BRIEFING

European Parliament

An analysis of the newly proposed rules to strengthen GDPR enforcement in cross-border cases

SUMMARY

After years of pressure from civil society organisations and the European Parliament, in 2023 the European Commission tabled a proposal to improve the General Data Protection Regulation (GDPR) cross-border enforcement procedure. The proposal lays out detailed and innovative rules that would promote harmonisation, yet this analysis shows that more could be done to deliver on the promise of strong and timely enforcement. It follows from the nature of the Commission's targeted approach that the scope of the envisaged regulation is limited and therefore some GDPR enforcement issues would remain outside its boundaries. It is much less apparent whether the proposed rules would achieve their desired effect.

Building on two related EPRS briefings that explain the proposal's logic, context and reception, this analysis uncovers a host of shortcomings. Contrary to political announcements, the proposal may actually slow down cross-border enforcement and deepen discord among supervisory authorities, not least by introducing additional procedural steps and ambiguous terms and by weakening the role of the supervisory authorities concerned and that of the European Data Protection Board.

IN THIS BRIEFING

EPRS | European Parliamentary Research Service

Author: Hendrik Mildebrath
Members' Research Service

PE 757.613 – April 2024

EN

Introduction

In July 2023, approximately 5 years after the GDPR became applicable, the Commission tabled a proposal seeking to accelerate and improve certain aspects of the GDPR's enforcement procedure. Justice Commissioner, Didier Reynders, and Vice-President for Values and Transparency, Věra Jourová, announced that this law would foster 'faster' and 'more decisive' procedures, 'quicker and more efficient handling of cases' and better protection of Europeans' right to privacy. Although the proposal contains rules that promote procedural efficiency, it may not deliver on the promise of efficiency in practice, and that even if it did, the cost would be substantial.

The envisaged rules may contribute to the efficient cooperation of supervisory authorities (SAs) by streamlining the handling of complaints; fostering early consensus building among SAs; deterring SAs that disapprove of how the procedure is evolving from undertaking lengthy and belated interventions; and standardising other interactions among SAs. Nevertheless, overall, the proposal may well fail to reach its efficiency objective, because it primarily builds on the GDPR's cooperation and consistency mechanism[1] and risks inheriting or even exacerbating crucial flaws instead of remedying them. It would likely strengthen the role of the lead supervisory authorities (LSAs), some of which are being heavily criticised for stifling strong enforcement and shielding controversial industry data practices. Conversely, it would limit the powers the current guidelines ascribe to the supervisory authorities concerned (CSAs) and the European Data Protection Board (EDPB), to undertake corrective action against the possibly flawed approaches of LSAs. Furthermore, it seems doubtful whether the additional procedural steps would accelerate enforcement considering that they build on ambiguous concepts and lack (hard) disciplinary measures such as deadlines.

It is conceivable that certain LSAs would increase procedural efficiency by systematically (and whenever permissible) disregarding interventions by fellow SAs. Consequently, the question arises whether the trade-off between efficiency and the CSAs' lessened powers of intervention is necessary and appropriate. Empowering the LSAs to disregard the CSAs' concerns without entering into EDPB dispute resolution would implicitly give the views of a single LSA priority and disqualify the SA majority from resolving disputes as members of the EDPB. This may reduce critical dialogue among SAs, threaten the substantive accuracy of outcomes, diminish coherence of GDPR enforcement decisions and relegate CSAs to launching uncertain and cumbersome procedures to challenge or override binding draft decisions of which they disapprove. Considering that fellow SAs are equally competent, concerned and (functionally) capable, it seems questionable whether opinions of single LSAs should take priority. Consequently, the implementation of the proposal may just as well slow down cross-border enforcement and deepen discord among SAs. This would clearly fail to meet citizens' expectations, who recently criticised compliance and enforcement deficits. Like civil society organisations, they advocate for stricter enforcement.

The primary focus[2] of this early analysis is the proposal's key concepts and their potential to ensure and accelerate due enforcement. The analysis builds on two related EPRS publications: the first explaining the legislative background and the second illustrating the logic of the envisaged procedure. Whereas the proposal does suffer from ambiguities and design flaws, prematurely discarding it would not do it justice. Instead, lawmakers could unlock the potential of the Commission's innovative concepts by amending the proposed text and/or drawing inspiration from it and pursuing an equally granular approach to promote harmonisation. Additional inspiration can be drawn from the EDPB-EDPS joint opinion and stakeholder contributions.

Analysis of individual aspects

1. Scope of the proposal

1.1. The Commission explains that 'the impact of the proposal will be limited to enhancing the functioning of the cross-border enforcement procedure laid down by the GDPR'. Consequently, it does not address substantive GDPR ambiguities, insufficient SA funding, cases without a cross-

border dimension, or other enforcement obstacles unrelated to the designated administrative procedure. It therefore does not present a panacea for remedying enforcement shortcomings, much less compliance issues. To meet citizens' expectations that the current proposal does not address, lawmakers could consider promoting the development of privacy-enhancing technologies (PETs), concrete data protection standards and adequate funding of SAs (Article 52(4) GDPR).

2. Initiation of procedures

2.1. CSAs are competent for cross-border cases, but restricted in the exercise of their powers as specified in the one-stop-shop mechanism (Articles 56 and 60 GDPR). CSAs must transfer cross-border cases with supra-local impact and those under Article 56(3) and (2) GDPR to the LSA, which must then steer the case forward and coordinate with fellow SAs. As pointed out by Advocate General (AG) Michal Bobek, CSAs have to make do with uncertain and cumbersome procedures to overcome LSA inactivity.[3] The Commission hardly addressed this subject in its proposal. If lawmakers establish that LSAs are stifling enforcement, they can consider introducing a formal procedure whereby CSAs can request the LSA to launch and actively pursue procedures in cross-border cases. CSAs are as competent, concerned and (functionally) capable as the LSA and must, likewise, contribute to the enforcement and consistent application of the GDPR (Articles 51(1) and (2) and 57(1)(a), (f), (g), and (h) GDPR). In keeping with the current one-stop-shop logic, the binding force of the request could be made contingent on consensus (between the LSA and the requesting CSAs) and, in the absence of consensus, EDPB dispute governance. This would ensure that SAs pursue cases consistently and that the majority of CSAs have the final say on controversial matters. Additionally, the provision could mandate that the requesting CSAs and/or the EDPB respect an LSA's limited[4] exclusive discretion, e.g. as regards allocating resources, duly setting the work programme and accounting for national procedural autonomy. On the other hand, the co-legislators could remind LSAs that they should exercise their powers 'impartially, fairly and within a reasonable time' (Recital 129 GDPR) and strive to ensure a 'consistent and high level of protection' and provide for 'strong enforcement' (Recitals 7 and 10 GDPR). A different approach might clarify and/or relax the conditions of urgency procedures, which the former Council Presidency and AG Bobek identified as a stopgap in cases where the LSA fails to act.

