



2023/0202(COD)

9.11.2023

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DRAFT REPORT

on the 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 (COM(2023)348 – C9-0231/2023 – 2023/0202(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sergey Lagodinsky

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2023)348 – C9-0231/2023 – 2023/0202(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)348),
 - having regard to Article 294(2) and Article 16 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0231/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In order to provide for the smooth and effective functioning of the cooperation and dispute resolution mechanism provided for in Articles 60 and

Amendment

(2) In order to provide for the smooth and effective functioning of the cooperation and dispute resolution mechanism provided for in Articles 60 and

65 of Regulation (EU) 2016/679, it is necessary to lay down rules concerning the conduct of proceedings by the supervisory authorities in cross-border cases, and by the Board during dispute resolution, including the handling of cross-border complaints. It is also necessary for this reason to lay down rules concerning the exercise of the right to be heard by the parties ***under investigation*** prior to the adoption of decisions by supervisory authorities and, as the case may be, by the Board.

65 of Regulation (EU) 2016/679, it is necessary to lay down rules concerning the conduct of proceedings by the supervisory authorities in cross-border cases, and by the Board during dispute resolution, including the handling of cross-border complaints. It is also necessary for this reason to lay down rules concerning the exercise of the right to be heard by the parties prior to the adoption of decisions by supervisory authorities and, as the case may be, by the Board. ***This Regulation thereby aims at protecting the right to good administration as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union (the ‘Charter’). To achieve this objective, when applying provisions of this Regulation, all data protection authorities should act in an impartial and independent manner and in accordance with the rule of law, as enshrined in Article 2 of the Treaty on European Union.***

Or. en

Amendment 2

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) This Regulation and Chapter VII of Regulation (EU) 2016/679 only govern certain elements of the cooperation procedure, when supervisory authorities of more than one Member State participate in the procedure. This Regulation does not apply when a party lodges a complaint directly with a lead supervisory authority in another Member State.

Or. en

Amendment 3

Proposal for a regulation Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) The procedural law of each Member State should apply to the supervisory authorities insofar as this Regulation does not harmonise a matter. In line with the primacy of Union law, supervisory authorities should not apply national procedural law where it is in conflict with this Regulation and Regulation (EU) 2016/679. Cooperation among supervisory authorities should not be limited because of differences in national procedural law.

Or. en

Justification

The Commission proposal is based on an idea of full harmonization, whereas matters like the use of languages, evidence, witnesses and alike are regulated in national procedures. The new Articles 1a and 2a to 2c shall clarify this matter.

Amendment 4

Proposal for a regulation Recital 4

Text proposed by the Commission

Amendment

(4) In order to be admissible a complaint should contain certain specified information. ***Therefore, in order to assist complainants in submitting the necessary facts to the supervisory authorities, a complaint form should be provided. The information specified in the form should be required only in cases of cross-border processing in the sense of Regulation (EU) 2016/679, though the form may be used by supervisory authorities for cases***

(4) In order to be admissible a complaint should contain certain specified information. No additional information should be required for a complaint to be deemed admissible. ***Where a complaint does not meet the minimum requirements, the supervisory authority should reject it and inform the complainant about the missing information. The complainant can then resubmit a complete complaint.*** It should be possible for supervisory

that do not concern cross-border processing. The form may be submitted electronically or by post. The submission of the information listed in that form should be a condition for a complaint relating to cross-border processing to be treated as a complaint as referred to in Article 77 of Regulation (EU) 2016/679. No additional information should be required for a complaint to be deemed admissible. It should be possible for supervisory authorities to facilitate the submission of complaints in a user-friendly electronic format and bearing in mind the needs of persons with disabilities, *as long as the information required from the complainant corresponds to the information required by the form and no additional information is required in order to find the complaint admissible.*

authorities to facilitate the submission of complaints in a user-friendly electronic format and bearing in mind the needs of persons with disabilities.

Or. en

Justification

The form should not be mandatory, as many complainants will not initially know if a case is cross-country or not. A mandatory form may unduly limit access to authorities. Instead, minimum information should be introduced.

Amendment 5

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Supervisory authorities are obliged to decide on complaints within a reasonable timeframe. What is a reasonable timeframe depends on the circumstances of each case and, in particular, its context, the various procedural steps followed by the lead supervisory authority, the conduct of the parties in the course of the procedure and the complexity of the case.

Amendment

(5) Supervisory authorities are obliged to decide on complaints within a reasonable timeframe. What is a reasonable timeframe depends on the circumstances of each case and, in particular, its context, the various procedural steps followed by the lead supervisory authority, the conduct of the parties in the course of the procedure and the complexity of the case. ***Article 6 of the European Convention on Human Rights (ECHR) and Articles 41 and 47 of***

the Charter require a reasonable overall duration of procedures. Given that this includes judicial remedies under Article 78 of Regulation (EU) 2016/679, procedures before supervisory authorities should typically not take more than nine months, unless exceptional circumstances arise. This Regulation foresees prolongations of time-limits for delays or disruptions that are outside the control of the lead supervisory authority.

Or. en

Justification

The duration of nine months is based on existing laws (requiring usually 3-12 months) and also objectively necessary, when appeals under Article 78 (often 2-3 “levels” in the Member States) are accounted for. It is formulated as an average, normal duration to recognize that exceptional cases may take longer.

Amendment 6

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) *The direct interaction between Member States’ supervisory authorities and the parties is governed by national procedural law, insofar as Regulation (EU) 2016/679, this Regulation or Union law do not take primacy. In the case of indirect interaction of a lead supervisory authority with a party via another supervisory authority, the latter authority’s procedural law should apply to any direct interaction with the party. In line with Article 56(6) of Regulation (EU) 2016/679, a complainant has the right to solely communicate with the supervisory authority with which the complaint has been lodged. This does not prevent the complainant to directly communicate with another supervisory authority, including the lead supervisory authority, which may*

be more efficient.

Or. en

Justification

The Commission follows the idea of full harmonisation. This begs the question which procedural laws govern elements that are not fully harmonised. Linked to Article 2a (new)

Amendment 7

Proposal for a regulation

Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) To ensure that minimum requirements of fair and efficient procedures are met in all cross-border cases, including in Member States where there is no codified national procedural law, the Regulation sets directly applicable rules based on Article 41 of the Charter.

Or. en

Justification

The minimum standards should be largely compatible with existing national procedural laws. In Member States without a codified procedure, these minimum standards allow more legal certainty. When national laws are not compatible, this Regulation prevails. Linked to Article 2a (new)

Amendment 8

Proposal for a regulation

Recital 5 c (new)

Text proposed by the Commission

Amendment

(5c) Article 6 of the ECHR and Article 47 of the Charter require that fair procedures are public. Article 42 of the Charter and the law of many Member States foresee the right of access to public

documents and the transparency of actions of authorities. However, it should be possible to apply, in accordance with national procedural law applicable to the supervisory authority that the party directly interacts with, strictly necessary and proportionate limitations in relation to the disclosure or the further use of legally protected information, such as personal data or trade secrets protected under Directive (EU) 2016/943^{1a}. This could include the internal deliberations and decision-making of the authority. The least intrusive measures, such as limitation of the use of information or blackening of information should be applied. Parties should always be informed that information was withheld from them, and why.

^{1a} Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1, ELI: <https://eur-lex.europa.eu/eli/dir/2016/943/oj>)

Or. en

Justification

Reconcile the right to fair (=public) procedures and the right to access to information with the need to protect trade secrets and the inner decision-making of the authorities. Linked to Article 2b (new).

Amendment 9

Proposal for a regulation Recital 5 d (new)

Text proposed by the Commission

Amendment

(5d) The lead supervisory authority

manages the case in line with this Regulation, Regulation (EU) 2016/679 and its national procedural law, while fully cooperating with other supervisory authorities. Other supervisory authorities should provide any relevant information and their views to the lead supervisory authority. The lead supervisory authority should structure the case in an efficient and expedient way taking full account of the views of other supervisory authorities.

Or. en

Justification

The LSA is in charge of managing the case, while the other SAs provide all information and must be involved. Linked to Article 2c (new).

Amendment 10

Proposal for a regulation
Recital 5 e (new)

Text proposed by the Commission

Amendment

(5e) Supervisory authorities may also start additional procedures, for example in the case of systemic or repetitive infringements. This should, however, not lead to any interference with the rights of the parties. Complaints procedures should not be delayed and the right of parties to be heard should not be limited when a supervisory authority opens an ex officio procedure into the same matter.

Or. en

Justification

To avoid an “ex officio bypass” by some authorities, where the issue of a complaint is moved into an “ex officio” procedure, without the participation of the complainant.

Amendment 11

Proposal for a regulation Recital 5 f (new)

Text proposed by the Commission

Amendment

(5f) Each supervisory authority should define one or more languages that it accepts for incoming information by other supervisory authorities. An additional joint “cooperation language” should be defined which all supervisory authorities must accept for incoming or outgoing information. In case of judicial remedies, the supervisory authority against which a judicial remedy is brought should have the duty to translate all relevant documents to the relevant accepted languages.

Or. en

Justification

Currently the joint language is English, based on IMI rules. This is not defined in law, but seems accepted and sufficient in most cases. This should be codified. Linked to Article 2d.

Amendment 12

Proposal for a regulation Recital 6

Text proposed by the Commission

Amendment

(6) Each complaint handled by a supervisory authority pursuant to Article 57(1), point (f), of Regulation (EU) 2016/679 is to 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***

(6) Each complaint handled by a supervisory authority pursuant to Article 57(1), point (f), of Regulation (EU) 2016/679 is to 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. While assessing the extent appropriate of an investigation, supervisory authorities should aim to deliver a

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.

satisfactory resolution to the complainant, which *requires* investigating all *relevant legal* and factual elements arising from the complaint, *to ensure that a decision can be jointly taken and* an effective and quick remedy to the complainant *can be quickly delivered. Planning the procedure is important to ensure a quick result. Supervisory authorities should not refer to the rights under Article 79 of Regulation (EU) 2016/679 as a reason to limit the investigation of a complaint. To ensure compliance with Article 47 of the Charter, the handling of a complaint should always lead to an appealable decision. Unless a complaint is withdrawn, it should not be possible for complaints to be closed or otherwise terminated without a decision.*

Or. en

Justification

The recital so far hinted at limited enforcement and discretion of authorities not to act. This was amended to ensure that their duty to act is highlighted.

Amendment 13

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) The lead supervisory authority should provide the supervisory *authority with which the complaint was lodged with the necessary* information *on the progress of the investigation for the purpose of providing updates* to the *complainant*.

Amendment

(7) The lead supervisory authority should provide the supervisory *authorities instant remote access to a joint case file that holds all relevant documents of the case, including all internal or confidential information as well as a translation of all documents* to the *cooperation language. In addition, the lead supervisory authority should actively inform the other supervisory authorities on major changes that may require imminent action or closer attention.*

*Justification**Linked to Articles 2c, 8***Amendment 14****Proposal for a regulation
Recital 8***Text proposed by the Commission*

(8) The competent supervisory authority should provide the ***complainant with*** access to the documents ***on the basis of which the supervisory authority reached a preliminary conclusion to reject fully or partially the complaint.***

Amendment

(8) The competent supervisory authority should provide the ***parties with remote*** access to the ***joint case file, except for redacted*** documents ***and internal deliberations.***

Or. en

Amendment 15**Proposal for a regulation
Recital 9***Text proposed by the Commission*

(9) In order for supervisory authorities to bring a swift end to infringements of Regulation (EU) 2016/679 and to deliver a quick resolution for complainants, supervisory authorities should endeavour, where appropriate, to resolve complaints by amicable settlement. The fact that an individual complaint has been resolved through an amicable settlement does not prevent the competent supervisory authority from pursuing an ex officio case, for example in the case of systemic or repetitive infringements of Regulation (EU) 2016/679.

Amendment

(9) In order for supervisory authorities to bring a swift end to infringements of Regulation (EU) 2016/679 and to deliver a quick resolution for complainants, supervisory authorities ***should be able to*** endeavour, where appropriate, to resolve complaints by amicable settlement ***between the parties. Supervisory authorities should not make the handling of a complaint contingent on participation in an amicable settlement process. Settlements should be able to take the form of a contract between the parties under applicable law, but should not bind the authorities.*** The fact that an individual complaint has been resolved through an amicable settlement does not prevent the

competent supervisory authority from pursuing an ex officio case, for example in the case of systemic or repetitive infringements of Regulation (EU) 2016/679.

Or. en

Amendment 16

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) It is particularly important for supervisory authorities to reach consensus on key aspects of the **investigation** as early as possible and prior to the **communication of allegations to the parties under investigation and** adoption of the draft decision referred to in Article 60 of Regulation (EU) 2016/679, thereby reducing the number of cases submitted to the dispute resolution mechanism in Article 65 of Regulation (EU) 2016/679 and ultimately ensuring the quick resolution of cross-border cases.

Amendment

(11) It is particularly important for supervisory authorities to reach consensus on key aspects of the **case via the summary of key issues and comments on that summary** as early as possible and prior to the adoption of the draft decision referred to in Article 60 of Regulation (EU) 2016/679, thereby reducing the number of cases submitted to the dispute resolution mechanism in Article 65 of Regulation (EU) 2016/679 and ultimately ensuring the quick resolution of cross-border cases.

Or. en

Amendment 17

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Cooperation between supervisory authorities should be based on open dialogue which allows concerned supervisory authorities to meaningfully impact the course of the investigation by sharing their experiences and views with the lead supervisory authority, **with due**

Amendment

(12) Cooperation between supervisory authorities should be based on open dialogue which allows concerned supervisory authorities to meaningfully impact the course of the investigation by sharing their experiences and views with the lead supervisory authority. For this

regard for the margin of discretion enjoyed by each supervisory authority, including in the assessment of the extent appropriate to investigate a case, and for the varying traditions of the Member States. For this purpose, the *lead* supervisory authority should provide *concerned supervisory authorities* with a summary of key issues setting out its preliminary view on the main issues in an investigation. It should be provided at a sufficiently early stage to allow effective inclusion of supervisory authorities concerned *but at the same time at a stage where the lead supervisory authority's views on the case are sufficiently mature.* Concerned supervisory authorities should have the opportunity to provide their comments on *a broad range of questions, such as the scope of the investigation and the identification of complex factual and legal assessments.* *Given that the scope of the investigation determines the matters which require investigation by the lead supervisory authority,* supervisory authorities should endeavour to achieve consensus as early as possible on the scope of the investigation.

purpose, the supervisory authority *with which a complaint has been lodged or which demands an ex-officio action* should provide a summary of key issues setting out its preliminary view on the main issues in an investigation. *In all other cases, the lead supervisory authority should draft the summary of key issues. The summary of key issues should be part of the joint case file, and should be a living document that is updated by the lead supervisory authority during the course of the procedure.* It should be provided at a sufficiently early stage to allow effective inclusion of supervisory authorities concerned. Concerned supervisory authorities should have the opportunity to provide their comments on *any update* of the *summary of key issues.* The lead supervisory authority *should comply with the comments as far as possible or reject them. In the case of a rejection, the supervisory authorities should be able to raise any dispute with the Board.* Supervisory authorities should endeavour to achieve consensus as early as possible on the scope of the investigation.

