

Brussels, 13 February 2025

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

WK 1877/2025 INIT

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

Ahead of the meeting of the Working Party on Data Protection of 19 February 2025, delegations will find in the Annex a Presidency discussion paper on the above-mentioned file.

Discussion paper - debrief from the ITM of 3/02 and 7/02 and preparations for further ITMs

The Presidency presents below the outcome of the interinstitutional technical meeting (ITM) that took place on 3/02 and 7/02 and were followed by further exchanges on drafting.

Executive summary:

The following Articles were discussed during the ITMs on 3/02 and 7/02: Articles 16-18, Articles 22-26a and Articles 27-28. The positions of the co-legislators were similar on some of the elements, on others the EP showed flexibility to follow the Council's GA. The delegations are asked for their views on some drafting changes as well as on elements of the EP's mandate, in particular the possibility of introduction of new paragraphs in Articles 16 and 18.

An overview of all provisionally agreed (greened) lines during the two ITMs is available in point 7. of this document.

The Presidency is also asking for comments in preparation for the horizontal discussion on deadlines during the upcoming ITMs.

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Explanation on the formatting of the text in this document:

in bold - elements added in the Council's general approach.

in bold and underlined - elements added or changed preliminarily as the result of the ITM.

~~not in bold and with a strikethrough~~ - elements of the Commission's proposal, removed either in the Council's general approach or – preliminarily - during the ITM.

~~**in bold and with a strikethrough**~~ - elements of Council's general approach proposed to be removed during the ITM.

1. Article 16 – Adoption of final decision (line 153-154m)

The discussion on this Article focused on elements added by the EP, including the very detailed requirements concerning the content and format of final decisions to be adopted by the supervisory authorities (see lines 154c to 154i, Article 16(1c) EP). The Presidency explained that such provisions do not appear as relevant in this Regulation, given the fact that the elements addressed by the EP in its mandate are already regulated under national procedural law. The EP proposal under line 154l – Article 16(13) has also been discussed in light of existing limitations to the publication of final decisions by supervisory authorities, including on confidentiality grounds.

Overall, the EP has shown flexibility in withdrawing its initial proposal but considered that the discussion should lead to a possible “package solution”, which could consist of:

- Ensuring that there is a reference in the regulation to the principle that handling of a complaint should always lead to a legally binding decision (EP is preliminarily open to using a different wording, such as “attackable act” or “outcome which can be challenged using judicial remedies” – this issue will be the object of a dedicated discussion during upcoming ITMs);
- Ensuring that the complainant is provided, by default, with some form of description of the main grounds of a decision and can gain access to a non-confidential version of a decision upon request.

The following main aspects with regards to Article 16 were discussed during the ITM and by the drafting team:

Article 16(1), line 154: it was noted that the addition of *“The supervisory authority with which the complaint was lodged shall inform the complainant of the decision”* in Council’s GA is almost a verbatim repetition of the last sentence of Article 60(7) GDPR. This line will be subject of further discussions.

Article 16(1a) and Article 16(1b) EP, lines 154a and 154b: discussion on these paragraphs was postponed until the discussion of Article 22 and the discussion on deadlines.

Article 16(2) Council’s GA, line 154a: as the addition from the Council for the most part repeats the content of Article 60(9) GDPR, it is proposed that instead, a reference to Article 60(9) GDPR is added to paragraph 1 of Article 16. The need for a separate paragraph was questioned from the legislative drafting point of view.

Article 16(1c), lines 154c-154j – EP preliminary agreed to withdraw the lines introduced which concerned the elements of a decision; however underlying that it is part of a proposed “package” (see above).

Article 16(1d), line 154j – EP preliminary agrees to the deletion

Article 16(1e), line 154k – in the EP’s approach, this line includes a rule that any decision shall only rely on factual findings made on the basis of documents on which the parties under investigation had the opportunity to make their views known. The discussion on this line will continue.