During the GDPR trilogues, the Conference of the German Data Protection Authorities (DSK) had advocated for introducing such a formal request mechanism. Critics might argue that this would conflict with the GDPR notion of the LSA and with its independence (Article 52 GDPR) and discretion guarantees. Additionally, they could argue that CSAs could protect their data subjects through existing means, including urgency procedures. By contrast, proponents could argue that existing means are insufficient and that a formal request mechanism is a legitimate and proportionate extension of the GDPR's 'concept of the CSA' and compatible with the 'LSA model'.

Such a formal request is not explicitly envisaged by the GDPR or the proposal. The one-stop-shop mechanism, consisting of the 'LSA model' and the 'concept of the CSA', substantially limits the CSA's sovereignty to pursue cases on their Member State's territory in exchange for giving them a say on the substance of the enforcement decision with the aim of promoting the consistent application of the GDPR (Article 51(2) GDPR). The LSA is responsible for opening *ex officio* procedures and spearheading complaint-based procedures (Article 56(1) GDPR). The EDPB clarifies that the LSA's 'competence translates into a 'leading function', i.e. into a steering role in taking the case forward, organising the cooperation procedure with a view to involving the other CSAs, coordinating investigations, gathering evidence etc.'. According to the EDPB, the LSA enjoys wide (but not limitless) discretion for launching *ex officio* procedures. On the other hand, the CSA is meant to 'ensure that the 'lead supervisory authority' model does not prevent other supervisory authorities having a say in how a matter is dealt with when, for example, individuals residing outside the lead supervisory authority's jurisdiction are substantially affected by a data processing activity'. The dispute resolution mechanism lends weight to CSA views and ensures the consistent application of the GDPR by giving the majority of CSAs the final say on issues in dispute. However, as indicated by AG Bobek, the GDPR 'mechanisms to overcome situations of administrative [LSA] *inertia*' may 'turn

out to be "paper tigers"' and their 'functioning is not always crystal clear'. LSA's unfettered inactivity would undermine the rationale and functioning of the one-stop-shop mechanism. Consequently, it can be argued that a formal request mechanism presents a necessary remedy that ties in with the logic of the one-stop-shop mechanism.

An argument can be made that such a legislative intervention would be compatible with the LSA's independence requirement (Article 52 GDPR). Proponents could invoke legitimate aims such as securing timely remedies for data subjects, ensuring the consistent application of the GDPR, and granting the – comparably independent – CSAs a minimum degree of control over the initiation and pursuit of cases affecting their jurisdictions (in compensation for their loss of autonomy). Additionally, it could be specified that a formal request mechanism limits the Article 52 independence requirement, in the same way as the one-stop-shop mechanism, and thereby a (Treaty-compliant) formal request mechanism would not interfere with the GDPR's independence guarantee. Arguably, it could be framed as an extension of the one-stop-shop mechanism itself, since LSA inactivity would undermine its rationale and functioning. Some might argue that the independence requirement only protects the data protection enforcement network from external influences, as opposed to protecting network participants from mutual influence that is prescribed by the law.[5] It could also be argued, on the basis of CJEU case law, that the guarantee of independence 'is intended to ensure the effectiveness and reliability of the supervision of compliance with the provisions on protection of individuals with the provisions on protection of individuals with regard to the processing of personal data and must be interpreted in the light of that aim. It was established not to grant a special status to those authorities themselves as well as their agents, but in order to strengthen the protection of individuals and bodies affected by their decisions'. It would frustrate the purpose, if the LSA could delay remedies for the individual without due justification and prevent legislative rectification by invoking the independence requirement. Finally, it is worth noting that the EDPB, like its members, is subject to independence requirements.

2.2. Many commentators, including former Commissioner for Justice, Viviane Reding, the EDPS, the German SA, various academics and EU citizens, would prefer a more centralised EU enforcement mechanism. Commissioner Reynders rejects this, not least to avoid reopening the GDPR.

3. The early scoping exercise (Chapter III, Section 1)

3.1. The justification and merit of classifying different types of disagreements and of unevenly subjecting them to different cooperation mechanisms and dispute-governance mechanisms within the early scoping exercise are unclear (Articles 9(2), 10(1) and 10(4)).[6] The envisaged early scoping exercise in Articles 9 and 10 serves to discharge the Article 65(1)(a) dispute resolution procedure in phase II and foster early and incremental consensus building among SAs in phase I. It encourages SAs to iron out differences and develop a (common) strategy of inquiry at an early stage, by mandating the consultation of fellow SAs, (enhanced) cooperation duties and, for specific issues in dispute, EDPB dispute governance. Such EDPB dispute governance is only prescribed if, in a complaint-based procedure, SAs do not find consensus on the scope of the investigations by way of (enhanced) cooperation. Otherwise, the path to EDPB dispute governance during the scoping exercise would remain limited to cumbersome, narrowly applicable and highly uncertain discretionary procedures (Article 66 GDPR and Articles 65(1)(c) and 64(2) GDPR) – which are also available under the current regime (see the last section of this briefing). CSAs may also engage in discretionary and compulsory (enhanced) cooperation, neither of which would guarantee that the LSA sustains their views. Consequently, the LSA retains the final say where cooperation fails and EDPB dispute governance is unavailable. The LSA categorically has the final say on outstanding disagreements in *ex officio* procedures (save uncertain discretionary procedures). Ultimately, the early scoping exercise may foster procedural efficiency through early consensus building. However, it is worth critically reflecting on the classification[7] and differential treatment of disagreements[8] and their interplay and topical overlap with disagreements excluded from qualifying as objections in the Article 60 consultation procedure (see the Section on 'Relevant and reasoned objections' further down in this briefing and Table 1 in the briefing illustrating the logic of the proposal).