Or. en

Amendment 18

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) In the interest of effective inclusive cooperation between all supervisory authorities concerned and the lead supervisory authority, *the comments of* concerned supervisory authorities should be concise and worded in sufficiently clear and precise terms to be easily understandable to all supervisory authorities. The legal arguments should be

Amendment

(13) In the interest of effective inclusive cooperation between all supervisory authorities concerned and the lead supervisory authority, *any documents submitted by* concerned supervisory authorities *and the parties* should be concise and worded in sufficiently clear and precise terms to be easily understandable to all supervisory

grouped by reference to the part of the summary of key issues to which they relate. ***The comments of supervisory authorities concerned may be supplemented by additional documents. However, a mere reference in the comments of a supervisory authority concerned to supplementary documents cannot make up for the absence of the essential arguments in law or in fact which should feature in the comments. The basic legal and factual particulars relied on in such documents should be indicated, at least in summary form, coherently and intelligibly in the comment itself.***

authorities. ***Supervisory authorities should therefore be able to limit the length of submissions by the parties.*** The legal arguments should be grouped by reference to the part of the summary of key issues to which they relate.

Or. en

Justification

To avoid “spamming” by large companies who can afford law firms to submit thousands of pages. The rule is similar to the rules of procedure before the CJEU, where submissions are regularly limited to 20 or 30 pages.

Amendment 19

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) Cases that do not raise contentious issues do not require extensive discussion between supervisory authorities in order to reach a consensus and could, therefore, be dealt with more quickly. When none of the supervisory authorities concerned raise comments on the summary of key issues, the lead supervisory authority should communicate the preliminary findings provided for in Article 14 within ***nine*** months.

Amendment

(14) Cases that do not raise contentious issues do not require extensive discussion between supervisory authorities in order to reach a consensus and could, therefore, be dealt with more quickly. When none of the supervisory authorities concerned raise comments on the summary of key issues, the lead supervisory authority should communicate the preliminary findings provided for in Article 14 within ***three*** months ***after the deadline for comments.***

Or. en

Justification

Linked to Article 9(6).

Amendment 20

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Supervisory authorities should avail of all means necessary to achieve a consensus in a spirit of sincere and effective cooperation. Therefore, if there is a divergence in opinion between the supervisory authorities concerned and the lead supervisory authority regarding the scope *of a complaint-based investigation, including the provisions of Regulation (EU) 2016/679 the infringement of which will be investigated, or where the comments of the supervisory authorities concerned relate to an important change in the complex legal or technological assessment, the concerned authority should use the tools provided for under Articles 61 and 62 of Regulation (EU) 2016/679.*

Amendment

(15) Supervisory authorities should avail ***themselves*** of all means necessary to achieve a consensus in a spirit of sincere and effective cooperation. Therefore, if there is a divergence in opinion between the supervisory authorities concerned and the lead supervisory authority regarding the scope ***or procedural issues of a case***, the supervisory authorities ***should be able to raise the matter quickly with the Board.*** ***The Board should be able to make the necessary procedural determinations.***

Or. en

Justification

Linked to Article 26a (new).

Amendment 21

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) If the use of those tools does not enable the supervisory authorities to reach a consensus on the scope of a

Amendment

deleted

complaint-based investigation, the lead supervisory authority should request an urgent binding decision of the Board under Article 66(3) of Regulation (EU) 2016/679. For this purpose, the requirement of urgency should be presumed. The lead supervisory authority should draw appropriate conclusions from the urgent binding decision of the Board for the purposes of preliminary findings. The urgent binding decision of the Board cannot pre-empt the outcome of the investigation of the lead supervisory authority or the effectiveness of the rights of the parties under investigation to be heard. In particular, the Board should not extend the scope of the investigation on its own initiative.

Or. en

Justification

Urgent decisions under Article 66(3) GDPR are limited to inaction of a DPA. Instead, procedural determinations by the Board should be possible for all sorts of procedural disputes. Linked to Recital (15).

Amendment 22

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) To enable the complainant to exercise her or his right to an effective judicial remedy under Article 78 of Regulation (EU) 2016/679, the ***supervisory authority fully or partially rejecting a*** complaint should ***do so by means of*** a decision which may be challenged before a national court.

Amendment

(17) To enable the complainant to exercise her or his right to an effective judicial remedy under Article 78 of Regulation (EU) 2016/679, the ***handling of any*** complaint should ***always lead to*** a decision which may be challenged before a national court.

Or. en

Justification

To ensure that cases are not “closed” or “deemed withdrawn” and alike without a clear decision which can be appealed.

Amendment 23

Proposal for a regulation Recital 18

Text proposed by the Commission

Amendment

(18) Complainants should have the opportunity to express their views before a decision adversely affecting them is taken. Therefore, in the event of full or partial rejection of a complaint in a cross-border case, the complainant should have the opportunity to make her or his views known prior to the submission of a draft decision under Article 60(3) of Regulation (EU) 2016/679, a revised draft decision under Article 60(4) of Regulation (EU) 2016/679 or a binding decision of the Board under Article 65(1), point (a), of Regulation (EU) 2016/679. The complainant may request access to the non-confidential version of the documents on which the decision fully or partially rejecting the complaint is based.

deleted

Or. en

Justification

There is a general right to be heard before a decision, which allows to remove the need for “draft” decisions. Article 11 is therefore also deleted. This should limit the need for paperwork through repeated “draft of the draft” procedures.

Amendment 24

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) It is necessary to clarify the division of responsibilities between the lead supervisory authority and the supervisory authority with which the complaint was lodged in the case of rejection of a complaint in a cross-border case. As the point of contact for the complainant during the investigation, the supervisory authority with which the complaint was lodged should **obtain the views of the complainant on the proposed rejection of the complaint and should** be responsible for all communications with the complainant. All such communications should be shared with the lead supervisory authority. Since under Article 60(8) and (9) of Regulation (EU) 2016/679 the supervisory authority with which the complaint was lodged has the responsibility of adopting the final decision rejecting the complaint, that supervisory authority should also **have the responsibility of** preparing the draft decision under Article 60(3) of Regulation (EU) 2016/679.

Amendment

(19) It is necessary to clarify the division of responsibilities between the lead supervisory authority and the supervisory authority with which the complaint was lodged in the case of rejection of a complaint in a cross-border case. As the point of contact for the complainant during the investigation, the supervisory authority with which the complaint was lodged should be responsible for all communications with the complainant. All such communications should be shared with the lead supervisory authority. Since under Article 60(8) and (9) of Regulation (EU) 2016/679 the supervisory authority with which the complaint was lodged has the responsibility of adopting the final decision **which needs to comply with its national procedural law**, rejecting the complaint, that supervisory authority should also **be involved by the lead supervisory authority in** preparing the draft decision under Article 60(3) **and any final decision under Article 60(7) to (9)** of Regulation (EU) 2016/679.

Or. en

Justification

The COM proposal would rewrite the GDPR, as the drafting is clearly with the LSA. We suggest to highlight that the CSA with which the complaint was filed must issue the final decision and therefore needs to be involved in the drafting, to ensure that it cannot be easily appealed before a national court.

Amendment 25

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) In order to effectively safeguard the

Amendment

(21) In order to effectively safeguard the

right to good administration and the rights of defence as enshrined in the Charter of *Fundamental Rights of the European Union ('the Charter')*, including the right of every person to be heard before any individual measure which would affect him or her adversely is taken, it is important to provide for clear rules on the exercise of this right.

right to good administration and the rights of defence as enshrined in the Charter, including the right of every person to be heard before any individual measure which would affect him or her adversely is taken, it is important to provide for clear rules on the exercise of this right *for all parties involved in a case*.

Or. en

Amendment 26

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) The rules regarding the administrative procedure applied by supervisory authorities when enforcing Regulation (EU) 2016/679 should ensure that the parties *under investigation* effectively have the opportunity to make known their views on the truth and relevance of the facts, objections and circumstances put forward by the supervisory authority throughout the procedure, thereby enabling them to exercise their rights of defence. The preliminary findings set out the preliminary position on the alleged infringement of Regulation (EU) 2016/679 following investigation. They thus constitute an essential procedural safeguard which ensures that the right to be heard is observed. The parties *under investigation* should be provided with the documents required to *defend themselves* effectively and to comment on the allegations made *against them*, by receiving access to the *administrative* file.

Amendment

(22) The rules regarding the administrative procedure applied by supervisory authorities when enforcing Regulation (EU) 2016/679 should ensure that the parties effectively have the opportunity to make known their views on the truth and relevance of the facts, objections and circumstances put forward by the supervisory authority throughout the procedure, thereby enabling them to exercise their rights of defence. The preliminary findings set out the preliminary position on the alleged infringement of Regulation (EU) 2016/679 following investigation. They thus constitute an essential procedural safeguard which ensures that the right to be heard is observed. The parties should be provided with the documents required to *make their case* effectively and to comment on the allegations made, by receiving access to the *joint case* file.

Or. en

Amendment 27

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) ***The preliminary findings define the scope of the investigation and therefore the scope of any future final decision (as the case may be, taken on the basis of a binding decision issued by the Board under Article 65(1), point (a) of Regulation (EU) 2016/679) which may be addressed to controllers or processors.***

The preliminary findings should be couched in terms that, even if succinct, are sufficiently clear to enable the parties ***under investigation*** to properly identify the nature of the alleged infringement of Regulation (EU) 2016/679. The obligation of giving the parties ***under investigation*** all the information necessary ***to enable them to properly defend themselves*** is satisfied if the final decision does not allege that the parties under investigation have committed infringements other than those referred to in the preliminary findings and only takes into consideration facts on which the parties ***under investigation*** have had the opportunity of making known their views. The final decision of the lead supervisory authority is not, however, necessarily required to be a replica of the preliminary findings. The lead supervisory authority should be permitted in the final decision to take account of the responses of the parties ***under investigation*** to the preliminary findings, and, where applicable, the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, and the ***Article 65(1), point (a)***, decision resolving the dispute between the supervisory authorities. The lead supervisory authority should be able to carry out its own assessment of the facts and the legal qualifications put forward by the parties ***under investigation*** in order either to

Amendment

(23) The preliminary findings should be couched in terms that, even if succinct, are sufficiently clear to enable the parties to properly identify the nature of the alleged infringement of Regulation (EU) 2016/679. The obligation of giving the parties all the information necessary ***for their right to be heard*** is satisfied if the final decision does not allege that the parties under investigation have committed infringements other than those referred to in the preliminary findings and only takes into consideration facts on which the parties have had the opportunity of making known their views. The final decision of the lead supervisory authority is not, however, necessarily required to be a replica of the preliminary findings. The lead supervisory authority should be permitted in the final decision to take account of the responses of the parties to the preliminary findings, and, where applicable, the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, and the decision ***by the Board*** resolving the dispute between the supervisory authorities ***under Article 65(1), point (a) of that Regulation***. The lead supervisory authority should be able to carry out its own assessment of the facts and the legal qualifications put forward by the parties in order either to abandon the objections when the supervisory authority finds them to be unfounded or to supplement and redraft its arguments, both in fact and in law, in support of the objections which it maintains.

abandon the objections when the supervisory authority finds them to be unfounded or to supplement and redraft its arguments, both in fact and in law, in support of the objections which it maintains. *For example, taking account of an argument put forward by a party under investigation during the administrative procedure, without it having been given the opportunity to express an opinion in that respect before the adoption of the final decision, cannot per se constitute an infringement of defence rights.*

Or. en

Amendment 28

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) The parties *under investigation* should be provided with a right to be heard prior to the submission of a revised draft decision under Article 60(5) of Regulation (EU) 2016/679 or the adoption of a binding decision by the Board pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679.

Amendment

(24) The parties should be provided with a right to be heard prior to the submission of a revised draft decision under Article 60(5) of Regulation (EU) 2016/679 or the adoption of a binding decision by the Board pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679.

Or. en

Amendment 29

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Complainants should be given the possibility to be associated with the proceedings initiated by a supervisory authority with a view to identifying or

Amendment

(25) Complainants should be given the possibility to be associated with the proceedings initiated by a supervisory authority with a view to identifying or

clarifying issues relating to a potential infringement of Regulation (EU) 2016/679. The fact that a supervisory authority has already initiated an investigation concerning the subject matter of the complaint or will deal with the complaint in an ex officio investigation subsequent to the receipt the complaint does not bar the qualification of a data subject as complainant. ***However, an investigation by a supervisory authority of a possible infringement of Regulation (EU) 2016/679 by a controller or processor does not constitute an adversarial procedure between the complainant and the parties under investigation. It is a procedure commenced by a supervisory authority, upon its own initiative or based on a complaint, in fulfilment of its tasks under Article 57(1) of Regulation (EU) 2016/679. The parties under investigation and the complainant are, therefore, not in the same procedural situation and the latter cannot invoke the right to a fair hearing when the decision does not adversely affect her or his legal position. The complainant's involvement in the procedure against the parties under investigation cannot compromise the right of these parties to be heard.***

clarifying issues relating to a potential infringement of Regulation (EU) 2016/679. The fact that a supervisory authority has already initiated an investigation concerning the subject matter of the complaint or will deal with the complaint in an ex officio investigation subsequent to the receipt *of* the complaint does not bar the qualification of a data subject as complainant.

Or. en

Amendment 30

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The complainants should be given the possibility to submit in writing views on the preliminary findings. However, they should not have access to business secrets or other confidential information belonging to other parties involved in the proceedings. Complainants should not be

Amendment

deleted

entitled to have generalised access to the administrative file.

Or. en

Amendment 31

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) When setting deadlines for parties ***under investigation and complainants*** to provide their views on preliminary findings, supervisory authorities should have regard to the complexity of the issues raised in preliminary findings, in order to ensure that the parties ***under investigation and complainants*** have sufficient opportunity to meaningfully provide their views on the issues raised.

Amendment

(27) When setting deadlines ***and limiting the length of submissions*** for parties to provide their views on preliminary findings, supervisory authorities should have regard to the complexity of the issues raised in preliminary findings, in order to ensure that the parties have sufficient opportunity to meaningfully provide their views on the issues raised. ***This should however not lead to unduly long procedures.***

Or. en

Amendment 32

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) ***The exchange of views prior to the adoption of a draft decision involves an open dialogue and an extensive exchange of views where supervisory authorities should do their utmost to find a consensus on the way forward in an investigation. Conversely, the disagreement expressed in relevant and reasoned objections pursuant to Article 60(4) of Regulation (EU) 2016/679, which raise the potential for dispute resolution between supervisory authorities under Article 65 of Regulation***

Amendment

deleted

(EU) 2016/679 and delay the adoption of a final decision by the competent supervisory authority, should 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. Such objections should be used sparingly, when matters of consistent enforcement of Regulation (EU) 2016/679 are at stake, since every use of relevant and reasoned objections postpones the remedy for the data subject. Since the scope of the investigation and the relevant facts should be decided prior to the communication of preliminary findings, these matters should not be raised by supervisory authorities concerned in relevant and reasoned objections. They may, however, be raised by supervisory authorities concerned in their comments on the summary of key issues pursuant to Article 9(3), before preliminary findings are communicated to the parties under investigation.

Or. en

Justification

Unduly limits the options for concerned supervisory authorities to raise objections. Could be used against CSAs by controllers e.g. filing injunctions against objections.

