European Data Protection Board

Mr Didier Reynders
European Commissioner for Justice
Sent by email only
Brussels, 10 October 2022
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Dear Commissioner Reynders,

The General Data Protection Regulation (GDPR) is a cornerstone of the digital single market and is a vital piece of legislation ensuring a human-centric approach to technology.

While its enforcement is picking up speed and the efficiency of cross-border cooperation among Supervisory Authorities is increasing steadily, the full potential of the GDPR remains to be unlocked.

With the statement adopted in April 2022, the European Data Protection Board (EDPB) signalled its enduring commitment to close cross-border cooperation. It also identified and started implementing targeted actions to enhance cooperation further, such as the identification of strategic cases for which cooperation is prioritised.

The EDPB has already developed guidelines to promote a common application of cooperation and consistency. Data Protection Authorities remain strongly committed to ensure a consistent application of the GDPR by all means at their disposal. Yet, it is a priority for GDPR cooperation to develop harmonised provisions at EU level. While recalling that it is premature to revise the GDPR at this point in time, this is necessary to iron out the differences in administrative procedures and practices which may have a detrimental impact on cross-border cooperation.

To this end, the EDPB has drawn up a list of procedural aspects that could benefit from further harmonisation at EU level, enclosed in the annex for European Commission's consideration.

This list addresses *inter alia*: the status and rights of the parties to the administrative procedures; procedural deadlines; requirements for admissibility or dismissal of complaints; investigative powers of Supervisory Authorities; and the practical implementation of the cooperation procedure.

We trust that the European Commission will support all endeavours to strengthen GDPR compliance through enforcement by addressing these procedural issues in order to maximise cross-border cooperation, and further harmonise the treatment of complainants and regulated entities across the EU.

The EDPB remains at the Commission's disposal for further information and clarifications.

Yours sincerely,

Andrea Jelinek

Annex

As mentioned in the EDPB Statement on enforcement cooperation of 28 April 2022, Data Protection Authorities have noted that several procedural aspects could be further harmonized in EU law, in order to maximize the efficiency of the cooperation mechanism.

This annex contains a list of procedural aspects that could benefit from further harmonisation at EU level, for the consideration of the European Commission[1], with a view of making sure that national procedures do not hinder the full effectiveness of the GDPR's cooperation and consistency mechanism.

1. Regarding the parties to the administrative procedure

1.1. Identification of the parties to the procedure; status and rights of the complainant

Proposal 1:

- **Defining who are the parties to the procedure;**
- **Clarifying the status of the complainant as party or not;**
- **Clarifying the status and rights of representatives of complainants**

A first that could benefit from enhanced harmonisation is the extent to which the complainant is entitled to take part in the proceedings in front of the Supervisory Authority. In particular, harmonization on whether the complainant should have have an active role with clearly defined rights, or whether it can only complain to the Supervisory Authority about a violation of GDPR while not being further involved in the procedure (e.g. with respect to measures and sanctions that may need to be imposed on the controller or processor)

This would entail clarifying whether the complainant is to be considered as a "party" to the procedure. In some Member States, the complainants are regarded as parties to the procedure and/or specific rights are conferred on them, while it is not the case in other Member States[2].

[1] In addition to the Contribution of the EDPB to the evaluation of the GDPR under Article 97 adopted on 18 February 2020.

[2] The Contribution of the EDPB to the evaluation of the GDPR under Article 97 confirms, on page 11, that the complainant is "not being always perceived as a party to the proceeding before the SA". This is also shown by the "Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities" issued by the EDPB on 5 August 2021. By way of example, according to this report, complainants have a right to be heard under Austrian, Belgian, Bulgarian, Irish, Maltese, Norwegian, Polish law; on the other hand, this is not the case under Czech, French, and Swedish law. Under Spanish law, complainants are not considered as parties except where the envisaged decision may adversely affect them which is assessed on a case-by-case basis but is by default deemed to be the case in all proceedings related to the exercise of data protection rights.