3.2. Additionally, the legal effect of possible outcomes of the early scoping exercise is unclear. Where cooperation fails to resolve disagreements and EDPB dispute governance is unavailable, the LSA would likely pursue investigations and take next steps according to its own views, i.e. retain the final say. This could be made explicit. Unlike Article 60(6) GDPR, according to which a draft decision becomes binding absent objection, the effect of consensus or the absence of disagreements is not entirely clear (Article 9(6) and 10(3)). Article 10(3), second sentence, merely states that the consensus 'shall be used' 'as a basis' for the LSA to continue the investigation and draft the preliminary findings or the reasons to reject the complaint. Since the LSA often has the final say when disagreements persist and may need to adapt the scope and strategy of inquiries on the basis of discoveries and other insights, the question arises whether the LSA may diverge from a consensus, from non-contentious key issues or from an EDPB urgent binding decision. The answer could be nuanced temporally and materially. For instance, a distinction could be made between extending and reducing the scope of investigations. Additionally, lawmakers may consider explicitly isolating the legal effect of an EDPB urgent binding decision under Article 10(4) from the (uncertain) implications of Articles 27 and 28 in order to prevent unwanted spill over (see the last section of this briefing).

3.3. It is unclear why the formulations in Article 9(2)(c) and Article 10(1)(b) and (c) diverge. Such different formulations could imply that the LSA, in a first step, only identifies, in the abstract, which assessments would be relevant for a preliminary orientation and, in a second step, after receiving comments, drafts a preliminary orientation. The CSAs could comment on the LSA's initially identified assessments (Article 9(3)) and would have to reaffirm their disagreement against the preliminary orientation or else the preliminary orientation is assumed to be non-contentious (Article 10(1)). However, Recital 15, second sentence, indicates that the Commission does not envisage an intermediate step. This situation calls for a streamlining of the formulations.

3.4. Article 7 specifies that the provisions on the early scoping exercise govern the relationship between SAs and do not confer rights on individuals or parties under investigation. This reinforces the internal nature of the cooperation procedure and prevents parties from challenging non-compliant procedural actions and meaningfully influencing this phase of the procedure (save expressing their views). Complainants prefer being empowered to intervene at an early stage.

3.5. In principle, SAs perform investigations in phases I and II. Decisions taken and insights gained throughout various stages of the procedure may influence the scope, direction, intensity and approach of investigations. It is not explicit: 1) whether the scope/extent of investigations evolves dynamically depending on discoveries and novel insights; 2) what powers SAs have at their disposal during initial, intermediate and advanced investigations[9]; and 3) whether and to what extent the non-contentious or agreed key issues bind the LSA as regards the further inquiry.

3.6. It is not clear whether an LSA must engage in the early scoping exercise and devise a draft decision if it intends to close the case without a formal decision. Echoing the EDPB, lawmakers could clarify that a draft decision shall serve as a final coordination between all SAs involved.

3.7. Recital 5 suggests that SAs are obliged to decide on complaints within a reasonable timeframe. Apart from this, the envisaged law contains few overall significant deadlines. It is worth clarifying the meaning of such timeframes or introducing hard deadlines to promote procedural efficiency. Additionally, it is doubtful whether the obligation to share information 'at earliest convenience' after it becomes available is compatible with the GDPR and promotes procedural efficiency (Article 8(1)). The EDPB assumes this must occur 'in a timely manner, i.e. as soon as reasonably possible'.

4. Duties to hear parties – DTHP (Chapter III, Sections 2 and 3)

4.1. DTHP prior to submitting a draft decision *rejecting the complaint*

4.1.1. The relation and timeline between the early scoping exercise and the drafting of preliminary findings or the drafting of the reasons for the intended rejection of the complaint appear ambiguous (Article 10(3), second sentence, and 11(1)). Article 10(3), second sentence, suggests that the SAs draft and share the preliminary findings or reasons after completing the early scoping exercise. However,

the use of the term 'preliminary view' in Articles 9(1) and 11(1) casts doubt on this interpretation or on the consistent use of the term. Additionally, uncertainty arises from the use of the term 'Following the procedure' in Article 11(1), which may be understood temporally (after) or substantively (in accordance with). Ultimately, the logic of the text and the rationale of the early scoping exercise support a chronological order, but the linguistic ambiguity seems unnecessary.

4.1.2. The exact procedure and the interactions between the LSA and the SAs that hear the parties is not entirely clear. At the outset, the LSA forms the preliminary view to fully or partially reject the complaint and shares the reasons for this with the complaint-receiving CSA (Article 11(1)). The complaint-receiving SA informs the complainant of these reasons and gives the complainant the opportunity to express its views (Article 11(2)). Once the complainant has expressed its views, the question arises as to which SA is responsible for determining whether the complainant's response warrants a change in the preliminary view and which SA is in charge of preparing the draft decision. Considering that Article 11(5) refers to a change in the 'preliminary view', which is formed by the LSA according to Article 11(1), the LSA's views would also determine whether a change is necessary after the parties express their views. This could be made more explicit. Additionally, it may be worth emphasising in Article 11(5) that the complaint-receiving SA must transmit its communication with the complainant to the LSA (Article 8(2)(i) and Recital 19, third sentence). If the LSA changes its mind and intends to find an infringement instead of rejecting the complaint, it would have to transition into the procedure under Section 3 and draw up preliminary findings (Article 14(1)). If the LSA reaffirms its preliminary view to reject the complaint, the complaint-receiving SA would prepare the draft decision accordingly and the LSA would submit it to the CSAs for consultation (Article 11(5)). However, it is not clear who would be in charge of preparing the draft decision if the LSA decides to reject the complaint partially instead of fully. Presumably, the LSA would be responsible for preparing the draft decision, because it requires substantive changes and, where appropriate, the preparation of a separate decision to pursue certain infringements in accordance with Section 3 (Article 60(9) GDPR). Lawmakers could explicitly clarify these points.

4.1.3. Unlike in the case of scenarios where the LSA intends to find an infringement (Article 14(6) and Article 20(3)), the provisions for rejecting complaints do not mandate that the LSA may, in its draft decision, only rely on facts and assessments for which the competent SA provided the adversely affected party the opportunity to comment on. Considering this dichotomy, it could be argued that the competent SA may, in its draft decision rejecting the complaint, rely on reasons, facts and assessments on which it did not hear the complainant. It might be worth clarifying this point.

4.1.4 Unlike the parties under investigation (Article 14(3) and (4)), the complainant does not have a right to access the administrative file before the LSA consults with CSAs on a draft decision that would adversely affect it (Article 11(4)). The complainant could request access to a non-confidential version of select documents, but would depend on a favourable decision by the competent SA. Lawmakers could clarify the reasons for this, specify the conditions under which the SAs may reject the request (to promote harmonisation), or give the complainant a non-contingent right of access.

