The Consumer Voice in Europe

GDPR Cross-Border Enforcement Regulation

BEUC's position paper

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Why it matters to consumers

The General Data Protection Regulation (GDPR) seeks to effectively uphold people's fundamental right to personal data protection in the EU. However, consumers and organisations representing them face disproportionate hurdles when lodging complaints before data protection authorities, particularly in cases involving complaints against companies that process personal data of consumers across many EU countries. These issues range from decisions from authorities taking too long while the infringements continue unimpeded, to complainants having insufficient rights to defend their interests, and the unpredictability of authorities' actions when they handle a case. The European Commission has proposed a Regulation to fix these problems, but it should be improved. Without these improvements, GDPR enforcement will continue to be seriously flawed, major infringers of the GDPR such as Big Tech companies will not face deterrent action, and consumers will not benefit from the protection they are entitled to.

Summary

BEUC – The European Consumer Organisation shares the European Commission's aim of tackling issues caused by the disparity of national procedures and the uncertainty surrounding cross-border cases under the GDPR. This is particularly relevant in the areas of admissibility of complaints, procedural rights of complainants and cooperation among supervisory authorities, including deadlines for different stages in the procedure. We would like to see certain aspects of the proposal improved.

BEUC's main recommendations to co-legislators:

1. *Ensure that the approach and scope of the Regulation are finetuned so that the Regulation does not inadvertently cause unnecessary administrative burden that results in more delays or that the harmonisation of rules precludes the application of more favourable national rules for data subjects.*

2. *Ensure that lodging complaints by consumers/data subjects is as easy as possible, minimising administrative hurdles.*

3. *Provide for mutual recognition of complaints so that the admissibility of complaints is assessed in an efficient manner.*

4. *Stipulate requirements for data protection authorities to both handle and investigate complaints with all due diligence, so that all complaints result in a formal, public decision that provide remedies to complainants.*

5. *Review the proposed rules on amicable settlements to ensure that they are only used in limited cases and do not impair consumers' personal data protection rights.*

6. *Ensure the Regulation requires closer, earlier and smoother cooperation between supervisory authorities to put an end to GDPR infringements swiftly and efficiently. The Regulation should establish adequate and proportionate deadlines for the lead and concerned supervisory authorities.*

7. *Establish a mechanism for data protection authorities to cooperate more closely with authorities from other fields.*

8. *Secure the same procedural rights for complainants as parties under investigation have, including the right to be heard at each relevant stage of the process and obtaining access to the documents necessary to defend their rights.*

9. *Finetune the provisions on confidentiality requirements to prevent unfounded confidentiality claims by defendants that obstruct procedures.*

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Introduction

BEUC – The European Consumer Organisation shares the European Commission's assessment that, after more than five years of application of the General Data Protection Regulation (GDPR), its enforcement needs to be improved, particularly in cross-border cases. However, we are concerned that **the draft Regulation does not go far enough to address the most concerning issues that consumer organisations[1] and other civil society organisations[2] have encountered** in their efforts to defend the rights that people have under the GDPR. There is even a chance **the proposal could worsen the current situation in some instances, for example in Member States where complainants' rights to be heard and to access documents are better under current national rules compared to the rules the proposal would stipulate.**

There are several positive aspects of the proposal which could be further developed to ensure the GDPR is better enforced. For example, we welcome that a complaint is determined as admissible if minimum elements are contained therein. We also welcome the Commission's intention to smoothen the cooperation between the lead supervisory authority (LSA) and concerned supervisory authorities (CSAs) earlier in the process so that decisions are adopted within a reasonable time.

The Regulation needs to be improved on certain aspects, notably on the procedural rights of complainants, amicable settlements, the regulation of confidential information, how authorities cooperate with each other and under which timeframe, and the diligence of the lead SA to investigate and take decisions on complaints. If the Regulation is not thoroughly amended, it risks not delivering for data subjects.

The enforcement of the GDPR needs to be more effective and deterrent. It should take less time to put an end to multinationals infringing EU data protection rules.

BEUC's views on the proposal are informed by its own experience and that of its members as complainants in several BEUC coordinated actions[3] under Article 80 GDPR.

[1] BEUC's recommendations on harmonising cross-border procedural matters in the GDPR, BEUC-X-2023-034, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-034_recommendations_on_harmonising_cross-border_procedural_matters_in_the_GDPR.pdf

[2] Improvements to the enforcement of the General Data Protection Regulation (GDPR) - Joint NGO letter, 12 June 2023, available at https://www.beuc.eu/letters/improvements-enforcement-general-data-protection-regulation-gdpr-joint-letter

[3] https://www.beuc.eu/actions

BEUC welcomes the efforts by the European Data Protection Board (EDPB) to foster greater cooperation and create more efficient cross-border enforcement for example via their guidelines, their internal documents, their 2021-2023 Strategy[4], their Work Programme, the "Vienna Declaration and the EDPB Document on selection of cases of strategic importance"[5-6]. We also commend the efforts of the European Data Protection Supervisor (EDPS) to trigger a deeper discussion on how to improve enforcement.[7] In addition, we welcome the EDPB-EDPS joint opinion[8] on this proposal that calls for numerous improvements which we also recommend in our position paper. The work of both the EDPB and the EDPS informs and enriches BEUC's position.

1. Scope and overall objectives of the Regulation

We note that one of the aims of the draft Regulation is to harmonise procedural rules for the handling of GDPR complaints and improve authorities' cooperation when conducting investigations in cross-border cases. While we understand the policy choice of focusing on the GDPR's cross-border enforcement (as per Article 1 of the draft Regulation and Article 4(23) GDPR), the Regulation must result in complainants keeping the procedural rights that they enjoy under national law or that are derived from the right to good administration in Article 41 of the EU Charter of Fundamental Rights, such as the right to be heard at different stages of the procedure or the right to access key documents in the procedure. The Regulation should build on Member State's best practices and address the relationship between cross-border procedural rules contained therein and national procedural rules.

Furthermore, most of the rules in the proposed Regulation would apply to a wide spectrum of cases that are very different in nature and scope and may have very few similarities other than their cross-border elements. For example, it may not make sense to require a 'summary of key issues' and 'preliminary findings' prior to a draft decision in a case where a company refused to grant access to data to a data subject.

The draft Regulation is tailored to procedures involving systemic cases that involve complex instances of processing of personal data of a large number of data subjects and grave and recurrent infringements. Frontloading discussions on the scope of the investigation is the Commission's rationale for adding rules establishing two new, additional stages – the summary of key issues (Article 9) and the preliminary findings (Article 14) – to the procedure. However, the procedure proposed by the draft Regulation may be inadequate for cases that require little investigation, whose scope for investigation is clear and that can be addressed through simple remedies. This could result in unnecessary administrative burden and a slower enforcement of the GDPR.

Therefore, it is necessary to amend the proposed Regulation to allow supervisory authorities to establish a different procedure for cases that involve GDPR infringements that are different in nature and that can be addressed using different types of procedures.

