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NOTE

From:	Presidency
To:	Working Party on Data Protection JHA Counsellors on Dataprotection Matters
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 - Addition to Presidency note

Ahead of the meeting of the JHA Counsellors (Data Protection) of 13 May 2025, delegations will find in the Annex an addition to the Presidency note on the above-mentioned file.

Addition to Presidency note

With this addition to the Presidency note, the Presidency shares the texts that were drafted and/or discussed on 12.05.

1. New article on time limits for the submission of a draft decision

Following further discussions at technical and drafting session level, it is suggested to have a dedicated article on time limits for the submission of a draft decision, which would also include the provisions related to the extension or suspension of these time limits. The proposed Article would also be complemented by accompanying recitals.

Article XX – Time limits for submission of a draft decision

- 1. The lead supervisory authority shall submit a draft decision pursuant to Article 60(3) of Regulation (EU) 2016/679 no later than [x] months after the lead supervisory authority has confirmed its competence pursuant to Article 3, paragraph 4a of this Regulation or after a binding decision by the Board pursuant to Article 65, paragraph 1, point b), of Regulation (EU) 2016/679 [or after the opening of an ex officio investigation]. This time limit may be extended [once] by the lead supervisory authority for a maximum period of [x] months, in line with the procedure in paragraph 3.*
- 2. Where a request under Article 10(4) of this Regulation has been made, the time limits referred to in paragraph 1 shall be suspended until the Board has adopted its binding decision.*

[Presidency comment: Article 10(4) concerns dispute on the scope of investigation in complaint-based cases. This only concerns enhanced cooperation cases, so only paragraph 1 is mentioned.]

- 3. In an exceptional case, the lead supervisory authority may extend the time limit referred to in paragraph 1 for a maximum period of [x] months on account of complexity of the case. In such a case, the lead supervisory authority shall inform the supervisory authorities concerned and set out the duration of and reasons for the intended extension, at least four weeks before the expiry of the time limit referred to in paragraph 1.*
- 4. Any supervisory authority concerned may submit an objection to the extension within two weeks from being informed pursuant to paragraph 3. The concerned authority shall set out the reasons for its objection. When determining whether to apply an extension to the time limit and, where applicable, the length of such an extension, the lead supervisory authority shall consider such an objection.*

[Presidency comment: the extension mechanism is simplified so that it is no longer tied to the presumption of urgency. The LSA retains full discretion on the extension.]

5. *Following the extension referred to in paragraph 3 of this Article, any supervisory authority concerned may inform the lead supervisory authority that it considers there is a need to act in order to protect the rights and freedoms of data subjects. Where the lead supervisory authority does not submit a draft decision within the extended time limit referred to in paragraph 3, an authority that has informed of a need to act in order to protect the rights and freedoms of data subjects may adopt a provisional measure on the territory of its Member State in accordance with Article 55 of Regulation (EU) 2016/679. In that case, the urgent need to act under Article 66(1) of Regulation (EU) 2016/679 shall be presumed to be met.*

[Presidency comment: the mechanism of presumption of urgency is no longer tied to the extension, it requires a separate notification and reasoning from concerned authorities. In other words, the concerned authorities might raise concerns over the extension of the deadline without triggering a possible consequence of presumption of urgency.]

6. *Where the simple cooperation procedure referred to in Article 8bis is applied, the lead supervisory authority shall submit a draft decision pursuant to Article 60(3) of Regulation (EU) 2016/679 no later than [x] months after the lead supervisory authority has confirmed its competence pursuant to Article 3, paragraph 4a of this Regulation or after a binding decision by the Board pursuant to Article 65, paragraph 1, point b), of Regulation (EU) 2016/679.*

Accompanying recitals:

(X) A mechanism should be introduced to allow the lead supervisory authority to extend the time limit for submitting a draft decision. Such extensions should be applied only in exceptional cases where it is required by the complexity of a case. Supervisory authorities concerned should be informed and have the opportunity to submit objections to the extension, which should be considered by the lead supervisory authority when determining whether to apply an extension to the time limit and, where applicable, the length of such an extension.

(XX) In cases where the lead supervisory authority extends the time limit for submitting a draft decision, supervisory authorities concerned should have the opportunity to inform the lead supervisory authority of their assessment that there is a need to act in order to protect the rights and freedoms of data subjects. In cases where the lead supervisory authority has been informed of such assessment in a timely manner, and does not submit a draft decision within the extended time limit, the urgent need to act as referred to in Article 66(1) of Regulation 2016/679 should be presumed. Notwithstanding this possibility, the urgency procedure remains available to supervisory authorities subject to the conditions set out in Article 66 of Regulation (EU) 2016/679.