Amendment 33

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) In the interest of the efficient and inclusive conclusion of the dispute resolution procedure, where all supervisory authorities should be in a position to contribute their views and bearing in mind the time constraints during dispute resolution, the form and structure of

Amendment

(29) In the interest of the efficient and inclusive conclusion of the dispute resolution procedure, where all supervisory authorities should be in a position to contribute their views and bearing in mind the time constraints during dispute resolution, the form and structure of

relevant and reasoned objections should meet certain requirements. Therefore, relevant and reasoned objections should **be limited to a prescribed length, should** clearly identify the disagreement with the draft decision and should be worded in sufficiently clear, coherent and precise terms.

relevant and reasoned objections should meet certain requirements. Therefore, relevant and reasoned objections should clearly identify the disagreement with the draft decision and should be worded in sufficiently clear, coherent and precise terms.

Or. en

Amendment 34

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) Access to the **administrative** file is provided for as a part of **the rights of defence and** the right to good administration enshrined in the Charter. Access to the **administrative** file should be provided to the parties **under investigation when they are notified of preliminary findings and the deadline to submit their written reply to the preliminary findings should be set.**

Amendment

(30) Access to the **joint case** file is provided for as a part of the right to good administration enshrined in the Charter. Access to the **joint case** file should be provided to the parties.

Or. en

Amendment 35

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) When granting access to the **administrative** file, supervisory authorities should ensure the protection of business secrets and other confidential information. The category of other confidential information includes information other than business secrets, which may be

Amendment

(31) When granting access to the **joint case** file, supervisory authorities should ensure the protection of business secrets and other confidential information. The category of other confidential information includes information other than business secrets, which may be considered as

considered as confidential, insofar as its disclosure would significantly harm a controller, a processor or a natural person. The supervisory authorities should be able to request that parties under investigation that submit or have submitted documents or statements identify confidential information.

confidential, insofar as its disclosure would significantly harm a controller, a processor or a natural *or legal* person. The supervisory authorities should be able to request that parties under investigation that submit or have submitted documents or statements identify confidential information.

Or. en

Amendment 36

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) When referring a subject-matter to dispute resolution under Article 65 of Regulation (EU) 2016/679, the lead supervisory authority should provide the Board with all necessary information to enable it to assess the admissibility of relevant and reasoned objections and to take the decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679. Once the Board is in receipt of all the necessary documents *listed in Article 23, the Chair of* the Board should register the referral of the subject-matter in *the sense of* Article 65(2) of Regulation (EU) 2016/679.

Amendment

(33) When referring a subject-matter to dispute resolution under Article 65 of Regulation (EU) 2016/679, the lead supervisory authority should provide the Board with all necessary information to enable it to assess the admissibility of relevant and reasoned objections and to take the decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679. Once the Board is in receipt of all the necessary documents, the Board should register the referral of the subject-matter in *accordance with* Article 65(2) of Regulation (EU) 2016/679.

Or. en

Justification

One does not refer to Articles in Recitals, because the Recitals are supposed to lead to the Articles later.

Amendment 37

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) The binding decision of the Board under Article 65(1), point (a), of Regulation (EU) 2016/679 should concern exclusively matters which led to the triggering of the dispute resolution and be drafted in ***a way which allows*** the lead supervisory authority to adopt its final decision on the basis of the decision of the Board ***while maintaining its discretion***.

Amendment

(34) The binding decision of the Board under Article 65(1), point (a), of Regulation (EU) 2016/679 should concern exclusively matters which led to the triggering of the dispute resolution and be drafted in ***clear and precise language, allowing*** the lead supervisory authority to adopt its final decision on the basis of the decision of the Board.

Or. en

Justification

Board decisions in dispute resolution are binding on the authorities.

Amendment 38

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) In order to streamline the procedure for the adoption of urgent opinions and urgent binding decisions of the Board under Article 66(2) of Regulation (EU) 2016/679, it is necessary to specify procedural rules regarding the timing of the request for an urgent opinion or urgent binding decision, the documents to be submitted to the Board and on which the Board should base its decision, to whom the opinion or decision of the Board should be addressed, and the consequences of the opinion or decision of the Board.

Amendment

(36) In order to streamline the procedure for the adoption of urgent opinions and urgent binding decisions of the Board under Article 66(2) of Regulation (EU) 2016/679, it is necessary to specify procedural rules regarding the timing of the request for an urgent opinion or urgent binding decision, the documents to be submitted to the Board and on which the Board should base its decision, to whom the opinion or decision of the Board should be addressed, and the consequences of the opinion or decision of the Board.
Provisional measures pursuant to Article 66(1) of Regulation (EU) 2016/679 should include all possible measures within the powers of supervisory authorities, pursuant to Article 58 of that Regulation.

Or. en

Justification

EDPB para 120.

Amendment 39

Proposal for a regulation

Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Where, after its deliberations, the Board is unable to determine the matter, because the joint case file and other information provided by the lead supervisory authority are not complete, the Board should be able to request further information from the parties or supervisory authorities, or conduct further factual investigations.

Or. en

Amendment 40

Proposal for a regulation

Recital 36 b (new)

Text proposed by the Commission

Amendment

(36b) The Board should be able to delegate certain tasks to one or more select committees, which can consist of members of the Board or members of the secretariat referred to in Article 75 of Regulation (EU) 2016/679. It should be possible for this delegation to include any task under Article 70 of Regulation (EU) 2016/679, decisions under Article 65 and 66 of Regulation (EU) 2016/679 or functions of the Board under this Regulation, such as routine tasks or decisions that need to be taken without delay, including any procedural determinations.

Justification

Linked to Articles 26a (new), 26b (new).

Amendment 41

**Proposal for a regulation
Recital 36 c (new)**

Text proposed by the Commission

Amendment

(36c) The complainant should have a right to a judicial remedy in the event that a supervisory authority does not use its powers or does not otherwise take necessary action required by Regulation (EU) 2016/679. In addition, the parties should have a right to take action against the lead supervisory authority in case of inaction or overly long procedures. To ensure that there is no enforcement gap, the parties to the case and organisations under Article 80(1) of Regulation (EU) 2016/679 should be empowered to seek a judicial remedy in the public interest if a supervisory authority does not comply with a decision of the Board.

Justification

Linked to Article 26c (new).

Amendment 42

**Proposal for a regulation
Recital 38**

Text proposed by the Commission

Amendment

(38) The European Data Protection Supervisor and the European Data Protection Board were consulted in

(38) The European Data Protection Supervisor and the European Data Protection Board were consulted in

accordance with Article 42(2) of Regulation (EU) 2018/1725 and delivered a joint opinion on *[]*,

accordance with Article 42(2) of Regulation (EU) 2018/1725 and delivered a joint opinion on **19 September 2023**,

Or. en

Amendment 43

Proposal for a regulation Chapter I – Section 1 (new)

Text proposed by the Commission

Amendment

Section 1

Subject matter, scope and definitions

Or. en

Amendment 44

Proposal for a regulation Article 1 – title

Text proposed by the Commission

Amendment

Subject matter

Subject matter **and scope**

Or. en

Amendment 45

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

This Regulation lays down procedural rules for the handling of complaints and the conduct of investigations in complaint-based and ex officio cases by supervisory authorities **in** the cross-border **enforcement** of Regulation (EU) 2016/679.

This Regulation lays down procedural rules for the handling of complaints and the conduct of investigations in complaint-based and ex officio cases by supervisory authorities **related to** the cross-border **processing in the meaning** of Regulation

Justification

EDPB wording suggestion – “cross-border enforcement” is not defined in GDPR. EDPB, introduction, p.7.

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation applies to cases under Regulation (EU) 2016/679 related to such cross-border processing, whenever supervisory authorities of more than one Member State are taking part in the case, as well as related judicial remedies.

Or. en

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Article 26c of this Regulation also applies to cases before a supervisory authority of a single Member State.

Or. en

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

This Regulation does not preclude Member States from specifying procedural matters not regulated by this Regulation or Regulation (EU) 2016/679.

Or. en

Amendment 49

Proposal for a regulation

Article 2 – paragraph 2 – point 1

Text proposed by the Commission

Amendment

(1) ‘***parties*** under investigation’ means the controller(s) and/or processor(s) investigated for alleged infringement of Regulation (EU) 2016/679 ***related to cross-border processing***;

(1) ‘***party*** under investigation’ means the controller(s) and/or processor(s) ***accused of, or*** investigated for, alleged infringement of Regulation (EU) 2016/679;

Or. en

Amendment 50

Proposal for a regulation

Article 2 – paragraph 2 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) ‘complainant’ means the data subject or non-for-profit body, organisation or association that has lodged a complaint under Article 77 of Regulation (EU) 2016/679;

Or. en

Justification

EDPB para 155.

Amendment 51

Proposal for a regulation

Article 2 – paragraph 2 – point 1 b (new)

Text proposed by the Commission

Amendment

(1b) ‘party’ means the party or parties under investigation, the complainant(s) and any third party to the case where foreseen under Member State law;

Or. en

Amendment 52

Proposal for a regulation

Article 2 – paragraph 2 – point 1 c (new)

Text proposed by the Commission

Amendment

(1c) ‘national procedural law’ means the laws or other rules of the Member State that regulate the procedure before a supervisory authority;

Or. en

Amendment 53

Proposal for a regulation

Article 2 – paragraph 2 – point 1 d (new)

Text proposed by the Commission

Amendment

(1d) ‘complaints procedure’ means an adversarial procedure determining a complaint under Article 77 of Regulation (EU) 2016/679;

Or. en

Amendment 54

Proposal for a regulation

Article 2 – paragraph 2 – point 1 e (new)

Text proposed by the Commission

Amendment

(1e) ‘*ex officio procedure*’ means an investigation into the activities of a natural or legal person, public authority, agency or other body initiated on a supervisory authority’s initiative under Article 57(1)(a) of Regulation (EU) 2016/279;

Or. en

Amendment 55

Proposal for a regulation

Article 2 – paragraph 2 – point 1 f (new)

Text proposed by the Commission

Amendment

(1f) ‘*internal deliberations*’ means any preliminary view, opinion, comment or exchange within or between the supervisory authorities or the Board, such as the summary of key issues, comments on the summary of key issues, draft decisions or relevant and reasoned objections under Article 60(3) to (5) of Regulation (EU) 2016/679;

Or. en

Amendment 56

Proposal for a regulation

Article 2 – paragraph 2 – point 1 g (new)

Text proposed by the Commission

Amendment

(1g) ‘*joint case file*’ means a dedicated electronic file for any given case,

managed by the lead supervisory authority, in which all documents, submissions, memos and other information regarding a case are stored and made remotely accessible to supervisory authorities and parties to the case;

Or. en

Amendment 57

Proposal for a regulation Section 2 (new) – Article 2 a (new)

Text proposed by the Commission

Amendment

Section 2

Procedural Rules

Article 2a

Applicable Procedural Law

- (1) In addition to, and where not conflicting with this Regulation, the applicable procedural law of a supervisory authority shall govern all direct interactions between that supervisory authority and the parties before it. When applying national procedural law, supervisory authorities shall strive to facilitate the participation of all parties, including parties established or residing in other Member States.***
- (2) Regulation (EU) 2016/679 and this Regulation govern the interaction between supervisory authorities of different Member States within the scope of this Regulation.***
- (3) Any complainant has the right to communicate solely with the supervisory authority with which the complaint has been lodged pursuant to Article 77 of Regulation (EU) 2016/679.***
- (4) The interaction and sharing of information between supervisory***

authorities as well as between supervisory authorities and the Board shall be neither restricted nor prohibited under national law. Cooperation under this Regulation and Regulation (EU) 2016/679 and the consistent application of those regulations shall not be limited, delayed or denied based on differences in national procedural laws.

Or. en

Amendment 58

Proposal for a regulation Article 2 b – title (new)

Text proposed by the Commission

Amendment

Article 2b

Procedural Minimum Standards

Or. en

Justification

Following from Article 6 ECHR and Article 41 CFR, as confirmed by CJEU in Case C-277/11.

Amendment 59

Proposal for a regulation Article 2 b – paragraph 1 (new)

Text proposed by the Commission

Amendment

(1) Without prejudice to additional rights under relevant national procedural law, each party shall have at least the right to:

(a) have their case handled impartially and fairly, and to be treated equally, even if they are before different supervisory authorities in different jurisdictions (“fair procedure and equality of arms”);

(b) be heard before any measure is taken

that would adversely affect the party, including before the decision to fully or partially dismiss or reject a complaint is adopted (“right to be heard”);

(c) have access to the joint case file, except to any internal deliberations (“procedural transparency”);

Or. en

Amendment 60

Proposal for a regulation Article 2 b – paragraph 2 (new)

Text proposed by the Commission

Amendment

(2) The lead supervisory authority shall hear the parties when novel issues arise during the procedures under Article 60, 65 or 66 of Regulation (EU) 2016/679.

Or. en

Justification

See Article 18(a)(a). This would ensure that if a CSA brings totally new issues up in a “reasoned objection” the parties are still heard – but only if that is the case, not as a default in all the “normal” cases.

EDPB, para 92

Amendment 61

Proposal for a regulation Article 2 b – paragraph 3 (new)

Text proposed by the Commission

Amendment

(3) On the request of a party or in the public interest, a supervisory authority may limit the rights referred to in paragraph 1 and 2 to protect legally recognized rights of others or to protect

the public interest. Any such limitation shall be in accordance with the national procedural law applicable under Article 2a(1) to any direct interaction between a supervisory authority and the party receiving limited information. The party claiming confidentiality shall provide a non-confidential version of any information, applying only strictly proportionate measures, such as redacting specific parts of documents. Supervisory authorities involved in a case, as well as other relevant authorities under Article 7(1a), shall always have access to the confidential version of all information, and shall confirm that redactions are strictly proportionate and may otherwise release the information. Supervisory authorities shall immediately inform the parties about the fact that information is withheld. The lead supervisory authority shall keep records of each access to the joint case file and a list of authorised staff from each supervisory authority.

Or. en

Justification

“... national procedural law” In line with wording suggestion from EDPB. “always have access to the confidential version” from EDPB para 68.

Amendment 62

Proposal for a regulation

Article 2 b – paragraph 4 (new)

Text proposed by the Commission

Amendment

(4) *In the interest of efficient procedures, supervisory authorities shall limit the length of submissions and set reasonable deadlines not longer than four weeks, unless exceptional circumstances require a reasonable extension..*

Or. en

Justification

Especially large law firms of big tech companies try to “bury” cases in endless submissions that neither SAs nor the other parties are able to process. The Regulation should follow the approach by the CJEU where page limitations and short deadlines lead to focused submissions.

Amendment 63

Proposal for a regulation
Article 2 c – title (new)

Text proposed by the Commission

Amendment

Article 2c
**Cooperation between supervisory
authorities**

Or. en

Amendment 64

Proposal for a regulation
Article 2 c – paragraph 1 (new)

Text proposed by the Commission

Amendment

1. The lead supervisory authority shall structure, coordinate and manage the case in an efficient and expedient way, in accordance with Regulation (EU) 2016/679, this Regulation and any applicable national procedural law, ensuring that Regulation (EU) 2016/679 is fully enforced.

Or. en

Amendment 65

Proposal for a regulation
Article 2 c – paragraph 2 (new)

Text proposed by the Commission

Amendment

2. The lead supervisory authority shall manage each case in full cooperation with the supervisory authorities concerned, and shall comply with any request of a supervisory authority under this Regulation and Articles 60 to 62 of Regulation (EU) 2016/679. Any supervisory authority may declare that it is concerned and participate in the case from that point onwards.. The lead supervisory authority shall maintain a list of supervisory authorities concerned for each case in the joint case file.