[4] EDPB Strategy 2021-2023. Available here: https://edpb.europa.eu/sites/default/files/files/file1/edpb_strategy2021-2023_en.pdf
[5] EDPB Document on selection of cases of strategic importance. Available here: https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-document-selection-cases-strategic-importance_en
[6] Statement on enforcement cooperation, https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf
[7] See, for example, EDPS Conference Report 2022, The future of data protection effective enforcement in the digital world, available at https://edps.europa.eu/data-protection/our-work/publications/brochures/2022-11-10-edps-conference-report-2022-future-data-protection-effective-enforcement-digital-world_en
[8] EDPB-EDPS Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679. Available at https://edpb.europa.eu/our-work-tools/our-documents/edpbedps-joint-opinion/edpb-edps-joint-opinion-012023-proposal_en

Both the LSA and CSAs must be able to **designate a specific case as "high impact"** upon identifying that the complaint or any other element of the case raises complex questions and or has a larger impact than other cases. In these cases, the lead supervisory authority shall produce and hear views on a document that preliminarily identifies possible infringements of the GDPR and possible corrective measures, i.e., preliminary findings as defined in Article 14 of the Regulation proposal.

When neither supervisory authority involved designates the case as "high impact", the lead supervisory authority should work towards preparing a draft final decision within specific a time limit (See Section 6). Very importantly, in cases which are not "high impact", the LSA should not prepare a summary of key issues or come up with preliminary findings.

While there is a need to device a procedure that is simpler than the one proposed in the Regulation to resolve cases involving straightforward violations of the GDPR quickly, such faster procedure cannot consist only in reaching amicable settlements (see section 4). There must be deterrent consequences for not respecting the GDPR.

BEUC recommendations:

- **Ensure that the Regulation does not deprive data subjects of the rights they have under national law when they complain against a company with its main establishment in another EU country.**
- **Simpler cases should be subject to simpler procedures for a quick enforcement of the GDPR thus legislators should carefully reassess which provisions of the Regulation apply to which type of cases and avoid adding too much administrative burden and delays to simple cases that could be resolved quickly.**

2. Complaints should be easy to file, and their admissibility should be established only once by the receiving DPA

Clarifications about the completeness and admissibility of complaints

BEUC welcomes that the draft Regulation would establish rules on the submission, handling and investigation of complaints to simplify the first stages of a procedure following the lodging of a complaint. We also welcome it would ensure the one-stop-shop mechanism focuses on the substance of the potential GDPR infringements raised by the complaints and those identified during the authority's investigations. However, these aspects of the Regulation should be further clarified to avoid legal uncertainty.

BEUC welcomes that Articles 3(1), 3(3) and 3(6) and recital 4 establish that a complaint is admissible if it is complete, and that it is complete as long as it contains the information required for in the Annex to the draft Regulation[9]. We also welcome the draft Regulation establishes a deadline for acknowledging the receipt of the complaint (one week) and declaring the completeness and admissibility of a complaint (one month). These rules can contribute to speeding up the handling of complaints and addressing issues consumer organisations have experienced in cross-border cases[10].

[9] We note that the EDPB-EDPS Joint opinion 01/2023 similarly welcomes harmonisation of admissibility requirements while suggesting that further specification of the rules on admissibility are necessary. See, in particular, paras. 22 *et seq*.

[10] See, in particular, BEUC's recommendations on harmonising cross-border procedural matters in the GDPR, BEUC-X-2023-034, pp. 2-4, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-034_recommendations_on_harmonising_cross-border_procedural_matters_in_the_GDPR.pdf

While generally welcoming Article 3(4), we regret that it does not explicitly mention that the LSA must not assess the admissibility of a complaint a second time. To the extent that this is not clarified, there is a degree of legal uncertainty that can create unnecessary obstacles and delays.

This concern is not merely hypothetical, as the double assessment of the validity of a complaint is an issue that has been experienced by BEUC members in our coordinated action against Google's location tracking (Every Step You Take) launched in November 2018.[11] Over a year after the complaints were lodged, the lead authority reached out to BEUC members requesting further evidence that they fulfilled the requirements to represent data subjects under Article 80 GDPR, and information to determine the legal interest of the data subjects they represented to lodge the complaints.[12] This hinders the trust between SAs and efficiency of their work and cooperation.

Therefore, Article 3(4) should establish that the SA with which the complaint was lodged shall immediately transmit the complaint to the LSA upon the expiry of the deadline set forth in paragraph 3 of the same article. **Article 3(4) should also make it clear that the completeness and admissibility of a complaint must only be assessed once**, by the supervisory authority with which a complaint was lodged.

On the other hand, Article 3(5) should not put the burden on the complainant to submit a non-confidential version of their complaint if they ask for confidentiality. It should be the task of the SAs to respect this request and take all appropriate measures to safeguard the confidentiality of the complainant and/or parts of the complaint flagged by the data subject or organisation representing them.

Additionally, the obligation to acknowledge receipt of a complaint by a SA in Article 3(6) should be complemented by the attribution of a case number by the supervisory authority and the designation of a case handler to the complaint to allow the complainant to request information regarding the status of the complaint.

Clarifications about the Form in Articles 3 and 4 and the Annex are needed

Whereas the Annex to the draft Regulation could have a positive impact by making it easier for complainants to draft complaints and ensure quicker and more legal certainty as to when complaints can be deemed admissible, a few aspects need to be clarified or amended.

First, Article 3 and recital 4 should explicitly clarify that data subjects and organisations representing them may submit a complaint using means different to the form (e.g., by e-mail) and it should be admissible as long as the information requested in Annex I is included in the submission. This would be in line with Article 3(1), which places more importance to the information contained in the Annex, and with recital 141 of the GDPR, which emphasises the need that SAs facilitate the submission of complaints.

Second, Article 3 and/or the Annex should clarify that natural persons lodging complaints should not be required to use a national electronic ID or e-government system to submit the form. This is important to address the issues that have been observed in some jurisdictions where natural persons that are not nationals encounter difficulties because of

[11] https://www.beuc.eu/every-step-you-take

[12] The Long and Winding Road - Two years of the GPDR: A cross-border data protection enforcement case from a consumer perspective, BEUC-X-2020-074, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-074_two_years_of_the_gdpr_a_crossborder_data_protection_enforcement_case_from_a_consumer_perspective.pdf

the requirement to use an e-government system that only works with national cards.[13] The European Commission is expecting that up to 20% of EU citizens will still not have the possibility to use a digital identity by 2030[14].

Third, the Annex should mention that complainants need to specify if they want confidentiality when submitting a complaint. This is important in the case of whistleblowers who work for a company that is the controller or processor against which the complaint is lodged, for example.

Fourth, point 1 of part A of the Annex should be amended to clarify whether an organisation is relying on Article 80(2) GDPR and their Member State legislation to lodge a complaint without a data subject's mandate.

This is important because some BEUC members have experienced issues when relying on Article 80(2) in cross-border cases. For instance, BEUC's Danish member Forbrugerrådet Tænk issued a complaint against Google's handling of location data under Article 80(2) GDPR in March 2018. The Danish Data Protection Authority (DPA) transferred the complaint to the lead authority, the Irish Data Protection Commission (DPC). Some months later, the Irish DPC requested our Danish member to re-submit their complaint, but this time on behalf of a data subject because Ireland did not implement Article 80(2) GDPR. This created a further impasse and uncertainty which this Regulation must prevent.

