

Regulation (EU) 20XX/XXX of the European Parliament and of the Council of XX XXX 2024 on the enforcement of the General Data Protection Regulation (Text with EEA relevance)

Chapter I - Subject Matter, Scope and Definitions

Article 1 - Objective

This Regulation lays down harmonised rules relating to procedural aspects of the cooperation between supervisory authorities and the enforcement of Regulation (EU) 2016/679 (“GDPR”).

Article 2 - Scope¹

1. This Regulation applies to procedures under the GDPR, whenever supervisory authorities of more than one² Member State are taking part in the procedure, as well as consequent judicial procedures.³
2. The Regulation also applies to national procedures regarding obligations in Article 28 of this Regulation.⁴
3. This Regulation does not prevent Member States to further specify procedures.⁵

Article 3 - Definitions

For the purpose of this Regulation, definitions in the GDPR equally apply to this Regulation and:

1. ‘National procedural law’ means the law applicable to the procedure of a supervisory authority;⁶
2. ‘Filing supervisory authority’ means the supervisory authority concerned, in which the complaint has been lodged,⁷ as defined under Article 4(22)(c) GDPR;
3. ‘Lead supervisory authority’ means the supervisory authority that is competent to act according to Article 56 GDPR;
4. ‘Party to the procedure’ means any natural or legal person that has procedural rights in a procedure under the relevant national procedural law,⁸ including, at the very least, the complainants and respondents;

¹ The Regulation should only apply to cross-country procedures and not to purely national procedures (the bulk of cases). This makes sure that national procedural laws are not interfered with. It does not include cases under ePrivacy or as Directive (EU) 2016/680 the processing of personal data in criminal procedures.

² “More than one Member State” to exclude cases where there are multiple SAs in one Member State (e.g. Germany or Spain) and there may be national cooperation between SAs.

³ As far as regulated below.

⁴ There are certain elements that are not limited to cross-country procedures.

⁵ Minimum harmonization.

⁶ The procedural law that applies under national provisions (e.g. the VwVfG in Germany, the Data Protection Act 2018 and Common Law in Ireland and so on).

⁷ Wording from Article 77(2) GDPR.

⁸ There are countries with „amicus“, third parties with certain rights and alike. This provision should set a minimum standard (data subject, controller and/or processor) but should accept that there are further options under national law (e.g. a controller that is not really the right defendant, third parties within direct interests and alike).

This suggestion not final and should only serve as a starting point and inspiration for a possible Regulation.

5. 'Complainant' means any person who filed a complaint under Article 77 GDPR;⁹
6. 'Respondent' means any entity against whom a complaint under Article 77 GDPR is filed, or against whom any ex officio procedure is undertaken;¹⁰
7. 'Complaints procedure' means an adversarial¹¹ procedure determining a complaint under Article 77 GDPR;
8. 'Ex officio procedure' means an investigation into the activities of a natural or legal person, public authority, agency or other body¹² initiated on a supervisory authorities own volition under Article 57(1)(a) GDPR;
9. 'Scope of a procedure' means all matters that must be determined in the course of a specific procedure in accordance with the applicable national law;¹³
10. 'Handling of a complaint' means all actions by the supervisory authorities until a legally binding decision on a complaint is reached;¹⁴
11. 'Relevant information'¹⁵ means all information held by a supervisory authority that could affect¹⁶ a procedure or the rights of the parties to the procedure, including all submissions, evidence or other information in the case file¹⁷ and no matter the format of such information,¹⁸ but not drafts and information by the authorities or the Board that form part of their internal decision process;¹⁹
12. 'Rejection of a complaint'²⁰ means the termination of a procedure under Article 77 GDPR through a negative legally binding decision on procedural grounds, such as inadmissibility of the complaint;
13. 'Dismissal of a complaint'²¹ means the termination of a procedure under Article 77 GDPR through a negative legally binding decision on the substance of the complaint;

⁹ There is a need to define these roles, independent from „data subject“ as the fact if a person is actually a “data subject” maybe an element of the procedure. There are comments that e.g. if there are doubts about the fact that data is personal data, the party does not have standing, which would move this assessment to an early stage.

¹⁰ Definition equally independent from „controller / processor“ as the role under the GDPR may still be subject to the outcome of the procedure.

¹¹ May have different meanings in Member States. Should express that it is a procedure between the parties and not a regulatory (ex officio) procedure by an authority, independent of individual rights.

¹² Article 4(7) and (8) GDPR for the forms of entities under the GDPR.

¹³ The national law where the case is initiated (see Article 5) shall determine the scope of the case. This allows filing SAs to ensure that the entire case is dealt with on a European level and avoids discussions about extending procedures at a later stage. It may be possible to rely on case law by the CJEU in the Brussels Regulation cases to determine the scope of procedures. It seems that the scope of procedures follows very different approaches in Member States.

¹⁴ This definition of “handling” would ensure that each complaint must lead to an outcome (upheld, dismissed, rejected and closed) to ensure that cases are not just “handled” with a simple email saying that there is no action. The word “handling” in Article 78(2) GDPR is not further defined so far.