In addition to these draft text already discussed with the EP, the Presidency is considering requesting an additional clarifying recital, in relation to the suspension of the time-limits, in particular where the LSA is required by a national Court to suspend its investigation. In this regard, the Presidency invites delegations to consider the draft proposal below.

(XXX) This regulation foresees a suspension of the time limit for the submission of a draft decision in circumstances that are outside the control of the lead supervisory authority, in particular where, in a complaint-based investigation, there is no consensus between the lead supervisory authority and one or more supervisory authority concerning the scope of investigation and the matter is referred to the Board for an urgent binding decision. It is also important to clarify that it is possible that the time limits referred to in this Regulation be suspended where, in accordance with national law and as a result of judicial proceedings at national level, the lead supervisory authority is ordered by a court to suspend its investigation.

2. Update on Article 16, paragraph 2 (Final decision, information provided to the complainant)

New proposed text of Article 16(2):

*(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 the grounds that do not include elements considered confidential in accordance with Article 21 of this Regulation, or a summary of the decision, including the relevant facts and grounds. In any case, the complainant shall, upon request, be provided with a version of that decision that includes its operative part in full and the grounds that do not include elements considered confidential in accordance with Article 21 of this Regulation. **Administrative modalities and requirements under the national procedural law of the lead supervisory authority shall continue to apply.***

The change concerns adding the text in bold – the previous reference to “without prejudice to corrective powers of supervisory authorities” was removed.

New proposed recital:

(X) (...) It is important that the provision to the complainant of a version of the final decision in accordance with this regulation does not circumvent the possibility for a supervisory authority to make the decision public as part of its corrective powers.

3. Recital 32a: access to documents

Original Council general approach recital:

(32a) Access to documents included in the administrative file on the basis of access to public documents shall be provided in accordance with Member States law. Until the final decision is adopted by the competent supervisory authority, the decision-making process of the

authorities, including the performance of their tasks without undue external influence, shall be protected.

Proposed compromise recital:

(32a) Access to documents included in the administrative file on the basis of access to public documents is to be provided in accordance with Member States law. In this regard, it is important that the integrity of the decision-making process is protected.

The suggested changes concern drafting (following the advice of lawyer-linguists), removal of reference to “until the final decision is adopted” and removal of the term “undue external influence”.

4. Recital XX: replacing Article 28a (EP)

As referred to in the previous note, the EP preliminarily agreed to resign from its article 28a, and proposes to add instead the following recital:

*(X) In order to ensure that proceedings are conducted efficiently, unless the procedural step in itself irrevocably affects the rights of the party under investigation or the complainant irrespective of the final decision, it is **[optimal][preferable]** that remedies against procedural steps of supervisory authorities only be available in conjunction with a remedy against a final decision.*

5. Recital 10a CSL – Protection of children

The EP opposed the recital proposed by Council and expressed strong reservation about any possible rewording, arguing that it would not support any specific or sectorial issue to be mentioned in the recitals of this regulation. In any case, the Council opposed any references to the «rights of the child», «dissemination of intimate material» and «high priority».

Original Council general approach recital:

10a) Cases where the rights of a child as data subject are at stake, and cases related to the dissemination of intimate material, should be given high priority to ensure the adequate protection of the rights of the child.

The Presidency is considering an alternative drafting proposal, to be added to Recital 6 of the proposed Regulation as follow (suggested addition in bold):

(6) Each complaint handled by a supervisory authority pursuant to Article 57(1), point (f), of Regulation (EU) 2016/679 should be investigated with all due diligence to the extent

*appropriate bearing in mind that every use of powers by the supervisory authority must be appropriate, necessary and proportionate in view of ensuring compliance with Regulation (EU) 2016/679. It falls within the discretion of each competent authority to decide the extent to which a complaint should be investigated. While assessing the extent appropriate of an investigation, supervisory authorities should aim to deliver a satisfactory resolution to the complainant, which may not necessarily require exhaustively investigating all possible legal and factual elements arising from the complaint, but which provides an effective and quick remedy to the complainant. The assessment of the extent of the investigative measures required could be informed by the gravity of the alleged infringement, its systemic or repetitive nature, or the fact, as the case may be, that the complainant also took advantage of her or his rights under Article 79 of Regulation (EU) 2016/679. **In this context, it is also important to consider the categories of personal data processed and the situation of the data subject, for example where a complaint relates to the processing of personal data of children.***