If this conflict of law remains unresolved, Article 80(2) could become unusable in cross-border cases. Article 3 of the proposal must ensure the recognition of the law of the complainant's country. The Regulation must clarify that the SA with which the complaint is lodged must be competent to determine the admissibility of the complaint, and that this decision must be recognised in the jurisdiction of the LSA.

Fifth, the supplementary information contained in part B of the Annex to the draft Regulation should be considered optional information. This is particularly important when complainants are data subjects, as the information contained in this part of the annex can be burdensome to provide e.g. screenshots. When considering the requirements in terms of supplementary information that are to be provided by the complainants it must be born in mind that the GDPR requires the data controller to prove that they are in compliance with the law (Art. 5(2) GDPR).

Sixth, it should be clear that complainants cannot be required to contact the data controllers before lodging a complaint. This would be contrary to the GDPR, which does not require complainants to do so before lodging a complaint with a supervisory authority. This should be made clear in Article 3, the Annex, and related recitals.

Seventh, to prevent the risk that a form limits the ability of the complainant to make all relevant information regarding the complaint known to the DPAs, it should be specified that SAs shall not set character or word limits, or similar restrictions, to either the complaints or via the form as a whole or the different sections or attachments that make them up.

[13] This is the case of the Spanish and Polish DPAs. See NOYB's submission to the call for evidence on the initiative "Further specifying procedural rules relating to the enforcement of the General Data Protection Regulation", p. 3, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13745-Further-specifying-procedural-rules-relating-to-the-enforcement-of-the-General-Data-Protection-Regulation/F3390245_en

[14] . European Parliament Research Service (EPRS) (2023), Updating the European digital identify framework, p.5, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698772/EPRS_BRI(2021)698772_EN.pdf

BEUC recommendations:

- **Clarify in Article 3 that the admissibility of a complaint must only be assessed by the SA with which the complaint is lodged.**
- **Clarify aspects of the Annex not to add burdens or unnecessary restrictions on complainants who suffer a violation of their fundamental right to data protection.**
- **While the form in the Annex could be available as an option, it shouldn't be the only possibility to submit complaints.**

3. Supervisory authorities should handle and investigate all complaints with all due diligence

Ensuring that supervisory authorities have the capacity – including all the necessary human and financial resources – as well as clear guidance to handle the complaints they receive is necessary so that the GDPR is enforced in a robust and coherent manner, ultimately protecting the fundamental rights to data protection across the EU. The proposed Regulation addresses how SAs should prioritise cases, but it does so in a manner that raises concerns to BEUC.

BEUC would welcome if SAs had to take into account different circumstances to prioritise cross-border cooperation in certain cases such as "*the expediency of delivering an effective and timely remedy to the complainant, the gravity of the alleged infringement and the systemic or repetitive nature of the alleged infringement*"[15].

However, Article 4 of the proposal does not talk about prioritising cooperation in certain cross-border cases, but about circumstances to take into account by SAs when investigating complaints. This could be misinterpreted as meaning that some complaints that lead to an LSA deciding to open an investigation should not be investigated with all due diligence because they do not include any circumstances described in Article 4. Therefore, in line with the GDPR and the EDPB's "Vienna Declaration" of 28 April 2022[16] and the EDPB Document on selection of cases of strategic importance[17], **BEUC recommends amending Article 4 to make this article about prioritising cooperation in cross-border cases** instead**.**

In addition, recital 6 should also be modified as it adds an additional 'relevant circumstance' to those indicated under Article 4. The recital indicates that the SAs may be informed when deciding whether to investigate a case by the fact that the complainant exercised their rights in court as per Article 79(1) of the GDPR. This must be deleted as it runs counter to both Article 47 of the Charter of Fundamental Rights and case law of the Court of Justice of the European Union (CJEU). The CJEU has been clear[18] that data subjects and organisations representing them can seek different remedies to infringements of the GDPR concurrently and independently, so maintaining the current recital would result in a weaker protection of consumer's personal data if complaints that are also subject to a court proceeding are not investigated.

[15] Article 4 of the draft Regulation.
[16] Statement on enforcement cooperation. Available here https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf
[17] EDPB Document on selection of cases of strategic importance. Available here: https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-document-selection-cases-strategic-importance_en
[18] See, e.g. CJEU Case C-132/21 (*BE v Nemzeti Adatvédelmi és Információszabadság Hatóság*) establishes that the GDPR and Article 47 of the Charter of Fundamental Rights must be read as permitting the remedies provided for in Article 77(1) and Article 78(1) of the GDPR, on the one hand, and Article 79(1) thereof, on the other, to be exercised concurrently with and independently of each other.

Moreover, despite the title of Chapter II of the proposed Regulation ("Submission and handling of complaints"), we are concerned that neither Article 3 nor Article 4 or recital 6 reiterate that DPAs shall handle complaints with all due diligence.

Article 57(1)(f) GDPR is clear that DPAs shall "*handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80,* ***and investigate, to the extent appropriate****, the subject matter of the complaint (…)*" (emphasis added). However, the GDPR does not say that DPAs should handle the complaints to the extent appropriate or only take a decision about only parts of a complaint. The CJEU has been clear in its cases C-362/14 (Schrems I)[19] and C-311/18 (Schrems II)[20] that "*[t]he supervisory authority must handle [complaints] with* ***all due diligence***"[21] (emphasis added). Therefore, Article 4 of the Regulation and recital 6 should be amended to **ensure that all subject matters in a complaint lead to a (public) decision from the supervisory authority**.

If the supervisory authority decides not to deal with a subject matter raised by the complaint, this cannot be an arbitrary choice. In line with Article 8(2)(d) and section 2 of Chapter III (full or partial rejection of complaints) of the proposal, LSAs should adopt a reasoned decision to fully or partially reject a complaint explaining why it did not find an infringement of the GDPR with all due diligence. **Recital 17** should therefore **be redrafted as an Article** of Section 1 of Chapter III to clarify that the SA fully or partially rejecting a complaint should do so by means of a decision that may be challenged before a national court. This is in line with joint cases C-26/22 and C-64-22, where the CJEU emphasised that Article 78(1) GDPR (Right to an effective judicial remedy against a supervisory authority) must be interpreted as meaning that for a judicial remedy to be effective as required by that provision, SA's decisions must be subject to full judicial review. The judicial review of a decision on a complaint taken by a SA must not be limited to whether the SA handled the complaint, investigated the subject matter of the complaint to the extent appropriate and informed the complainant of the outcome of the investigation[22].

Lastly, Article 4 and recital 25 should explicitly clarify that a complaint must be treated in a complaint-based procedure and that the complainants' rights cannot be bypassed if the LSA opens a parallel *ex officio* investigation on the same subject matter. BEUC members have encountered issues in our coordinated action against Google's location tracking whereby the LSA launched an own-volition enquiry in parallel to our members' complaints.