¹⁵ From Article 60 GDPR, so far not defined.

¹⁶ Some SAs so far exclude information that is before them, but that they did not consider for the decision. This may however be exactly the problem, if SAs should have considered such evidence to get to the correct conclusion. An abstract relevance test could fix this issue.

¹⁷ The wording “case file”

¹⁸ This should include oral (oral hearings, talks or phone calls between parties and the SAs), digital and analogue documents (that are e.g. only to be read physically at the location of the DPA e.g. in PL and BG).

¹⁹ This could be aligned with Article 4(3) of the EU Regulations on access to documents 1049/2001, to the extent that the party rights (which are more relevant than public information rights) are not overriding such interests.

²⁰ From Article 60 GDPR, so far not defined.

²¹ From Article 60 GDPR, so far not defined.

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14. 'Closing of a complaint'²² means the termination of a procedure under Article 77 GDPR for reasons that are neither a rejection nor a dismissal of the complaint;
15. 'Final authority decision'²³ means any final and formal determination over the scope of a procedure²⁴ by a supervisory authority, such as the rejection, dismissal or closing of a complaint or the decision or other end of an ex officio procedure, independent if this leads to a res judicata under national procedural law or not²⁵ and independent of it being a partial determination or a determination over the entire scope of the procedure;²⁶
16. 'Procedural determination'²⁷ means any decision of a supervisory authority or the Board that does not lead to a final determination of matters within the scope of a procedure;
17. 'Enforceable decision'²⁸ means a legally binding decision that is enforceable under the law of the Member State in which it was issued;
18. 'Issuing State' shall mean the Member State in which an enforceable decision was delivered;²⁹
19. 'Executing State' shall mean the Member State to which an enforceable decision has been transmitted for the purpose of enforcement;³⁰

Chapter II - General Provisions

Article 4 - Determination of roles of supervisory authorities³¹

1. Any supervisory authority may declare itself a lead supervisory authority in accordance with Article 56(1) GDPR, if the criteria is fulfilled at the time of the opening of a procedure.³²
2. Any supervisory authority may declare itself to be a supervisory authority concerned in accordance with Article 4(22) GDPR. The other supervisory authorities grant it all rights as a supervisory authority concerned from the moment of this declaration.

²² Article 60 GDPR only knows positive or negative outcomes. "Closing" of cases is not foreseen in Article 60 GDPR, but the bulk of all outcomes and partly foreseen in national law ("amicable resolutions", complaints withdrawn, cases that are declared "moot" and alike). Needs rules in this Regulation to ensure consistent handling of such situations.

²³ See if this can be replaced with "legally binding decision" as in Article 78(1) GDPR.

²⁴ The decision should always be linked to the scope of the procedure, to ensure that decisions do not go beyond the scope (SAs may still open an "ex officio" if they wish to go further) and the entire scope is dealt with.

²⁵ In some Member States, cases get "rejected" for formal reasons, but this still allows the case to be resubmitted at a later stage. In other cases, this may lead to a "res judicata". The Regulation should leave the effect of a rejection to Member State law.

²⁶ In some Member States SAs may issue "partial decisions" for elements that are quick to decide as part of the SA's case management. This should be reflected in the definition.

²⁷ There are many procedural decisions that only concern the management of the case. These decisions should be defined and fall under a different system than final material decisions of the SA. This differentiation is very common in Member State procedural law and allows to limit fights during the course of the procedure.

²⁸ From Article 1(c) of Council Framework Decision 2005/214/JHA

²⁹ From Council Framework Decision 2005/214/JHA on the enforcement of penalties.

³⁰ From Council Framework Decision 2005/214/JHA on the enforcement of penalties.

³¹ The Regulation would need some structure to define who is a LSA and a CSA now in each procedure. We have situations of "positive" and "negative" conflicts, where more SAs want to be LSA or none wants to be one. This must be determined at the very start. There is LSAs, CSAs and "other SAs" (that are neither LSA nor CSA). Requiring to take positions and allow raising issues early seems useful, at the same time this can start very lengthy discussions about decision structures of controllers and their "main establishment", so it may be reasonable to contain the decision to the information available at the time and not allow to start new investigations with no good reason.

³² Currently jurisdiction shifts according to EDPB Opinion 8/2019 any change in company structure or decision making patterns. The GDPR does so far not specify the relevant time for determining the LSA. Especially in the tech industry, products, start-ups and alike are rather fluid, leading to cases that need to be restarted over and over again. It is also likely that the Member State SA that is located at the main establishment at the time of a violation is best placed to investigate factual matters. The enforcement in other member states should be allowed in accordance with the provisions on enforcement below.