Harmonisation of this aspect, regardless of the national procedural law which is used to handle the case, would avoid any different treatment of complainants depending on the Member State where the LSA is in charge or where the complaint was filed.

It would also be useful to specify that the representative mentioned in Article 80(1) GDPR, when acting on behalf of the data subject, is entitled to the same status and procedural rights as the complainant who is represented. Additionally, when this provision is implemented by Member State law, entities lodging complaints under Article 80(2) should also be treated in the same way as individual complainants.

1.2. Rights of the parties to the procedure

Proposal 2:

- **Specifying and harmonising procedural rights that parties are entitled to**

Procedural rights afforded to the parties[3] are currently different across Member States. To strengthen the uniform application of the GDPR and avoid different treatment of the parties, it would be desirable to specify a list of procedural rights that the parties are entitled to, irrespective of the Member State concerned. Increased harmonisation of the procedural rights of the parties at national level would also be beneficial in situations where the case also needs to be dealt with at EU level, in particular for cases that require dispute resolution in accordance with Article 65(1)(a) GDPR.

1.3. Access of the parties to the file and confidentiality

Proposal 3:

- **Specifying the right of the parties to access the documentation of the proceedings;**
- **Clarifying the minimum scope of the file;**
- **Clarifying the scope of access that should be granted to parties and further use**

In particular, the right of the parties to access the documentation of the proceedings could be further specified. In this regard, it could be useful to determine exactly what constitutes the minimum scope of the file, and the scope of the access that should be granted to the parties.

Indeed, in cooperation cases under Article 60 GDPR, there are currently no clear rules on what documents are considered part of the file, with which the parties (respondent / complainant

[3] As mentioned above, a clear identification of the parties to each procedure, with specific regard to the role of the complainant, would also be beneficial.

where relevant) have the right to acquaint themselves with, and in particular if any documents should be considered as internal and confidential documents between authorities. Without prejudice to the rights to good administration of the parties concerned, it could be clarified which documents (e.g. documents that contain formalized opinions, comments, positions and relevant and reasoned objections of Supervisory Authorities) are part of the file to which access of the parties should be granted.

Likewise, it could be beneficial to specify rules on the criteria under which documents and elements can be flagged as confidential (e.g. business secrets) by the respondent in the proceedings, and on the limitations applicable to the handling of such documents (e.g. whether they can be shared with the other parties in the proceedings).

Additionally, the specification of the rules applicable to the recipients on how they can use the information received as part of the access to the file (in terms of divulgation, for instance) would bring further clarity.

Furthermore, it should be clarified when such an access request can be addressed and which authority should process it and, if applicable, how authorities should cooperate in this process in order to have a consistent approach.

Harmonisation could also be provided on the modalities of the access to the file[4].

1.4. Right to be heard

Proposal 4:

- **Further harmonisation on scope, modalities and timing of the right to be heard of parties**

A further issue is related to the implementation of the right to be heard of the parties involved in the proceedings, before the national Supervisory Authority as it has direct consequences for the provision of this right at a later stage before the EDPB. The right to be heard is a generally recognized principle of EU law that is enshrined in Article 41 of the EU Charter of Fundamental rights. This right is currently applied in Article 60 GDPR proceedings under a patchwork of diverse Member State laws and/or practice of national supervisory authorities[5].

