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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 - Presidency note

Ahead of the meeting of the JHA Counsellors (Data Protection) of 15 May 2025, delegations will find in the Annex a Presidency note on the above-mentioned file.

Presidency note

Following the ITM of 14/05~~/~~, the Presidency shares with delegations the most important changes provisionally agreed at this ITM.

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1. Proposal for Article XX on the time limit for submission of a draft decision

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. This time limit may be extended ~~[~~once~~]~~ by the lead supervisory authority in line with the procedure in paragraphs 3 and 4.

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.

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 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~~ take due account of such an objection.

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.

6. Where the simple cooperation procedure ~~referred to in~~under 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 recital:

(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.

Text above provisionally agreed by ITM on 14/05/2025

2. Recital related to Article 16(2)

Presidency proposal

(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~~remains without prejudice to the possibility for a supervisory authority to decide whether to make the decision public as part of its corrective powers.

Text above provisionally agreed by ITM on 14/05/2025

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3. Subsequent domestic proceedings

Presidency proposal

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~~b) 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, and~~.~~

~~b~~c) submit a draft decision before adopting any subsequent decision that is different from the preceding decision pursuant to ~~—~~Articles 13 or 16~~, and~~.

Text above provisionally agreed by ITM on 14/05/2025 – wording "different" delegated to drafting session / lawyer-linguists

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

CSL feedback pending on discussion and agreement on length of time limit

4. Article 8bis

Presidency proposal

Article 8 bis – 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) the lead supervisory authority considers that 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

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(b) the legal and factual issues identified by the lead supervisory authority do not require additional cooperation between supervisory authorities for the purpose of a complex investigation, in particular where they can be addressed based on previous decisions in similar cases.

In such a case, Articles 9, 10, 11, 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 the time limit referred to in Article XX, paragraph X ~~[within X months] from the transmission of a complaint in accordance with Article 3, paragraph 4~~, of this Regulation.

Change to paragraph above provisionally agreed by ITM on 14/05/2025, with the exception of reference to Article 11

2. The lead supervisory authority shall notify the supervisory authorities concerned of its intention to apply the simple cooperation procedure, providing information on the characteristics of the case relevant to establishing the conditions set out in paragraph 1, no later than within six weeks from the confirmation of 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. ~~the transmission of a complaint in accordance with Article 3, paragraph 4, of this Regulation~~.

Change to paragraph 2 provisionally agreed by ITM on 14/05/2025

3. Where any of the supervisory authorities concerned objects to the application of the simple cooperation procedure, 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 cooperate 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 that, where applicable, ~~the right of~~the parties under investigation are provided with the right to be heard and the~~. The~~ complainant ~~shall be~~ is provided with an opportunity to make his or her views known. ~~in accordance with rules on access to the administrative file and on confidential information under Articles 19 and 21~~. For the purpose of this paragraph, administrative modalities and requirements under national procedural law of the lead supervisory authority, or the supervisory authority with which the complaint has been lodged, where applicable, shall continue to apply.

Reference to Article 11 and change to paragraph 4 pending EP and CSL confirmation

Accompanying recital

(Based on text shared with EP on 07/03, wording suggested to align with provisional agreement on Article 8bis)

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(10b) Where the lead supervisory authority~~, based on the characteristics of the case and previous decisions, considers that consensus on the main elements of a case is likely to be established~~ has formed a preliminary view on the main issues in an investigation, it may cooperate with supervisory authorities through a simple cooperation procedure. In such a case, the lead supervisory authority should inform supervisory authorities concerned of such consideration and provide all relevant information concerning the characteristics of the case and the complaint, including the main relevant facts and the provisions to be investigated. Unless any of the supervisory authorities concerned object, the lead supervisory authority shall continue cooperating ~~in accordance with Article 60 of Regulation (EU) 2016/679~~ and submit a draft decision ~~as referred to in Article 60, paragraph 3 of Regulation (EU) 2016/679 [within X months] from receiving the complaint~~within the time limits foreseen in this Regulation.

(10ba) The simple cooperation procedure should only ~~apply~~ be applied on a case-by-case basis, following a consideration by the lead supervisory authorities that, base on the characteristics of the case, no reasonable doubt exists as to the scope of the investigation and the legal and factual issues identified do not require additional cooperation of the purpose of a complex investigation ~~consensus on the main elements of a case is likely to be established~~, in particular on the basis of the characteristics of the case and previous decision on similar cases. In addition, existing case-law and guidelines adopted by the Board on the alleged infringement of Regulation (EU) 2016/679 to be investigated should also be taken into account by the lead supervisory authority in considering that consensus on the main elements of a case is likely to be established. The simple cooperation procedure should not apply in principle where the case raises structural or recurring problem in several Member States, where the case concerns a general legal issue with regards to the interpretation, application or enforcement of Regulation (EU) 2016/679, where the case is related to the intersection of data protection with other legal fields, where the case affects a large number of data subjects in several Member States, where the case is related to a large number of complaints in several Member States; or where Regulation (EU) 2016/679 implies that a high risk can be assumed.