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3. Declarations under paragraph 1 and 2 must be shared with all parties to the procedure and all supervisory authorities within two weeks.
4. Supervisory authorities assumed to be the lead supervisory authority, until another supervisory authority or the parties to the procedure challenge the declaration in accordance with Article 65(1) GDPR. Parties to the procedure must challenge that status within two weeks from receiving the declaration before the Board or Cooperation Committee.³³

Article 5 - Applicable Procedural Law

1. Without prejudice to this Regulation, the applicable national procedural law of the supervisory authority governs to all direct interaction between that supervisory authority and the parties before it.³⁴ Applicable national procedural law may not hinder residents of other Member States to fully participate in procedures.³⁵
2. Any complainant has a right to communicate solely with the supervisory authority that a complaint was lodged with under Article 77 GDPR.³⁶
3. The GDPR and this Regulation govern all interaction between supervisory authorities of different Member States within the scope of this Regulation.
4. The interaction and sharing of information between supervisory authorities as well as the supervisory authorities and the Board shall be neither restricted nor prohibited by national law. Cooperation under the GDPR and this Regulation may not be limited, delayed or denied based on differences in national procedural laws.³⁷

Article 6 - Minimal procedural Guarantees

1. Without prejudice to additional rights under relevant national law that go beyond the following provisions, all parties to the procedure have at least the right to:³⁸
 - (a) have his or her affairs handled impartially and fairly, ensuring that all parties to the procedure are treated equally,³⁹ even if they are before different supervisory authorities;
 - (b) be heard before any measure that adversely affect the party is taken,⁴⁰ including the decision to close, dismiss or reject a complaint;⁴¹
 - (c) have access to all files of the procedure,⁴² including all evidence, submissions or other communication⁴³ between the other parties and a supervisory authority that concern the procedure, no later than two weeks after their occurrence; and

³³ A short deadline could increase legal certainty for the rest of the procedure.

³⁴ Statement of the obvious, but still a matter of debates with some SAs.

³⁵ Some SAs require e.g. national ID cards or other elements as the sole way to communicate with them, which makes access for other EU citizens virtually impossible.

³⁶ Equivalent to Article 56(6) GDPR for the controller/processor. Written as a "right" to also allow to just directly talk to the LSA on a voluntary basis.

³⁷ Some SAs limit cooperation, as they do not find the procedural law of another SA equivalent. Similar to Article 1 GDPR, that foresees the free flow of data, this Regulation should prohibit any such limitations.

³⁸ This Article is based on Article 41 CFR, with some additional specifications.

³⁹ See Article 20 CFR (equality), further defined in paragraph 2 below.

⁴⁰ Article 41 CFR

⁴¹ To further define what "adversely affected" can mean in GDPR procedures.

⁴² Article 41 CFR („every person to have access to his or her file“)

⁴³ This would also include oral communication, to capture "off record" oral exchanges.

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- (d) receive a legally binding decision within a reasonable time as specified under applicable national law, but no later than six months from the opening of the proceedings.⁴⁴
2. To ensure the principle of equality in paragraph 1(a) is upheld,⁴⁵ supervisory authorities must inform each other about all steps of the procedure and shall grant all procedural rights that go beyond the rights under this Regulation and national procedural law, if parties before another supervisory authority are granted such rights.
 3. Supervisory authorities may limit the rights referred to in paragraph 1 in accordance with the national procedural law applicable in relation to a party receiving the information, to protect legitimate interests of confidentiality and trade secrets of others. Supervisory authorities may only take strictly proportionate measures, such as redacting specific parts of documents or other information. Supervisory authorities must always inform the parties about the existence of redacted information and issue a reasoned decision for any limitation.⁴⁶

Article 7 - Cooperation between supervisory authorities

1. The lead supervisory authority shall coordinate and manage the procedure in accordance with the GDPR, this Regulation and its applicable national procedural law.⁴⁷ It shall manage each procedure in cooperation with the concerned supervisory authorities and comply with any request from them.
2. The lead supervisory authority shall take all necessary steps and structure the procedure in an efficient and expedient way, ensuring that the GDPR is fully enforced.⁴⁸ It shall include all information regarding the case in a case file.⁴⁹
3. The lead supervisory authority shall, provide instant access to the case file to the concerned supervisory authorities. Relevant information must be added to the case file without undue delay, but no later than one week from the moment that the lead supervisory authority received such information.
4. When divergent views are to be expected,⁵⁰ the lead supervisory authority shall initiate an exchange with all concerned supervisory authorities with an aim to reach an early consensus.
5. Supervisory authorities shall use their powers under Articles 60 to 66 GDPR and Articles 19 and 20 of this Regulation in the case of inactivity of another supervisory authority, if this is necessary to ensure compliance with this Regulation and the GDPR.⁵¹

⁴⁴ This would also apply to ex officio cases and also give a right to controllers and processors to have a case decided and not be subject to “endless” investigations. However, such a right can also lead to delay tactics to have the SA run out of time.

⁴⁵ This provision would require the “leveling up” if one SA grants extra rights to a party that is not foreseen in this Regulation or the GDPR. By “leveling up” the fairness of the procedure (“equality of arms”) is maintained.

⁴⁶ Article 41 CFR: “the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;” Maybe refer to: Directive (EU) 2016/943 on the protection of know-how and trade secrets. Regulation (EC) No 1049/2001 has very wide definitions such as „commercial interests“ which seems reasonable if freedom of information is balanced with commercial interests, while the right to be heard and have access to files by a party may require a more limited exception than freedom of information.