Or. en

Amendment 66

Proposal for a regulation Article 2 c – paragraph 3 (new)

Text proposed by the Commission

Amendment

3. Any supervisory authority which receives relevant information for a case shall provide it to the lead supervisory authority without delay, but no later than one week from the day that it received such information.

Or. en

Amendment 67

Proposal for a regulation Article 2 c – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. The lead supervisory authority may join and separate cases in

accordance with national procedural law, insofar as this does not undermine the rights of the parties.

Or. en

Justification

Generally recognizing this option would ensure legal certainty, especially in Member States where there is no procedural law.

EDPB, para 50.

Amendment 68

Proposal for a regulation

Article 2 c – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. The lead supervisory authority shall include all documents, submissions, memos and other information regarding the case in a joint case file without delay, but no later than one week from the day in which the lead supervisory authority received such information. Any other supervisory authority and the Board shall have instant remote access to the joint case file.

Or. en

Amendment 69

Proposal for a regulation

Article 2 c – paragraph 6 (new)

Text proposed by the Commission

Amendment

6. When diverging views arise or are to be expected, for example when a case is considered as contentious under Article 9, the lead supervisory authority shall instantly initiate an exchange with all concerned supervisory authorities with an

aim to reach an early consensus or narrow areas of disagreement. The lead supervisory authority shall investigate facts relevant for diverging views.

Or. en

Amendment 70

Proposal for a regulation

Article 2 c – paragraph 7 (new)

Text proposed by the Commission

Amendment

7. Supervisory authorities shall use their powers under this Regulation and under Chapter VII of Regulation (EU) 2016/679 if diverging views cannot be overcome or in the case of inactivity of another supervisory authority.

Or. en

Justification

Active duty to take action under Articles 60 to 66 GDPR when another SA does not fulfill its duties for cooperation. Otherwise parties are left in limbo.

EDPB, para 120.

Amendment 71

Proposal for a regulation

Article 2 c – paragraph 8 (new)

Text proposed by the Commission

Amendment

8. All written documents by the supervisory authorities shall be provided by electronic means and in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

Justification

*The principle to use short, concise, transparent (...) documents is taken from various duties for CSAs in the proposal and elevated to a general principle (also applicable to the LSA).
Text is taken from Article 12 GDPR*

Amendment 72

**Proposal for a regulation
Article 2 d – title (new)**

Text proposed by the Commission

Amendment

Article 2d

Use of Languages and Translations

Justification

Amended version of Article 6 moved here, to ensure that the rules on translations apply to any type of procedure, not only to complaints procedures.

Amendment 73

**Proposal for a regulation
Article 2 d – paragraph 1 (new)**

Text proposed by the Commission

Amendment

1. The Board shall determine one language that shall be accepted by all supervisory authorities during the cooperation procedure (“cooperation language”).

Amendment 74

**Proposal for a regulation
Article 2 d – paragraph 2 (new)**

Text proposed by the Commission

Amendment

2. When a supervisory authority shares relevant information with another supervisory authority, it shall provide a translation into the cooperation language or any other language the receiving supervisory authority accepts.

Or. en

Justification

The “any other language” ensures that information is shared as soon as it is available. The information would still have to be translated into the cooperation language, once it goes into the joint case file.

Amendment 75

Proposal for a regulation

Article 2 d – paragraph 3 (new)

Text proposed by the Commission

Amendment

3. The lead supervisory authority shall provide entries into the joint case file in the original language, and shall provide translations into the cooperation language.

Or. en

Amendment 76

Proposal for a regulation

Article 2 d – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. In any direct interaction with the parties, supervisory authorities shall provide parties with information in the original language and, if necessary, either a translation into the language of the national procedural law, or into any other

language the party understands or uses in its routine external communication.

Or. en

Justification

See same rule in Article 12 of Regulation 2020/1784, Service of Documents Regulation.

Amendment 77

Proposal for a regulation

Article 2 d – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. A supervisory authority may provide automated translations, if they certify that the translation is not substantially different from the original.

Or. en

Justification

The existing practice of automated translations should be regulated, by demanding a certification that the contents are (at the core) correct.

Amendment 78

Proposal for a regulation

Article 2 d – paragraph 6 (new)

Text proposed by the Commission

Amendment

6. When a judicial remedy is filed against a supervisory authority, the supervisory authority shall provide the joint case file and any other relevant information in a language accepted by the judiciary of the Member State of jurisdiction.

Or. en

Amendment 79

Proposal for a regulation Chapter II – title

Text proposed by the Commission

Submission and handling of complaints

Amendment

Complaints ***and ex officio procedures***

Or. en

Amendment 80

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. A complaint ***on the basis*** of Regulation (EU) 2016/679 ***that relates to cross-border processing*** shall provide the information ***required in the Form, as set out in the Annex***. No additional information shall be required in order for the complaint to be admissible.

Amendment

1. A complaint ***that is potentially subject to Article 60*** of Regulation (EU) 2016/679 shall ***comply with the requirements of national procedural law applicable to the supervisory authority with which the complaint has been lodged and shall*** provide the ***following minimum*** information:

(a) the name, address and any other available contact details of the complainant,

(b) if known, the name, address and any other contact details of the party under investigation,

(c) the facts of the case and any evidence available to the complainant,

(d) the measures that the complainant demands from the supervisory authority.

No additional information shall be required in order for the complaint to be admissible. In particular, complainants shall not be required to use a national electronic ID or e-government system to submit the complaint.

Justification

Instead of a mandatory form, there should be minimum requirements to ensure that the complaint can be processed by the LSA. We recognize possible additional requirements under national law and the fact that in some cases, a data subject may not know or understand all details of a case. EDPB, para 23. Complainants shall not be required to use a national electronic ID to prevent the undue restriction of the manner in which to submit a complaint in cases where the data subject may not be aware whether the case relates to cross-border processing, and to align the Reg. with recital 141 GDPR.

Amendment 81**Proposal for a regulation****Article 3 – paragraph 1 a (new)***Text proposed by the Commission**Amendment*

1a. The complainant shall not be required to contact the party under investigation before submitting a complaint for the complaint to be admissible.

Justification

To prevent the undue rejection of complaints as observed in the practice of various DPAs.

Amendment 82**Proposal for a regulation****Article 3 – paragraph 1 b (new)***Text proposed by the Commission**Amendment*

1b. The supervisory authority with which a complaint has been lodged shall, within one week, acknowledge receipt of the complaint, and where a complaint does not meet the requirements pursuant to paragraph 1, declare the complaint inadmissible and inform the complainant about the missing information.

Justification

Moved up from paragraph 6, to follow the sequence of events.

Amendment 83

Proposal for a regulation

Article 3 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. The supervisory authority shall attribute a case number to the complaint, designate a case handler and communicate this information to the complainant. This shall be without prejudice to the assessment of admissibility of the complaint pursuant to paragraph 2(c)(i).

Justification

To facilitate communication between the CSA with which the complaint is lodged and the complainant.

Amendment 84

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. The supervisory authority with which the complaint **was** lodged shall establish whether the complaint relates to cross-border processing.

2. The supervisory authority with which the complaint **has been** lodged shall, **within three weeks after receipt of the complaint:**

Justification

Combining the steps in paragraphs 2 to 4 into one paragraph to ensure that all steps are under the three week deadline. The three weeks is parallel to Article 56(3) GDPR, and has been moved here from the end of the paragraph, to make clear everything shall be done

within three weeks.. Additional wording from EDPB suggestions.

Amendment 85

Proposal for a regulation

Article 3 – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

(a) determine the admissibility of the complaint,

Or. en

Amendment 86

Proposal for a regulation

Article 3 – paragraph 2 – point b (new)

Text proposed by the Commission

Amendment

(b) establish, by way of a preliminary conclusion, whether the complaint relates to cross-border processing,

Or. en

Amendment 87

Proposal for a regulation

Article 3 – paragraph 2 – point c (new)

Text proposed by the Commission

Amendment

(c) establish which supervisory authority is the assumed lead supervisory authority under Article 56(1) of Regulation (EU) 2016/679, and whether the case is local in nature pursuant to Article 56(2) of Regulation (EU) 2016/679,

Or. en

Amendment 88

Proposal for a regulation

Article 3 – paragraph 2 – point d (new)

Text proposed by the Commission

Amendment

(d) draft a summary of key issues, and

Or. en

Amendment 89

Proposal for a regulation

Article 3 – paragraph 2 – point e (new)

Text proposed by the Commission

Amendment

(e) either

Or. en

Amendment 90

Proposal for a regulation

Article 3 – paragraph 2 – point e – point i (new)

Text proposed by the Commission

Amendment

(i) transmit the complaint to the assumed lead supervisory authority under Article 56(1) of Regulation (EU) 2016/679 and inform the complainant thereof. The assessment of the admissibility of the complaint by the supervisory authority with which the complaint has been lodged shall be binding on the lead supervisory authority;

Or. en

Justification

To provide clarification on the mutual recognition of complaints. EDPB, para 24.

Amendment 91

Proposal for a regulation

Article 3 – paragraph 2 – point e – point ii (new)

Text proposed by the Commission

Amendment

(ii) handle the complaint under Article 56(2) of Regulation (EU) 2016/679; or

Or. en

Amendment 92

Proposal for a regulation

Article 3 – paragraph 2 – point e – point iii (new)

Text proposed by the Commission

Amendment

(iii) inform the complainant that he or she can resubmit the complaint, naming any missing information.

Or. en

Amendment 93

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The lead supervisory authority shall immediately provide the complaint to the party under investigation and demand a reply without undue delay, but no later than three weeks from the day it was informed by the supervisory authority concerned.

Amendment 94

Proposal for a regulation Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *The parties or the assumed lead supervisory authority shall raise any objection in relation to the competence of the assumed lead supervisory authority or to the handling of a complaint under Article 56(2) of Regulation (EU) 2016/679 within three weeks from being informed about the transmission of the complaint to the assumed lead supervisory authority or the lack of such a transmission.*

Or. en

Amendment 95

Proposal for a regulation Article 3 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. *Where an objection under paragraph 2b was raised, the supervisory authority with which the complaint has been lodged may withdraw the transmission of the complaint and either assume its own competence under Article 55 or 56 of Regulation (EU) 2016/679 or transfer it to an assumed lead supervisory authority within two weeks. If none of these actions were undertaken, the supervisory authority with which the complaint has been lodged shall request a determination by the Board under Article 26a.*

Or. en

Justification

Related to Article 26a

Amendment 96

**Proposal for a regulation
Article 3 – paragraph 3**

Text proposed by the Commission

Amendment

3. The supervisory authority with which the complaint was lodged shall determine the completeness of the information required by the Form within one month. *deleted*

Or. en

Justification

Merged into paragraph 2.

Amendment 97

**Proposal for a regulation
Article 3 – paragraph 4**

Text proposed by the Commission

Amendment

4. Upon assessment of the completeness of the information required by the Form, the supervisory authority with which the complaint was lodged shall transmit the complaint to the lead supervisory authority. *deleted*

Or. en

Justification

Merged into paragraph 2.

Amendment 98

Proposal for a regulation Article 3 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the complainant claims confidentiality when submitting a complaint, the complainant shall also submit a non-confidential version of the complaint. *deleted*

Or. en

Justification

Covered by new horizontal rule on confidentiality in Article 2b(3).

Amendment 99

Proposal for a regulation Article 3 – paragraph 6

Text proposed by the Commission

Amendment

6. The supervisory authority with which a complaint was lodged shall acknowledge receipt of the complaint within one week. This acknowledgement shall be without prejudice to the assessment of admissibility of the complaint pursuant to paragraph 3. *deleted*

Or. en

Justification

Moved up to paragraph 1a, to follow the chronological order of events.

Amendment 100

Proposal for a regulation Article 4 – title

Text proposed by the Commission

Amendment

Investigation of complaints

Handling of complaints

Or. en

Amendment 101

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

While assessing the extent appropriate to which a complaint should be investigated in each case the supervisory authority shall **take into account all relevant circumstances, including all of** the following:

While assessing the extent appropriate to which a complaint should be investigated in each case the **lead** supervisory authority shall **ensure** the following:

Or. en

Amendment 102

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the **expediency of delivering** an effective and timely remedy to the complainant;

(a) the **delivery of** an effective and timely remedy to the complainant;

Or. en

Amendment 103

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) the **gravity of the alleged infringement**;

Amendment

(b) the **investigation of all factual and legal elements required to jointly decide on the complaint and issue a decision under Article 60(7) to (9) of Regulation (EU) 2016/679**;

Or. en

Amendment 104

Proposal for a regulation Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) the systemic or repetitive **nature of the alleged infringement**.

Amendment

(c) the **investigation of any other elements necessary for the efficient enforcement of Regulation (EU) 2016/679, including the ex officio exercise of powers pursuant to Article 58(2), Article 83 or Article 84 of Regulation (EU) 2016/679, especially in the case of systemic or repetitive infringements**.

Or. en

Amendment 105

Proposal for a regulation Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The handling of a complaint shall always lead to a legally binding decision that is subject to an effective legal remedy under Article 78 of Regulation (EU) 2016/679.

Or. en

Justification

Each complaint must lead to an appealable decision. This will prevent situations where complaints are “closed” without an appealable decision. “Handling of complaints” is from Article 78(2) GDPR and ensures deadlines are met. EDPB, para 29.

Amendment 106

Proposal for a regulation

Article 4 – paragraph 1 b – introductory part (new)

Text proposed by the Commission

Amendment

The lead supervisory authority shall deliver a draft decision pursuant to Article 60(3) of Regulation (EU) 2016/679 without delay, but not later than nine months from the receipt of the complaint.

This period may exceptionally be prolonged by:

Or. en

Amendment 107

Proposal for a regulation

Article 4 – paragraph 1 b – point a (new)

Text proposed by the Commission

Amendment

(a) eight weeks when comments under Article 9(3) are submitted against a summary of key issues or an updated summary of key issues;

Or. en

Amendment 108

Proposal for a regulation

Article 4 – paragraph 1 b – point b (new)

Text proposed by the Commission

Amendment

(b) the period of time between a

reference under Article 26a and the decision by the Board;

Or. en

Justification

Linked to Article 26a.

Amendment 109

Proposal for a regulation

Article 4 – paragraph 1 b – point c (new)

Text proposed by the Commission

Amendment

(c) the period of any prolongation permitted by the Board under Article 26a(3).

Or. en

Justification

Linked to Article 26a.

Amendment 110

Proposal for a regulation

Article 4 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

Paragraph 1b shall not apply once a case is submitted to the consistency mechanism in accordance with Article 60(4) of Regulation (EU) 2016/679.

Or. en

Amendment 111

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

A complaint may be resolved by amicable settlement ***between the complainant and the parties under investigation***. Where ***the supervisory authority considers that an amicable settlement to the complaint has been found, it shall communicate the proposed settlement to the complainant. If the complainant does not object to the amicable settlement proposed by the supervisory authority within one month, the complaint shall be deemed withdrawn.***

Amendment

1. A complaint may be resolved by amicable settlement only where it concerns the data subjects' rights and where with the resolution of the dispute by an amicable settlement, the processing which the complaint related to is no longer taking place.

Or. en

Justification

EDPB para 32. See also EDPB Guidelines 06/2022 on amicable settlements.