4.2. DTHP prior to submitting a draft decision *finding an infringement*

4.2.1. It is not entirely clear who is responsible for making the final decision as to whether information qualifies as confidential or not and what the relevant assessment criteria are (Article 21(4)-(7)).

4.2.2. The envisaged law would oblige the complaint-receiving SA to share a non-confidential version of the preliminary findings with the complainant and, where the LSA considers it necessary, a non-confidential version of relevant documents contained in the administrative file (Article 15(1) and (3)). It appears arguable whether the latter should be dependent on the LSA's considerations.

4.3. DTHP prior to submitting a revised draft decisions

4.3.1 It is not entirely clear whether the LSA or the complaint-receiving SA is responsible for drawing up the revised draft decision seeking to *reject a complaint*. It could be argued that in the analogous Article 11(5) and Recital 23, fourth sentence, the complaint-receiving SA is responsible for the draft decision, should the parties' views not lead to a change in the view that the complaint should be rejected. Conversely, the Commission proposes a dedicated provision on hearing the complainant before consulting CSAs on the revised draft decision (Article 12), without mentioning who is responsible for drawing up the revised draft decision, thereby (arguably) leaving the GDPR attribution, whereby the LSA is competent, untouched (Articles 56(1) and 60 GDPR).

4.3.2. It appears uncertain whether the SAs must hear the parties if the LSA initially sought to *reject a complaint*, but after the Article 60(3) consultation decides to *find an infringement* in accordance with a CSA's objection. It seems doubtful whether Article 17 was drafted with this scenario in mind and would apply to such a case. According to the provision, the LSA is only obliged to hear the parties under investigation where it considers this necessary, but the parties merit being heard categorically, since they would be adversely affected by the decision (*audi alteram partem*) and, previously, did not get an opportunity to express their views under Article 11. Additionally, the provision refers to 'new elements', (arguably) implying that the draft decision already contained elements on which the parties under investigation had to be heard – which is not the case (Article 11). Furthermore, in the spirit of Article 60(9) GDPR, it could be argued that such a reversal of the envisaged decision would present a *wholly new* draft decision, which would be subject to Articles 14 and 15 and not to Article 17. Lawmakers could account for this scenario more clearly.

5. Relevant and reasoned objections (Chapter III, Section 4)

5.1. According to Recital 28, fourth sentence, SAs should decide on the scope of the investigation and the relevant facts prior to the communication of preliminary findings; consequently, the CSAs should not raise these matters in 'relevant and reasoned objections'[10]. The Commission intends to promote early consensus building by frontloading certain CSA interventions. To this end, it proposes to limit the disagreements qualifying as 'relevant and reasoned objections' (Article 18(1)) and to introduce an early scoping exercise where CSAs can intervene (Articles 9 and 10). A closer look at these provisions and their interplay raises concerns that this approach would unduly restrict the role of CSAs during the Article 60 consultation procedure without sufficiently justifying or compensating this loss of powers (see Table 1 in the related illustrative briefing). Thus, it is worth considering deleting or expanding the eligibility criteria for dispute resolution-laden objections.

Strikingly, Article 18(1) would restrict the range of disagreements qualifying as 'relevant and reasoned objections' compared with contemporary EDPB guidance. Additionally, Recital 34 would emphasise the LSA's discretion, whereas contemporary **EDPB** guidance largely emphasises the binding feature of Article 65(1)(a) decisions and limitations on LSA discretion. Even where the EDPB explicitly mentions a margin of discretion, it specifies that the discretionary powers must be exercised 'in accordance with the relevant provisions of the GDPR implying mutual cooperation', and that the EDPB could mandate additional investigations – to the extent appropriate. It is worth noting that the **Irish SA** and various **investigated parties** are challenging the EDPB's contemporary interpretation in administrative and legal proceedings (see Annex for details). The **CJEU** judgments in the joined-cases T-70/23, T-84/23 and T-111/23, case C-97/23 P and case T-682/22 as well as possible appeals are expected to bring more clarity. The **Commission proposal** borrows from the Irish views by restricting the grounds for objections, but empowers the CSAs to intervene during the early scoping exercise.

Article 18(1) stipulates that relevant and reasoned objections must be based exclusively on factual elements included in the draft decision and not change or expand the scope of allegations (presumably) as defined by the draft decision. *E contrario*, interventions that do not satisfy these requirements do not qualify as 'relevant and reasoned' objections. Consequently, the provision risks

disqualifying dissenting views that rely on considerations other than facts included in the draft decision, e.g. those based 1) on purely legal considerations;[11] 2) on generally recognised facts; or 3) on facts contained in the case file (but not in the draft decision). Additionally, it would disqualify any competing views that would change or expand the scope of allegations, whereas Article 4(24) GDPR implies that CSAs should have a say on 'whether there is an infringement' of the GDPR.

Nevertheless, restricting the CSAs' say on the draft decisions in phase II might be deemed appropriate where their loss of powers is justified or compensated in phase I. The Commission did not indicate that its approach would result in a net loss of powers for CSAs. Nevertheless, the envisaged early scoping exercise would **not fully compensate** the CSAs for their loss of powers by enabling them to intervene broadly and forcefully with an equivalent effect during the frontloaded scoping exercise. There are at least three reasons why CSA interventions during the early scoping exercise would not fully offset the loss of powers during the Article 60 consultation procedure:

- The early scoping exercise does not apply to the full range of disagreements disqualified from classifying as dispute resolution-laden objections in the Article 60 consultation procedure as interpreted by contemporary EDPB guidance. The early scoping exercise and the Article 60 consultation procedure take place at different stages of procedural maturity (phase I and II), i.e. before and after the main investigations. As investigations unfold, more facts become known, assessments mature and determination evolves. The LSA would consult the CSAs on significantly different texts and the CSAs would raise significantly different legal and factual concerns. Since many interventions during the Article 60 consultation procedure concern specific legal or factual aspects of the draft decision and/or rely on investigation results, it is logically impossible that the early scoping exercise would fully compensate the loss of power during the Article 60 consultation period. Additionally, the early scoping exercise, by design, would not apply to issues relating to minor relevant facts and non-complex legal and technological assessments (Article 9(2)(a) and (c)).
- Where the early scoping exercise applies, CSAs are not always equipped with powers equivalent to those they have during the Article 60 consultation procedure. Unlike during the Article 60 consultation procedure, only one type of disagreement is eligible for EDPB dispute governance in the early scoping exercise (Article 10(4)). Otherwise, the path for involving the EDPB during the scoping exercise would remain limited to narrowly applicable and highly uncertain discretionary procedures (see the last section of this briefing). In many cases, the LSA would have the final say where consensus building fails and EDPB dispute resolution is not foreseen (see Table 1 in the illustrative briefing). In the absence of an immediate and certain threat of EDPB dispute governance, CSAs may find that an LSA disregards their concerns vis-à-vis fact statements (these may rely on facts not included in the draft decision), the scope of investigations (in *ex officio* procedures), legal assessments (these may change or expand the scope of the allegations in the draft decision and/or rely purely on legal considerations), technological assessments (these may rely on facts not included in the draft decision) or envisaged corrective measures (these may rely purely on legal considerations) throughout the entire procedure.
- Even where the scoping exercise provides the CSAs with formally equivalent powers to intervene on an issue that would otherwise be raised during the Article 60 consultation procedure, the effect of the intervention is not comparable and different in nature. An intervention on the scope of the investigation would be characterised by an *ex ante* steering effect, whereas an intervention done before finalising the draft decision but after carrying out the main investigations would have an *ex post* control and accountability dimension. CSAs could scrutinise the scope of the investigation more accurately during the Article 60 consultation procedure, where the LSA submits all relevant facts and conclusions. They could also account for discoveries made during investigations. If CSAs would only be able to intervene on the scope during the early scoping exercise, they might leave the LSA with greater discretion on how it conducts, frames and accounts for investigations.

The prospect of a net loss in CSA powers sparks questions about its **legitimacy** and its compatibility

with the GDPR. Proponents of this approach might argue that the CSAs delay procedures by raising lengthy and belated objections. Consequently, they should be limited to intervening at an earlier stage, specifically within the deadlines of the early scoping exercise. The CSAs would either disapprove of the LSA's progress and scoping report ('summary of key issues') or acquiesce in the LSA conducting the outlined inquiry and exclusively defining the legal and factual scope of the draft decision based on insights gained ('disapprove early or acquiesce' approach). A net loss in CSA power may be deemed inevitable, due to the LSAs' independence and discretion guarantees. These would preclude granting the CSAs a broad say on the 'summary of key issues'. Additionally, the powers to intervene at an early stage concern inevitably less mature issues than at a later stage. Lastly, proponents could argue that enhancing the decision-making authority of a single LSA would also enhance procedural efficiency, as it eliminates the need to reconcile the views of multiple SAs.

However, doubts arise as to whether late objections are the main reason for procedural delays, whether accompanying adverse effects are unavoidable, and whether there are alternative interventions that are equally effective but less disruptive. Civil society organisations and academics have identified a number of issues that delay enforcement, sometimes completely unrelated to objections. Additionally, there are indications that LSAs themselves do not always cooperate efficiently and that disagreements are simply the result of diverging legal views regardless of the procedural stage. As criticised by various actors, LSAs may act as bottlenecks to defend their own legal convictions and/or shield businesses. Consequently, frontloading CSA interventions may not significantly increase procedural efficiency.

Furthermore, frontloading cooperation at the cost of a net loss in CSA powers may entail serious adverse effects that would render the approach inadequate. The approach would restrict CSAs' say in decisions about their data subjects, despite the fact that they are obliged to protect them and there are no indications that they are abusing objections. Furthermore, replacing the rule of the SA majority (EDPB) with the rule of a single LSA may reduce critical dialogue among SAs, threaten the substantive accuracy of outcomes, diminish coherence of GDPR enforcement decisions (divergent interpretations by LSAs) and diminish SA ownership of and commitment to decisions (lack of representation). Considering that CSAs are equally concerned, competent and (functionally) capable, it seems doubtful that opinions of a single LSA should take priority. Finally, legislative restrictions on objections may impact the General Court's forthcoming judgment in the joined-cases T-70/23, T-84/23 and T-111/23.

It is also possible to devise policies that stimulate early cooperation, while minimising adverse effects and possible disruptions to the GDPR's system. For instance, lawmakers could:

- impose disciplinary measures such as deadlines throughout the administrative procedure;
- prescribe the use of a cross-border case management system that tracks progress and cooperation in relation to deadlines or milestones and includes behavioural design features that encourage early CSA interventions;
- introduce the early scoping exercise without restricting the grounds for objections, because compulsory early cooperation may stimulate early consensus building by itself;
- involve the CSAs more closely by updating them on the case developments and allowing them to comment;[12]
- authorise the LSA to seek the validation of the 'statement of key issues' from the CSAs (by majority or consensus) where objection-based investigations are expected to impose a considerable burden or when the case is particularly meaningful;
- oblige CSAs to include a timeliness statement in their objections, explaining why they could not have raised the issue at an earlier stage (and which tasks they prioritised) and oblige LSAs to formally register any disagreements with the EDPB;
- oblige the EDPB to track and review the timeliness of interventions by reviewing timeliness statements and LSA disagreements as well as platform metrics;
- empower the EDPB to raise the cost of submitting objections (not least to facilitate their processing by LSAs) if the EDPB review reveals a practice of unreasonably delayed interventions;

- mandate that CSAs must support supplementary investigations by LSAs with resources to compensate for the additional costs that could have been avoided through prior intervention.

Even if policymakers choose to follow the Commission's 'disapprove early or acquiesce' approach, it could be designed without resulting in a net loss of CSA powers. Mechanisms limiting CSAs to intervening at an early stage should comply with the LSA's independence and discretion guarantees and maintain the CSAs' powers, if necessary at a later stage. Lawmakers could delete the Commission's definition of objections and instead specify that CSAs cannot raise objections on factual and legal elements affecting the scope if they could have reasonably raised them during the early scoping exercise (with prospects of EDPB dispute governance).[13] This would negatively correlate the CSAs' early and late scopes of intervention. To increase the number of issues requiring early interventions, lawmakers would have to subject additional key issues to EDPB dispute governance[14] and LSAs would have to submit well-developed findings and assessments for early consultation. The mechanism would not prevent CSAs from objecting to facts that became known over the course of investigations conducted after the early scoping exercise. Additionally, lawmakers could mandate that the LSA must submit the matter to the EDPB for dispute governance if it disagrees with the timeliness of the objection. Lawmakers could take a graduated response and condition the activation of this mechanism on evidence demonstrating that, despite the implementation of lighter interventions, CSAs continue to intervene too late.