⁴⁷ By default the LSA law defines the procedure.

⁴⁸ Some high level principles, as can be found in various national procedural laws.

⁴⁹ The “case file” should include all information. It is later referred to as the documents that need to be shared.

⁵⁰ EDPB Guidelines 2/2020, para 94.

⁵¹ This would add an obligation by authorities to take action if their counterparts are not taking action, to ensure that the parties must not travel to another Member State to take action against an inactive SA.

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6. Any supervisory authority which receives relevant information for a procedure shall, without delay, provide any relevant information to the lead supervisory authorities concerned, but no later than one week from the moment that it received such information.
7. Any written exchange or decision by the supervisory authorities shall use a concise, transparent, intelligible and easily accessible form, using clear and plain language.⁵²
8. Each supervisory authority shares relevant information in the original format and language and provide a translation to a language the lead supervisory authority accepts. The parties shall be provided with the original and a translation to the language of the national procedure.⁵³
9. An automated translation is sufficient, if a supervisory authority certifies that the translation does not materially depart from the original.⁵⁴ The Board shall provide automated and manual translation services to the supervisory authorities.

Article 8 - Expedited Procedure⁵⁵

1. A lead supervisory authority can decide to conduct an expedited procedure if:
 - (a) The procedure does not concern novel or unclear legal issues, especially because there is existing European case law, Board decisions under Article 65 GDPR, or Board guidelines under Articles 64 or 70(1)(d) to (k) GDPR on these legal questions; and
 - (b) the supervisory authority does not intend to depart from them; and
 - (c) the facts and circumstances of the case are likely established without the need to exercise powers under Article 58(1)(b) and (f) GDPR.
2. In the event that the conditions of paragraph 1 no longer apply, the lead supervisory authority shall continue the procedure without relying on the procedure under this Article.
3. During the expedited procedure the supervisory authority may:
 - (a) [Example: solely translate the legally binding decision or any other form of termination of the procedure]
 - (b) [Example: adopt its decision based solely on the complaint and the response of the respondent]
 - (c) [Example: not hear the party that wins the case]
 - (d) [Example: use forms / an EU online system to communicate with the parties]
4. The lead supervisory authority shall decide on whether it chooses to make use of the expedited procedure within one month from the initiation of proceedings and inform all concerned supervisory authorities about this decision no later than within one week. The concerned supervisory authorities shall inform the parties to the procedure before them

⁵² Guidelines 2/2020, Para 109 – combined with existing wording from Article 12(1) GDPR. Could be expanded to all exchanges. Should make translations simpler too.

⁵³ Providing also originals allows the parties to understand the documents (e.g. when the Member State use the same language) or ensure that the translations are correct.

⁵⁴ This could deal with the de facto practice, even if it seems unclear if this is acceptable from an access to documents perspective. Especially Member States with smaller language groups may suffer from limited quality of automated translations. The fact that SAs must certify that the translation is correct would maybe form a middle ground between efficiency and quality.

⁵⁵ The expedited procedure could include some shortcuts and limitations of steps for “clear cut” cases, such as unanswered SARs, no response on the exercise of other GDPR rights and alike.

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about the decision under paragraph 1 or 2 within one week from receiving the notification from the lead supervisory authority.

5. Member States may provide for limitations of requirements under national procedural law for expedited procedures.

Article 9 - Procedures of special relevance⁵⁶

1. A lead supervisory authority can declare a procedure to have special relevance, if:
 - (a) it concerns a large number of data subjects in more than one Member State, but likely at least one percent of the population of any Member State; and
 - (b) it concerns novel or unclear legal issues, especially because there is no or no consistent existing European case law, Board decisions under Article 65 GDPR or Board guidelines under Articles 64 or 70(1)(d) to (k) GDPR on these legal questions.
2. The following provisions apply to such procedures:
 - (a) The periods within Articles 60, 65 and 66 of the GDPR and Chapter III, IV and V of this Regulation may be extended for the same period of time only once.
 - (b) The lead supervisory authority may request resources from other Supervisory Authorities, the Board and the Secretariat. The Board shall provide these resources, as far as possible.
3. The lead supervisory authority must notify all supervisory authorities of a declaration under paragraph 1. Following the receipt of the notification, the concerned supervisory authorities shall inform the parties to the procedure before them within one week about the declaration of special relevance.
4. Member States may provide specific requirements under national procedural law for procedures of special relevance.

Article 10 - Relationship between multiple procedures

In accordance with applicable national law, competent supervisory authorities may join or separate procedures that effect the same subject matter and the same respondents. The existence of other procedures that effect the same subject matters and the joining or separation of such procedures may not undermine or limit party rights under Article 6 of this Regulation.⁵⁷

Chapter III – Complaints Procedures

Article 11 - Admissibility and scope

1. The filing supervisory authority shall assess the admissibility of a complaint and shall reject inadmissible complaints in accordance with national law.

⁵⁶ Cases that have huge significance could get more time and resources under the Regulation.

