



Council of the European Union
General Secretariat

Brussels, 13 March 2025

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

WK 3384/2025 INIT

LIMITE

DATAPROTECT

JAI

DIGIT

MI

FREMP

CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

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 - Presidency note

Ahead of the meeting of the Working Party on Data Protection of 14 March 2025 and in addition to the discussion paper already issued (WK 3208/2025), delegations will find in the Annex a Presidency note on the above-mentioned file.

Presidency note – debrief from the interinstitutional technical meeting of 12.03 (GDPR procedural regulation)

In preparation for the Data Protection WP of 14.03, the Presidency shares this written account of the ITM of 12.03. **This ITM concerned deadlines**, predominantly an overview of the approach to deadlines by both co-legislators, the extension mechanism and some exchange on the consequences of missing a deadline.

Duration of the procedure to deliver a draft decision under the GDPR procedural regulation

The EP explained that a red line in their position is the necessity to have a specified duration for the procedure, with a clear maximum end point enshrined in the regulation for the completion of an investigation (and the submission of an investigation). In this way, the EP pointed out that the Council GA includes the possibility to extend the duration of the procedure for a specified time, but without specifying the maximum duration of such extension.

The Presidency offered to further consider this aspect, and test limiting the maximum duration of extension for issuing the draft decision, however, on the condition that: 1) both the original deadline and the period for extension is sufficiently long; 2) the extension mechanism remains in the hands of the LSA (i.e. it does not involve the Board).

The Presidency hinted to a first preliminary proposal that such deadline could be phrased as 18 months to deliver a draft decision from the receipt of the complaint by the LSA, plus a maximum of 18 months of extension. The discussion on how to exactly phrase such deadline, in smaller steps or as a global deadline, will in any case continue between the co-legislators.

The initial overall timeline of 18 months is based on the Council GA: it is the time of all steps proposed under the GA approach added, including the extensions that are not depended on the LSA (i.e. including smaller extensions on the request of the concerned authority or the complainant and the party under investigation). As for the extension period, the Presidency followed the approach from the Council GA: that is the extension can be done only once and for a specified timeline, and added the idea, suggested by some delegations, that such extension should not be longer than the initial maximum deadline for the procedure. The Presidency explained to the Parliament that if the deadline would be shorter, the possibility to have an extension without specifying the timeline must remain.

The future discussion will still concern duration of interim steps, after which the co-legislators will discuss whether the “global deadline” should be set out explicitly, or it should be evident based on the duration of each step. The Presidency suggests that in any case, deadlines for some steps should be included (*example: summary of key issues, comments from CSA, procedure to hear the parties under investigation and the views of the complainants*). Removing specific deadlines for some other steps might give the authorities more flexibility. This may be considered for example concerning the exact timing for the LSA to present the preliminary findings. Any solution involving an overall timeframe would include a specification that such timeline would not run in case a dispute between the authorities is referred to the Board (i.e. any aspects that are not under the control of the LSA should not be counted in the timeframe).

The Presidency insisted that any set overall timeline must account of all cases to be investigated by DPA, including the most complex ones, and should also be considered in terms of practical implementation and quality of the investigation.

- **For scrutiny of delegations (1):** In Presidency's assessment, the potential areas to explore in negotiations include:
- Foreseeing a shorter timeframe for "6bis/18bis cases";
 - Foreseeing an initial timeframe shorter than 18 months for "enhanced procedure" cases, but with the possibility to extend the duration once for a specified period, and/or foreseeing a timeframe shorter than 18 months for the maximum extension period.

Extension mechanism

The Presidency conveyed the message that the Member States do not agree to the extension mechanism being controlled by the Board. Preliminarily, the EP reacted positively to the idea consulted with Member States during the JHA counsellors meeting of 12.03, that is of a tailored-made, two step mechanism: 1) non-binding consultation on the extension with other concerned authorities; 2) presumption of urgency based on article 66(1) only in case when the extended deadline is missed and a concerned authority has previously opposed to an extension of a deadline. The discussion on this aspect will continue.

- **For scrutiny of delegations (2):** Possible area of compromise might include a solution whereby extension of short duration should not face further scrutiny, while a more elaborate mechanism (in any case not involving the Board) should only be applicable to extension of longer duration.

Consequences of missing a deadline

The Presidency conveyed the message from the Member States, that is that article 26b (EP) – "Judicial remedies" – might lead to overall increased risk of litigation, without clear benefit to the complainant, and that the vagueness of the provision might lead to the risk of invalidating the procedure run by the supervisory authorities.

Selected specific deadlines

A limited discussion on selected interim deadlines took place, with the possible compromise suggested by Parliament as follows:

- 4 weeks for the decision on the admissibility of a complaint (original deadline in Council GA: 4 weeks + 2 weeks extension).
- 6 weeks for the confirmation of the LSA competence, from the receipt of the complaint by the LSA

- **For scrutiny of delegations (3):** Delegations are invited to take the floor in case they wish to comment on the two interim deadlines selected above.

The Presidency will ask for delegations' preliminary views on the three points mentioned above for their scrutiny, and any additional comments on the issues indicated above.

Simple cooperation proposal (EP redrafting proposal)

The Presidency has just received a redrafting proposal from the European Parliament following the in-depth discussion and compromise suggested regarding Article 6bis of the Council General Approach.

The EP redrafting proposal is included below, without any preliminary assessment or comment from the Presidency, for delegations' information and preliminary consideration. The Presidency has already indicated to the EP that this redrafting proposal will have to be scrutinized in details. The Presidency has already identified that further wording adjustment will most probably be needed, in particular concerning paragraph 4.

Article 8bis
Simple cooperation procedure

1. Once the lead supervisory authority has formed a preliminary view on the main issues in an investigation, it may cooperate with supervisory authorities concerned through a simple cooperation procedure, in accordance with this Article, where:
 - (a) no reasonable doubt exists as to the scope of the investigation, in particular the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement which are to be investigated; and
 - (b) the legal and factual issues identified by the lead supervisory authority do not require a complex investigation, in particular where they can be addressed based on previous decisions in similar cases.

In such a case, Articles 9, 10, 14, 15, 18(1), points (a) and (b) and 18(2) of this Regulation shall not apply, and the lead supervisory authority shall submit a draft decision in accordance with Article 60(3) of Regulation (EU) 2016/679 [within X months] from the transmission of a complaint in accordance with Article 3, paragraph 4, of this Regulation.

2. The lead supervisory authority shall notify the supervisory authorities concerned of its intention to apply the procedure referred to in paragraph 1, providing information on the characteristics of the case relevant to establishing the criteria set out in paragraph 1, and the relevant previous decisions taken into consideration, [no later than within six weeks] from the transmission of a complaint in accordance with Article 3, paragraph 4, of this Regulation.

3. Where any of the supervisory authorities concerned objects to the application of the procedure referred to in paragraph 1, within two weeks after having been notified of it, this procedure shall not apply and the lead supervisory authority shall draft a summary of key issues in accordance with Article 9 of this Regulation and continue cooperating under the procedures pursuant to Chapter III of this Regulation.

4. When applying the procedure referred to in paragraph 1, the lead supervisory authority shall, prior to the submission of a draft decision finding an infringement of Regulation (EU) 2016/679, ensure the right of parties under investigation to reply to all main findings of the investigation and on any corrective measures which the lead supervisory authority considers using. The supervisory authority with which the complaint has been lodged shall, in accordance with rules on access to the administrative file and on confidential information under Articles 19 and 21, provide the complainant with an opportunity to make his or her views known.