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From: To:	Presidency 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 - Discussion paper

Ahead of the meeting of the Working Party on Data Protection of 15 April 2025, delegations will find in the Annex a Presidency discussion paper on the above-mentioned file.

Data Protection WP, 15.03.2025

Discussion paper – GDPR procedural regulation

PUBLIC

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This paper includes a debrief from the ITM which took place on 28.03. The ITM scheduled for 1.04 was cancelled at the request of the Parliament. The next ITM is scheduled for 24.04.

1. Oral debrief on the state of play of negotiations and the updated calendar

The Presidency will make an oral debrief on the state of play of negotiations and the updated calendar of negotiations.

2. Investigation of complaints – the concept of "extent appropriate" (Article 4, lines 69 to 72)

The Presidency and the EP continued discussions on Article 4 which previously took place under the Hungarian Presidency. The approaches of the EP and the Council differ significantly in this Article (in lines 69 to 72; the later lines from the EP's approach are subject to separate discussion). Since this subject was already discussed previously, but no comprehensive compromise was found, the EP suggested that these lines could be removed from the text altogether and therefore proposed the full deletion of Article 4.

In the Presidency's assessment, Article 4 codifies practices which are already used by the authorities, and it refers to very general concepts (such as "nature of the alleged infringement", as per the Council General Approach, line 71). Originally, the Council has included this Article in its General Approach following the Commission's proposal. However, ultimately this Article is of lesser importance in the overall architecture of the Regulation.

The approach initially proposed by the Parliament is more far reaching, and mixes the concept of "the extent appropriate to which a complainant should be investigated" with placing more concrete obligations on the authorities (e.g. "endeavor to ensure…", line 69).

The EP did not show the willingness to move significantly towards the approach proposed in the Commission's proposal and in the Council GA. Thus, there is a risk that a potential compromise would require a mixed approach between the positions of the Parliament and the Council, which might result in a more "obligation-based" approach ("endeavor to ensure"). As such, the Presidency considers that the deletion of this Article could be a more suitable option.

➔ **Question 1: The delegations are asked for their views on the potential deletion of Article 4 (lines 69 to 72, the concept of "extent appropriate").**

3. Request for ex officio procedure / launch of an investigation (Article 5a (EP))

The Presidency and the EP continued discussions on Article 5a (EP) – Investigation of complaints (see WK 3089/2025 INIT for previous discussion).

To recall, the aim of this provision in the EP's mandate is to ensure that a supervisory authority from another Member State might request another supervisory authority to open an ex officio procedure. The latter supervisory authority would in principle (that is, unless some exceptions apply) be bound to open the procedure and deliver a draft decision within a specified period. The existence of such solution is a very important element to the EP.

The Presidency and the Commission explained previously that there is already a possibly of request to open an investigation based on Article 61 GDPR. The EDPB also reached a similar conclusion in its opinion.[1] However, as previously reported (WK 3089/2025 INIT), the EP raised that Article 61 GDPR does not include an obligation to launch the investigation within a specified period, and is not linked to an obligation to deliver a draft decision within a specified period as a result. On a request by the Parliament, the Presidency has previously consulted the delegations on a possibility of foreseeing such deadlines. The delegations did not grant the Presidency the mandate to agree to the introduction of such a deadline.

As a result, the Presidency preliminarily tested another wording which would clarify some of the elements of Article 61 GDPR, without introducing a concrete deadline (see below). As it stands, this proposal does not appear as acceptable for the Parliament.

[1] https://www.edpb.europa.eu/system/files/2024-10/edpb_statement_20241007_additionalproceduralrulesgdprenforcement_en_0.pdf, at 19

Article 5a

Mutual assistance for the opening of an investigation

1. A supervisory authority concerned may request to the lead supervisory authority to open an investigation on an alleged infringement of Regulation (EU) 2016/679 in relation to a cross-border processing, through a request for mutual assistance in accordance with Article 61 of Regulation (EU 2016/679.

2. Where a supervisory authority concerned has addressed a request referred to in paragraph 1, the lead supervisory authority shall, within one month, provide the supervisory authority concerned with information on the progress of the measures taken in order to open an investigation or provide reasons for refusal in accordance with Article 61, paragraph 4, of Regulation (EU) 2016/679.

3. When informing the supervisory authority concerned of the progress of the measures taken in order to open an investigation, in accordance with Article 61, paragraph 5, of Regulation (EU) 2016/679, the lead supervisory authority may in particular refer to the order of its priorities and provide an estimate of the timing for the opening of the investigation.