While the need to specify which parties or subjects are entitled to this right has been outlined above, it would in addition be helpful for EU law to provide further indications as to its scope,

[4] In Poland, the parties can only get access to the documents upon an in-person appointement.
[5] especially relevant where national legislation is silent on this point

modalities and timing. Harmonized rules would be welcomed. For instance, when it comes to the extent and scope of this right, depending on the Member State, it may or may not be possible for a complainant to examine and react to a draft decision (and, where this possibility is provided for, this may or may not include the envisaged sanctions and corrective measures)[6]. Depending on the Member States, the submissions can cover only the facts and not the legal arguments. Additionally, it would be useful to harmonise the timing of the implementation of this right as the current practices currently differ[7]. To offer a meaningful opportunity to amend the draft decision in light of the response of the parties, the right to be heard should be implemented before the draft decision is shared with the CSAs (since the draft decision becomes final and all CSAs are bound to it unless a relevant and reasoned objection is filed). Standardizing the procedure by specifying the scope of this right, minimum standards as to modalities to be used by SAs when discharging this obligation, and the timing for documents to be shared and submissions to be taken into account, would be very useful. While the EDPB has addressed the right to be heard as part of its Rules of Procedure and in the context of specific guidelines on Article 65(1)(a), the EDPB considers that it may also be useful to codify these elements, which relate in particular to the national SAs duties and responsibilities.

2. Regarding procedural deadlines

2.1. Procedural steps not subject to a deadline

Proposal 5:

- **Further introduction of, and harmonisation of, deadlines for a number of procedural steps**
- **Further clarification of existing deadlines in the cross-border case handling procedure**
- **Introduction of rules to address the exceeding of specified or unspecified deadlines**

While GDPR specifies a number of deadlines (e.g. an SA should reply within 1 month after receiving a request in the context of article 61(2); 4 weeks to express a relevant and reasoned objection once a draft decision was submitted; 2 weeks to react on a revised draft decision, etc.), there are a number of procedural steps in the handling of a case (both at national level and in

[6] Please see above, footnote 2.

[7] The practice of the Austrian, Cypriot, Greek, Irish, Lithuanian, Luxembourgish, and Spanish SAs, as well as legislation in Latvia, Slovenia and Poland provides for hearing the parties before CSAs are consulted on the draft decision. On the other hand, the practice of the Bulgarian SA provides for CSAs to be consulted before the hearing or at least in parallel with the hearing. According to the practice of the Finnish and Portuguese SAs, the hearing should happen after sharing the draft decision. The practice of the Maltese and Dutch SAs provides for the parties to be heard at the investigation stage but not before the decision is issued.

the context of cross-border cooperation), which are not subject to any deadline. This may cause some undue delay and/or disparities in the finalization of cases[8]. Therefore, to foster legal certainty and avoid undermining effectiveness and credibility of enforcement, the introduction of deadlines to take a number of procedural steps could be useful (while at the same time, the time needed to process a case also depends on its complexity). This expectation is also in line with Article 41 (right to good administration) of the EU Charter of Fundamental rights and recital 129 GDPR, which highlights that the powers of supervisory authorities should be exercised within a reasonable time.

Taking into account the specificity and complexity of each case, deadlines could therefore be specified, in particular, for establishing the admissibility of the complaint, the transfer of complaints to the LSA, the establishment of the competence of the SA or LSA, to start an investigation[9], to communicate the information on the case to CSAs[10], to issue a draft decision[11], to prepare a revised draft decision after relevant and reasoned objections were sent[12], to adopt a final decision after consensus was reached, or to trigger an article 65 procedure if no consensus can be reached.

Additionally, specific provisions could be established to address situations where cross-border cases are not handled by LSA within a certain timeframe. This could be complemented by the

[8] On this, it may at the same time be relevant to bear in mind that national law or internal regulations of the SAs (SE, DK) may impose time limits for handling cases, sometimes suspended or not applicable in the case of an OSS procedure. See "Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities" issued by the EDPB on 5 August 2021 page 22.

[9] Including following Art. 61(2) GDPR.

[10] The Contribution of the EDPB to the evaluation of the GDPR under Article 97 flags, on page 10, that "the LSAs have different approaches regarding the start of the cooperation procedure, the timing of involvement of CSAs, and the communication of relevant information to them". See the work of the EDPB on this matter within EDPB Guidelines 02/2022 on the application of Article 60 GDPR.