Article 16(1f), line 154l – this line includes a rule proposed by the EP that a copy of the legally binding decision adopted under Article 60(7) GDPR should always be notified to the complainant. The EP preliminarily agrees to removing that rule, however, the EP proposes specifying instead that 1) the complainant should be informed of the main elements of the decision and 2) should be granted a non-confidential version of the decision on request. The Presidency reserved the position on this aspect (see Article 16(2) below and question 1).

Article 16(1g), line 154m – the EP preliminarily agreed to refer instead to a recital describing the existing practice of the Board with regards to publication of decisions in an online register. The EP underlined the need to underline - in a recital - that the register referred to in Article 70(1)(y) GDPR is meant to include the texts of the decisions.

The draft consolidated version of Article 16 would read, without prejudice to the points still under discussion as indicated above:

Article 16

Adoption of final decision

1. *After submitting the draft decision to supervisory authorities concerned pursuant to Article 60(3) of Regulation (EU) 2016/679 and where none of the supervisory authorities concerned has objected to the draft decision within the periods referred to in Article 60(4) and or (5) of Regulation (EU) 2016/679 as applicable, the lead supervisory authority shall adopt and notify, **within one month from the end of the period referred to in Article 60(4) or (5) of Regulation (EU) 2016/679**, its decision under Article 60(7) **or, where applicable Article 60(9)**, of Regulation (EU) 2016/679 to the main establishment or single establishment of the controller or processor, as the case may be, ~~and inform the supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds.~~ **[The supervisory authority with which the complaint was lodged shall inform the complainant of the decision.]***
2. ~~*Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and act on other parts of that complaint, a separate decision shall be adopted and notified to the main or single establishment of the controller or the processor and the complainant, following the Article 60 (9) of Regulation (EU) 2016/679.*~~
*2. **The information provided to the complainant referred to in paragraph 1 shall consist of a summary of the decision adopted, including the relevant facts and grounds. Upon request, the complainant shall be provided with a version of that decision that does not include information considered confidential in accordance with Article 21, paragraph 1, of this Regulation.***

In addition, the following recital is proposed by the Presidency and the drafting team as an alternative to the EP's Article (not discussed yet with the EP at an ITM):

(XX) It is important that the Board facilitate access to decisions adopted in accordance with the cooperation and consistency mechanisms, by making the text of the final decisions adopted by national supervisory authorities available online through easily accessible registers. In accordance with applicable national law, supervisory authorities can redact party names, any other information that allows for the identification of parties, and other information that is protected under applicable Union and national law.

The recital is aimed at reflecting the current practice of the EDBD, which provides two registers: [of decisions on issues handled in the consistency mechanism](#) and of [final one stop shop decisions](#). The recital is not aimed at suggesting additional publication obligations for Member States.

- ➔ **Question 1:** The delegations are asked for their views on the draft wording of Article 16 and the proposed new recital. In particular, the delegations are asked for their views on

compromise proposal under article 16(2) as per the consolidated text above, that is introduction of a principle that a complainant would have the possibility to request a non-confidential copy of a decision adopted pursuant to Article 60(7) GDPR.

2. Article 17 – Right to be heard in relation to revised draft decision (lines 155-157a) + recital 24

The EP showed flexibility in reinstating Article 17, originally removed in its mandate. The discussion on paragraph 17(2) will continue during the discussion on the deadlines. Paragraph 2bis from Council's GA was provisionally retained.

The text of recital 24 (line 34), as proposed by the Commission and supported in the Council GA has been provisionally agreed.

3. Article 18 – Relevant and reasoned objections (lines 159-166)

The discussion focused on finding similarities between the approaches of the co-legislators, which were not too far apart. During this discussion, reference was made to the recent CJEU ruling in Joined Cases T-70/23, T-84/23 and T-111/23, notably when it comes to the wording of paragraph 18(1)(a) (Judgment of the General Court of 29 January 2025 (Data Protection Commission v European Data Protection Board)).

An overall agreement was found in preserving the proposal and logic underpinning the Council's GA, with the three criteria listed under paragraph 1(a) and the preservation of paragraph 2, as proposed by Council.