Amendment 112

Proposal for a regulation Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. An amicable settlement between the complainant and the party under investigation shall be considered to be found where there is explicit agreement. The supervisory authority with which the complaint has been lodged may facilitate such an amicable settlement in the preparatory phase; the lead supervisory authority may facilitate it once a complaint has been transmitted to it. Where an amicable settlement to the complaint has been found, the parties shall communicate the settlement to the supervisory authority, and the complaint shall be deemed withdrawn.

Or. en

Justification

EDPB para 33, clarification which SA is in charge when. Joint communication by the parties ensures it is the free will of the complainant.

Amendment 113

**Proposal for a regulation
Article 5 – paragraph 1 b (new)**

Text proposed by the Commission

Amendment

1b. The supervisory authority is not bound by the amicable settlement. It shall in particular open an ex officio investigation instead, where

(a) the party under investigation is a repeat offender,

(b) the party under investigation has been the subject of a large number of other amicable settlements,,

***(c) the broad subject matter of the complaint concerns a large number of data subjects other than the complainant;
or***

(d) the consequence of the processing which has been subject to the complaint is of long duration or serious nature.

Or. en

Justification

A dispute settlement between two parties is usually seen as a contract between these parties, not an act between a party and an authority. EDPB, para 32.

Amendment 114

**Proposal for a regulation
Article 5 a (new)**

Article 5a

Request for an ex officio procedure

- 1. The lead supervisory authority may open an ex officio procedure at any time.***
- 2. Where it considers that Regulation (EU) 2016/679 may be violated, any concerned supervisory authority may request an ex officio procedure by submitting a written request to the lead supervisory authority. Such a request shall contain at least:***
 - (a) a declaration to be a concerned supervisory authority;***
 - (b) any evidence of the violation;***
 - (c) a summary of key issues pursuant to Article 9;***
- 3. Within three weeks, the assumed lead supervisory authority shall:***
 - (a) inform the concerned supervisory authority that it has opened an ex officio procedure.;***
 - (b) inform the concerned supervisory authority that Article 56(2) of Regulation (EU) 2016/679 applies to the case and that in accordance with Article 56(3) of Regulation (EU) 2016/679 the lead supervisory authority does not intend to handle the case itself in line ; or***
 - (c) reject the request, if it takes the view that it is not the lead supervisory authority or there is no violation of Regulation (EU) 2016/679.***

In the case referred to in point (a) of this paragraph, the concerned supervisory authority may submit to the lead supervisory authority a draft decision pursuant to Article 56(4) of Regulation (EU) 2016/679

In the case referred to in point (c) of this paragraph, the concerned supervisory

authority may resubmit an amended request for an ex officio procedure, or request a determination on the opening of the procedure by the Board under Article 26a(1).

Or. en

Justification

Deadline of three weeks in para 3 from Article 56 GDPR.

Amendment 115

**Proposal for a regulation
Article 6**

Text proposed by the Commission

Amendment

Article 6

deleted

Translations

1. The supervisory authority with which the complaint was lodged shall be responsible for:

(a) translation of complaints and the views of complainants into the language used by the lead supervisory authority for the purposes of the investigation;

(b) translation of documents provided by the lead supervisory authority into the language used for communication with the complainant, where it is necessary to provide such documents to the complainant pursuant to this Regulation or Regulation (EU) 2016/679.

2. In its rules of procedure, the Board shall determine the procedure for the translation of comments or relevant and reasoned objections expressed by supervisory authorities concerned in a language other than the language used by the lead supervisory authority for the purposes of the investigation.

Or. en

Justification

Moved to Article 2d, as the matter of translations does not only concern complaints procedures but any form of cooperation.

Amendment 116

**Proposal for a regulation
Article 7 – title**

Text proposed by the Commission

Cooperation between supervisory
authorities

Amendment

Cooperation between supervisory
authorities ***and between supervisory
authorities and other relevant authorities***

Or. en

Amendment 117

**Proposal for a regulation
Article 7 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

***Supervisory authorities shall strive to
communicate the information obtained in
the context of the procedures set out in
this Regulation to national and Union
supervisory authorities competent in other
areas, including competition, financial
services, energy, telecommunications and
consumer protection authorities, where
the information is deemed relevant to the
tasks and duties of those authorities.***

Or. en

Justification

Recognising that investigation on infringements in the area of data protection might provide evidence on infringements in other areas. This is a demand from many civil society organisations.

Amendment 118

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

Amendment

The provisions in this section concern the relations between supervisory authorities and are not intended to confer rights on individuals or the parties under investigation. **deleted**

Or. en

Justification

If the parties cannot bring a claim in national courts over the lack of cooperation, this would in many cases make Article 78 GDPR inefficient if the “problem” for a missing decision lies in the lack of cooperation and cannot be tackled by the parties. EDPB, para 29.

Amendment 119

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. The lead supervisory authority shall ***regularly update the other supervisory authorities concerned about the investigation and*** provide the other supervisory authorities ***concerned, at the earliest convenience, with all relevant information once available.***

1. The lead supervisory authority shall provide the other supervisory authorities ***and the Board with instant, unrestricted and continuous remote access to the full joint case file, and shall include into the joint case file any documents, submissions, communication, protocols, evidence or other information related to the case within one week of producing or receiving it.***

Or. en

Amendment 120

Proposal for a regulation Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. Relevant information within the meaning of Article 60(1) and (3) of Regulation (EU) 2016/679 shall **include**, where applicable:

Amendment

2. **The lead supervisory authority shall actively provide the other supervisory authorities and the Board with** relevant information within the meaning of Article 60(1) and (3) of Regulation (EU) 2016/679, **within one week from receiving or producing it. This information shall cover information on major steps in the procedure, including** where applicable:

Or. en

Amendment 121

**Proposal for a regulation
Article 8 – paragraph 2 – point a**

Text proposed by the Commission

(a) information on the opening of an investigation **of an alleged infringement of Regulation (EU) 2016/679;**

Amendment

(a) information on the opening of an **ex officio** investigation **or a complaints procedure;**

Or. en

Amendment 122

**Proposal for a regulation
Article 8 – paragraph 2 – point e**

Text proposed by the Commission

(e) summary of key issues in an investigation in accordance with Article 9;

Amendment

(e) **the issuing or updating of the** summary of key issues in an investigation in accordance with Article 9;

Or. en

Amendment 123

Proposal for a regulation

Article 8 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) any comments to a summary of key issues in accordance with Article 9(3);

Or. en

Amendment 124

Proposal for a regulation

Article 8 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) information concerning steps aiming to establish an infringement of Regulation (EU) 2016/679 prior to the preparation of preliminary findings;

(f) information concerning steps aiming to establish an infringement of Regulation (EU) 2016/679 prior to the preparation of preliminary findings ***and prior to the preparation of the draft decision;***

Or. en

Amendment 125

Proposal for a regulation

Article 8 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) the response of the parties under investigation to the preliminary findings;

deleted

Or. en

Justification

Following the deletion of Article 15.

Amendment 126

Proposal for a regulation

Article 8 – paragraph 2 – point i

Text proposed by the Commission

Amendment

(i) the views of the complainant on the preliminary findings; **deleted**

Or. en

Justification

Following the deletion of Article 15.

Amendment 127

Proposal for a regulation

Article 8 – paragraph 2 – point j

Text proposed by the Commission

Amendment

(j) in the case of rejection of a complaint, the written submissions of the complainant; **deleted**

Or. en

Justification

Following the deletion of Article 15.

Amendment 128

Proposal for a regulation

Article 8 – paragraph 2 – point k

Text proposed by the Commission

Amendment

(k) any relevant steps taken by the lead supervisory authority after receiving the response of the parties under investigation to the preliminary findings and prior to submission of a draft decision in the sense of Article 60(3) of Regulation **deleted**

(EU) 2016/679.

Or. en

Justification

Following the deletion of Article 15.

Amendment 129

**Proposal for a regulation
Article 8 – paragraph 2 – point k a (new)**

Text proposed by the Commission

Amendment

(k a) any draft decision in accordance with Article 60(3) of Regulation (EU) 2016/679 or revised draft decision in accordance with Article 60(5) of Regulation (EU) 2016/679;

Or. en

Amendment 130

**Proposal for a regulation
Article 8 – paragraph 2 – point k b (new)**

Text proposed by the Commission

Amendment

(k b) any relevant and reasoned objections in accordance with Article 60(4) of Regulation (EU) 2016/679;

Or. en

Amendment 131

**Proposal for a regulation
Article 8 – paragraph 2 – point k c (new)**

Text proposed by the Commission

Amendment

(k c) any judicial remedy brought during a procedure under Article 60 of Regulation (EU) 2016/679 or against a decision under Article 60(7) to (9) of Regulation (EU) 2016/679.

Or. en

Amendment 132

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. ***Once*** the lead supervisory authority ***has formed a preliminary view on the main issues in an investigation, it*** shall draft a summary of key issues for the purpose of cooperation under Article 60(1) of Regulation (EU) 2016/679.

1. ***At the outset of any case, the lead supervisory authority, or where a case is transferred from another supervisory authority, that authority, shall draft a summary of key issues that presumably need to be determined to decide the case, for the purpose of cooperation under Article 60(1) of Regulation (EU) 2016/679. The summary shall be drafted in an impartial way, taking into account any diverging facts and arguments.***

Or. en

Justification

Under Article 3(2), the summary of key issues should be drafted by the CSA that receives a complaint, as it will best understand the concern of the data subject and is under the jurisdiction for appeals in case a complaint is rejected. EDPB, para 50.

Amendment 133

Proposal for a regulation Article 9 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the **main** relevant facts;

(a) the relevant facts;

Or. en

Amendment 134

Proposal for a regulation

Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) a preliminary identification of the scope of the investigation, in particular the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement ***which will be investigated;***

(b) a preliminary identification of the scope of the investigation, in particular the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement , ***and an indication if they seem to be infringed;***

Or. en

Amendment 135

Proposal for a regulation

Article 9 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) identification of ***complex*** legal and technological assessments which are relevant for preliminary orientation of their assessment;

(c) identification of legal and technological assessments which are relevant for preliminary orientation of their assessment;

Or. en

Justification

EDPB para 52.

Amendment 136

Proposal for a regulation

Article 9 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) where applicable, European case law, as well as guidelines, recommendations and best practices issued by the Board, that would determine the matter, and an indication if the supervisory authority intends to follow them;

Or. en

Amendment 137

Proposal for a regulation

Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The summary of key issues shall be updated by the lead supervisory authority without undue delay to reflect any material changes that emerge during the course of the procedure.

Or. en

Amendment 138

Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. The supervisory authorities concerned may provide comments on the summary of key issues. Such comments must be provided within four weeks of receipt of the summary of key issues.

3. The supervisory authorities concerned may provide comments on the summary of key issues. Such comments must be provided within four weeks of receipt of the summary of key issues ***or any update.***

Amendment 139

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. Comments provided pursuant to paragraph 3 shall meet the following requirements: *deleted*

(a) language used is sufficiently clear and contains precise terms to enable the lead supervisory authority, and, as the case may be, supervisory authorities concerned, to prepare their positions;

(b) legal arguments are set out succinctly and grouped by reference to the part of the summary of key issues to which they relate;

(c) the comments of the supervisory authority concerned may be supported by documents, which may supplement the comments on specific points.

Or. en

Justification

Moved to a horizontal provision on all communications in Article 2c(8).

Amendment 140

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. The Board may specify in its rules of procedure restrictions on the maximum length of comments submitted by supervisory authorities concerned on the summary of key issues. *deleted*

Justification

EDPB para 54. (EDPB Rules of Procedure can specify this already anyway.)

Amendment 141**Proposal for a regulation****Article 9 – paragraph 6***Text proposed by the Commission*

6. Cases where none of the supervisory authorities concerned provided comments under paragraph 3 of this Article shall be considered non-contentious cases. In such cases, the preliminary findings referred to in Article 14 shall be communicated to the parties ***under investigation*** within **9** months of the expiry of the deadline provided for in paragraph 3 of this Article.

Amendment

6. Cases where none of the supervisory authorities concerned provided comments under paragraph 3 of this Article, ***and where the supervisory authority indicates that it intends to follow European case law, as well as guidelines, recommendations and best practices referred to in paragraph 2(ca)***, shall be considered non-contentious cases. In such cases, the preliminary findings referred to in Article 14 shall be communicated to the parties within **3** months of the expiry of the deadline provided for in paragraph 3 of this Article.

Justification

3 months: rapid decision-making in non-contentious cases requires shorter deadlines.

Amendment 142**Proposal for a regulation****Article 10 – paragraph 1***Text proposed by the Commission*

1. A supervisory authority concerned shall make a request to the lead supervisory authority under Article 61 of Regulation (EU) 2016/679, Article 62 of Regulation (EU) 2016/679, or both,

Amendment

deleted

where, following the comments of supervisory authorities concerned pursuant to Article 9(3), a supervisory authority concerned disagrees with the assessment of the lead supervisory authority on:

(a) the scope of the investigation in complaint-based cases, including the provisions of Regulation (EU) 2016/679 concerned by the alleged infringement which will be investigated;

(b) preliminary orientation in relation to complex legal assessments identified by the lead supervisory authority pursuant to Article 9(2), point (c);

(c) preliminary orientation in relation to complex technological assessments identified by the lead supervisory authority pursuant to Article 9(2), point (c).

Or. en

Justification

Covered by horizontal provisions in new Article 2c now.

Amendment 143

**Proposal for a regulation
Article 10 – paragraph 2**

Text proposed by the Commission

Amendment

2. The request under paragraph 1 shall be made within two months of the expiry of the period referred to in Article 9(3). deleted

Or. en

Justification

Covered by horizontal provisions in new Article 2c now.

Amendment 144

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

4. Where, ***in a complaint-based investigation***, there is no consensus between the lead supervisory authority and one or more concerned supervisory authorities on the ***matter*** referred to in Article 9(2), ***point (b), of this Regulation***, the lead supervisory authority ***shall*** request ***an urgent binding decision of the Board under Article 66(3) of Regulation (EU) 2016/679. In that case, the conditions for requesting an urgent binding decision under Article 66(3) of Regulation (EU) 2016/679 shall be presumed to be met.***

Amendment

4. Where there is no consensus between the lead supervisory authority and one or more concerned supervisory authorities on the ***matters*** referred to in Article 9(2), the lead supervisory authority ***or a concerned supervisory authority may*** request ***a procedural determination pursuant to Article 26a(1).***

Or. en

Amendment 145

Proposal for a regulation Article 10 – paragraph 5 – introductory part

Text proposed by the Commission

5. When requesting an urgent binding decision of the Board pursuant to paragraph 4 of this Article, the ***lead*** supervisory authority shall provide all of the following:

Amendment

5. When requesting an urgent binding decision of the Board pursuant to paragraph 4 of this Article, the supervisory authority shall provide all of the following:

Or. en

Amendment 146

Proposal for a regulation Article 10 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(a) the **documents** referred to in Article 9(2), **points (a) and (b)**;

(a) the **relevant information** referred to in Article 9(2);

Or. en

Amendment 147

Proposal for a regulation Article 10 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) the comments of the supervisory authority concerned that disagrees with the lead supervisory authority's preliminary identification of the **scope of the investigation**.