[11] For instance, pursuant to Article 60.3, communicating information on the matter or submitting a draft decision must be done "without delay". As to the timing of submission of the draft decision, the EDPB Guidelines 02/2022 on the application of Article 60 GDPR (adopted on 14 March 2022) highlight that a "timely submission of the draft decision [...] alleviates the risks for the protection of the fundamental rights and freedoms of data subjects, since corrective measures taken in due time by SAs prevent continuing infringements" (para 120), acknowledging at the same time that "bearing in mind the complexity and the variety of cases, the timeline in which the LSA needs to submit swiftly the draft decision can be quite different" (para 121). This suggests that the deadline that could be established should be a maximum deadline, without prejudice to the possibility and possibly the duty for SAs to proceed more swiftly in more straightforward cases.

[12] The EDPB Guidelines 02/2022 on the application of Article 60 GDPR (adopted on 14 March 2022) specify that the submission of a revised draft decision should also be carried out "without undue delay" (para 167) and that the LSA should "make sure that the lapse of time between receipt of the relevant and reasoned objections under Article 60(3) and submission of the revised draft decision is as short as possible and appropriate to the context of the OSS procedure", "without prejudice to the efforts made to reach consensus and to the eventual obligation of the LSA to provide the right to be heard again, pursuant to national law, in view of envisaged changes in the revised draft decision that will newly affect the rights of the controller or processor" (para 168).

possibility for LSAs to provide justifications for the impossibility of meeting the deadline. This may help alleviate public criticism from complainants or the general public on some cross-border cases, which are deemed as being handled too slowly[13], with no final decision being published even after a number of years.

In addition, Article 60 Section 3 of the GDPR establishes that the lead supervisory authority shall, "without delay", communicate the relevant information on the matter to the other supervisory authorities concerned. The vagueness of the wording "without delay" poses challenges in the cooperation procedure. For legal certainty, a more precise deadline would be desirable to help enhance cooperation and the progression of cross-border cases[14].

It is equally important to foresee the consequences for not complying with these newly established procedural deadlines (bearing in mind that the GDPR already provides for an ad hoc procedure which can be triggered where certain deadlines are not met[15]).

In addition, it would also be desirable to clarify when the administrative procedures of a supervisory authority is considered to start. In the context of cross border cases this would clarify whether the preliminary vetting by the CSA shall be counted into the administrative time limit or not, and with regard to local cases this could clarify the starting point for calculation of the deadline to take action (as some Member States have precise rules for the timeframe within which the investigation has to end).

[13] The average time for each SA to formally issue a decision on a case is analysed on page 21 of the Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities" issued by the EDPB on 5 August 2021.

[14] The EDPB Guidelines 02/2022 on the application of Article 60 GDPR (adopted on 14 March 2022) recall that although no specific timeline is provided by Article 60, "effective enforcement of the GDPR throughout the EU requires that all CSAs receive all relevant information in a timely manner, i.e. as soon as reasonably possible" (para 54). This means that "the mutual obligation to exchange all relevant information" applies "already prior to the submission of a draft decision by the LSA" (para 54) and should be discharged "at a moment where it is still possible for the LSA to take on board the viewpoints of the other CSAs" (para 55). The EDPB then recommended "as a minimum standard" that "all efforts" should be made by the LSA to share "the scope and main conclusions of its draft decision prior to the formal submission of the latter" (para 57) with the objective of achieving consensus (see para 56).

[15] For instance, pursuant to Article 61.8, where a supervisory authority does not provide the information referred to in article 61.5 within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure on the territory of its Member State in accordance with Article 55(1). In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an urgent binding decision from the Board pursuant to Article 66(2).

As noted above, it is important that any identified deadlines take account of the specifity and complexity of each individual case. This case by case assessment will also ensure that extensions of any specified deadline are the exception, thereby ensuring legal certainty.

