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AMENDMENTS: 26

Sergey Lagodinsky

Laying down additional procedural rules relating to the enforcement of Regulation (EU)
2016/679

Proposal for a regulation COM(2023)0348 - C9-0231/2023 – 2023/0202(COD)

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Amendment 1

Axel Voss

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1 a) This Regulation should be seen as the first step of a more comprehensive but at the same time targeted GDPR revision, which is hopefully also suggested by the upcoming report on the application of the GDPR in May 2024, as there is an urgent effort of modernizing EU data protection rules as well as streamlining it with the European data strategy (i.e. Data Act, DGA, EHDS).

Or. en

Amendment 2

Axel Voss

Proposal for a regulation

Recital 22

Text proposed by the Commission

Amendment

(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

(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.

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. ***Where, at any stage in an investigation, a submission is made to a lead supervisory authority, which materially changes the lead supervisory authority's view of a case, parties under investigation should be given an opportunity to respond to this submission before the lead supervisory authority takes its final decision.***

Or. en

Amendment 3
Axel Voss

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 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 ***as well as the capacity of the parties under investigation and complainants to respond***, in order to ensure that the parties under investigation and complainants have sufficient opportunity to meaningfully provide their views on the issues raised.

Or. en

Amendment 4
Axel Voss

Proposal for a regulation
Article 3 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Where the complainant claims confidentiality when submitting a complaint, the complainant shall also submit a non-confidential version of the complaint ***that the supervisory authority should only disclose if such disclosure is necessary for the parties under investigation to exercise their rights of defence efficiently.***

Or. en

Amendment 5
Axel Voss

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

Text proposed by the Commission

Amendment

(c a) the complainant's use of internal complaint mechanism (CM) provided by the parties under investigation.

Or. en

Amendment 6
Axel Voss

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

Amendment

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

A complaint may be resolved by amicable settlement between the complainant and the parties under investigation ***at any stage of the investigation. The supervisory authority may encourage and facilitate amicable settlements where relevant.*** Where the supervisory authority considers that an amicable settlement to the

amicable settlement proposed by the supervisory authority within one month, the **complaint** shall be deemed **withdrawn**.

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 **settlement** shall be deemed **accepted**.

Or. en

Amendment 7
Axel Voss

Proposal for a regulation
Article 9 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(d a) an overview of both the replies of all parties under investigation as well as the views of the complainant on to the preliminary findings.

Or. en

Amendment 8
Axel Voss

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

Amendment

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.

6. **In** non-contentious 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.

Or. en

Amendment 9

Axel Voss

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

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, 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:

Amendment

1. Supervisory **authorities** 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, where, following the comments of supervisory authorities concerned pursuant to Article 9(3), **at least two** supervisory **authorities** concerned **disagree** with the assessment of the lead supervisory authority on:

Or. en

Amendment 10

Axel Voss

Proposal for a regulation

Article 10 – paragraph 3

Text proposed by the Commission

3. The lead supervisory authority shall engage with the supervisory authorities concerned on the basis of their comments on the summary of key issues, and, where applicable, in response to requests under Article 61 and 62 of Regulation (EU) 2016/679, in an endeavour to reach a consensus. The consensus shall be used as a basis for the lead supervisory authority to continue the investigation and draft the preliminary findings or, where applicable, provide the supervisory authority with which the complaint was lodged with its reasoning for the purposes of Article 11(2).

Amendment

3. The lead supervisory authority shall engage **with a serious determined effort** with the supervisory authorities concerned on the basis of their comments on the summary of key issues, and, where applicable, in response to requests under Article 61 and 62 of Regulation (EU) 2016/679, in an endeavour to reach a consensus. The consensus shall be used as a basis for the lead supervisory authority to continue the investigation and draft the preliminary findings or, where applicable, provide the supervisory authority with which the complaint was lodged with its reasoning for the purposes of Article 11(2).

Or. en

Amendment 11

Axel Voss

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, in a complaint-based investigation, there is no consensus between the lead supervisory authority and **at least two** 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.