(b) the comments of the supervisory authority concerned that disagrees with the lead supervisory authority's preliminary identification of the **matter referred to in Article 9(2)**.

Or. en

Amendment 148

Proposal for a regulation Article 10 – paragraph 6

Text proposed by the Commission

Amendment

6. The Board shall adopt an urgent binding decision on the **scope of the investigation** on the basis of **the comments of the supervisory authorities concerned and the position of the lead supervisory authority on those comments**.

6. The Board shall adopt an urgent binding decision on the **summary of key issues, in accordance with Article 66(3) of Regulation (EU) 2016/679**, on the basis of **all documents received**.

Or. en

Justification

Wording suggestion from EDPB.

Amendment 149

Proposal for a regulation Chapter III – Section 2

Text proposed by the Commission

Amendment

SECTION 2

deleted

Full or partial rejection of complaints

Article 11

Hearing of complainant prior to full or partial rejection of a complaint

- 1. Following the procedure provided for in Article 9 and 10, the lead supervisory authority shall provide the supervisory authority with which the complaint was lodged with the reasons for its preliminary view that the complaint should be fully or partially rejected.**
- 2. The supervisory authority with which the complaint was lodged shall inform the complainant of the reasons for the intended full or partial rejection of the complaint and set a time-limit within which the complainant may make known her or his views in writing. The time-limit shall be no less than three weeks. The supervisory authority with which the complaint was lodged shall inform the complainant of the consequences of the failure to make her or his views known.**
- 3. If the complainant fails to make known her or his views within the time-limit set by the supervisory authority with which the complaint was lodged, the complaint shall be deemed to have been withdrawn.**
- 4. The complainant may request access to the non-confidential version of the documents on which the proposed rejection of the complaint is based.**
- 5. If the complainant makes known her or his views within the time-limit set by the supervisory authority with which the complaint was lodged and the views do not lead to a change in the preliminary view that the complaint should be fully or**

partially rejected, the supervisory authority with which the complaint was lodged shall prepare the draft decision under Article 60(3) of Regulation (EU) 2016/679 which shall be submitted to the other supervisory authorities concerned by the lead supervisory authority pursuant to Article 60(3) of Regulation (EU) 2016/679.

Article 12

Revised draft decision fully or partially rejecting a complaint

1. Where the lead supervisory authority considers that the revised draft decision within the meaning of Article 60(5) of Regulation (EU) 2016/679 raises elements on which the complainant should have the opportunity to make her or his views known, the supervisory authority with which the complaint was lodged shall, prior to the submission of the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, provide the complainant with the possibility to make her or his views known on such new elements.

2. The supervisory authority with which the complaint was lodged shall set a time-limit within which the complainant may make known her or his views.

Or. en

Justification

Covered by Article 14 now.

Amendment 150

Proposal for a regulation Article 13

Text proposed by the Commission

Amendment

Article 13

deleted

Decision fully or partially rejecting a complaint

When adopting a decision fully or partially rejecting a complaint in accordance with Article 60(8) of Regulation (EU) 2016/679, the supervisory authority with which the complaint was lodged shall inform the complainant of the judicial remedy available to him or her in accordance with Article 78 of Regulation (EU) 2016/679.

Or. en

Justification

Moved to Article 16(1)(f) to horizontally ensure that all parties are informed about judicial remedy options.

Amendment 151

**Proposal for a regulation
Section 3 – title**

Text proposed by the Commission

Amendment

Decisions addressed to ***controllers and processors***

Decisions addressed to ***parties under investigation***

Or. en

Justification

Wording suggestion from EDPB.

Amendment 152

**Proposal for a regulation
Article 14 – paragraph 1**

Text proposed by the Commission

Amendment

1. When the lead supervisory authority intends to submit a draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679 to the other supervisory authorities concerned finding an infringement of Regulation (EU)

1. ***Following the consultations and procedures under Articles 9 and 10 of this Regulation***, when the lead supervisory authority intends to submit a draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679 to the other

2016/679, it shall draft preliminary findings.

supervisory authorities concerned finding an infringement of Regulation (EU) 2016/679, it shall draft preliminary findings.

Or. en

Justification

Wording suggestion from EDPB.

Amendment 153

Proposal for a regulation

Article 14 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The preliminary findings shall present allegations raised in an exhaustive and sufficiently clear way to enable the parties ***under investigation*** to take cognisance of the conduct investigated by the lead supervisory authority. In particular, they ***must*** set out clearly all the facts and the entire legal assessment raised against the parties under investigation, so that ***they*** can express their views on the facts and the legal conclusions the lead supervisory authority intends to draw in the draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679, and list all the evidence it relies upon.

Amendment

The preliminary findings shall present allegations raised in an exhaustive and sufficiently clear way to enable the parties to take cognisance of the conduct investigated by the lead supervisory authority. In particular, they ***shall*** set out clearly all the facts and the entire legal assessment raised against the parties under investigation, so that ***the parties*** can express their views on the facts and the legal conclusions the lead supervisory authority intends to draw in the draft decision within the meaning of Article 60(3) of Regulation (EU) 2016/679, and list all the evidence it relies upon.

Or. en

Justification

EDPB para 135

Amendment 154

Proposal for a regulation

Article 14 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The preliminary findings shall indicate corrective measures the lead supervisory authority ***intends to use***.

Amendment

The preliminary findings shall indicate ***the*** corrective measures ***that are considered by*** the lead supervisory authority.

Or. en

Justification

EDPB para 135

Amendment 155

Proposal for a regulation

Article 14 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Where the lead supervisory authority ***intends*** to impose a fine, it shall list in the preliminary findings the relevant elements on which it ***relies*** while calculating the fine. ***In particular, the lead supervisory authority shall list the essential facts and matters of law which may result in the imposition of the fine and*** the elements listed in Article 83(2) of Regulation (EU) 2016/679, including any aggravating or mitigating factors it will take into account.

Amendment

Where the lead supervisory authority ***considers imposing*** a fine, it shall list in the preliminary findings the relevant elements ***of facts and law, which are known to it, and*** on which it ***intends to rely in deciding whether to impose an administrative fine and*** while calculating the fine, ***having regard to*** the elements listed in Article 83(2) of Regulation (EU) 2016/679, including any aggravating or mitigating factors it will take into account..

Or. en

Justification

EDPB para 135

Amendment 156

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

3. The lead supervisory authority shall

Amendment

3. The lead supervisory authority shall

notify preliminary findings to each of the parties *under investigation*.

notify preliminary findings to each of the parties.

Or. en

Amendment 157

Proposal for a regulation Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. The lead supervisory authority shall, when notifying the preliminary findings to the parties under investigation, set a time-limit within which these parties may provide their views in writing. The lead supervisory authority shall not be obliged to take into account written views received after the expiry of that time-limit. *deleted*

Or. en

Justification

Replaced by horizontal rule in Article 2b(4).

Amendment 158

Proposal for a regulation Article 14 – paragraph 5

Text proposed by the Commission

Amendment

5. When notifying the preliminary findings to the parties under investigation, the lead supervisory authority shall provide those parties with access to the administrative file in accordance with Article 20. *deleted*

Or. en

Justification

Replaced by horizontal rule in Article 2b(1)(c).

Amendment 159

Proposal for a regulation
Article 14 – paragraph 6

Text proposed by the Commission

6. The parties ***under investigation*** may, in their written reply to preliminary findings, set out all facts and legal arguments known to them which are relevant to their defence against the allegations of the lead supervisory authority. They shall attach any relevant documents as proof of the facts set out. The lead supervisory authority shall, in its draft decision, deal only with allegations, including the facts and the legal assessment based on those facts, in respect of which the parties ***under investigation*** have been given the opportunity to comment.

Amendment

6. The parties may, in their written reply to preliminary findings, set out all facts and legal arguments known to them which are relevant to their defence against the allegations of the lead supervisory authority. They shall attach any relevant documents as proof of the facts set out. The lead supervisory authority shall, in its draft decision, deal only with allegations, including the facts and the legal assessment based on those facts, in respect of which the parties have been given the opportunity to comment.

Or. en

Amendment 160

Proposal for a regulation
Article 15

Text proposed by the Commission

Article 15

Transmission of preliminary findings to complainants

1. Where the lead supervisory authority issues preliminary findings relating to a matter in respect of which it has received a complaint, the supervisory authority with which the complaint was lodged shall provide the complainant with a non-confidential version of the

Amendment

deleted

preliminary findings and set a time-limit within which the complainant may make known its views in writing.

2. Paragraph 1 shall apply also when a supervisory authority, where appropriate, treats several complaints jointly, splits the complaints in several parts or in any other way exercises its discretion concerning the scope of the investigation as set out in preliminary findings.

3. Where the lead supervisory authority considers that it is necessary for the complainant to be provided with documents included in the administrative file in order for the complainant to effectively make known her or his views on the preliminary findings, the supervisory authority with which the complaint was lodged shall provide the complainant with the non-confidential version of such documents when providing the preliminary findings pursuant to paragraph 1.

4. The complainant shall be provided with the non-confidential version of the preliminary findings only for the purpose of the concrete investigation in which the preliminary findings were issued.

5. Before receiving the non-confidential version of preliminary findings and any documents provided pursuant to paragraph 3, the complainant shall send to the lead supervisory authority a confidentiality declaration, where the complainant commits himself or herself not to disclose any information or assessment made in the non-confidential version of preliminary findings or to use those findings for purposes other than the concrete investigation in which those findings were issued.

Or. en

Justification

Now covered by Article 14, which in amended form requires preliminary findings to be sent to all parties of a case, including complainants.

Amendment 161

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

After submitting the draft decision to supervisory authorities concerned pursuant to Article 60(3) of Regulation (EU) 2016/679 and where none of the supervisory authorities concerned has objected to the draft decision within the periods referred to in Article 60(4) and (5) of Regulation (EU) 2016/679, the lead supervisory authority shall adopt and notify its decision under Article 60(7) of Regulation (EU) 2016/679 to the main establishment or single establishment of the controller or processor, as the case may be, and inform the supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds.

Amendment

After submitting the draft decision to supervisory authorities concerned pursuant to Article 60(3) of Regulation (EU) 2016/679 and where none of the supervisory authorities concerned has objected to the draft decision within the periods referred to in Article 60(4) and (5) of Regulation (EU) 2016/679, the lead supervisory authority shall, ***within four weeks from the end of the periods referred to in Article 60(4) and (5) of Regulation 2016/679***, adopt and notify its decision under Article 60(7) of Regulation (EU) 2016/679 to the main establishment or single establishment of the controller or processor, as the case may be, and inform the supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds.

Or. en

Justification

Four weeks from Article 60(4) and (5) GDPR

Amendment 162

Proposal for a regulation Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Where a supervisory authority concerned has objected to the draft decision within the period referred to in Article 60(4) of Regulation (EU) 2016/679, and the lead supervisory authority intends to follow that objection, the lead supervisory authority shall, within four weeks, submit a revised draft decision pursuant to Article 60(5) of that Regulation.

Or. en

Amendment 163

Proposal for a regulation Article 16 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Where a supervisory authority concerned has objected to the draft decision within the period referred to in Article 60(4) of Regulation (EU) 2016/679, and the lead supervisory authority does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, the lead supervisory authority shall, within four weeks, submit the matter to the consistency mechanism referred to in Article 63, in accordance with Article 60(4) of that Regulation.

Or. en

Amendment 164

Proposal for a regulation Article 16 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

Without prejudice to additional

requirements under national law, any draft decision or final decision under Article 60(3), (5) or (7) to (9) of Regulation (EU) 2016/679 shall be issued in writing, using a short, concise, transparent, intelligible form and clear and plain language. It shall be drafted in an impartial way, taking into account any diverging evidence and views of the parties, and shall at least contain the following elements:

(a) the name of the supervisory authority which issued the decision;

(b) the date of issuing of the decision;

(c) an impartial summary of the relevant facts of the case and their source;

(d) the legal grounds for the decision;

(e) the exercised corrective powers, penalties or other measures; and

(f) information on the right to an effective judicial remedy under Article 78 of Regulation (EU) 2016/679 and any applicable national procedural law.

Or. en

Justification

Point (f) moved here from Article 13. This information should be available to all parties.

Amendment 165

Proposal for a regulation Article 16 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

In a case where the legally binding decision is to be issued by the supervisory authority with which the complaint has been lodged in accordance with Article 60(8) or (9) of Regulation (EU) 2016/679, the lead supervisory authority shall ensure that the decision contains all elements necessary under the applicable

national procedural law of the concerned supervisory authority. The concerned supervisory authority with which the complaint has been lodged shall assist the lead supervisory authority in drafting the decision in such a manner.

Or. en

Amendment 166

Proposal for a regulation

Article 16 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

The information provided to the parties under Article 60(7) to (9) of Regulation (EU) 2016/679 shall include a copy of the legally binding decision.

Or. en

Amendment 167

Proposal for a regulation

Article 16 – paragraph 1 f (new)

Text proposed by the Commission

Amendment

Supervisory authorities shall publish all legally binding decisions they issue without undue delay, but no later than three months after adoption, unless they do not materially depart from previously published decisions. In accordance with applicable national procedural law,, supervisory authorities may redact information that may allow identifying parties and redact other information that is protected under applicable law.

Or. en

Justification

Established practice in most Member States, see GDPRhub.eu:- Spain publishes everything. Most countries publish novel or relevant decisions only (which is the proposal here). Germany and Romania do not publish anything (other than some press release).

Amendment 168

Proposal for a regulation
Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Right to be heard in relation to revised draft decision

1. Where the lead supervisory authority considers that the revised draft decision within the meaning of Article 60(5) of Regulation (EU) 2016/679 raises elements on which the parties under investigation should have the opportunity to make their views known, the lead supervisory authority shall, prior to the submission of the revised draft decision under Article 60(5) of Regulation (EU) 2016/679, provide the parties under investigation with the possibility to make their views known on such new elements.

2. The lead supervisory authority shall set a time-limit within which the parties under investigation may make known their views.

Or. en

Justification

This Article is replaced by Article 2b(1)(b), which clarifies that the parties must be heard on novel issues that were not brought to their attention (“Überraschungsverbot”). There is no need to hear the parties on the entire draft decision.

Amendment 169

Proposal for a regulation Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) be based ***exclusively*** on factual elements included in the draft decision; ***and***

Amendment

(a) be based on factual elements included in the draft decision, ***or in the joint case file or on any additional evidence submitted together with the relevant and reasoned objection;***

Or. en

Justification

The limitation to only base this on what the LSA has put in the draft decision allows to manipulate the outcome by simply only focusing on certain elements. It should be at least the entire case file, ideally also evidence that the LSA may have been missing. EDPB paras 92-96

Amendment 170

Proposal for a regulation Article 18 – paragraph 1 – point b

Text proposed by the Commission

(b) not change the scope of the ***allegations by raising points amounting to identification of additional allegations of infringement of Regulation (EU) 2016/679 or changing the intrinsic nature of the allegations raised.***

Amendment

(b) not change the scope of the ***case as defined through the latest version of the summary of key issues; and***

Or. en

Justification

Based on EDPB wording suggestions.

Amendment 171

Proposal for a regulation Article 18 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) clearly identify the elements of the draft decision that should be changed, including, where possible, the precise wording of the proposed change or a sufficiently precise description of the proposed change to the draft decision.