3. Regarding complaints

3.1. Formal requirements for admissibility

Proposal 6:

- **Harmonisation of formal admissibility requirements and conditions**
- **Conformation that LSAs shall not re-examine the admissibility of the complaint in cross-border cases**

The experience of the SAs shows that there is insufficient harmonization across Member States on requirements for complaints under Article 77 GDPR[16]. For example, in some Member States, an electronic mail suffices for the submission of a complaint, while in others, the lack of signature leads to inadmissibility of the complaint. Another example is that the name and address of the complainant may be required in some Member States, and not in others. In some countries, the complaint is inadmissible due to the lack of residency of the complainant in the State of the SA, to the fact that a prior request has not been sent to the controller, the lack of identification of legal grounds in the complaint or because the e-Gov access was not used to file the complaint. Finally, there are discrepancies as to whether the complainant has to demonstrate its interest when filing a complaint.

The "Internal EDPB Document 6/2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints" states that the complaint has to fulfill formal conditions of the Member State where it was lodged, and that the LSA shall not re-examine the admissibility of the complaint[17]. However, this internal guidance has no binding effect on the Member State authorities.

[16] This was highlighted in the Contribution of the EDPB to the evaluation of the GDPR under Article 97, on page 10. For example, national legislation in AT, BE, BG, IT, LV, NL, PL, SI, ES foresees formal admissibility requirements. On the other hand, no admissibility requirements are foreseen in CZ, DK, DE, whereas a discretionary power regarding the assessment of admissibility is exercised in LU.

[17] This issue was flagged by some of the individual replies to the Questionnaire shared by the European Commission in the context of the evaluation of the GDPR: for instance, the FR SA specified that "It appeared for instance that some DPAs consider they have always to assess the admissibility of a complaint regarding their own criteria, including when they act as LSA on the basis of complaints launched with another DPA. This could lead a LSA to refuse to handle a complaint, although deemed admissible by the complaint receiving DPA".

In addition, when investigating cross-border cases it is essential that the lead supervisory authority is provided with all the relevant information on the complaint, including the controller's action or lack thereof pursuant to Article 12 section 3 and 4 GDPR. Harmonized rules on the admissibility of the complaint would be desirable.

A further aspect to be considered is the harmonisation of the rules relating to the deadlines to lodge a complaint, after the data subject unsuccessfully exercised his rights[18]

For the consistent application of the GDPR and the equal treatment of the complainants across the EU, (i) the implementation of harmonized rules on the formal requirements of complaints, and (ii) the legal confirmation that LSAs shall not re-examine the admissibility of the complaint in cross-border cases[19], could be considered.

3.2. Dismissal or rejection of the complaint and termination of the procedure initiated by a complaint

Proposal 7:

- **Defining the situations that lead to rejection and dismissal of the complaint**
- **Clarifying procedural requirements for dismissal and rejection**
  - **Confirm explicitly that dismissal and rejection can be done via formal letter indicating possibility of appeal**
  - **Clarify the steps the LSA and the complaint receiving SA need to take in cases of granted appeals by either the court in country of LSA or CSA or both**

Uniform and consistent rules on the dismissal and rejection of a complaint and the termination of the procedure initiated by a complaint should be considered, as currently national rules diverge. For example, in some Member States, the lack of minimal evidence of the alleged infringement would lead to dismissal or rejection, in others the failure of response of the complainant within a reasonable timeframe results in the dismissal or rejection of the complaint or the termination of the procedure, whilst in certain Member States complaints are not filtered on their credibility or merits, nor on the necessary evidence on the alleged infringement. Defining what situations must lead to rejection or dismissal of a complaint, and what situations

[18] The proposal for the introduction of a time limitation is attributed to the recognition that the states claim is not unlimited. A time limit for introducing the complaint is envisaged in AT, SK law.