The EP showed flexibility in provisionally removing the initial paragraph 18(2), originally included in the Commission's proposal, which included very detailed requirements on the form and structure of relevant and reasoned objections. Instead, a more general reference is proposed under paragraph 18(3). In the Presidency's assessment, such general reference will provide guidance for the authorities, while leaving them a sufficient margin of discretion (in particular as compared to the original proposal of the Commission, retained in EP's mandate).

A tentative consolidated version of Article 18 would read:

Article 18

Relevant and reasoned objections

1. *Relevant and reasoned objections within the meaning of Article 4(24) of Regulation (EU) 2016/679 shall:*

*(a) be based ~~exclusively~~ on factual **and legal** elements included in the draft decision or in the cooperation file; ~~taking into account the comments relating to the summary of key issues and the preliminary findings~~; and*

*(b) not ~~change~~ **concern** the scope of the allegations by raising points amounting to identification of additional allegations of infringement of Regulation **an investigation on which consensus was found pursuant to Article 10(EU1a) 2016/679 or changing the intrinsic nature or 10(3), or as defined in the binding decision of the allegations raised. Board adopted under Article 10 (6) when applicable**; and*

(c) not concern a draft decision adopted in accordance with the conditions pursuant to Article 5 of this Regulation.

2. Notwithstanding point (b) of paragraph 1, a supervisory authority concerned may provide relevant and reasoned objections that concern the scope of an investigation as referred to in point (b) of paragraph 1, provided that, in duly justified cases:

- the lead supervisory authority has failed to investigate all the elements of the summary of key issues agreed pursuant to Article 10(1a) or 10(3), or has failed to comply with the binding decision of the Board under Article 10 (6) or,**
- additional new elements not available at the time of agreeing on the summary of key issues pursuant to Article 10(1a) or 10(3), or at the time of the binding decision of the Board under Article 10 (6), demonstrate a significant risk posed by the draft decision as regards the fundamental rights and freedom of the data subject and, where applicable, the free flow of personal data within the Union; or both.**

3. A relevant and reasoned objection shall clearly state the disagreement of the supervisory authority concerned with the draft decision and shall be worded in sufficiently clear, coherent and precise terms to enable the lead supervisory authority, and as the case may be, supervisory authorities concerned, to prepare their positions and to enable the Board to efficiently resolve the dispute.

➔ **Question 2:** The delegations are asked for their views on the proposed wording of Article 18(1) and the possible introduction of a new paragraph 3.

4. Article 24 – Statement of reason (lines 209-213)

The Commission and the Presidency presented arguments in support of Article 24, deleted in the EP's mandate. The EP reserved its position on this Article with the main critical arguments as follows:

- In EP's view, the Article introduces a change in the character of the role of the Board and the nature of its binding decisions. The EP reserved further scrutiny on this element;
- In EP's assessment, this solution would increase the burden on the Board, and make it more difficult for it to adopt its decision within the time limit foreseen in Article 65 GDPR.
- While ultimately the EP has showed some limited openness, it has remarked that in any case, the nature of the statement of reasons referred to in Article 24 should be changed so that the preparation of the document adds less burden for the Board.

The discussion on this provision will continue at upcoming ITMs.

➔ **Question 3:** The floor will be open in case delegations wish to make any remarks with regards to ongoing discussions on Article 24.

5. Articles 22, 23, 25, 26, 26a – Dispute resolution (lines 190-208a, 214-231i)

The positions of the co-legislators on Articles 22, 23, 25 and 26 are relatively close. The EP and the Presidency found a provisional compromise on the main elements of these Articles, which will be

subject to further alignment by the drafting team. Some proposed changes are pointed out for delegations' information and scrutiny. In addition, a first discussion on Article 26a (EP) took place.