Or. en

Amendment 172

Proposal for a regulation

Article 18 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the length of each relevant and reasoned objection and the position of the lead supervisory authority on any such objection shall not exceed three pages and shall not include annexes. In cases involving particularly complex legal issues, the maximum length may be increased to six pages, except if specific circumstances justifying a longer length are accepted by the Board;

deleted

Or. en

Justification

The duty to have concise documents is introduced as a general principle in Article 2c(8), which also applies to relevant and reasoned objections. Limiting it to 3 or maximum 6 pages is too narrow. EDPB para 97

Amendment 173

Proposal for a regulation

Chapter IV – title

Text proposed by the Commission

Amendment

Chapter IV

(deleted)

**Access to the administrative file and
treatment of confidential information**

Or. en

Justification

The entire Chapter is replaced by Article 2b.

Amendment 174

**Proposal for a regulation
Article 19**

Text proposed by the Commission

Amendment

Article 19

deleted

Content of the administrative file

- 1. The administrative file in an investigation concerning an alleged infringement of Regulation (EU) 2016/679 consists of all documents which have been obtained, produced and/or assembled by the lead supervisory authority during the investigation.**
- 2. In the course of investigation of an alleged infringement of Regulation (EU) 2016/679, the lead supervisory authority may return to the party from which they have been obtained documents which following a more detailed examination prove to be unrelated to the subject matter of the investigation. Upon return, these documents shall no longer constitute part of the administrative file.**
- 3. The right of access to the administrative file shall not extend to correspondence and exchange of views between the lead supervisory authority and supervisory authorities concerned. The information exchanged between the**

supervisory authorities for the purpose of the investigation of an individual case are internal documents and shall not be accessible to the parties under investigation or the complainant.

4. Access to relevant and reasoned objections pursuant to Article 60(4) of Regulation (EU) 2016/679 shall be provided in accordance with Article 24.

Or. en

Justification

Replaced by Article 2b(3). Paragraph 3 is captured by the definition of “internal deliberations” in Article 2(1f).

Amendment 175

Proposal for a regulation

Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

Access to the administrative file and use of documents

1. The lead supervisory authority shall grant access to the administrative file to the parties under investigation, enabling them to exercise their right to be heard. Access to the administrative file shall be granted after the lead supervisory authority notifies the preliminary findings to the parties under investigation.

2. The administrative file shall include all documents, inculpatory and exculpatory, including facts and documents which are known to the parties under investigation.

3. The conclusions of the lead supervisory authority in the draft decision under Article 60(3) of Regulation (EU) 2016/679 and the final decision under Article 60(7) of Regulation (EU) 2016/679

may only rely on documents cited in the preliminary findings or on which the parties under investigation had the opportunity to make their views known.

4. Documents obtained through access to the administrative file pursuant to this Article shall be used only for the purposes of judicial or administrative proceedings for the application of Regulation (EU) 2016/679 in the specific case for which such documents were provided.

Or. en

Justification

The entire Chapter is replaced by Article 2b. Paragraph 4 is particularly problematic, as supervisory authorities should not be prevented from using information obtained in one procedure to perform their functions in other procedures and ex officio inquiries. EDPB para 79.

Amendment 176

**Proposal for a regulation
Article 21**

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

Replaced by Article 2b(3).

Amendment 177

**Proposal for a regulation
Article 22 – title**

Text proposed by the Commission

Amendment

Referral to dispute resolution under Article

Referral to dispute resolution under Article

Justification

Wording suggestion from EDPB.

Amendment 178

**Proposal for a regulation
Article 22 – paragraph 1**

Text proposed by the Commission

1. If the lead supervisory authority does not follow the relevant and reasoned objections or is of the opinion that the objections are not relevant or reasoned, it shall submit the subject-matter to the dispute resolution mechanism set out in Article 65 of Regulation (EU) 2016/679.

Amendment

1. If the lead supervisory authority does not follow the relevant and reasoned objections or is of the opinion that the objections are not relevant or reasoned, it shall submit the subject-matter to the dispute resolution mechanism set out in Article 65 of Regulation (EU) 2016/679, ***within four weeks from the receipt of all relevant and reasoned objections.***

Justification

In some cases, LSAs have taken a year to submit RROs to the Board.

Amendment 179

**Proposal for a regulation
Article 22 – paragraph 2 – introductory part**

Text proposed by the Commission

2. When referring the subject-matter to dispute resolution, the lead supervisory authority shall provide the Board with all of the following ***documents***:

Amendment

2. When referring the subject-matter to dispute resolution, the lead supervisory authority shall provide the Board with all of the following:

Amendment 180

Proposal for a regulation Article 22 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) *the summary of key issues;*

Or. en

Amendment 181

Proposal for a regulation Article 22 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) a summary of the relevant facts;

(b) a summary of the relevant facts,
including the description of processing activities, the description of the company's organisation and the description of where decisions are taken;

Or. en

Justification

EDPB para 108

Amendment 182

Proposal for a regulation Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) view made in writing by the parties
under investigation, as the case may be,
pursuant to Articles ***14 and 17;***

(d) view made in writing by the parties,
pursuant to Articles ***15;***

Or. en

Justification

Aligned with amended and broader Article 15.

Amendment 183

Proposal for a regulation

Article 22 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) views made in writing by complainants, as the case may be, pursuant to Articles 11, 12, and 15; **deleted**

Or. en

Justification

Aligned with amended and broader Article 15, see amended point (d).

Amendment 184

Proposal for a regulation

Article 22 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) the relevant and reasoned objections which were not followed by the lead supervisory authority;

*(f) the relevant and reasoned objections which were not followed by the lead supervisory authority, **and the objections that the lead supervisory authority has rejected as being neither relevant nor reasoned;***

Or. en

Justification

Wording suggestion by EDPB.

Amendment 185

Proposal for a regulation Article 22 – paragraph 2 – point g

Text proposed by the Commission

(g) the reasons on the basis of which the lead supervisory authority did not follow the ***relevant and reasoned*** objections or considered the objections not to be relevant or reasoned.

Amendment

(g) the reasons on the basis of which the lead supervisory authority did not follow the objections or considered the objections not to be relevant or reasoned;

Or. en

Justification

Wording suggestion by EDPB, to align with (f).

Amendment 186

Proposal for a regulation Article 22 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(g a) access to the joint case file.

Or. en

Amendment 187

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

3. The Board shall within ***four*** weeks of receiving the documents listed in paragraph 2 ***identify retained relevant and reasoned objections.***

Amendment

3. The Board shall ***register the submission of a subject-matter to the dispute resolution mechanism*** within ***two*** weeks of receiving the documents listed in paragraph 2 ***or it shall demand a resubmission that includes any missing information within another week. When registering the submission, the Board shall list and structure the disputes***

between supervisory authorities which form the scope of the procedure before the Board, and instantly provide them to the supervisory authorities.

Or. en

Amendment 188

Proposal for a regulation

Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The supervisory authorities concerned may, within two weeks after having been provided with the submission pursuant to paragraph 3, submit any relevant information that they have on that case, including but not limited to, facts and documentation that underlie their objection.

Or. en

Justification

EDPB para 108.

Amendment 189

Proposal for a regulation

Article 22 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 b. The “referral of the subject-matter” pursuant to Article 65(2) of Regulation (EU) 2016/679 shall mean the moment when all of the documents referred to in Article 2(2) are available and translated.

Or. en

Justification

EDPB para 101.

Amendment 190

**Proposal for a regulation
Article 22 – paragraph 3 c (new)**

Text proposed by the Commission

Amendment

3 c. The prohibition provided for in Article 65(4) of Regulation (EU) 2016/679 for supervisory authorities to adopt a decision on the subject matter submitted to the Board during the periods referred to in Article 65(2) of Regulation (EU) 2016/679 and Article 65(3) of that Regulation, shall also apply during the periods referred in paragraph 3 of this Article.

Or. en

Justification

Wording suggestion from EDPB.

Amendment 191

**Proposal for a regulation
Article 23**

Text proposed by the Commission

Amendment

Article 23

deleted

Registration in relation to a decision under Article 65(1), point (a), of Regulation (EU) 2016/679

The Chair of the Board shall register the referral of a subject-matter to dispute resolution under Article 65(1), point (a), of Regulation (EU) 2016/679 no later than one week after having received all of the following documents:

- (a) the draft decision or revised draft decision subject to the relevant and reasoned objections;**
- (b) a summary of the relevant facts;**
- (c) view made in writing by the parties under investigation, as the case may be, pursuant to Articles 14 and 17;**
- (d) views made in writing by complainants, as the case may be, pursuant to Articles 11, 12 and 15;**
- (e) the retained relevant and reasoned objections;**
- (f) the reasons on the basis of which the lead supervisory authority did not follow the retained relevant and reasoned objections.**

Or. en

Justification

Covered by Article 22(2) and (3) now.

Amendment 192

**Proposal for a regulation
Article 24**

Text proposed by the Commission

Amendment

Article 24

deleted

Statement of reasons prior to adoption of decision under Article 65(1), point (a), of Regulation (EU) 2016/679

1. Prior to adopting the binding decision pursuant to Article 65(1), point (a), of Regulation (EU) 2016/679, the Chair of the Board shall, through the lead supervisory authority, provide the parties under investigation and/or, in the case of full or partial rejection of a complaint, the complainant, with a statement of reasons explaining the reasoning the Board intends to adopt in its decision. Where the

Board intends to adopt a binding decision requiring the lead supervisory authority to amend its draft decision or revised draft decision, the Board shall decide whether such statement of reasons should be accompanied by the retained relevant and reasoned objections on the basis of which the Board intends to adopt its decision.

2. The parties under investigation and/or, in the case of full or partial rejection of a complaint, the complainant, shall have one week from receipt of the statement of reasons referred to in paragraph 1 to make their views known.

3. The deadline in paragraph 2 shall be extended by one week where the Board extends the period for adoption of the binding decision in accordance with Article 65(2) of Regulation (EU) 2016/679.

4. The period for adoption of the binding decision of the Board provided for in Article 65(2) of Regulation (EU) 2016/679 shall not run during the periods provided for in paragraphs 2 and 3.

Or. en

Justification

EDPB paras 143-153. "Statement of Reasons" is not defined, and the whole procedure would require the EDPB to take three decisions in extremely limited time, see para 150. EDPB para 153 therefore recommends to delete Article 24.

Amendment 193

Proposal for a regulation Article 24 a (new)

Text proposed by the Commission

Amendment

Article 24a

Request for information by the Board

1. In cases in which the Board is otherwise unable to determine the matter,

it may request further information from the parties or supervisory authorities, or it may conduct further factual investigations.

2. The deadlines in Article 65(2) of Regulation (EU) 2016/679 are extended for the duration of the procedure under paragraph 1, but no more than one month.

Or. en

Justification

Proposal from EDPS to replace the cumbersome procedure in Article 24.

Amendment 194

**Proposal for a regulation
Article 25**

Text proposed by the Commission

Amendment

Article 25

deleted

Procedure in relation to decision under Article 65(1), point (b), of Regulation (EU) 2016/679

1. When referring a subject-matter to the Board under Article 65(1), point (b), of Regulation 2016/679, the supervisory authority referring the subject-matter regarding the competence for the main establishment shall provide the Board with all of the following documents:

- (a) a summary of the relevant facts;*
- (b) the assessment of these facts as far as the conditions of Article 56(1) of Regulation (EU) 2016/679 are concerned;*
- (c) views made by the controller or processor whose main establishment is the subject of the referral;*
- (d) the views of other supervisory authorities concerned by the referral;*

(e) any other document or information the referring supervisory authority considers relevant and necessary in order to find a resolution on the subject-matter.

2. The Chair of the Board shall register the referral no later than one week after having received the documents referred to in paragraph 1.

Or. en

Justification

Duplication with Article 22(2).

Amendment 195

Proposal for a regulation
Article 26

Text proposed by the Commission

Amendment

Article 26

deleted

Procedure in relation to decision under Article 65(1), point (c), of Regulation (EU) 2016/679

1. When referring a subject-matter to the Board under Article 65(1), point (c), of Regulation 2016/679, the supervisory authority referring the subject-matter or the Commission shall provide the Board with all of the following documents:

- (a) a summary of the relevant facts;*
- (b) the opinion, as the case may be, issued by the Board pursuant to Article 64 of Regulation (EU) 2016/679;*
- (c) the views of the supervisory authority referring the subject-matter or the Commission as to whether, as the case may be, a supervisory authority was required to communicate the draft decision to the Board pursuant to Article 64(1) of Regulation (EU) 2016/679, or a supervisory authority did not follow an*

opinion of the Board issued pursuant to Article 64 of Regulation (EU) 2016/679.

2. The Chair of the Board shall request the following documents:

(a) the views of the supervisory authority alleged to have breached the requirement to communicate a draft decision to the Board or to have failed to follow an opinion of the Board;

(b) any other document or information the supervisory authority considers relevant and necessary in order to find a resolution on the subject-matter.

If any supervisory authority declares a need to submit its views on the referred subject-matter, it shall submit those views within two weeks of the referral referred to in paragraph 1.

3. The Chair of the Board shall register the referral no later than one week after having received the documents referred to in paragraphs 1 and 2.

Or. en

Justification

Duplication with Article 22(2).

Amendment 196

Proposal for a regulation Article 26 a (new)

Text proposed by the Commission

Amendment

Article 26a

Procedural determinations by the Board

1. Without prejudice to Articles 65 and 66 of Regulation (EU) 2016/679, supervisory authorities may request from the Board to make a procedural determination on any dispute arising during a cooperation

procedure, including whether a case meets the requirements of Article 56 of Regulation (EU) 2016/679.

2. Parties to the procedure may request from the Board to make a determination when no supervisory authority considers itself competent to handle a complaint under Article 55 or 56 of Regulation (EU) 2016/679 or in exceptional cases when a case can otherwise not progress, because a supervisory authority manifestly violates its duties under Regulation (EU) 2016/679 or this Regulation.

3. Where the lead supervisory authority is of the view that it cannot possibly comply with the deadline from Article 4(1b), especially because of the need for exceptionally complex factual investigations, it shall request from the Board a prolongation of up to twelve months. The supervisory authority shall submit a detailed plan of the investigation that demonstrates that despite its compliance with Article 2c(1) the prolongation sought is strictly necessary.

4. Requests under paragraph 2 and 3 shall be brought within two weeks from the delivery of the procedural determination or a rejection by a supervisory authority and must at least contain:

(a) the facts relied upon and any evidence available to the authority or party;

(b) the legal grounds for the request;

(c) the determination pursuant to paragraphs 1 and 2 or the prolongation pursuant to paragraph 3 that the authority or party requests from the Board;

5. Within two weeks, the Board shall determine the matter based on the information before it or it shall reject the application if the requirements under paragraphs 1 to 4 are not fulfilled. Determinations are binding on the

supervisory authorities.

Or. en

Justification

To avoid “deadlocked” cases, e.g. where SAs can’t agree on who is lead authority, etc. EDPS paras 108-111.

Amendment 197

Proposal for a regulation

Article 26 b (new)

Text proposed by the Commission

Amendment

Article 26b

Select Committees

1. The Board may appoint one or more select committees of three or more members, who can be part of the supervisory authorities or of the secretariat under Article 75 of Regulation (EU) 2016/679. The mandate of each of the committees is determined by the Board. Select committee Members perform their tasks under the instructions of the Board and may only be discharged by the Board.