This meant BEUC members are not part of the own volition inquiry dealing with the very topic of their complaints, which has left BEUC members facing unjustified difficulties to represent data subjects and put them in a disadvantaged position vis-à-vis the parties under investigation. The rights to be heard and to have access to the administrative file are intrinsic to complainants' possibility to contradict factual and legal elements that will have an effect on their rights and freedoms, to ensure decisions are based on correct factual and legal reasoning, and to ensure public trust in the DPAs and the public administration more broadly.

[19] Para 63.
[20] Para. 109.
[21] *Ibid*.
[22] Para. 53.

BEUC recommendations:

- **Article 4, recitals 6 and 12 should be amended to ensure that:**
  - **SAs prioritise cooperation in cross-border cases of strategic importance rather than deciding not to investigate cases because they do meet the criteria in Article 4 and recital 6.**
  - **Supervisory authorities shall handle and investigate all complaints with all due diligence.**
  - **All complaints are subject to a (public) decision, including all its subject matters. If the supervisory authority decides not to deal with a subject matter raised by the complaint, it should adopt a public, reasoned decision to reject this part of the complaint explaining why it did not find an infringement of the GDPR and the remedies the complainant has against this decision.**

- **Chapter II of the proposal and related recitals must be amended to ensure that if supervisory authorities exercise their discretionary powers to carry out own-initiative investigations, this does not in any way undermine the rights of the complainants and/or result in delays. This should apply in particular when an own-initiative investigation is opened alongside a complaint procedure in the frame of Article 60 GDPR. The relationship between own-volition inquiries and complaints should be clarified more explicitly in the Regulation so that they do not have a negative impact on the handling and investigation of complaints or complainants' rights.**

4. Amicable settlements should be the exception, not the norm.

Under the GDPR, amicable settlements are only mentioned in recital 131. In addition, a study commissioned by the EDPB[23] shows there are huge differences across Member States on this point. The study concludes that amicable settlements under the GDPR are only allowed by law in six EU countries.

Amicable settlements could be a quick solution to address simple, non-systemic GDPR infringements, such as when a data controller does not reply to a data subject access request to their personal data. However, amicable settlements are not suitable for all types of cases, as already recognised in recital 131 GDPR and in the guidelines of the European Data Protection Board[24].

The GDPR, in recital 131, only foresees the possibility of amicable settlements when the possible infringement detected, or the subject matter of the complaint only affects processing activities in the Member State where a complaint was lodged and do not or are not likely to substantially affect data subjects in other Member States[25].

In this sense, Article 5 of the draft Regulation can be **problematic** for effectively exercising data subject rights under the GDPR. Ultimately, not respecting the GDPR should have deterrent consequences on data controllers and processors.

[23] Millieu (2020) Study on the national administrative rules impacting the cooperation duties for the national supervisory authorities, available at https://edpb.europa.eu/our-work-tools/our-documents/other/study-national-administrative-rules-impacting-cooperation-duties_en

[24] See EDPB Guidelines 06/2022 on the practical implementation of amicable settlements, paras. 13, 14. https://edpb.europa.eu/system/files/2022-06/edpb_guidelines_202206_on_the_practical_implementation_of_amicable_settlements_en.pdf

[25] See also the EDPB Guidelines on amicable settlements, para. 11.

Similarly, contrary to Article 5 of the proposal, it should not be understood that data subjects agree to an amicable settlement and that they withdraw their complaint when they simply fail to object to the amicable settlement proposed by an SA within a month.

BEUC recommendations:

Article 5 must be amended to:

- **reduce its scope of application, specifying that amicable settlements can only be acceptable in very limited cases following specific criteria in line with the EDPB guidelines.**
- **require the positive agreement of the complainant for amicable settlements to be accepted. Silence cannot amount to agreement.**
- **ensure, in line with recital 6, that supervisory authorities can still initiate an *ex officio* investigation on the same grounds, for example in the case of systemic or repetitive infringements.**

5. Achieving a smoother, closer and more effective cooperation between authorities

General observations

BEUC welcomes how the proposal tries to ensure SAs can resolve issues and align early in the process and not at the end of a lengthy investigation by the lead DPA in cross-border cases. However, the proposal risks introducing greater administrative burden and limitations of SAs' powers if not carefully amended. We are not convinced that all the stages proposed in cross-border procedures are necessary for all cases. As mentioned in Section 1, adding many steps to reaching decisions on straightforward, non-systemic cross-border cases risks burdening GDPR enforcement. While the proposal tries to add additional steps only for complex matters or cases, what constitutes a 'complex' case is not defined which can lead to unfortunate situations and unexpected consequences.

For this reason, we suggest limiting the cases in which a series of exchanges of views on the scope and other issues is necessary between CSAs and LSAs to "high impact cases". Importantly, it would be the responsibility of the CSAs and the LSA to designate a case as "high impact" before the investigation is opened (See Section 1 on the scope of the Regulation).

In cases that have not been designated as 'high impact' cases by the LSA or any CSA, the LSA should not be tasked with drafting a summary of key issues or preliminary findings, for these stages would add very little to the process while adding administrative burden and extending the duration of the procedure. This means that the provisions in the proposal regarding the drafting of a summary of key issues and preliminary findings shall not apply to cases that have not been designated as "high impact" so as to avoid prolonging the process of cases where cooperation among authorities is very likely to be smooth.

Once a supervisory authority has designated a case as "high impact", in order to facilitate the alignment of the among supervisory authorities, it is convenient that the CSAs have a chance to make their views known on the preliminary main findings of the investigation and the possible sanctions to be imposed on the parties under investigation. However, even in complex cases having two additional phases to the procedure between the opening of an investigation and the draft decision risk unnecessarily prolonging the procedure. Therefore, we suggest that the **stage of the procedure corresponding with the drafting of and hearing views on the summary of key issues is merged with the stage of drafting of and hearing views on the preliminary findings**. This way, the LSA would draft preliminary findings supported by a summary of key issues on which CSA

and also the parties under investigation and complainants (see Section 6 of this paper) may make their views known.

Therefore, Articles 2, 4, 8, 9 and 14 should be amended to introduce respectively a definition of "high impact cases" and the conditions under which a SA may designate a case as "high impact". They shall also be amended so that the summary of key issues shall not be drafted for any other purpose than to support preliminary findings and that preliminary findings shall only be prepared by LSAs in the context of high impact cases.

Furthermore, while some deadlines are introduced, which can help accelerate the process, deadlines are not introduced for most lead supervisory authorities' tasks and duties. Similarly, it is essential that the Regulation ensures that final decisions are taken within a reasonable time.

It is unacceptable for serious GDPR violations not to be sanctioned after almost five years, which is the situation of BEUC's coordinated action with members against Google's data location tracking at the time of writing.

Suggested amendments to the modalities and stages of cooperation between authorities impact the provisions on the rights of the parties to the procedure and vice versa as these are interwoven in the Regulation proposal. In this section of the paper, we imply the changes that we propose in the following section on the procedural rights of the complainants, which consist fundamentally in upholding the procedural rights of the complainants by granting the complainants access to the file and a right to be heard at each stage of the procedure.