⁵⁷ This should prevent that “ex officio” procedures are blocking complaints procedures and/or the core of complaints is outsourced into an “ex officio” procedure, without the complainant being heard.

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2. The scope of the complaint is exclusively defined by the applicable national procedural law before the filing supervisory authority.⁵⁸
3. Other supervisory authorities may not reassess the admissibility or the scope of the complaint.

Article 12 - Initial procedure⁵⁹

1. Without delay, but no later than two weeks from the filing of an admissible complaint, the filing supervisory authority must,
 - (a) determine the parties to the procedure and the assumed lead supervisory authority;
 - (b) provide all relevant information to the assumed lead supervisory authority; and
 - (c) inform the complainant of the above.
2. Within two weeks from being provided the relevant information, the assumed lead supervisory authority must,
 - (a) accept the complaint and provide the complaint to the respondent and request an answer to the complaint within two weeks, including all relevant evidence; or
 - (b) return the complaint to the filing supervisory authority, if it takes the view that it is not the lead supervisory authority. In this case, the filing supervisory authority may either repeat the steps under paragraph 1, if it agrees with this view, or otherwise request a determination by the Coordination Committee under Article 23 within two weeks.
3. The filing supervisory authority will forward the answer of the respondent to the complainant within one week, requesting a statement from the complainant within two weeks.
4. The filing supervisory authority forwards the statement of the complainant to the lead supervisory authority within one week.
5. Durations under this article may be expanded for no more than one weeks if the supervisory authorities are otherwise unable to provide for a translation of documents.

Article 13 - Handling of complaints

1. Within two weeks from the provision of the statement under Article 12(4), the supervisory authorities jointly determine the necessary steps to come to a legally binding decision within six months from the filing of the complaint.
2. The supervisory authority shall use its powers to investigate the complaint in a swift, efficient, transparent and thorough manner.

⁵⁸ The Admissibility and Scope of the complaint should be defined by the Filing DPA, right now the LSAs “second guess” under their law if a complaint was filed correctly.

⁵⁹ The idea is to have a quick first exchange of positions. Right now parties often wait for years to just get an admission from the controller back that they violated the law. A quick exchange between the parties allows understanding the core arguments of the parties, the scope of the dispute, the option to settle the case quickly and/or the need to investigate certain matters further.

Article 14 - Closing of a complaints procedure⁶⁰

1. Where provided for in applicable national law of the filing procedural authority, a complaints procedure may be closed, if:
 - (a) a complaint is withdrawn by the complainant, especially if the respondent has remedied alleged violations or the parties have otherwise settled the complaint;⁶¹
 - (b) a complainant did not comply with procedural deadlines or requirements that are necessary to continue the proceeding;⁶² or
 - (c) the complainant lost the right to have a complaint decided⁶³ or the handling of the complaint is otherwise impossible.
2. In accordance with Article 60(8) GDPR the filing supervisory authority issues a legally binding decision to close the complaints procedure.⁶⁴ The lead supervisory authority informs the respondent about the closure no later than within one week.

Article 15 - End of a complaints procedures

1. Any complaints procedure shall end with a legally binding decision under Article 60(7) to (9) GDPR or a formal decision to close the procedure under Article 13 of this Regulation.
2. The end of a complaints procedure does not prevent supervisory authorities from taking further steps in the course of an ex officio procedure.

Chapter IV – Ex officio procedures

Article 16 - Opening and scope of procedures

1. The lead supervisory authority may open an ex officio procedure at any time.
2. If there is probably cause that a provision of the GDPR may be violated, any concerned supervisory authority may ask for an ex officio procedure with the lead supervisory authority by submitting a written request that must at least contain: ⁶⁵
 - (a) a declaration to be a concerned supervisory authority under Article 4(22) GDPR;
 - (b) any evidence in support of the probable cause;
 - (c) the details of the respondent or respondents;
 - (d) any available relevant information; and
 - (e) the scope of the procedure, including the factual and legal matters to be investigated.
3. Within two weeks, the assumed lead supervisory authorities must,

⁶⁰ This is an addition to the other two options in Article 60(8) “rejection” and “dismissed”.

⁶¹ This makes clear that an “amicable resolution” is based on the consent of the complainant to withdraw the complaint.

⁶² For example, when a complainant cannot be contacted anymore or does not participate in the procedure anymore.

⁶³ For example, a party does not exist anymore.

⁶⁴ This should open the path to a legal remedy in all cases that are not a “dismissal” or “rejection” of a case.

⁶⁵ Probable cause is the first requirement for the opening of an ex officio by another SA, the SA must also be a “concerned” SA. In addition, a clear outline of the case should ensure that SAs have to invest certain time and effort into triggering an ex officio procedure.

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- (a) accept the request to open an ex officio procedure, expand an existing ex officio procedure to include the matters raised; or
- (b) return the request to the filing supervisory authority, if it takes the view that it is not the lead supervisory authority or there is no probable cause for a violation. In this case, the concerned supervisory authority may either initiate an amended ex officio procedure if it agrees, or otherwise request a determination by the coordination committee under Article 22 within two weeks.