Accompanying recital (on the basis of CJEU case law - Joined Cases T-70/23, T-84/23 and T-111/23, at 80 and 81):

(XX) In line with Regulation 2016/679, supervisory authorities should assist each other in performing their tasks and provide mutual assistance, including through requests to carry out investigations. Where it is requested to open an investigation related to a cross-border processing, the lead supervisory authority should inform in due time the requesting supervisory authority on the progress of the measures taken in this regard. It is only in the circumstances provided for in Article 66 of Regulation 2016/679, where another supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, that an urgent binding decision of the Board may oblige the lead supervisory authority to review without delay the order of its priorities in order to deal with a case.

The negotiations on this Article are currently in a stalemate due to the Parliament reluctance to consider a provision that would not have the effect of a binding request on the LSA with an obligation to open and close an investigation within a specified time. It might be subject of a future discussion on the political level.

To prepare for such discussion, the Presidency is open to gather alternative ideas on how to address the issue of request for ex officio investigations from other supervisory authorities.

➔ **Question 2: The delegations are asked for their views on the text preliminary tested with the Parliament and potential areas for compromise with regards Article 5a (EP).**

4. Adoption of final decision (Article 16(2))

The Presidency and the EP continued to exchange on Article 16(2) (see WK 3208/25 for previous discussion).

The EP proposed the following wording. The parts in track changes are changes that the Presidency plans to propose to the EP based on the delegations' feedback received previously.

*2. The information to be provided to the complainant pursuant to Article 60(7) and Article 60(9) of Regulation (EU) 2016/679 shall consist of a version of the decision adopted that includes its operative part in full and whose grounds do not include elements considered confidential in accordance with Article 21, paragraph 1, of this Regulation, or a summary of the decision, including the relevant facts and grounds. ~~In any case and~~ **Where the complainant has only been provided with a summary of the decision** ~~without prejudice to the use of its corrective powers by the supervisory authority~~ ~~the complainant~~ **he or she** shall, upon request, be provided with a version of that decision that includes its operative part in full and whose grounds do not include elements considered confidential in accordance with Article 21, ~~paragraph 1~~, of this Regulation **without prejudice to the use of its corrective powers by the supervisory authority**.*

➔ **Question 3: the floor will be open in case delegations will want to comment on this provision.**

5. Subsequent domestic proceedings

The Council general approach introduced specific provisions to addresses cases where national procedural law foresees that a supervisory authority has to engage in subsequent domestic procedures related to the same case, such as administrative appeal proceedings or misdemeanour proceedings (see recital 14a and 23a, and Article 9(5) and Article 14(8) of the Council's general approach).

Preliminary discussions had already taken place with the European Parliament on these provisions under the Hungarian Presidency, where arguments where made in order to avoid unnecessary administrative burden and the repeating of cooperation steps which were in any case apply in the first instance.

Following continued informal negotiation talks with the Parliament's negotiating team, the Parliament has considered positively the initial proposal made by the Council and suggested a compromise text laying down an horizontal provision addressing the issue at stake.

Text from the Parliament:

<u>EP proposal in response to lines 111a and 146b of the Council mandate</u>

Article XX

1. Where national law requires subsequent domestic proceedings related to the same case to be opened after the adoption of a decision pursuant to Articles 13 or 16, the lead supervisory authority shall:

a) not draft a new summary of key issues,
b) submit a draft decision before adopting any subsequent decision pursuant to Articles 13 or 16, and
c) repeat the procedural steps pursuant to Article 11 or Articles 14 and 15 only where its factual or legal assessment differs from the preceding decision adopted pursuant to Articles 13 or 16.

2. The time limit pursuant to Article XX shall apply to submitting a draft decision in any subsequent proceedings referred to in paragraph 1.

[*Explanation from the EP: "Paragraph 2 should link to the provision on the general time limit for submission of a draft decision by the lead supervisory authority. Its text should be aligned with what is agreed on that general provision, if necessary".*]

The Presidency considers, preliminarily, that this article should address the issues previously identified by some Member States that have this kind of national procedures. In paragraph 2, the issue of time limit might require more discussion in order to ensure that there is enough time for decision making also at the subsequent step.

➔ **Question 4: the floor will be open in case delegations wish to raise any issues with this proposal.**

6. Statement of reason and hearing at EDPB level (Article 24)

The discussion on this Article took into consideration the opinion of Advocate General in case C-97/23 P, WhatsApp Ireland Ltd v EDPB, issued on 27th March 2025. In this opinion, the Advocate General advises the Court to rule that a decision by the EDPB may be directly challenged at the General Court.