BEUC recommendations:

- **Introduce a definition of 'high impact' cases in Article 2 to ensure that those cases not falling under such category follow an expedite procedure.**
- **Merge the staged of the procedure corresponding to the summary of key issues and the preliminary findings to avoid unduly prolonging the cases.**

Cooperation with relevant authorities beyond GDPR infringements should be foreseen

The Regulation is silent regarding the cooperation of SAs with other authorities. The Regulation should be explicit in ensuring that SAs are allowed to engage, exchange information and cooperate with other authorities in areas such as competition, financial services, energy, telecom or consumer protection when they become aware of any potential infringements under legislation under which they are not competent. We recall our joint letter co-signed by 11 NGOs to the European Commission ahead of the publication

of the draft Regulation[26]. It is indeed likely that CSAs incidentally find evidence related to potential infringements in the abovementioned areas when conducting investigations related to data protection. Recent CJEU case law such as case C-252/21[27] has highlighted the interplay between areas such as data protection, competition and consumer protection.

BEUC recommendation:

- **Ensure that the Regulation fosters cooperation among supervisory authorities in different regulatory fields instead of preventing it.**

The lead supervisory authorities' role should be clarified so that procedures are faster and more predictable.

The draft Regulation could benefit from greater clarity on the provisions on information sharing between the LSA and CSAs. Whereas it is reasonable that SAs do not share business secrets or any other confidential information when communicating publicly, **Article 21(1)** needs to specify that when communicating between each other, LSAs and CSAs must share any information collected or obtained in cross-border cases, including confidential information, thereby allowing for effective cooperation between SAs.

Setting proportionate time limits throughout the procedure to effectively deliver remedies to data subjects.

The Regulation should establish a set of additional **deadlines, particularly upon LSAs**, that would make GDPR cross-border enforcement more predictable and efficient. BEUC and BEUC's member experiences include delays in cross-border cases which are often caused by LSAs not reaching milestones in the process within reasonable time periods. Hence, it is of paramount importance to establish deadlines for LSAs to complete different tasks. The EDPB and EDPS raised similar concerns in their joint opinion and emphasised the need that LSAs and CSAs are given a more equal treatment in terms of procedural deadlines and the right of initiative.[28]

BEUC notes that there is a remarkable degree of disparity in the national rules imposing deadlines on SAs to prepare a draft. National legislation sets out deadlines below six months in many Member States (Austria, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland Slovenia, Slovakia) to prepare a draft decision, deadlines between six months and one year in others (Italy, Spain) and longer deadlines in one case (Portugal) to complete the full procedure in two to three years. At the same time, many SAs are required simply to handle cases without undue delay (Finland, Iceland, Liechtenstein, Netherlands, Norway, Sweden).[29] Furthermore, in various EU Member States national administrative rules provide legal grounds for the suspension or extension of procedural deadlines in cross-border cases.[30]

We suggest below a comprehensive set of rules that builds upon the procedural deadlines already proposed in the Regulation, the wish list sent by the EDPB to the European

[26] https://edri.org/wp-content/uploads/2023/06/BEUC_Ccivil-society-letter-on-upcoming-GDPR-procedural-harmonisation-proposal.pdf
[27] Bundeskartellamt v Meta C-252/21 https://curia.europa.eu/juris/document/document.jsf;jsessionid=346F8626813BDED16C7F37E1F329046A?text=&docid=275125&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=62741
[28] Ibid. para. 42.
[29] Millieu (2020) Study on the national administrative rules impacting the cooperation duties for the national supervisory authorities, available at: https://edpb.europa.eu/our-work-tools/our-documents/other/study-national-administrative-rules-impacting-cooperation-duties_en
[30] Ibid.

Commission on 10 October 2022[31], national practices and existing deadlines in Member State law. We also bear in mind that it takes longer for data subjects to obtain remedies to GDPR infringements than the mere completion of the administrative procedure, since GDPR infringers, particularly big tech companies, manage to extend the procedure though appeals and litigation after a final decision has been issued by the LSA.

Comparison of deadlines for SAs in the Commission's Proposal and BEUC's proposal

Topic	Commission's proposal	BEUC's proposal
Admission of the complaint, LSA appointment, and opening of the investigation	Admissibility of the complaint (SA with which the complaint is lodged) and LSA appointment: 1 month. Article 3 Recital 4	= Commission's proposal + 1 month for the LSA to decide to open an investigation or reject the complaint.
Summary of key issues	4 weeks for CSAs to comment on the summary of key issues. Articles 8, 9 Recitals 12, 13)	Not applicable
Preliminary findings	9 months for LSA to communicate preliminary findings to the parties under investigation if CSAs do not provide comments to the summary of key issues. Articles 9(6), 14 and 15 Recitals 8, 14, 26	6 months for the LSA to draft preliminary findings. 2 months for the CSAs to comment on them
Draft decision	N/A Article 11 Recitals 18, 23	6 months for the LSA to prepare a draft decision from the opening of an investigation or, in high impact cases, 6 months upon receiving the views in writing by the parties under investigation, the complainants and the CSAs. Two months for the complainants, parties und to make their views known in writing.

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

Revised draft decision	N/A (Articles 60(4) and 60(5) GDPR already impose a series of time limits on Sas) Article 17 Recitals 23, 27	= Article 60 GDPR deadlines + 4 months for the LSA to issue a revised draft decision.
Final decision	N/A Article 16 Recital 34	A 4-month deadline for the LSA to issue a final decision after receiving relevant and reasoned objections from CSAs if the LSA does not refer the subject matter of the case to the Board (Article 65 GDPR)

Ensuring that the early stages of the procedure until the opening of an investigation are completed swiftly

As previously mentioned in Section 2 of this paper, BEUC welcomes the time limits set in Article 3 concerning the acknowledgement of the receipt of the complaint and the determination of the admissibility and completeness of the complaint.

BEUC welcomes that Articles 3(3) and 3(4) imply that the establishment of the LSA shall take place within a month of the complaint being lodged. This would be a clear improvement. When BEUC members lodged complaints between November and December 2018 against Google's location tracking practices, it took between six and seven months for the Irish DPC to be appointed as the lead authority.[32]

However, we note that Chapter III must be amended to include a provision **setting a time limit of one month, following the transmission of the complaint to the LSA according to Article 3(4), for the LSA to open an investigation** or take a reasoned decision fully or partly rejecting the complaint.

The LSA should have clear deadlines in relation to the preliminary findings.

Article 14 must be amended to establish a time limit for **LSAs to communicate its preliminary findings to the CSAs, the parties under investigation and the complainants**[33]. The LSA should do so **within six months**[34] of opening the investigation.

[32] https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-074_two_years_of_the_gdpr_a_cross-border_data_protection_enforcement_case_from_a_consumer_perspective.pdf

[33] N.B.: The suggested amendment renders Article 14(3) redundant.

[34] The suggestion of a four mount time limits is based on national laws the practice of SAs where national law does not provide deadlines discussed above in this section.

Draft decision and partial or full rejection of complaints should have similar deadlines

Article 16 needs to be amended to ensure the LSA delivers and shares a draft decision to the CSAs, parties under investigation, and complainants within **six months**[35] upon receipt of the views of the CSAs, parties under investigation and complainants on the preliminary findings in the case of high impact cases and **six months** from the opening of an investigation in the case of cases that have not been designated as high impact.. The deadline should be the same for the LSA to issue a draft decision partially or fully rejecting the complaint.