Article 17 - End of an ex officio procedure

1. The lead supervisory authority shall investigate the matter and issue a draft decision under Article 60(3) GDPR within six months. The duration may be extended for no more than six months if the lead supervisory authorities are otherwise unable to finish the procedure.
2. If a concerned supervisory authority initiated the ex officio procedure, it may only be closed with the agreement of that concerned supervisory authority.⁶⁶

Chapter V – Cooperation

Article 18 - European coordination committee

1. The Board shall appoint one or more European Coordination Committees (“Coordination Committee”)⁶⁷ of three to five members. Members are part of secretariat under Article 75 GDPR. Members perform their tasks exclusively under the instructions of the Board and may only be discharged by the Board.⁶⁸
2. The Coordination Committee shall decide over disputes between supervisory authorities and necessary procedural determinations. In its rules of procedure, the Board may designate tasks under Articles 64(1) and 65 GDPR to the Coordination Committee.
3. The decisions by the Coordination Committee shall be based on the information before it,⁶⁹ issued within one week, reasoned and addressed to the supervisory authorities. Decisions by the Coordination Committee are binding on the supervisory authorities and may be challenged by the parties only in the course of a remedy against a legally binding decision of the supervisory authorities or the Board.⁷⁰
4. The supervisory authorities shall not adopt a decision on the subject matter submitted to the Coordination Committee during the period under paragraph 3. The period of the decision process is not taken into account for deadlines under national law or in this Regulation.

⁶⁶ This ensures that if a CSA insists, there has to be a decision under Article 60(3) GDPR which can then lead to an Article 65 GDPR procedure.

⁶⁷ Could be developed from existing enforcement sub group, but with permanent members that deal with procedural issues during the OSS procedure.

⁶⁸ Given that the committee oversees independent SAs (like the EDPB) the committee must also be self-governed by the SAs via the EDPB.

⁶⁹ This should limit the need to investigate matters further by the committee itself.

⁷⁰ This moves the option for legal redress to the end of the procedure and allows errors to “heal” in the meantime.

Article 19 - Procedural determinations

1. Proceedings against procedural determinations of the supervisory authorities must be brought with the remedy against the legally binding decision. Deadlines under applicable national law are delayed for that period.⁷¹
2. Parties to the procedure may apply to the Coordination Committee to make a determination in the following cases:⁷²
 - (a) When a controller is established in the Union, but no supervisory authority declares itself as being the lead supervisory authority under Article 56 GDPR.
 - (b) When a supervisory authority violates Articles 60 to 66 GDPR and this Regulation to the detriment of the parties.
 - (c) When a complaints procedure is not determined within the deadlines under this Regulation.
3. Concerned supervisory authorities may apply to the coordination committee to make a determination in any matter or dispute between supervisory authorities that must be determined to continue the procedure.
4. Applications under paragraph 2 and 3 must be made within two weeks from the delivery of the procedural determination by a supervisory authority.⁷³

Article 20 - Draft decisions and objections

1. A draft decision must fulfill the requirements of a legally binding decision. Unless already included in the draft decision, the lead authority must provide the following information together with the draft decision:
 - (a) A neutral summary⁷⁴ of the positions of the parties to the procedure and
 - (b) the case file.
2. A reasoned and relevant objection must contain:
 - (a) the specific element in relation to the infringement of the GDPR or the envisaged action that should be investigated,⁷⁵ changed, removed from or added to the draft decision;
 - (b) the reasons for this change; and
 - (c) the significance of the risks under Article 4(24) GDPR.

⁷¹ Some Member States allow for “interlocutory” procedures (like “Judicial Reviews”), which would conflict with the timelines and the system for dealing with procedural issues under this Regulation. This proposed solution would ensure that the procedure under this Regulation can not be paused via national interlocutory procedures, while it would allow parties to bring these claims at a later stage by pausing the statute of limitation during the European procedure.

⁷² This should be cases where the procedure gets “stuck” and no SA has an option or interest to start the procedure anew, such as negative competence conflicts (where two SAs take the view the other SA is in charge).

⁷³ This should ensure quick legal certainty for the duration of the procedure.

⁷⁴ There should be a principle that the LSA may not argue their legal view, but rather represent the case in an utmost neutral and balanced way, so that other SAs have the full picture. Specific SAs have previously limited the summary to the points that supported their findings, but removed facts that would point in other directions.

⁷⁵ It seems useful if SAs must raise very specific changes (e.g. a specific fine or action) instead of rather generic criticism, as the objections form the scope of the Article 65 procedure and the LSA should be enabled to

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3. A significant risk under Article 4(24) GDPR is assumed if the supervisory authority declared itself to fall under Articles 4(22)(b) or (c) GDPR.⁷⁶
4. Within a period of four weeks, the lead supervisory authority shall either submit the matter to the consistency mechanism referred to in Article 63 or submit a revised draft decision under Article 60(5) GDPR.⁷⁷

Chapter V – Consistency Procedure

Article 21 - Scope and Initiation

1. The scope of the consistency procedure is defined by the relevant and reasoned objections under Article 60(4) GDPR.
2. When the lead supervisory authority received objections that it does not intend to follow under Article 60(4) GDPR:
 - (a) it shall share the case file and the reasoned objections with the parties to the procedure within two weeks,
 - (b) request a statement from the parties to the procedure on the draft decision and the reasoned objections within another two weeks⁷⁸ and
 - (c) it shall submit the matter to the Board within further two weeks.
3. Should the lead supervisory authority fail to submit the matter to the Body within the period above, any party to the procedure and any concerned supervisory authorities may submit the matter to the Board for a decision under Article 65(1)(a) GDPR.