[19] confirming the approach agreed in the Internal EDPB Document 6/2020 available at https://edpb.europa.eu/system/files/2022-07/internal_edpb_document_062020_on_admissibility_and_preliminary_vetting_of_complaints_en.pdf

may lead to the termination of the procedure is a much needed addition for the sake of consistency across the Union[20].

Moreover, clarifying the procedural requirements for dismissal would be also a welcomed addendum. In particular, it would be useful to confirm explicitly that dismissal can be in form of a formal letter indicating the possibility to appeal. Finally, clarification on the need to exchange information between SAs in case of dismissal decisions regarding cross border cases would also be welcome.

Finally, it would be useful to clarify the procedure in case the complainant's appeal to the decision to dismiss or reject the complaint has been granted by the court, as in this situation, the CSA is not solely competent and the court of the CSA's Member State has no competence to force the LSA to change its decision.

3.3. Handling complaints with amicable settlements

Proposal 8:

- **Clear and harmonised rules on resolving complaints through amicable settlement or other non-contentious ways**
- **Clarification of the applicability of Article 60 in case of amicable settlements**

Complaints can sometimes be resolved in a non-contentious way, for example after the intervention of the SA has facilitated the exercise of the rights of a data subject[21]. However, the current lack of harmonisation regarding amicable settlement[22] creates challenges. In the majority of Member States, there is no legal framework, and therefore no possibility for the

[20] The EDPB provided, as interpretation of "dismissal or rejection", the following: "a decision dismissing or rejecting a complaint (or parts of it) should be construed as a situation where the LSA has found, in handling the complaint, that there is no cause of action regarding the complainant's claim, and no action is taken in relation to the controller" (EDPB Guidelines 02/2022, para 225). It was also clarified by the EDPB that "a dismissal or rejection at [the cooperation stage] is different from a possible finding of dismissal or rejection at the vetting stage of the complaint procedure" since "this vetting precedes any submission of the complaint to the LSA and is performed by the complaint receiving SA" and in "such a case, the complaint would be dismissed or rejected before reaching the cooperation stage" (para 229).

[21] See EDPB Guidelines 02/2022 on the application of Article 60 GDPR, para 230-231; EDPB Guidelines 06/2022 on the practical implementation of amicable settlements

[22] This lack of harmonisation was highlighted by the Contribution of the EDPB to the evaluation of the GDPR under Article 97 on page 10-11 and 33 ("Some SAs resolve possible infringements with so-called "amicable settlements" or "amical resolution" pursuant to provisions in their national law or explicit procedures. Other SAs aim at resolving cases in a conciliating way, even though this is not foreseen as a formal outcome of the proceedings, the case is closed when an agreement is reached between the parties or the data subject request has been satisfied. This is especially common when data subjects' rights are at stake or when minor infringements are concerned. Nine SAs did not make use of "amicable settlements").

amicable settlements[23]. In addition, clear and harmonized rules on amicable settlements, including their legal status, or dedicated simplified procedures for handling such complaints are desirable.

A further issue is the need to clarify that the amicable settlement achieved in the OSS context on a specific case also requires cooperation on the legal questions behind the individual case (either by demonstrating it is an isolated case or by explaining what follow up actions are intended to be taken regarding the breach of GDPR provisions by the controller).

4. Regarding investigative powers

4.1. Preliminary vetting and clarification of investigatory powers of the Supervisory authorities before competence is established

Proposal 9:

- **Clarify investigatory powers of the SAs before competence pursuant to Article 55 and 56 is established (preliminary vetting)**

Experience shows that supervisory authorities have different views on the extent to which they are able to investigate processing activities and controllers to establish competence. The assessment of whether a controller or processor has a "main establishment" under Article 4(16) GDPR and thus the identification of the "lead supervisory authority" under Article 56 GDPR depends on specific requirements[24]. In some cases, for instance, the determination of where "decisions on the purposes and means of the processing of personal data" may require the collection of evidence. At the same time, requesting information and carrying out investigations are investigative powers as per Article 58(1) GDPR, entrusted to the competent supervisory authority. Codifying rules for preliminary vetting, steps to be followed and the clarification of the investigatory powers of the authorities before competence is established would be desirable. In particular, harmonisation could be desirable regarding the fact that complaint receiving SAs should perform preliminary investigations on the cross-border nature of complaints and, where appropriate, their potential local impact, especially for cases involving the exercise of rights.