Alternatively, lawmakers could adopt the Commission's 'disapprove early or acquiesce' approach, but empower CSAs to request formally that the LSA initiates an *ex officio* procedure on matters, that the CSA could not raise as objections, but that nevertheless merit investigations. If lawmakers opt for this approach, they should further delineate such scenarios and (explicitly) account for them in the scope and the criteria of the final request mechanism. Without this clarification, SAs and data operators may argue that the formal request mechanism does not apply because the preceding cross-border administrative procedure concluded the matter (administrative finality).

5.2. Recital 28, second sentence, reads that 'the disagreement expressed in relevant and reasoned objections [...], which raise the potential for dispute resolution [...], arise in the exceptional case of a failure of supervisory authorities to achieve a consensus and where necessary to ensure the consistent interpretation of Regulation (EU) 2016/679'. Indeed, Recital 138 GDPR and the EDPB's Article 60 guidance support an interpretation according to which all means within the cooperation mechanism should be exhausted before the dispute resolution mechanism is triggered. However, an objection is part of the cooperation procedure and not the consistency procedure. The LSA can and must refer the matter to the EDPB only if it rejects or contravenes the objection. The onus of exhausting all options does not lie only with the CSAs, but also with the LSA. Suggesting that an objection should not only present the exception, but also only 'arise [...] where necessary to ensure the consistent interpretation of Regulation (EU) 2016/679', may encourage an overly narrow definition of what presents a 'relevant and reasoned objection'. This, in turn, may limit excessively the grounds for CSA intervention.

6. Urgency procedure (Chapter VI)

6.1. More clarity is needed as regards the conditions and justification for applying the urgency procedure (Articles 27 and 28). Under exceptional circumstances, SAs may derogate from the one-stop-shop mechanism to take or compel urgent action where the competent SA failed to take (appropriate) measures needed to protect the rights and freedoms of data subjects (Articles 66, 61(8), 62(7) and 60(11) GDPR and Recital 137 GDPR). Considering the net loss of CSA powers that would occur if the co-legislators adopt the proposal without amendments, the question arises whether CSAs could operationalise the urgency procedure to a) overcome situations of LSA inactivity or to b) override decisions of which they disapprove. As indicated by AG Bobek, the scenario under a) is conceivable (Articles 61(5) and (8) and 66(1) and (2) GDPR) but uncertain. However, where the LSA takes meaningful action to investigate possible GDPR breaches or even adopts an enforcement decision, it is doubtful that the urgency criteria would be met. It is

improbable that slow cooperation, by itself, would justify a derogation from the one-stop-shop mechanism.[15] In the same vein, it is unlikely that CSAs could categorically operationalise the urgency procedure to challenge the LSA's final measures where they perceive them to be too lenient and therefore inappropriate.[16] Similarly, it is uncertain whether CSAs could successfully request an EDPB opinion on matters of general application (Articles 64(2) GDPR) and, subsequently, compel its implementation by requesting an opinion-related binding decision if the LSA does not follow the opinion (Article 65(1)(c) GDPR).[17] Consequently, a formal request mechanism and meaningful influence by CSAs, as discussed above, should be considered.

6.2. The proposal appears to suggest restricting the territorial and personal scope of urgent opinions and urgent binding decisions to the requesting SA and its territory (Articles 27(1)(c) and (2) and 28(1)(d), (2) and (3)). This is worth reconsidering.

FURTHER READING

H. Mildebrath, Newly proposed rules to strengthen GDPR enforcement in cross-border cases, legislative briefing, EPRS, European Parliament, 2024.
H. Mildebrath, A visual presentation of the newly proposed rules to strengthen GDPR enforcement in cross-border cases, briefing, EPRS, European Parliament, 2024.

ENDNOTES

1 Consequently, it relies on the means and will of SAs to enforce the GDPR and to intervene against flawed enforcement approaches of fellow SAs. Legal traditions, political interests and insufficient resources may influence a SA's will to act.

2 Much more could be said with regard to topics such as complaint handling, right to be heard, right of access to the file, and request and referral rules for dispute resolutions. This analysis very briefly reviews the provisions governing the hearing of parties concerning consistency and their impact on procedural efficiency. It does not assess whether the envisaged procedural rights satisfy the right to be heard as recognised as part of a general principle of EU law and in Recital 129 GDPR and as applicable in (non-)adversarial and composite administrative procedures. Further inspiration on this aspect can be drawn from the ReNEUAL (Book III) and ReNEUAL 2.0 (cf. procedural rights and common core) projects, national procedural laws and various stakeholder contributions, notably the legal opinions commissioned by ICCL and CCIA Europe.

3 CSAs can encourage, substitute or compel LSA action by demanding enhanced cooperation (Articles 61 and 60(2) GDPR), taking or compelling urgency measures subject to standard or simplified conditions (Articles 66 and 61(8) GDPR) and requesting an EDPB opinion and an opinion-related binding decision (Articles 64(2) and 65(1)(c) GDPR).

4 On complaint-based cases, the CJEU has acknowledged that there are limits to the discretion of SAs, and that courts may examine whether SAs complied with these limits. According to the EDPB's Article 65(1)(a) guidelines, the CSA can object to draft decisions on the ground that the LSA unjustifiably failed to investigate alleged infringements. On this basis, the EDPB can mandate additional investigations through binding decisions in cases of dispute (the Irish SA recently challenged three such binding decisions). The EDPB considers that SAs have 'wide discretionary powers to decide when to initiate an investigation ex officio', but also indicates that it is not limitless. In view of the SA's supervisory tasks and powers, it is doubtful whether the LSA has far more discretion concerning the opening and investigation of an *ex officio* inquiry when it becomes aware of a probable large-scale infringement through other ways than a complaint. SAs should protect data subjects even where they did not lodge complaints. Even more so, where CSAs confirm a need to act in cross-border cases, but are not empowered to pursue the case themselves.

5 The EDPB clarifies that the requirement 'has no bearing on the [Article 60] general obligation to cooperate'.

6 If not otherwise specified, the articles cited in this briefing refer to articles from the Commission proposal. Exceptionally, 'Article 60 consultation procedure' refers to part of the GDPR's one-stop-shop mechanism.