Article 22 - Referral and assessment of the case file

1. The lead supervisory authority shall refer the entire case file and at least the following documents to the Board:
 - (a) an objective and concise summary of the case, including all relevant facts and legal questions, an objective overview of arguments submitted by all parties of the procedures insofar as it relates to the scope of the consistency procedure;
 - (b) a concise summary of the proposed final decision of the lead supervisory authority and an explanation as to the reasons why the lead supervisory authority does not follow the reasoned objection or is of the opinion that the objection is not relevant or reasoned;
 - (c) the draft decision or revised draft decision subject to the reasoned objections;
 - (d) the objections made by the supervisory authorities concerned;
 - (e) the written observations submitted by the parties of the procedure in the national procedure and under Article 21(2)(b).
2. Within two weeks from the referral, the Board shall either accept the case and or reject it as being incomplete. In such a case, the lead supervisory authority shall provide any missing information within two weeks. The Board shall inform the supervisory authorities and the parties to the procedure about any acceptance or rejection of the case.

⁷⁶ The Regulation could add an assumption to limit this barrier for CSAs, without amending the GDPR.

⁷⁷ Currently the GDPR does not foresee any deadlines.

⁷⁸ This would ensure that the right to be heard (Article 41 CFR) is taken care of by the SAs.

Article 23 - Investigations by the Board

1. The Board shall give due regard to the statements of the parties of the procedure, as provided under Article 21(2)(b), the draft decision and the reasoned objections.
2. The Board shall rely on the case file when making its decision, unless there is probable cause that the case file is not fully representative of the facts of the case or there Board deems it impossible to decide on the case without further information.
3. In such a case, the Board may rely on Article 61 GDPR and request supervisory authorities to gather additional information, conduct its own investigations or conduct an oral hearing of the parties to the procedure.
4. The duration of the procedure under paragraph 3 shall be excluded from the deadline under Article 65(2) GDPR.

Article 24 - Rapporteur

1. The decisions shall be prepared and drafted by the Secretariat and upon decision of the Chair, together with a Rapporteur and expert subgroups members. The concerned supervisory authorities and the lead supervisory authority cannot be the Rapporteur. The Secretariat can act as Rapporteur.
2. The Rapporteur shall make sure that the procedural requirements are met, that the file is complete, that the rights of the parties are respected. The Rapporteur shall present the matter to the Board.

Article 25 - Decision of the Board

1. The decision of the Board shall address all matters within the scope of the procedure. Decisions by the Board must be specific enough that the lead authority can clearly determine the required contents of a legally binding decision.

Article 26 - Procedure

The Board can further specify procedural rules in its rules of procedure adopted according to Article 72(2) GDPR. These rules shall especially regulate:

1. the use of languages before the Board and matters of translations;
2. the format and the length of documents that must be submitted before the Board;
3. standard forms to be used by supervisory authorities and the parties to the procedure;

Chapter VI – Legally binding decisions

Article 27 - Contents

1. Without prejudice to additional requirements under national law, any legally binding decision shall be issued in writing, using a concise, transparent, intelligible form and clear and plain language.⁷⁹ It shall at least contain the following elements:⁸⁰

⁷⁹ Guidelines 2/2020, para 109, replaced with the wording of Article 12(1) GDPR.

⁸⁰ Ensuring that decisions are complying with minimal requirements.

This suggestion not final and should only serve as a starting point and inspiration for a possible Regulation.

- (a) the name of the supervisory authority which issued the decision;
 - (b) the date of issue of the decision;
 - (c) the relevant facts of the case;
 - (d) the grounds for the decision;
 - (e) the exercised corrective powers, penalties or other measures; and
 - (f) information on the right of an effective remedy under Article 78 GDPR or any applicable national law.
2. In a case where the legally binding decision must be issued by the filing supervisory authority in accordance with Articles 60(8) or (9) GDPR, the lead authority shall ensure that the decision contains all elements necessary under the applicable national law of the filing supervisory authority. The filing supervisory authority shall assist the lead supervisory authority in drafting the decision.⁸¹
 3. The information provided to the parties under Article 60(7) to (9) GDPR shall include a copy of the legally binding decision.

Article 28 - Transparency of legally binding decisions

1. Supervisory authorities must publish all legally binding decisions without undue delay, but no later than three months after adoption,⁸² unless they are not materially departing from previously published decisions.⁸³
2. In accordance with applicable law, supervisory authorities and the Board may:
 - (a) redact party names and any other information that may allow identifying parties; and
 - (b) redact other information that is legally protected under applicable law.