The LSA should provide revised draft decisions and final decisions within a set deadline

Section 3 of Chapter III must be amended to specify time limits for the LSA to issue revised draft decisions and final decisions, thereby ensuring that the procedure is not protracted and that data subjects can expect to receive remedies within a reasonable and predictable time frame.

Moreover, **Article 20(3)** should be amended to ensure that the conclusions of the LSA in a draft decision transmitted to the CSAs can rely on any document that is part of the administrative file, not just documents cited in the preliminary findings, which must have been accessed by both the complainants and the parties to the investigation.

In line with other time limits suggested above, the time limit for the LSA to review the draft decision upon receiving comments by CSAs and the views of the parties should not exceed **four months.** Similarly, the LSA should be requested to issue a final decision four months after the expiration set in Article 17(2) for the parties to make their views on a revised draft decision known.

Concerned supervisory authorities should not see their right to provide relevant and reasoned objections on draft decisions restricted

Whereas the draft Regulation aims to ensure that the views and arguments of CSAs can be shared in as early of a stage as possible and be meaningfully taken into account by the LSA, the draft Regulation also poses a specific risk in unduly restricting the role of the CSAs against the letter and spirit of the GDPR.

Article 18(1) of the draft Regulation would unduly restrict the definition of relevant and reasoned objections in Article 4(24) GDPR, and therefore constrain the ability of CSAs to comment on LSAs' draft decisions.

Article 18(1)(a) limits the ability of CSAs to raise objections based on factual elements not included in the draft decision – but possibly included in the preliminary findings or administrative file – or relevant and reasoned objections based on legal elements. This **limitation on** their **scope** is not justified. Similarly, Article 18(1)(b) and recital 28 would **prevent CSAs from invoking additional infringements of the GDPR** in their reasoned objections to the draft decision. This is concerning as in fact several EDPB decisions regarding Article 65 of the GDPR have precisely touched upon additional GDPR infringements not identified by LSAs in their draft decisions.

[35] The suggestion of a four mount time limits is based on national laws or the practice of SAs where national law does not provide deadlines discussed above in this section.

We understand that Article 18 aims to speed up the process of the procedure, but the consequences of the restrictions are too far-reaching, compromising the independence of the CSAs to perform their tasks and weakening the GDPR enforcement regime. Consequently, **Article 18(1) should be deleted and recitals 27 and 28 should be amended accordingly.**[36]

The role of the European Data Protection Board should be further specified

The role of the EDPB in cross-border cases could be further specified to facilitate cooperation and guarantee the rights of the parties.

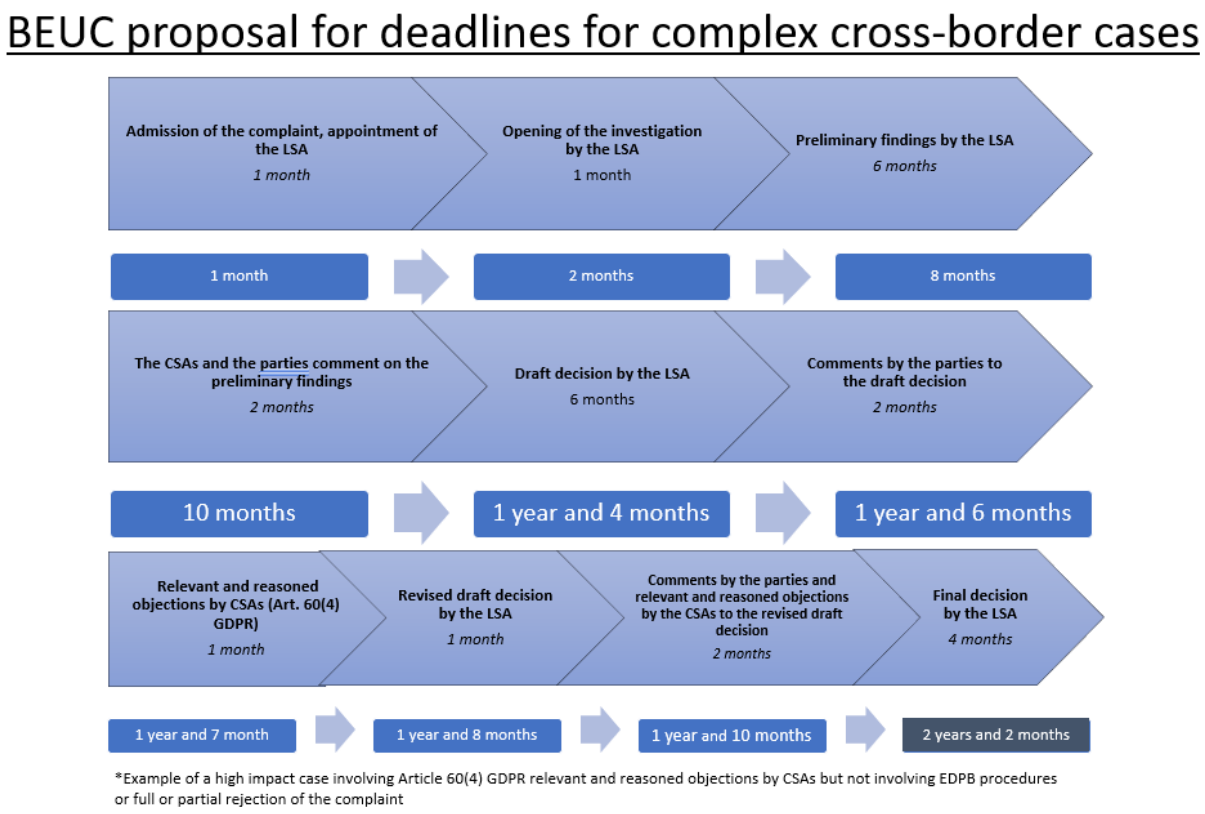
The role of the EDPB would also be more constructive if it was required in Articles 22(3), 23(e) and 28 to share with the parties to the procedure which objections are not retained as being relevant or reasonable (see Section 6 of this document for a further discussion of the rights of complainants).

In addition, in line with the EDPB-EDPS Joint Opinion on the proposal, Article 28 should be amended to prevent the undue territorial restriction of the scope of application of Article 66 GDPR urgency procedure decisions. Similarly, Article 24 should be amended to prevent the new Regulation from jeopardising the ability of the EDPB to comply with the time limits that Article 65 establish for the EDPB to adopt a binding decision.[37]

BEUC recommendations:

- **Set clear and specific time limits for the lead supervisory authority to perform its tasks throughout the procedure and share information, including communicating a summary of key issues, preliminary findings, a draft decision, a revised draft decision and a final decision.**
- **Expand the deadlines set for concerned supervisory authorities where appropriate to ensure that they have the ability to meaningfully contribute to the process and to perform their tasks. Further specify the conditions under which supervisory authorities much share information and cooperate, ensuing that CSAs have all the relevant information they need, including confidential information, in a timely manner.**
- **Delete Article 18(1) not to restrict the ability of CSAs concerned supervisory authorities to raise relevant and reasoned objections to draft decisions from LSAs.**
- **Amend Article 28 to avoid unduly restricting the territorial scope of urgent decisions and to align the time limits in this Regulation with those set out in the GDPR.**
- **Amend Articles 25 and 26 to clarify the time limits for the different phases of the adoption of binding decisions under Article 65 GDPR.**
- **Specify a concise time limit for the LSA to implement urgent decisions by the EDPB under Article 66 GDPR.**

[36] In their Joint Opinion 01/2023 on the proposal, the EDPB and the EDPS have expressed similar criticism and recommendations, paras. 93-98.
[37] Ibid, section 6.1.2.