Considering the opinion, which might influence the ruling of the Court in this case, the EP – who previously has removed Article 24 in its mandate – has confirmed it has changed its position and is willing to include Article 24 in the Regulation. In addition, the EP considers that as a result of the opinion, the right to be heard in proceedings before the Board should concern reasoned and relevant objections (see language for a revised Article 24 proposed by the EP below):

Article 24 (EP Proposal)

Hearing the party under investigation and the complainant prior to adoption of decision under Article 65(1), point (a), of Regulation (EU) 2016/679

1. Prior to adopting the binding decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679, the Board shall provide the party under investigation, or, in case where the Board decision can result in the rejection of a complaint, the complainant, with the opportunity to express their views on the relevant and reasoned objections and on any other new factual or legal elements on which its decision will be based. The Board shall provide the opportunity in writing, setting a time limit.

2. The Board's duties provided in paragraph 1 shall take place before the registration of the referral of the subject matter pursuant to Article 22(3). Should new factual or legal elements be considered by the Board after that moment, the same process described in paragraph 1 shall take place on those elements.

The main changes in this article as compared with the Commission's proposal and the Council GA are:

1) the introduction of the right to be heard/make the views known on the relevant and reasoned objections (and not only on new elements). The EP argues however that the relevant and reasoned objections would normally nevertheless include new elements.
2) the solution whereby this process takes place before the registration of the referral. This is supposed to ensure that the Board has enough time for executing the right to be heard/making the views known.

The EP underlined that these changes are of very big importance to them and to the overall solution.

In the Presidency assessment, the scope of the right to be heard / making the views known foreseen in the Council GA is relatively wide – it refers to all elements on which the parties under investigation or the complainant have not been heard. However, this entails that the Board makes some choices with regards to the elements on which the parties under investigation and the complainant have not been heard.

➔ **Question 5: the floor will be open in case delegations want to express their views on the possible consequences of the reasoning presented in AG opinion in case C-97/23 P for Article 24 and the right to be heard before the Board. The delegations are asked for their views on the proposal made by the EP.**

7. **Article 28a (EP) (lines 250a and 250b)**

In preparation for the upcoming ITMs, delegations are asked for their views on Article 28a as introduced by the EP. As explained by the EP, this article should concern bringing challenges to procedural mistakes other than the one related to deadlines, such as for example not granting the right to be heard. The EP argues it is important to ensure that

such challenges are brought only together with a challenge to the final decision, so that they are not used as tools to block the procedure and decision-making of the DPAs.

Article 28a (EP)

Remedies against procedural determinations

Remedies against procedural determinations by a supervisory authority under national law shall only be brought together with the remedy against the final material decision. Deadlines for remedies against procedural determinations under applicable national law are prolonged for the duration of the procedure before the supervisory authority.

➔ **Question 6: Delegations are asked for their views on Article 28a (EP).**

8. Judicial remedies

The EP and the Parliament continue the discussion on the judicial remedies. The EP has presented its new proposal as below.

Article 2c

Common rules on time limits

(1) Where this Regulation or Regulation (EU) 2016/679 provides that an obligatory procedural step is to be taken by a supervisory authority or by the Board within a specified time limit, taking such a step after the expiry of the time limit shall not affect the legality or validity of that procedural step or of the final decision.

(2) Without prejudice to paragraph 1 of this Article and to Article 7(2), where this Regulation or Regulation (EU) 2016/679 provides that an obligatory procedural step is to be taken by a supervisory authority within a time limit and such a procedural step has not been taken within that time limit, the party under investigation shall have the right to an effective judicial remedy equivalent to the one provided to the complainant pursuant to Article 78(2) of Regulation (EU) 2016/679, and it shall be presumed that the supervisory authority does not handle a complaint within the meaning of Article 78(2) of Regulation (EU) 2016/679.

[Explanation from the EP: the "obligatory procedural step" is to be defined or specified in the text as relating to the decision on admissibility, delivering a draft decision and a final decision].

In the assessment of the Presidency, paragraph 1) is similar to the paragraph on validity previously consulted with the delegations.

As for paragraph 2), to the Presidency notes that it concerns only the rights of the party under investigation. In previous discussion, the Presidency has been arguing that the rights of the claimant are ensured under article 78(2) GDPR. It seems that the EP accepts this interpretation. However, in the intention of the EP with its proposal, this paragraph is

supposed to ensure that similar right is granted to the party under investigation and harmonised at EU level.