Article 22

Line 199b, Article 22(2a) – it is proposed to simplify the text of the Council's GA in the following way: **~~"Where appropriate, [T]he Board may request further documents from the lead supervisory authority, at least to the extent they relate to the subject matter submitted to the dispute resolution mechanism."~~** It was pointed out during the ITM that the reference to "where appropriate" is not necessary in a "may" provision; while the reference to "at least to the extent (...)" is unclear.

Article 23

In the EP's approach, Article 23 was removed, and its content was included in Article 22. However, on the substance, the positions of the co-legislators are similar. The discussions on the best approach on how to structure the elements from Articles 22 and 23 will continue. Preliminarily, Article 23(2) – line 28a – introduced in Council's GA is retained.

Article 25

The EP showed flexibility in reinstating the Article, originally removed in its mandate. Changes introduced in the Council's GA were also retained with the following caveats:

Article 25(1a), line 220a – it is proposed to remove "where appropriate" (*see above similar change for line 199b*)

Article 25(2b), line 221b - the Presidency explained that the mechanism of "acknowledgement" of its role by the competent supervisory authority designated by the Board was introduced in order to provide a clear moment in time from which subsequent deadlines would run. The EP acknowledged the need to address this issue, but suggested to specify instead that the deadlines should run from the moment the authority is notified of the Board's decision. The Presidency preliminarily agreed that such mechanism is more common in legal texts and could be accepted.

Article 26

The Council's approach is retained in full.

➔ **Question 4: The floor will be open in case delegations wish to make any remarks with regards to ongoing discussions on Articles 22, 23, 25 and 26.**

Article 26a

The EP has preliminarily agreed to removing the proposed paragraph 26a(1), which referred to the *"procedural determination by the Board on any procedural dispute arising between the supervisory authorities"*.

However, the EP has maintained its view on the solution proposed by it under Article 26a(2), that is the obligation to seek the agreement of the Board when the lead supervisory authority seeks the extension of the deadline for delivering the draft decision.

While the Commission and the Presidency has presented arguments countering this solution, the Presidency committed to discussing this proposal further with the delegations. (See question 6, under point 8 of this document on the preparation for the 12th and 13th ITMs).

6. Articles 27 – 28 – Urgency procedure - (lines 233-250)

The positions of the co-legislators were close on Articles 27 and 28. In effect, several lines were preliminarily greened after drafting changes and other changes aiming at finding a compromise between the additions from both the EP and the Council. The Articles will be subject of further work of the drafting team, thus full tentative consolidated versions of the Articles are not reproduced here. However, some notable changes and proposals from the ITM are pointed out for delegations' information and scrutiny.

Article 27

Article 27(1)(a), line 235: it is proposed to accept EP's addition, however with a change from "evidence" (which could be problematic from procedural point of view) to "allegation" (*"A request for an urgent opinion of the Board (...) shall contain (...) a summary of the relevant facts, including evidence-an allegation of the infringement of Regulation 2016/679"*).

Article 27(2), line 238: EP showed flexibility in removing the paragraph, deleted in the Council's GA.

a) Article 28

Article 28(1)(a), line 241 — it is proposed to accept EP's addition with a change from "evidence" to "allegation" (*see explanations above on line 235*)

Article 28(1)(c), line 243 — it is proposed to accept EP's removal of "the local establishment". This addition is not necessary from the legal and practical point of view – if the authority receives replies from other establishments of the party under investigation (e.g. the main establishment decides to contact the authority instead of the local establishment), such replies should also be included as part of the request for an urgent binding decision of the Board referred to in Article 28.

Article 28(1)(f), line 246 – the line was marked in yellow, while the Presidency reserved its position on reinstating the word "against". Seeing that the removal of the word "against" in the Council GA's leads to a drafting problem, the Presidency proposes the following alternative wording for this line: *"where applicable, the views of the local establishment of the parties under investigation ~~against~~ which is concerned by the provisional measures ~~were~~ taken pursuant to Article 66(1) of Regulation (EU) 2016/679."*

Article 18(1a), line 246a – the wording of Council's GA was accepted, however it is proposed by the EP that the words "where appropriate" are removed. From the point of view of legal drafting, the words "where appropriate" are not necessary in a "may" provision.