6. Complainants need better procedural rights under the Regulation

Complainants must be considered parties to the procedure

The draft Regulation is underpinned by a fundamental assumption that is made explicit in recital 25, according to which investigations by a supervisory authority do not constitute an adversarial procedure, but it is instead a procedure started by a supervisory authority at the petition of the complainant. From here it follows that the parties under investigation and the complainant should not have the same procedural rights meaning that complainants cannot invoke a right to a fair hearing or access to the administrative file as the draft Regulation assumes the decision does not affect their legal position.

BEUC strongly disagrees with this characterisation of the procedure, which transfigures the right to lodge a complaint into a petition or information right to the SA. We note that the CJEU affirmed in joint cases C-26/22 and C64/22 that the complaints procedure "is not similar to that of a petition" and "is designed as designed as a mechanism capable of effectively safeguarding the rights and interests of data subjects"[38]. BEUC urges policymakers to ensure the Regulation evens out the rights of the complainants in relation to the rights of the parties under investigation. Doing otherwise would not only be against the interest and rights of the complainants but also against the interest of the procedure, since complainants are more likely to successfully appeal procedures where they are not adequately involved and heard if they seek remedies under Article 78 GDPR.

The **right for complainants to be parties to the procedure** is derived from the fundamental right to good administration as enshrined in Article 41(2) of the EU Charter

[38] Para. 58.

of Fundamental Rights ('the Charter'). Article 41(2) establishes that every person has the right to be heard before any individual measure which would adversely affect them is taken; the right to have access to their file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; and the obligation of the administration to give reasons for its decisions.

CJEU's case-law[39] has reiterated that EU Member States are bound by the Charter when they act within the scope of Union Law as is the case when a Member State authority applies the GDPR. The **Regulation should respect the Charter and follow relevant EU case law and clarify and harmonise the right of the complainants to be heard by SAs as parties to the procedure**.

We note that the draft Regulation appears to draw inspiration from other fields of law, such as competition law. Whereas specific procedural aspects of competition law might be replicable, it must be born in mind that the purpose of competition law is to ensure competitive markets by maximising consumer welfare. The GDPR's primary objective, on the other hand, is to ensure the respect of people's fundamental right to personal data protection as per Article 8 of the Charter and Article 16 of the Treaty on the Functioning of the European Union. The decisions of SAs in relation to complaints brought by data subjects or organisations representing them under Article 80 GDPR directly impact the fundamental rights of the individuals affected. Therefore, it is unacceptable that the draft Regulation does not consider complainants as being parties to the procedure.

In addition, even under competition law, complainants and third parties have well-defined procedural rights, conditional on demonstrating legitimate/sufficient interest in the proceedings. These involve the right to be heard (submission of comments in writing, participation in oral hearings) and access to documents such as non-confidential versions of the Statement of Objections or parties' replies.

Moreover, the draft Regulation is also problematic regarding the rights to be heard and to access the administrative file as compared to the current situation under the GDPR in several EU countries.

According to a study commissioned by the EDPB, **parties have a right to be heard in at least 23 European jurisdictions** (Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Slovakia, Slovenia, Spain and Sweden).[40]

The regulation and practice on the right of the complainants to be heard varies widely because there are countries where complainants **are heard at least before any decision is made** (Austria, Italy, Luxembourg and Iceland), countries where the **hearing takes place only before a draft decision is made** (Greece, Cyprus, Latvia, Lithuania and Spain), other countries where SAs have discretionary power to decide to hear the parties or not at different stages (e.g. Estonia and Sweden)[41] and countries where, since the SA has a duty to investigate or ensure that a decision is based on sufficient information, it is implied that the data subject has a right to be heard (e.g. Norway).[42]

There are also wide asymmetries in the EU between a majority of countries whose SAs recognise the right to be heard of both the complainants and the parties under investigation

[39] See Case C-617/10 (Grand Chamber) of 7 May 2013 Åklagaren v Hans Åkerberg Fransso.
[40] Millieu (2020) Study on the national administrative rules impacting the cooperation duties for the national supervisory authorities, available at https://edpb.europa.eu/our-work-tools/our-documents/other/study-national-administrative-rules-impacting-cooperation-duties_en
[41] *Ibid*.
[42] Act relating to procedure in cases concerning the public administration (Public Administration Act), Section 17, available at https://lovdata.no/dokument/NLE/lov/1967-02-10?q=forvaltningsloven

and a minority of SAs that either *de facto* or *de iure* recognise only the parties under investigation as having a right to be heard while not recognising the same right for complainants (e.g. Ireland, Portugal).

This is why the EU is right to harmonise this via this Regulation. If not modified, the Commission's proposal could potentially lower the procedural rights of complainants in several Member States. The draft Regulation should build on best practices across Member States and not diminish the procedural rights of the complainant in cross-border cases under the GDPR. If this isn't changed in the Regulation, a complainant could have more rights in local cases in various Member States but less rights in cross-border cases.
Since the GDPR came into application, the most systemic GDPR infringements affecting the

The proposal could worsen the current situation in some instances, for example, in Member States where complainants' rights to be heard and to access documents are better under national rules compared to what the proposal would stipulate.

data protection rights of a large number of data subjects happen in cross-border cases. They take place invisibly, either because the infringement of the GDPR takes place after the personal data on the data subject has been collected or because of the technical and legal complexity of the processing that might constitute an infringement – or both.

In addition, **the investigations carried out by SAs can, in many cases, reveal new information relevant to the complaint regarding whether and how the investigated GDPR infringements violate the rights of data subjects that was unknown to the complainants at the time of lodging the complaint**. In this context, the complainants' rights to make their views known to the LSA on equal footing as the parties under investigation is indispensable so that the complainant can express how their views and arguments vary as more information on the alleged GDPR infringements becomes known to the authorities.

This requires:

1. Inserting a definition of complainants

Article 2 should define complainants as parties to the procedure both when they are data subjects lodging a complaint or organisations representing them in line with Article 80(1) or Article 80(2) GDPR.

2. Ensuring complainants can access and express views about the preliminary findings

Articles 2(3), 14(2), 14(3), 14(5) and 14(6) must be amended so that not only the parties under investigation, but also **complainants** receive and have the **right to make their views on the preliminary findings by the LSA known under the same**

conditions as the parties under investigation other than for considerations on confidentiality. The right to be heard is not only important when parts of or a full complaint are rejected.

Complainants should at least be given **two months** to express their views about the preliminary findings.

Granting complainants a right to access to the administrative file.