7 Besides revisiting the classifications as such, lawmakers may also consider reflecting on the delimitation of key issues from one another. For instance, it seems likely that disagreements on the scope of the investigation may rest on diverging views regarding the relevance of certain facts and/or regarding complex legal assessments. In the spirit of legal certainty, lawmakers could clarify delimitations or adopt priority rules.

8 It is worth noting that Council drew up similar classifications and deliberated whether they should be treated differently when designing the GDPR's one-stop-shop mechanism.

9 A distinction could be made depending on when they are performed, e.g. during the preliminary vetting stage, before consulting on key issues, after concluding the early scoping exercise and after hearing the parties.

10 Under the current regime, the definition of 'relevant and reasoned objections' determines which CSA interventions require dispute resolution if rejected or contravened by the LSA and which issues the EDPB must address in its dispute resolution decision (Articles 60(4), 65(1)(a) and 4(24) GDPR). Where the regulatory framework excludes a subject matter from qualifying as an objection or provides the LSA with exclusive discretion, the LSA can, in principle, disregard the CSA's concerns and take a decision without entering into EDPB dispute resolution.

[11] In their opinion, the EDPS and EDPB state that 'it is unclear whether the provision aims to restrict the possibility for RROs [relevant and reasoned objections] to be based on legal elements'. A less critical interpretation of Article 18(1) might conclude that interventions based on or relating to legal considerations qualify as objections, since this is covered by the broad language of Article 4(24) GDPR. Absent clarifications, this cannot be taken for granted.

[12] It is doubtful whether the law should assume that CSAs acquiesce in the issues concerned by an update if they fail to intervene on the individual update. This approach may inadvertently burden CSAs with an excessive focus on updates, possibly leading them to neglect other tasks.

[13] Lawmakers could specify that untimely interventions on such elements are exempt from qualifying as objections, because the LSA is vested with the discretion to duly determine such elements where the CSA failed to raise timely interventions and cannot demonstrate justifiable cause for its failure to intervene. Justifiable cause may include that the cause of objection emerged after the early scoping exercise, that the CSA could not reasonably recognise the future significance of the element or that extenuating circumstances apply. If lawmakers assume that the GDPR generally does not provide CSAs with the power to object to factual and legal elements affecting the scope (see Annex), they could equip them with the powers to raise quasi-objections to such elements and specify corresponding limitations on the LSA's discretion.

[14] Like the one-stop-shop mechanism and the formal request mechanism, such an enhanced early scoping exercise may be considered compatible with the GDPR's independence and discretion guarantees.

[15] Slow cooperation does not systematically imply that a danger exists that the enforcement of a right of a data subject could be considerably impeded. Additionally, complex technological and legal assessments may require time.

[16] The controller may have stopped the infringement, but the CSA may still consider that the fine is not sufficiently dissuasive. Additionally, there are several reasons why arguing in favour of an urgent need to act based on an (arguable) strict interpretation of the GDPR after the (near-)completion of an Article 60 cooperation procedure would not present suitable grounds for an urgency procedure: i) the urgency procedure is not an administrative review procedure, ii) urgency measures under Article 66(1) and (2) GDPR are explicitly designed as a derogation from parts of the consistency mechanism and the one-stop-shop mechanism, but these may well have been concluded by the time the CSA takes or requests urgency measures, and iii) the CSAs may attempt to override aspects of a binding draft decision on which the LSA holds the prerogative of interpretation and has the final say as circumscribed by Articles 9, 10 and 18 (i.e. circumvention of the division of competences). However, where the LSA evidently fails to take appropriate action and treats cooperation as a formality, CSAs might be able to rely on the urgency procedure.

[17] Caspar considers that the EDPB tends to restrict such procedures to abstract legal questions independent of specific cases (see also EDPB Article 60 guidelines, marginal No 198). Nevertheless, Hijmans points out that 'individual cases of alleged breaches of data protection law' may give rise to Article 64(2) GDPR procedures, but also that Article 64(2) GDPR gives the impression that it 'is meant for the situation where a DPA does not properly cooperate with a peer cross border, not where it has a different view on substance'. Where the CSA can frame a controversial matter that is relevant to the specific case as a matter of general application or as a mater substantially affecting a significant number of data subjects in several Member States, it should be able to launch an Article 64(2) GDPR procedure. Concerns that the application of the procedures would circumvent the division of competence laid down in the Article 60 cooperation procedure (as envisaged by the proposal), could be dispelled by reference to the different nature of the procedures (case-specific vs. matter of general concern) and with reference to Recital 135 GDPR. The SAs would have to follow the EDPB binding decision in their envisaged enforcement decision (Article 65(1)(c) GDPR).

DISCLAIMER AND COPYRIGHT

eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

http://epthinktank.eu (blog)

Annex: Lead supervisory authorities' discretion today

Opinions differ on whether certain CSA interventions regarding factual elements, legal elements and final determinations qualify as 'relevant and reasoned objections'. The controversies focus specifically on

- challenges to the validity and completeness of the statement of facts;
- challenges resting on facts that are not suggested in the draft decision;
- challenges to specific legal or factual aspects of the draft decision that would warrant investigations or modifications that exceed the LSA's original scope of the inquiry (or exceed allegations as defined by the draft decision); and
- challenges to the final determinations such as the choice in corrective measures.

Scope of inquiry and LSA's statement of facts

Some argue that the LSA holds exclusive discretion to define the scope of the inquiry and thereby determine which legal and factual aspects will be investigated and assessed in the administrative procedure. In a dispute resolution procedure, the Irish SA and the investigated party, Meta, argued that expanding the LSA's original **scope of the inquiry** would violate the investigated party's 'legitimate expectations, right to fair procedures and due process (including the right to be heard), and rights of the defence'. During the GDPR legislative procedure, a former Council Presidency held that 'it is difficult to envisage that a DPA should be allowed to trigger the consistency mechanism by objecting to the lead DPA's **assessment of the facts**', but acknowledged CSAs may have discussions over facts. Council later determined that the EDPB 'should be able to issue guidelines in particular... on what constitutes a relevant and reasoned objection' in what is now Recital 124 GDPR. This indicates that the Council was aware of the definition's 'potential to create misunderstandings and inconsistent applications' and that the details were not fully settled. It remains uncertain which understanding prevailed in the trilogues.