(Recital 10c from Council general approach – line 20c)

~~(10c) Where formal steps for the enhanced cooperation procedure pursuant to this regulation are not engaged, supervisory authorities should ensure that the right to be heard of the parties under investigation and the complainant applies in a timely manner, as provided for in this Regulation and in line with Article 41(2) of the Charter which enshrines the right to good administration and the right of every person to be heard before any individual measure which would affect him or her adversely is taken.~~

Recital provisionally agreed by ITM on 14/05/2025, drafting team to check last sentence of recital 10b

5. Article on consequences of time limits

Presidency proposal

Article XX
Common rules on time limits

(1) Where this Regulation or Article 65(6) of Regulation (EU) 2016/679 requires that a supervisory authority take a procedural step 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) [judicial remedies]

Text of paragraph 1 provisionally agreed by ITM on 14/05/2025, place to be decided, separated from a possible provision on judicial remedies (the two paragraphs should not be included in the same article). The possible provision on judicial remedies will be taken up to the political trilogue.

6. Recital based on Article 28a EP

Presidency proposal

(X) In order to ensure that proceedings are conducted ~~efficiently~~in an efficient manner, unless the procedural step in itself ~~irrevocably~~ irreversibly affects the rights of the party under investigation or the complainant irrespective of the final decision, without prejudice to the procedural autonomy of Member States, it is ~~optimal~~ preferable that remedies against procedural steps taken by~~of~~ supervisory authorities only be available in conjunction with a remedy against a final decision.

Text above provisionally agreed by ITM on 14/05/2025

7. Recital 32a on access to document

Presidency proposal

(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

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important that the integrity of the decision-making process is protected until the final decision is adopted by the competent supervisory authority.

Text above provisionally agreed by ITM on 14/05/2025

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8. EP proposal on Recital 24 (Accompanying Article 24)

(24) Prior to the adoption of a binding decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679, the Board should provide the party under investigation and the complainant, as the case may be, with the opportunity to make their views known in writing on any new factual or legal elements on which its decision is to be based. ***New legal elements include relevant and reasoned objections where those objections contain legal assessments different from those proposed by the lead supervisory authority in the draft decision submitted pursuant to Article 60(4) of Regulation (EU) 2016/679.***

CSL Scrutiny reservation

9. Possible compromise on enforcement statistics – PCY proposal

Article XX
Enforcement statistics on cross-border cases

1. As part of the annual activity report to be drawn up under Article 71 of Regulation (EU) 2016/679, the European Data Protection Board shall provide statistics on the enforcement of Regulation (EU) 2016/679 in cases falling under the scope of this regulation, and in particular:

(a) the number of complaints-based and ex officio procedures initiated and concluded by the supervisory authority;
(b) the number of requests for the opening of an investigation addressed by concerned supervisory authorities pursuant to Article 61(1) of Regulation (EU) 2016/679;
(c) the number of complaints lodged;
(d) the number of complaints fully or partially rejected or dismissed;
(e) the average duration of ex officio and complaint-based procedures concluded;
(f) the number and the amount of administrative fines imposed pursuant to Article 83 and 84 of Regulation (EU) 2016/679.

2. Where the statistics referred to in paragraph 1 are not directly available to the Board, the supervisory authorities shall, upon request, provide them to the Board in a timely manner.

Recital (37a) CSL

(37a) The ~~successful~~ implementation of the Regulation requires adequate digital tools supporting the rapid and secure exchange of information ~~in line with the Regulation~~. It is important that ~~A~~an appropriate secure common electronic tool ~~should~~ be available ~~provided~~ for all data protection authorities, ~~which should build upon~~taking into account the experience gained in using the existing tools~~systems~~. It is also important that ~~T~~the ~~sufficient~~ resources needed for the implementation of such an electronics tool ~~communication system should~~

be provided **and that ~~,~~ such tools facilitate the collection and consolidation of enforcement statistics on cross-border cases by the Board.**

The main change in this compromise proposal concerns foreseeing that the gathering of the statistics in cross-border cases should be primarily a task for the Board, via the electronic system (IMI) that should facilitate the gathering of statistics. Furthermore, the list of statistics to gather is shortened and simplified. Recital (37a) should underline the role of the IMI system in this context (text added in bold, in addition to drafting changes and changes to take into account EP's proposal).

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