As complainants should be considered parties to the procedure to ensure greater procedural rights in light of Article 41 of the Charter, **Articles 20 and 21** should grant **complainants access to the administrative file**.

3. Ensuring that complainants are meaningfully heard before a draft decision or full or partial rejection of the complaint

Article 11(2) says that if the SA with which a given complaint is lodged reaches the preliminary view that the complaint should be fully or partially rejected, it must inform the complainant of the reasons for this decision and allow the complainant to make their views known in writing within at least three weeks. This is an extremely short deadline. For example, for organisations like BEUC that coordinate input with members and external counsel in actions we have lodged, this would not allow for a high-quality and comprehensive response.

BEUC urges co-legislators to amend Article 11(4) of the proposal as the fact that complainants would need to ask for further documents would add further delays and complicate compliance with the deadline set forth in Article 11(2). The supervisory authority with which the complaint was lodged should send *"the non-confidential version of the documents on which the proposed (partial or full) rejection of the complaint is based"* to the complainant at the same time as informing them of the preliminary view of the lead supervisory authority to reject the complaint. To guarantee the efficiency of the procedure to communicate full or partial rejection of a complaint, Article 11(1) must also be amended to ensure the LSA sends these documents to the supervisory authority with which the complaint was lodged when informing it about its preliminary view to reject the complaint.

Article 11(5) should be amended so that the authority that should prepare a draft decision to the other concerned SAs should be the LSA, not the SA with which the complaint was lodged.

Even more concerning are **Article 12(2)** on the one hand and **Articles 15(1), 17(2) and 21(6)** on the other, which leave it to the SA with which the complaint is lodged and the LSA respectively to set time-limits within which the complainants may make known their views regarding aspects of the procedure as crucial as the revised draft decision fully or partially rejecting a complaint, the preliminary findings, the revised draft decision and to raise a confidentiality claim.

Articles 14(4), 17(2) and 21(6) would allow the LSA to set time limits for the parties under investigation. Upon amendment of those articles in line with the BEUC recommendations outlined in section 5 of this document, the deadline for both the parties under investigation and the complainants must also be aligned and extended.

In each of the cases above, the risk that an SA with which the complaint was lodged or the LSA may set an unexpectedly short time limit which would result in the complainant's ability to exercise its right to be heard to be curtailed. In turn, it can hinder the ability of

data subjects and organisations representing them to seek effective remedies to GDPR infringements.

Article 17(1) and (2) must be amended to grant the complainants the **right to be heard in relation to a draft decision** and to express their views in writing within a reasonable time framework (see section 5 of this document). In turn, **Article 20(3)** should be amended so that the parties are granted access.

4. Granting rights to complainants in dispute resolution procedures under Article 65

The draft Regulation's chapter V further specifies various aspects of the procedure in the cases where the LSA submits the case to the EDPB dispute resolution mechanism (Article 65 GDPR). However, as noted in recital 37 of the draft Regulation, chapter V is not concerned with the procedural rights of the parties, unlike chapters III (cooperation under Article 60 of Regulation (EU) 2016/679) and IV (access to the administrative file and treatment of confidential information).

We strongly believe that, for the same reasons that complainants must have adequate procedural rights before a procedure that is eventually referred to the European Data Protection Board, chapter V must also concern the rights of complainants. Below, we suggest a series of areas for improvement in this direction.

Article 24(1) and (2) must be amended so that **the statement of reasons provided by the European Data Protection Board to the LSA are provided to the complainants regardless of whether the complaint is fully or partially rejected or accepted.**

In addition, the deadline for complainants to provide their views cannot only be one week. This is an extremely short period of time. BEUC suggests to at least provide four weeks (Article 24(2), with a possibility to extend it for four extra weeks under Article 24(3). Article 25 (1)(c) must also be amended so that the views of the complainant on the matter of the main place of establishment of the controller or processor are also provided by the relevant SA to the European Data Protection Board.

BEUC recommendations:

- **Amend chapter V of the proposal to grant specific procedural rights to the complainants in Article 65 GDPR procedures.**
- **Extend the deadline for complainants to provide their views prior to the adoption of a decision under Article 65 GDPR from one week to at least four weeks.**
- **Article 11(2) must be amended to grant at least two months for complainants to reply. This is needed to ensure that the complainants can fully exercise their right to be heard.**

7. The confidentiality of information should be justified

The draft Regulation includes provisions that harmonise the treatment of confidential information in cross-border cases. While the confidentiality of information may be necessary in certain instances, **confidentiality claims must be sufficiently justified and verified by the LSA**. Furthermore, the regulation of the treatment of confidential

information must not result in overburdening the complainants when they access non-confidential versions of documents provided by LSAs.

Article 14(2) should specify that the **corrective measures** identified by the LSA **should not be considered confidential**. In BEUC's experience, many LSAs do not provide this information to complainants before a decision is final, which limits the ability of complainants to express their views in the subsequent stages of the process.

Articles 15(4) and 15(5) must be amended to both clarify the obligations of complainants when they are provided with non-confidential documents by the LSA and to make those obligations more proportionate to the nature of the documents. As pointed out by the EDPB and EDPS in their Joint Opinion on the proposal[43], a **"non-disclosure" declaration would be more adequate than the proposed "confidentiality declaration"**. Confidentiality declarations involve an excessive administrative burden that does not only arise from signing it, but also verifying and managing it, which is not justified by the type of documents that complainants gain access to upon submitting the declaration.

Article 21 needs to be amended to ensure that the SA that receives a confidentiality claim must assess that claim thoroughly, only treating it as such if the information strictly qualifies as confidential. This is to avoid that parties under investigation flag information as confidential without providing justification for the confidentiality of the claim, or by providing unconvincing claims. Therefore, Article 21(4) should require that entities claiming some information is confidential should provide sufficient, reasoned and comprehensive reasons for that would merit the confidentiality.

It must also be clearly specified in Article 21 that the LSA and not the parties under investigation must decide which parties should not have access to confidential information following the views of the parties under investigations. The LSA must provide reasons to complainants as to any redactions or refusals of access allowing them to express their views about them. LSAs should not be granted more than a week to decide on a claim of confidentiality.

Article 21(2) imposes restrictions on the freedom of expression and information that may hamper the accountability of the public administration and negatively impact democracy to the extent that oversight of public authorities will be limited. Therefore, **we recommend this provision to be deleted**. This Regulation must not curtail the rights of EU citizens to obtain information from SA of the Member states that allow freedom of information requests. The draft Regulation could create a situation where a given public authority could be subject to freedom of information requests related to a local case but not when the case is cross-border, giving rise to an unfair imbalance.

BEUC recommendations:

- **Ensure only confidential information is treated as such.**
- **Amend Article 21 to ensure that only valid confidentiality claims are accepted by supervisory authorities.**
- **Do not request a confidentiality declaration by complainants to access non-confidential information and request a "non-disclosure" declaration instead.**

- END –

[43] EDPB-EDPS Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679, paras. 80-81, available at https://edpb.europa.eu/our-work-tools/our-documents/edpbedps-joint-opinion/edpb-edps-joint-opinion-012023-proposal_en

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