The Presidency considers that in any case, certain elements would need to be clarified: for example the reference to "obligatory procedural steps" needs to be improved and clarified, and a different term should be used. Moreover, the reference to a "presumption" does not seem justified, as there is no such "presumption" with regards to the complainant – thus, it could be argued that the party under investigation is granted more far-reaching rights than the claimant.

Irrespective of these problems, the Presidency asks the delegations for their comments on the main policy idea from this article: that is that the party under investigation should be granted a right similar this granted for the complainant in article 78(2) GDPR. The policy idea behind this article proposed by the EP is that it is also in the interest of the party under investigation that the final decision is delivered within the time limit, and prolonged proceedings can lead to legal uncertainty and publicity issues for the party under investigation.

➔ **Question 7: The delegations are asked for their views on Article 2c as proposed by the EP, and in particular the main idea introduced in this paragraph, that is that a right for effective judicial remedy for not handling a case is introduced for a party under investigation.**

9. Deadlines

The discussion on a "global investigation deadline" is currently put on hold – the negotiating teams are focusing on discussing the parameters and mechanisms of the procedure, while the overall length of the procedure will likely be a subject of a discussion on the political level. Some of these parameters have been preliminary considered at technical level, in particular the following elements:

- The global investigation deadline shall start from the receipt of the complaint by the LSA and confirmation of its competence and end with the submission of a draft decision.
- The global investigation deadline shall be suspended where disagreement on the scope of investigation is referred to the EDPB for a binding decision.
- The overall investigation deadline shall be structured around two periods (X months + X months extension).

Concerning, intermediary deadlines, within the global investigation deadline, a tentative compromise could also include the following elements:

- A deadline should be set for the communication of the summary of key issue by the LSA (see point a))
- The preliminary findings shall be communicated by the LSA, prior to the submission of the draft decision and ensuring the related procedures can be completed with

sufficient time, but without the need to set a defined intermediary deadline for the submission of preliminary findings.

In general, the EP explained it sees the need to look at the whole procedure from the point of view of the complainant. That is, while the focus of a "global investigation deadline" is the time needed for the lead supervisory authority to deliver a draft decision, there are the following time periods that still need to be added to calculate the possible length of the procedure from the point of view of the complainant:

- The decision an admissibility and on the cross-border nature of the case
- Transmission of the complaint from the concerned supervisory authority to the lead supervisory authority
- Confirmation of competence by the lead supervisory authority
- Possible proceedings before the EDPB on the competence of the lead supervisory authority.
- The time needed after the delivery of the draft decision to adopt and notify the final decision, depending on possible relevant and reasoned objections and possible dispute resolution at EDPB.

The EP underlines that therefore to have a full overview, it is necessary to add several months to the "global investigation deadline" to arrive at a maximum duration of the procedure from the point of view of the complainant.

While the Presidency considers that deadlines falling outside the "global investigation deadline" should be somehow considered as an integral part of the procedure, it reminded Parliament that some of these deadlines should not be considered in extenso, as they would vary depending on the case at stake, and others are not fully dependent on the LSA (eg. adoption of the final decision in case of relevant and reasoned objection). Nevertheless, the Presidency draws delegations' attention to the argument made by Parliament regarding the overall duration of the procedure from the point of view of the complainant.

a) Interim deadlines

The Presidency and the EP continued the discussion on the interim deadlines for particular steps -without prejudice to the discussions on the overall "global investigation deadline".

Following a preliminary discussion with the Parliament, a tentative compromise deadline for the submission of the summary of key issues has been proposed: 3 months from the confirmation of the LSA competence.

➔ **Question 8: the floor will be open to delegations in case they wish to comment on the deadline for the summary of key issues.**

b) Deadline for the "6bis" procedure

Both the Presidency and the Parliament considered that, the discussion on the "global investigation deadline" should also take into account the applicable investigation deadline for

the simple cooperation procedure (Article 6bis/8bis). A key consideration is that the investigation deadline for the simple cooperation procedure must be realistic and adapted to the cases falling under such a procedure.

The Presidency takes the view that the investigation deadline for the simple cooperation should be shorter than the deadline for the standard procedure, but it should however not deter supervisory authorities from engaging in such a procedure.

The Parliament has preliminarily proposed that such duration could be between 4 and 6 months (from the establishing of the competence by the LSA to the delivery of the draft decision – thus from the point of view of the complainant, up to a year from the filing of the complaint until the delivery of a final decision, unless there is objection and/or dispute resolution at EDPB level).

➔ **Question 9: delegations are invited to share their views and proposal for the duration of the investigation deadline under the simple cooperation procedure.**

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