Or. en

Amendment 12

Axel Voss

Proposal for a regulation

Article 10 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

(a) the documents referred to in Article 9(2);

Or. en

Amendment 13

Axel Voss

Proposal for a regulation

Article 10 – paragraph 5 – point b

Text proposed by the Commission

(b) the comments of the supervisory **authority** concerned that **disagrees** with the

Amendment

(b) the comments of the supervisory **authorities** concerned that **disagree** with

lead supervisory authority's preliminary identification of the scope of the investigation.

the lead supervisory authority's preliminary identification of the scope of the investigation.

Or. en

Amendment 14

Axel Voss

Proposal for a regulation

Article 10 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. The Board shall adopt an urgent binding decision, *strictly limited to* 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.

Or. en

Amendment 15

Axel Voss

Proposal for a regulation

Article 14 – paragraph 4

Text proposed by the Commission

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*.

Amendment

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

Or. en

Amendment 16

Axel Voss

Proposal for a regulation

Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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 preliminary findings and set a time-limit within which the complainant may make known its views in writing. ***This time limit shall be proportionate to afford the complainants adequate time to provide their response.***

Or. en

Amendment 17

Axel Voss

Proposal for a regulation

Article 15 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Before ***providing*** the non-confidential version of preliminary findings and any documents provided pursuant to paragraph 3, the supervisory authority ***with which the complaint was lodged shall request the complainant to sign*** 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 ***making submission on*** the concrete investigation in which those findings were issued. ***Member States shall specify the***

legal consequences of refusing to sign or to comply with the confidentiality declaration.

Or. en

Amendment 18

Axel Voss

Proposal for a regulation

Article 17 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***exercise their right to be heard and to*** make their views known on such new elements.

Or. en

Amendment 19

Axel Voss

Proposal for a regulation

Article 17 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 20

Axel Voss

Proposal for a regulation

Article 19 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. In the course of investigation of an alleged infringement of Regulation (EU) 2016/679, the lead supervisory authority *shall* 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.

Or. en

Amendment 21

Axel Voss

Proposal for a regulation

Article 21 – paragraph 2

Text proposed by the Commission

2. Any information collected or obtained by a supervisory authority in cross-border cases under Regulation (EU) 2016/679, including any document containing such information, is excluded from access requests under laws on public access to official documents as long as the proceedings are ongoing.

Amendment

2. Any information collected or obtained by a supervisory authority in cross-border cases under Regulation (EU) 2016/679, including any document containing such information, is excluded from access requests under laws on public access to official documents as long as the proceedings are ongoing. *The same exclusion applies to business secrets or other confidential information even after the investigations are concluded.*

Or. en

Amendment 22

Axel Voss

Proposal for a regulation
Article 21 – paragraph 6 – introductory part

Text proposed by the Commission

6. The lead supervisory authority may set a time-limit for parties under investigation and any other party raising a confidentiality claim to:

Amendment

6. The lead supervisory authority may set a **proportionate** time-limit for parties under investigation and any other party raising a confidentiality claim to:

Or. en

Amendment 23
Axel Voss

Proposal for a regulation
Article 26 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a a) views made in writing by the parties under investigation as well as by complainants;

Or. en

Amendment 24
Axel Voss

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) 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.

Or. en

Amendment 25
Axel Voss

Proposal for a regulation
Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. *Where the Board adopts an urgent binding decision indicating that final measures should be adopted, the Board shall request a joint assessment carried out by at least 5 experts from the 'Support Pool of Experts' of the EDPB. This joint assessment shall be published together with the urgent binding decision.*

Or. en

Amendment 26
Axel Voss

Proposal for a regulation
Annex I – title

Text proposed by the Commission

Amendment

Part A - 3. *Entity whose processing of your personal data infringes Regulation (EU) 2016/679. Provide all information in your possession to facilitate the identification of the entity which is the subject of your complaint, including whether you have contacted the entity prior to your complaint and outline the result of any such actions. If possible, please attach any relevant correspondence between you and the entity.*

In return, delete the second paragraph of Part B.

Or. en