 2016/679 should be submitted to the other supervisory authorities concerned, with a view to adopting a final decision in accordance with Article 60(7) of Regulation (EU) 2016/679 establishing that the alleged infringement has been brought to an end and that the complaint, or part of the complaint, has been resolved by the lead supervisory authority. The draft decision submitted could therefore be simplified and limited to an information that the complaint was settled, in whole or in part, through a procedure allowing for its early resolution, indicating the reasons underlying the decision and the scope of the resolution, and confirming that the complaint is therefore devoid of purpose. In such cases, the lead supervisory authority should directly submit its draft decision, without having to prepare and circulate a summary of key issues or preliminary findings.*