2. In its rules of procedure, the Board may designate any tasks, such as determinations under Article 26a, or other tasks aimed at ensuring harmonised implementation of Regulation (EU) 2016/679 and this Regulation by the supervisory authorities, to the select committees and specify the procedures of the select committees further. Each of the committees shall present their findings to the Board.

Or. en

Justification

To avoid overloading the whole Board with little cases, e.g. missing documents etc.

Amendment 198

Proposal for a regulation Article 26 c (new)

Text proposed by the Commission

Amendment

Article 26c

Right to an effective judicial remedy against a supervisory authority

1. Without prejudice to existing remedies under Article 78 of Regulation (EU) 2016/679 and any other administrative or non-judicial remedy, each party to the procedure shall have the right to an effective judicial remedy:

(a) where the supervisory authority with which the complaint has been lodged does not use its powers to ensure that another supervisory authority progresses the procedure;

(b) where a lead supervisory authority does not comply with deadlines as provided for in Regulation (EU) 2016/679 and this Regulation; or

(c) where a supervisory authority does not comply with a binding decision of the Board.

2. Any party to the procedure or a not-for-profit body under Article 80(1) of Regulation (EU) 2016/679 may bring an action under paragraph 1, point (c) independently of an infringement of the rights of a data subject.

Or. en

Justification

To prevent cases from being dead-locked when a supervisory authority simply does not act.

Amendment 199

Proposal for a regulation

Article 27 – paragraph 1 – introductory part

Text proposed by the Commission

1. A request for an urgent opinion of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks **prior to the expiry** of provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679 and shall contain all of the following items:

Amendment

1. A request for an urgent opinion of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks **after the adoption** of provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679 and shall contain all of the following items:

Or. en

Justification

To allow for more time for the EDPB, see EDPB paras 124-125

Amendment 200

Proposal for a regulation

Article 27 – paragraph 1 – point b

Text proposed by the Commission

(b) a description of the provisional measure adopted on **its own** territory, its duration and the reasons for adopting it, including the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;

Amendment

(b) a description of the provisional measure adopted on **the** territory **of the Member State of the supervisory authority requesting the opinion**, its duration and the reasons for adopting it, including the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;

Or. en

Justification

Aligned with Article 28, see EDPB para 118.

Amendment 201

Proposal for a regulation

Article 27 – paragraph 1 – point c

Text proposed by the Commission

(c) a justification of the urgent need for final measures to be adopted ***on the territory of the Member State of the requesting supervisory authority***, including an explanation of the exceptional nature of circumstances requiring the adoption of the measures concerned.

Amendment

(c) a justification of the urgent need for final measures to be adopted, including an explanation of the exceptional nature of circumstances requiring the adoption of the measures concerned.

Or. en

Justification

In cross-border matters, coherent measures have to be taken, not 27 different ones. EDPB para 113.

Amendment 202

Proposal for a regulation

Article 27 – paragraph 2

Text proposed by the Commission

2. The urgent opinion of the Board shall be addressed to ***the*** supervisory ***authority that submitted the request. It shall be similar to an opinion within the meaning of Article 64(1) of Regulation (EU) 2016/679 and enable the requesting authority to maintain or amend its provisional measure in line with the obligations of Article 64(7) of Regulation (EU) 2016/679.***

Amendment

2. The urgent opinion of the Board shall be addressed to ***all*** supervisory ***authorities.***

Or. en

Justification

In cross-border matters, coherent measures have to be taken, not 27 different ones. EDPB para 113. “all supervisory authorities ” as in EDPB para 121, because EDPB opinions have general applicability. EDPB para 119.

Amendment 203

Proposal for a regulation Article 28 – title

Text proposed by the Commission

Urgent decisions under Article 66(2) of Regulation (EU) 2016/679

Amendment

Urgent **binding** decisions under Article 66(2) of Regulation (EU) 2016/679

Or. en

Justification

Aligned with wording of Article 66(2) GDPR.

Amendment 204

Proposal for a regulation Article 28 – paragraph 1 – introductory part

Text proposed by the Commission

1. A request for an urgent decision of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks **prior to the expiry** of provisional measures adopted under Articles 61(8), 62(7) or 66(1) of Regulation (EU) 2016/679. That request shall contain all of the following items:

Amendment

1. A request for an urgent **binding** decision of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679 shall be made no later than three weeks **after the adoption** of provisional measures adopted under Articles 61(8), 62(7) or 66(1) of Regulation (EU) 2016/679. That request shall contain all of the following items:

Or. en

Justification

“binding” aligned with wording of Article 66(2) GDPR.

Amendment 205

Proposal for a regulation Article 28 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the provisional measure adopted on the territory of the Member State of the supervisory authority requesting the decision, its duration and the reasons for adopting ***the provisional measures***, in particular the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;

(b) the provisional measure adopted on the territory of the Member State of the supervisory authority requesting the decision, its duration and the reasons for adopting ***it***, in particular the justification of the urgent need to act in order to protect the rights and freedoms of data subjects;

Or. en

Justification

Aligned with Article 27, see EDPB para 118.

Amendment 206

**Proposal for a regulation
Article 28 – paragraph 1 – point c**

Text proposed by the Commission

Amendment

(c) information on any investigatory measures taken on its own territory and replies received from ***the local establishment of*** the parties under investigation or any other information in the possession of the requesting supervisory authority;

(c) information on any investigatory measures taken on its own territory and replies received from the parties under investigation or any other information in the possession of the requesting supervisory authority;

Or. en

Justification

EDPB para 122

Amendment 207

**Proposal for a regulation
Article 28 – paragraph 1 – point d**

Text proposed by the Commission

Amendment

(d) a justification of the urgent need for final measures to be adopted on the territory of the requesting supervisory authority, bearing in mind the exceptional nature of circumstances requiring the adoption of the final measure, or proof that a supervisory authority failed to respond to a request under Article **61(3) or 62(2)** of Regulation (EU) 2016/679;

(d) a justification of the urgent need for final measures to be adopted on the territory of the requesting supervisory authority, bearing in mind the exceptional nature of circumstances requiring the adoption of the final measure, or proof that a supervisory authority failed to **provide the information requested under Article 61(5) of Regulation (EU) 2016/679 or failed to** respond to a request under Article 62(2) of Regulation (EU) 2016/679;

Or. en

Justification

Wording suggestion by EDPB.

Amendment 208

**Proposal for a regulation
Article 28 – paragraph 1 – point f**

Text proposed by the Commission

Amendment

(f) where applicable, the views of the **local establishment of the parties under investigation against which provisional measures were taken pursuant to Article 66(1) of Regulation (EU) 2016/679.**

(f) where applicable, the views of the parties.

Or. en

Justification

Where applicable, all parties, including complainants, should be heard. EDPB para 128.

Amendment 209

**Proposal for a regulation
Article 28 – paragraph 2**

Text proposed by the Commission

2. The urgent decision referred to in paragraph 1 shall be addressed to the supervisory **authority that submitted the request** and shall **enable the requesting authority to maintain or amend its provisional measure**.

Amendment

2. The urgent **binding** decision referred to in paragraph 1 shall be addressed to the supervisory **authorities concerned** and shall **specify the supervisory authorities that would need to adopt final measures, if applicable, in light of the urgent opinion or decision of the Board pursuant to Article 66(2) of Regulation (EU) 2016/679**.

Or. en

Justification

“all the supervisory authorities concerned” as in EDPB para 121, so it applies everywhere where the cross-border processing takes place.

Amendment 210

**Proposal for a regulation
Article 28 – paragraph 3**

Text proposed by the Commission

3. Where the Board adopts an urgent binding decision indicating that final measures should be adopted, the supervisory authority **to which the decision is addressed** shall adopt such measures prior to the expiry of the provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679.

Amendment

3. Where the Board adopts an urgent binding decision indicating that final measures should be adopted, the **lead** supervisory authority shall adopt such measures prior to the expiry of the provisional measures adopted under Article 66(1) of Regulation (EU) 2016/679.

Or. en

Amendment 211

**Proposal for a regulation
Article 28 – paragraph 4**

Text proposed by the Commission

4. The supervisory authority that

Amendment

4. The supervisory authority that

submitted the request referred to in paragraph 1 shall notify its decision on the final measures to the *establishment of the controller or processor on the territory of its Member State* and inform the Board. Where the lead supervisory authority is not the requesting authority, the requesting authority shall inform the lead supervisory authority of the final measure.

submitted the request referred to in paragraph 1 shall notify its decision on the final measures to the controller or processor and inform the Board. Where the lead supervisory authority is not the requesting authority, the requesting authority shall inform the lead supervisory authority of the final measure.

Or. en

Justification

EDPB para 122

Amendment 212

Proposal for a regulation Article 29

Text proposed by the Commission

Amendment

Article 29

deleted

Beginnings of time periods and definition of working day

- 1. Time-limits provided for in or fixed by the supervisory authorities pursuant to Regulation (EU) 2016/679 shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council¹⁷.***
- 2. Time periods shall begin on the working day following the event to which the relevant provision of Regulation (EU) 2016/679 or this Regulation refers.***

¹⁷ ***Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).***

Or. en

Justification

EDPB para 191 - Regulation No. 1182/71 applies anyway.

Amendment 213

**Proposal for a regulation
Article 30 – paragraph 1**

Text proposed by the Commission

Chapters III and **IV** shall apply to ex officio investigations opened after the entry into force of this Regulation and to complaint-based investigations where the complaint was lodged after the entry into force of this Regulation.

Amendment

Chapters **I, II** and III shall apply to ex officio investigations opened after the entry into force of this Regulation and to complaint-based investigations where the complaint was lodged after the entry into force of this Regulation.

Or. en

Justification

Following the introduction of new Articles in Chapters I and II.

Amendment 214

**Proposal for a regulation
Article 30 – paragraph 2**

Text proposed by the Commission

Chapter V shall apply to all cases submitted to dispute resolution under Article 65 of Regulation (EU) 2016/679 after the entry into force of this Regulation.

Amendment

Chapters V and VI shall apply to all cases submitted to dispute resolution under Article 65 **and urgency procedure under Article 66(2) and (3)** of Regulation (EU) 2016/679 after the entry into force of this Regulation.

Or. en

Amendment 215

**Proposal for a regulation
Article 30 a (new)**

Text proposed by the Commission

Amendment

Article 30a

Evaluation and review

The Commission shall evaluate and review this Regulation as part of its reports to the European Parliament and to the Council under Article 97 of Regulation (EU) 2016/679.

Or. en

Justification

While additional reports might be excessive, the reports on the GDPR must include an evaluation of the functioning of this Regulation. EDPB para 190.

Amendment 216

**Proposal for a regulation
Article 31 – title**

Text proposed by the Commission

Amendment

Entry into force

Entry into force ***and application***

Or. en

Amendment 217

**Proposal for a regulation
Article 31 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

It shall apply from ... [one year from the date of entry into force of this Regulation].

Or. en

Justification

EDPB para 192 – transition period for necessary adjustments in EDPB secretariat and tools

(IMI), national DPAs, and possibly national laws.

Amendment 218

Proposal for a regulation Annex I

Text proposed by the Commission

Amendment

[...]

deleted

¹⁸ The complaint should be completed and submitted electronically or completed and submitted to the supervisory authority by post.

¹⁹ For example, passport, driving licence, national ID.

²⁰ In the case a complaint is submitted by a body referred to in Article 80 of Regulation (EU) 2016/679, all of the information in point 2 should be provided.

Or. en

Justification

Instead of a mandatory form, there should be minimum requirements to ensure that the complaint can be processed by the LSA.

EXPLANATORY STATEMENT

Short Justification

Background

The General Data Protection Regulation seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing of their data and to ensure the free flow of personal data between Member States. The Parliament has in the past expressed concerns with regard to “the uneven and sometimes non-existent enforcement of the GDPR by national [Data Protection Authorities] DPAs”. It underlined that **lengthy procedures can produce an “adverse effect on effective enforcement and on citizens’ trust”**, and, in particular for cross-border complaints, has suggested to establish “a common administrative procedure to handle complaints” to strengthen enforcement.¹ The Commission proposal at hand for a GDPR Enforcement Procedures Regulation (GDPR-EPR) suggests to facilitate in particular cross-border cases. It also takes up demands of national DPAs to clarify and streamline cross-border procedures, as spelled out in the European Data Protection Board’s “Vienna Statement”² from April 2022, the EDPB “Wish List”³ from October 2022, the European Data Protection Supervisor’s (EDPS) contribution from April 2023⁴, and the EDPB-EDPS joint opinion on the Commission proposal from September 2023⁵.

The Rapporteur’s Position

- The **national procedural laws should continue to apply** insofar as they are not in conflict with the GDPR-EPR, thereby ensuring more detailed rules such as on oral hearings continue to be valid, while national procedural standards are not lowered.
- The report consolidates and expands on the provisions on general procedural rules in a new Section 2 in Chapter I in order for the **right to be heard, translations, confidentiality, and the sincere cooperation of authorities to always apply**, not only in the case of complaints or for dispute resolution among authorities.
- The **right to be heard** is streamlined following Article 42(1) of the Charter on good administration, and **applies to all parties of a case equally**.
- A **joint case file** is introduced, containing all information relating to a case, and making them accessible to all parties and supervisory authorities, thus avoiding a back and forth of documents and ensuring all parties and authorities have the same, most current information, while internal deliberations of authorities and confidential information remain protected.
- In case new information or infringements are revealed over the course of an investigation, the **scope of a case can be expanded**.
- **Amicable settlements** are limited to cases of data subject rights, requiring the explicit agreement of the complainant, while **not preventing ex-officio investigations** of a

¹ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0111_EN.html

² https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf

³ https://edpb.europa.eu/system/files/2022-10/edpb_letter_out2022-0069_to_the_eu_commission_on_procedural_aspects_en_0.pdf

⁴ https://edps.europa.eu/system/files/2023-04/23-04-25_edps-contribution-procedural-rules-gdpr-enforcement_en.pdf

⁵ https://edpb.europa.eu/system/files/2023-09/edpb_edps_jointopinion_202301_proceduralrules_ec_en.pdf

supervisory authority for larger scale infringements of the GDPR.

- **Deadlines and the respective roles and duties** of a lead authority and other supervisory authorities are clarified, in particular with regard to procedures to draft a decision, to reach consensus, or to resolve disputes, including procedural determinations by the EDPB.
- A right to **judicial remedies in case a competent supervisory authority does not act** is introduced.
- The **transition period of one year** should allow for the necessary changes to the Internal Market Information System used by the authorities, and the Rules of Procedure of the Board, as well as possible amendments of national laws.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT

The following list is drawn up under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

<i>Person (consented to having their name published)</i>	<i>Entity</i>
Chiara Manfredi	Access Now
Fernando Hortal Foronda	BEUC
Claudia Canelles Quaroni	CCIA
	DIGITALEUROPE
Francesco Bondi	DOT Europe
Diego Naranjo	EDRi
Enrico Giroto	FEDMA Federation of European Data and Marketing
Miglė Alenčikaitė (Blomeyer)	Google
Ines Talavera de la Esperanza	IAB Europe
Laura Pliauskaite	IAPP International Association of Privacy Professionals
Guillermo Ferrer Hernáez	Information Technology Industry Council (ITI)
Dr Johnny Ryan FRHistS	Irish Council for Civil Liberties
Max Schrems	NOYB None of Your Business
Clara Fecke	Rakuten