Article 28(1c) CSL, line 246c – the EP expressed the view that if such paragraph were to be accepted, it should concern not only elements on which the *parties under the investigation* have been provided with an opportunity to express their views, but also the *complainant*. The EP also pointed out that the CSL approach, in its view, is inconsistent: at the end of the paragraph, reference is made both to the parties under investigation and the complainant. The EP reserved its views on this paragraph. The discussion on this provision will continue.

Article 28(4), line 249 – the paragraph is provisionally removed, following the Council's GA, however with a scrutiny reservation from the EP (yellow marking)

➔ **Question 5: The floor will be open in case delegations wish to make any remarks with regards to ongoing discussions on Articles 27 and 28.**

7. Overview of all lines provisionally agreed (greened) during the ITMs of 3/02 and 6/02 in chronological order

Line(s)	Article	Source and/or comment
34	<i>Recital (24)</i>	Commission proposal / Council's GA
153	16	Title of Article 16
154c-154j	16(1c), 16(1d) including subpoints	Paragraphs added by the EP removed
155m	17	Title of Article 17
156	17(1)	Council's GA
162	18(1)(b)	Council's GA, possible further changes by the drafting team
162b-162d	18(1a), 18(1a)(a)-(b)	Council's GA
163-166	18(2), 18(2)(a)-(c)	Paragraphs deleted following Council's GA
190	22	Title of Article 22
191	22(1)	Paragraph deleted (Council's GA)
191a	22(1a)	Council's GA
191b	22(1b)	Council's GA
192	22(2)	Merging of the two mandates
214	25	Title of Article 25
215-220	25(1), 25(1)(a)-(e)	Commission proposal and/or Council's GA
220a	25(1a)	Council's GA, with the removal of "where appropriate"
221	25(2)	Council's GA
225	26(1)(ba)	Council's GA
226	26(1)(c)	EP mandate with the change from "explanation" to "indication"
226a	26(1a)	Council's GA with the removal of "where appropriate"
227	26(2)	Council's GA
231a	26(3a)	Council's GA
231c	26a (EP)	The EP preliminarily agrees to removing the paragraph
235-237	27(1)(a), (b), (c)	Compromise approach / EP / EP and Council's GA
238	27(12)	Council's GA
239	28	Title of Article 28
241-243	28(1)(a), (b), (c)	Compromise approach / Council's GA / EP
246a	28(1a)	Council's GA with the removal of "where appropriate"
247	28(2)	Council's GA (paragraph removed)
248	28(3)	Commission proposal / Council's GA

8. Preparations for the 12th and 13th ITMs

The discussions during the 12th and 13th ITMs (March) are expected to follow the calendar shared with the delegations in the document WK 824/2025 INIT, possibly with the continuation of discussion on Articles 4, 5a EP, 6bis CSL, 26a EP, 26b EP. Additional two meetings of the drafting team are scheduled in February.

a) Update from the Presidency on Article 6bis

The Presidency will make an oral update on Article 6bis during the Working Party.

b) Discussion on the approach to negotiations of the deadlines

In anticipation of the upcoming discussion regarding deadlines and time limits, the EP has already indicated that they would favor having in the Regulation a provision setting out an overall deadline for the conclusion of a complaint-based procedure.

The EP mandate foresees that “procedures before supervisory authorities should typically not take more than nine months, unless exceptional circumstances arise” (Recital 5, line 15). Under Article 4, the EP mandate foresees that “the lead supervisory authority shall deliver a draft decision (...) without delay, and no later than nine months from the receipt of the complaint” (line 72b), with a possible extension of 8 weeks in case comments are submitted to the summary of key issues or in case the LSA intends to issue a fine (line 72d and 72e). In “exceptionally complex factual investigation”, the EP mandate foresees an extension of up to nine months for the LSA, but subject to a justification and a binding decision by the Board allowing for such an extension (Article 26a EP, line 231d).