Conversely, the EDPB considers that the LSA's discretion is limited, that CSAs can raise objections on factual and legal elements, including where they are not explicitly addressed by the LSA's original scope of inquiry, and that the EDPB can instruct the LSA to undertake additional investigations and issue an updated or supplementary draft decision. Specifically, CSAs may call for further investigations on account of unjustifiable gaps in investigations and/or insufficient factual information, as well as raise additional or alternative infringements based on a diverging legal assessment. This is supported by the broad language of Article 4(24) GDPR, the GDPR's policy objectives, the SAs' tasks and powers, the rationale and logic of the dispute resolution procedure, CJEU case law (full judicial review as regards SA's compliance with the limits of their discretion), and EDPB guidance. Article 4(24) GDPR defines objections as challenges as to whether there is an infringement of the GDPR or whether the envisaged action is compliant with the GDPR and sets qualitative thresholds ('relevant and reasoned' and 'significant risk'). This does not confine objections to legal considerations, nor to relying on the LSA's statement of facts, nor to exclusively raising issues that would align with the LSA's original scope of inquiry, the allegations explicitly made by complaints or the allegations raised in the draft decision. The initial scope of inquiry or the literal terms of complaints should not strictly limit the investigations, since they may build on an immature understanding of the legal and factual situation and therefore excessively limit investigations of unforeseen matters. Strictly speaking, it would also preclude reasonably adjusting the scope based on new information. Limiting objections to the scope of the draft decision precludes investigating unforeseen matters that are nevertheless relevant to the complaints and reports of data subjects and fellow SAs. Matters that are not addressed by, but have a close link to complaints, allegations and reports may warrant investigations and objections (nexus argument). The EDPB does not share the Irish SA's and Meta's view that finding objections admissible would breach Meta's procedural rights. The General Court judgment in joined-cases T-70/23, T-84/23 and T-111/23 and possible appeals are expected to bring more clarity.

Investigations

Considering the broad language of Article 4(24) GDPR, CSAs may well object to draft decisions on account of factual mistakes rooted in flawed investigations, competing interpretations of legal criteria, or unjustifiable failures to address issues raised in a complaint. Since the EDPB does not hold the power to conduct fact-finding, it appears necessary for the EDPB to refer the matter back to the LSA and request **additional investigations** and an updated or supplementary draft decision. This would allow the EDPB to address all 'the matters which are the subject of the relevant and reasoned objection' (Article 65(1)(a) GDPR). However, some consider that the GDPR provides the LSA with exclusive discretion ranging beyond what is guaranteed by the qualitative thresholds of Article 4(24) GDPR. They argue that Article 57(1)(f) GDPR and other provisions equip the LSA with exclusive discretion over investigations, that the EDPB does not hold a general supervision role akin to national courts, and that the dispute resolution rules do not explicitly provide for the possibility of referring the matter back to the LSA. Instead, the one-stop-shop mandates the quick resolution and finalisation of the entire procedure, hardly leaving room for additional investigations (Article 65(2)-(6) GDPR).

Nevertheless, the EDPB and legal academics assume that the EDPB could instruct the LSA to carry out additional investigations and issue an updated or supplementary draft decision.[1] This is arguable, because the discretion to investigate complaints 'to the extent appropriate' (as opposed to each complaint in every detail) is inherently limited, its attribution within and effect on the enforcement network is not entirely clear and its interplay with the one-stop-shop mechanism unsettled. Even if the GDPR equips the LSA with a broad margin of exclusive discretion, it can be argued that the CSAs and the EDPB may intervene: First, the one-stop-shop mechanism must be given full effect after the LSA terminates its main investigations and launches the Article 60 consultation procedure. The procedure applies indiscriminately to the draft decision, without exempting certain discretionary determinations. Second, the CSAs and the EDPB should (at least) be able to intervene where they consider that the LSA breached the limitations of its investigatory discretion. Third, the power to intervene broadly would align with the EDPB's dispute resolution tasks and the GDPR's policy objectives, including ensuring adequate, effective and consistent enforcement. Fourth, referring the matter back would (arguably) be compatible with the GDPR's dispute resolution provision. Finally, if the opposing views were adopted, LSAs could exploit this situation by setting an excessively narrow scope of inquiry or by performing superficial investigations to derive overly lenient decisions that avoid effective scrutiny by the CSAs and the EDPB. The General Court judgment in the joined-cases T-70/23, T-84/23 and T-111/23 and possible appeals are expected to bring more clarity.

Corrective measures

Council deliberations during the legislative process, CJEU case-law and EDPB guidance suggest that the CSAs and the EDPB can intervene when the proposed **(corrective) measures** are in violation of the GDPR. It is worth noting that the General Court did not take issue with the fact that the EDPB's binding decision 1/2021 instructed the LSA to increase the envisaged fines based on a revised interpretation of the Article 83 criteria. However, the order also clarified that the LSA retains discretion where the EDPB did/could not take a position, including as regards setting the actual amount of the fines. The appeal of relevant order and the CJEU determinations in case T-682/22 against the EDPB's binding decision 2/2022 may bring further clarity. The Council explained that a precursor of the Article 4(24) definition would exclude the possibility 'that the supervisory authority substitutes itself for the lead supervisory authority in determining the corrective measure, but it does empower the Board to take decisions in this regard when the proposed measure is in violation

[1] It is not entirely clear whether the EDPB can only instruct additional investigations if the CSA asserts insufficient information in the case file and/or explicitly requests further investigations as part of its objection. The EDPB upheld an LSA draft decision without ordering additional investigations, where it did not share the CSA's view that the facts in the case file supported finding additional infringements.

of the regulation, including the proportionality requirement for fines'.

***In line with the argumentation above and the EDPB guidance, lawmakers could modify Recital 34 to emphasise the binding features of Article 65(1)(a) binding decisions, instead of highlighting the LSA's discretion. It is safe to say that the LSA holds discretion to make editorial changes (Article 28) and transpose the binding (draft) decision into national law. It is debatable whether and to what extent the LSA holds exclusive discretion as regards the scope of the inquiry, establishing the facts, conducting investigations and choosing the corrective measures. Despite the pending-cases T-70/23, T-84/23 and T-111/23, lawmakers might feel inclined to clarify or particularise whether the LSA holds exclusive discretion beyond what is guaranteed by the qualitative thresholds of Article 4(24) GDPR ('relevant and reasoned' and 'significant risk'). If lawmakers considered that the CSAs should always be able to object on the matters mentioned above, regardless of the creation of an early scoping exercise, they would need to delete or significantly relax the Article 18(1) limitations.