[23] Hence, recital 131 GDPR establishing that the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of the GDPR should seek an amicable settlement with the controller, cannot take real effect in many of the Member States (see Annex 2 of Guidelines 06/2022 on the practical implementation of amicable settlements).

[24] See the WP29 Guidelines for identifying a controller or processor's lead supervisory authority, adopted on 13/12/2016, endorsed by the EDPB on 25 May 2018:

4.2. Investigating "to the extent appropriate"

Proposal 10:

- **Clarifying when further investigation is and is not required**

Article 57 Section 1 f) of the GDPR provides that each SA shall handle complaints lodged, and investigate, to the extent appropriate, the subject matter of the complaint. However, it is not always clear when further investigation is not required. Taking into account the independance and margins of manoeuvre of SAs to assess the elements of each case, providing indications that allow identifying cases where further investigation is not warranted would mitigate the legal uncertainty, and harmonize practices.

4.3. Compliance with enforcement orders

Proposal 11:

- **Confirming that SAs are competent to monitor compliance with enforcement orders**

A clear confirmation that the investigative powers of the supervisory authorities pursuant to Article 58 Section 1 GDPR include the power to monitor compliance with the enforcement orders contained in the final decision would be highly welcome. This way any remaining doubts as to the powers of SAs to monitor the adequate execution of their final decisions would be dispelled.

5. Regarding the cooperation procedure pursuant to Article 60 GDPR

5.1. Informal cooperation and scope of the information exchanged between SAs

Proposal 13:

- **Further clarification of the scope, content and modalities of information sharing**
- **Clarification of the term "relevant information" in Article 60(1) and (3)**
- **List (types of) documents that must systematically be shared between SAS**

Pursuant to Article 60 (1) and (3) GDPR, the LSA has an obligation to cooperate and share information with the CSAs also before the draft decision stage. In addition to the timing, as specified above[25], the content and modalities of information sharing and cooperation during these earlier stages could be further harmonised. For instance, the current regulatory

[25] Please see footnote 12 above.

framework, which refers to a duty to share "relevant information", is unclear about the scope and nature of the documents that must be shared with other Supervisory Authorities in the context of the OSS, both at the early stages[26] of the Article 60 cooperation procedure and during the different phases, in case new evidence is collected by the LSA (or CSAs). It would be useful to list unambiguously the documents that must systematically be shared between SAs[27], including the initial complaint and evidence submitted by the complainant insofar relevant to the case, relevant official procedural documents adopted by the concerned supervisory authority with regard to the admissibility of the complaint, all relevant documentation pertaining to investigations carried out by the lead supervisory authority including on the scoping of the investigation, and (a summary of) the written submissions by the parties to the national proceedings. While the relevance of additional documents to be provided to other concerned supervisory authorities shall remain a matter for the lead supervisory authority to decide, draft decisions (or at least summaries of the main elements of the case and of the legal reasoning) could also be included among the relevant information that LSA share, aiming at trying to reach consensus before presenting them under the terms of article 60.3 GDPR. The LSA should also