The Presidency interprets the EP mandate on an overall time limit for the LSA to submit a draft decision as summarized below:

- 9 months from the receipt of the complaint, and
- possible extension of:
 - 2 months when comments are submitted to the summary of key issues,
 - 2 months when the LSA intends to issue “fines or other penalties”,
 - up to 9 months in “exceptionally complex factual investigation”, following a decision by the Board.

The EP mandate and initial negotiating position seems to indicate that the EP’s position is that a complaint-based procedure on a cross-border case cannot exceed 18 months (that is, the extensions of 2 months are not to be cumulated with the extension of 9 months).

The Council general approach does not include a specific time limit which would define and mandate a period of time for the LSA to submit a draft decision from the receipt of the complaint. However, the Council general approach foresees a series of specific deadlines related to the different intermediary cooperation steps, leading to the submission of a draft decision. In chronological order, the Council general approach regarding deadlines can be summarized as below:

- 3 months for the submission of the summary of key issues (with a possible extension of 3 months),
- 1 month for the provision of comments by CSA to the summary of key issues (with a possible extension of 2 weeks),
- 1 month for the LSA to respond to comments on the summary of key issues (with a possible extension of 2 weeks),
- 6 months for the LSA to communicate the preliminary findings, in case of consensus on the summary of key issues (may be extended once, on account of the complexity of the case, for a period defined by the LSA),
- 1 month for the CSA to provide comments on the preliminary findings (with a possible extension of 2 weeks),
- 1 month for the parties under investigations and the complainants to make their views known (with a possible extension of 2 weeks),
- 3 months after having heard the parties for the LSA to submit a draft decision (may be extended once, on account of the complexity of the case, for a period defined by the LSA).

In the absence of comments to a summary of key issues and without using the possible extension mechanism, the Council general approach foresees that a complaint-based procedure on a cross-border would mandate the LSA to submit a draft decision within 14 months from the receipt of the complaint.

However, should all possibility of extension be used, **this period could be extended to up to 19 months, or even longer on account of the complexity of the case, and for a maximum period to be determined by the LSA.** It should also be noted that such period does not take into account circumstances where the Board would be required to adopt a binding decision in the absence of consensus on the summary of key issues.

The Presidency takes the view that a preliminary discussion on an overall time frame for the LSA to submit a draft decision could be relevant and help making progress on the matter. Following such a discussion, it will however be necessary to discuss and agree on intermediary time limits for the different procedural steps laid down by the Regulation. In anticipation of such a discussion, the Presidency intends to clarify first the following points:

- The relevant overall period to be discussed should have as a starting point the LSA's confirmation of its competence following the receipt of the complaint, and as a final point the submission of a draft decision by the LSA in accordance with Article 60(3) GDPR.
- Other specific time limits foreseen in the GDPR and/or the proposed Regulation (admissibility of complainant, transmission to the LSA, referral to dispute resolution, etc...) should in any case be subject to separate case by case discussions.

➔ **Question 6:** Considering the above and in anticipation of the discussion with the EP on deadlines, delegations are asked for their views on the following points:

a) Possible maximum duration of a procedure in a cross-border case, from the receipt of the complaint by the LSA to the submission of the draft decision, and possible maximum duration in case of extension.

b) Type of mechanism or procedure for the extension of deadlines applicable to the LSA. Delegations are in particular invited to share their views on the solution proposed by the EP in Article 26a(2) – line 231d – the obligation to ask for the Board's approval to extend the deadline for delivering the draft decision. Delegations are also invited to share any suggestions regarding alternative procedures allowing for the extension of a deadline, including safeguards to ensure the correct and justified use of such extension.

c) Preliminary views and reflections regarding the consequences for the LSA of not meeting a deadline related to cooperation between authorities, including the deadline for the submission of a draft decision. In addition, delegations are invited to share their view in relation to deadline applicable to the CSA when cooperating with the LSA (e.g. comments on the summary of key issues, views on the preliminary findings, etc...).