Chapter VII – Remedies

Article 29 - Remedies under Article 78 GDPR

1. Without prejudice to remedies under national law, each natural or legal person shall have the right to an effective judicial remedy:
 - (a) against a legally binding decision of a supervisory authority concerning them;
 - (b) where they are parties to the procedure⁸⁴ and the supervisory authorities do not handle a complaint or where the supervisory authorities do not decide over a complaint within the legally required deadlines under this Regulation, the GDPR or under applicable national law;

⁸¹ A decision from country A may simply not be 1:1 valid in country B, where the Court would review the decision issued by the DPA in Country B under the law of Country B. As an alternative a decision could be seen as fully compliant with Union law if certain minimal requirements are met – however this would likely get into conflict with national law.

⁸² This should ensure transparency, but ensure legal certainty and deterrence.

⁸³ This would ensure that repetitive decisions do not have to be published.

⁸⁴ This limits the possible applicants to parties of the procedure.

This suggestion not final and should only serve as a starting point and inspiration for a possible Regulation.

- (c) where they are parties to the procedure and where a supervisory authority does not comply with its obligations under this Regulation a decision by the Coordination Committee or the Board;⁸⁵
 - (d) where they are parties to the procedure and where a supervisory authority does not use its discretionary powers to ensure that another supervisory authority progresses the procedure;⁸⁶ or
 - (e) where they are data subject and are not provided with the information under Article 77(2) GDPR every three months.
2. Without prejudice to national law and Article 78(3) GDPR, any supervisory authority concerned may be joined to a national procedure in another Member State.⁸⁷

Article 30 - Additional remedies before national courts

Without prejudice to the rights under Article 78 GDPR and national laws, the parties to the procedure have the right to seek judicial redress if a supervisory authority does not comply with this Regulation, a decision by the Coordination Committee or the Board.

Chapter VIII – Enforcement decisions

Article 31 - Enforcement of fines

1. Without prejudice to any other instruments, a lead supervisory authority may request another supervisory authority to enforce a fine under Article 83 GDPR. The supervisory authority shall enforce the fine under applicable national law as if the final decision would be issued by the requested supervisory authority.
2. Supervisory authorities may not issue a fine for an offense affecting the same conduct for which a respondent has already been fined within the Union.⁸⁸

Article 32 - Enforcement of other remedies

1. Without prejudice to any other instruments, a lead supervisory authority may request another supervisory authority to use its corrective powers under Article 58(2) GDPR and national law, if this is necessary to enforce a legally binding decision. Article 61(3) to (9) GDPR apply.
2. The other supervisory authority may reject request under paragraph 1 if the legal requirements of its Member State for such a corrective power would not be met.

Chapter IX – Final provisions

Article 33 - Deadlines

1. Regulation 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits shall apply to this Regulation.

⁸⁵ This could allow for national enforcement of EDPB decisions, as the EDPB seems to lack the power to act

⁸⁶ While the Court of one Member State does not have jurisdiction over the SA in another Member State,

⁸⁷ This could ensure that data subjects can bring procedures before their home court and at least have the LSA heard, even if the Court may not have direct jurisdiction over the LSA. This should ensure that national courts can have a full overview in cases of cooperation issues and hear all SAs.

⁸⁸ See CJEU case law under the Brussels Regulations, where the CJEU had a broad interpretation of the identity of a case. The Regulation should be aligned with the CJEU case law.

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2. In exceptional cases and in accordance with national procedural law, deadlines under this Regulation may be extended by supervisory authorities or the Board to the minimum necessary. Such exceptional cases are for example force majeure, strict inability of the parties to comply with deadlines [fill in more examples].

Article 34 - Forms and data structures

Without prejudice to Articles 61(9), [fill in all other provisions] and 67 GDPR, the Commission may, by means of implementing acts, specify the format and procedures for steps referred to in this Regulation and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Article 35 - Statistics

1. Supervisory authorities must report the following numbers in their activity report under Article 59 GDPR:
 - (a) the number of ex officio investigations initiated by the supervisory authority;
 - (b) the number of ex officio investigations initiated by another supervisory authorities;
 - (c) the number of complaints under Article 77 GDPR received, including the number that were rejected, dismissed, closed, partly upheld and fully upheld;
 - (d) the number of legally binding decisions currently on appeal;
 - (e) the number and average duration of open and decided procedures under (a) to (d) to date;
 - (f) the number of each type of measure taken in accordance with Article 58(2) GDPR or applicable national law;
 - (g) the number and the overall amount of fines issued and collected under Article 83 and 84 GDPR or relevant national law; and
 - (h) the annual budget and the number of staff, itemized by training, tasks and organizational units.
2. Supervisory authorities must publish the activity report for the past year without undue delay, but no later than 30 June.
3. The Board shall make the information of all supervisory authorities in paragraph 1 available to the public no later than 31 July of each year.

Article 36 - Entry into force and application

- (1) This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
- (2) It shall apply to procedures initiated after 31. December 2023.