[26] In practice, the identification of the scope of the investigation, be it in complaint-based or own volition inquiries, often causes difficulties, as to the extent to which the LSA should involve CSAs in this decision (which may rely, inter alia, on available resources, existence of parallel inquiries, enforcement strategies and other considerations) is not fully clear. The EDPB Guidelines 09/2020 on relevant and reasoned objection (V2 adopted on 09 March 2021) specify that the "system designed by the legislator suggests that consensus on the scope of the investigation should be reached at an earlier stage by the competent SAs" (para 28). More specifically: "In procedures based on a complaint or on an infringement reported by a CSA, the scope of the procedure (i.e. those aspects of data processing which are potentially the subject of a violation) should be defined by the content of the complaint or of the report shared by the CSA: in other words, it should be defined by the aspects addressed by the complaint or report. In own-volition inquiries, the LSA and CSAs should seek consensus regarding the scope of the procedure (i.e. the aspects of data processing under scrutiny) prior to initiating the procedure formally. The same applies in cases where a SA dealing with a complaint or report by another SA takes the view that an own-volition inquiry is also necessary to deal with systematic compliance issues going beyond the specific complaint or report", para 27). However, in practice it may occur that this early involvement on the identification of the scope of the investigation does not take place. This may lead to disagreements on the scope at a time - e.g. the time when draft decisions are made available to the CSAs - where it is often too late or extremely challenging to adjust the scope of the investigation of the LSA. The EDPB has acknowledged the possibility for relevant and reasoned objections to be raised on this point, but this as a "last resort to remedy an allegedly insufficient involvement of the CSA(s) in the preceding stages of the process" (Guidelines on relevant and reasoned objections, para 28). The possible consequences of objections raised by CSAs on this point are specified in the Guidelines on Article 65(1)(a), adopted on 13 April 2021(especially paragraphs 77-81). One way to solve this issue is by introducing provisions on a duty to agree on the scope of the investigation (it should be clarified whether this duty has different features depending on whether the case is complaint-based), e.g. via the mandatory sharing of the investigation scope in an early stage of the investigation or a mandatory meeting between the LSA and CSAs. This way, the CSAs could have greater influence on determining the scope.

[27] The EDPB Guidelines 02/2022 engaged in an interpretation of this wording, by specifying that the information to be considered as "relevant" "depends on the circumstances of each individual case" as it should encompass "all information that is directly or indirectly conducive to the conclusion of the proceeding" (para 46) with the goal of enabling all SAs involved to fulfil their role properly (para 47). Please see also para 48-53 for further details and specific examples of "relevant information".

share information about the progress of the case. Confidentiality assurance related to this exchange of information would ensure that useful documents can always be shared between SAs[28].

5.2. Information of the supervisory authorities concerned and the Board pursuant to Article 60 (7) GDPR, and moment when decisions can be published

Proposal 14:

- **Implement rules on the timeframe and the modalities of the obligation to inform the Board of the adoption of a decision pursuant to Article 60(7)**
- **Harmonise rules on the publication of decisions, including timeframe**

Regulating the timeframe (e.g. as soon as the decision was notified to the concerned entity vs. only after expiry of all legal remedies/appeals) and modalities (pseudonymized vs. anonymized) of the information on the adoption of the decision pursuant to Article 60 Section 7 GDPR would be desirable[29].

Currently Member States have diverging rules on the moment when decisions can be published, which can lead to transparency issues and lack of a level playing field. While some Member States allow for a publication once the SA has made its decisions, others only allow publication once the decision can no longer be appealed. Related rules would be desirable in order to standardise the practices of supervisory authorities and allow for greater transparency as to the decisions adopted[30].

[28] The EDPB Guidelines 02/2022 already specify that the "LSA and other CSAs may flag specific pieces of information as (highly) confidential, particularly when this seems necessary in order to meet requirements of confidentiality constraints laid down in national laws. In such a case, the SAs should inform each other immediately and jointly find legal options for a solution against the background that confidentiality provisions usually relate to external third parties and not to CSAs. In this regard, any information received that is subject to national secrecy rules should not be published or released to third parties without prior consultation with the originating authority, whenever possible" (para 52).
[29] See EDPB Guidelines 02/2022 (para 211-212, 215-217).
[30] Including via the Register of OSS Decisions kept by the EDPB.