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The Consumer Voice in Europe

Making cross-border GDPR enforcement work better for consumers

BEUC recommendations for the trilogue negotiations on the GDPR cross-border enforcement regulation

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Why it matters to consumers

The General Data Protection Regulation (GDPR) upholds people's fundamental right to personal data protection in the EU. However, consumers and consumer organisations and organisations representing them face disproportionate hurdles when lodging complaints before data protection authorities, particularly in cross-border cases. These issues range from decisions from authorities taking too long to complainants having insufficient rights to defend their interests, and the unpredictability of authorities' actions when they handle a case. The negotiations on the GDPR cross-border enforcement Regulation provide an opportunity to solve many of these issues. Without improvements to GDPR's enforcement, 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

The European Commission proposed a *Regulation laying down additional procedural rules relating to the enforcement of the GDPR* in July 2023. The European Parliament adopted its first reading position in April 2024 and Council adopted its general approach in June 2024.

The amendments proposed by the co-legislators bring several improvements to the Commission's proposal. While both the Council and the European Parliament seem to largely agree on the need for changes to the Commission proposal, both versions would benefit from technical changes to ensure more effective and rights-protective enforcement as well as legal certainty.

The Regulation should:

- Ensure that **consumers' personal data are adequately protected**. By ensuring that the GDPR is **deterrent**, there is a greater chance that multinationals such as Big Tech companies comply.

- Establish a **level playing field** between **SMEs and multinationals**. Today, SMEs are disadvantaged vis-à-vis Big Tech companies because SMEs are typically subject to national procedures that are quicker than the cross-border procedures that big companies are subject to. This is an unfair disadvantage for European SMEs and a reform would reduce the risk of potential forum shopping from big companies. The Draghi Report reiterated the need to overcome differences among Member States in the implementation and enforcement of the GDPR and to ensure that the GDPR is enforced more stringently and within shorter timeframes.[1]

[1] European Commission 'The future of European Competitiveness, Part B | In-depth analysis and recommendations' (2024).

- **Minimise** the **administrative burden of supervisory authorities**, streamline the handling and investigation of complaints and foster cooperation between authorities. This will ensure that supervisory authorities use their limited human and financial resources more effectively.

To achieve the above, BEUC recommends:

1. Establishing **comprehensive and specific time limits for both the lead and concerned authorities** under the cross-border mechanism**.** This should guarantee that there are final decisions within a reasonable, predictable timeframe of no longer than 1 year after the complaint is lodged, during which the complaints would have to be declared admissible and ex officio investigations carried out.

2. Guaranteeing the **right to be heard of complainants** at relevant stages of the procedure, including following the preliminary findings and at the draft decision stage.

3. Ensuring that it is **easy to lodge complaints** for individuals and civil society groups and that **investigations are opened in a timely manner**.

4. **Adapting** the procedural **requirements according to the complexity and impact of different cases**, while ensuring robust procedural rights in early resolution cases.

5. Enabling **cooperation between data protection authorities and other regulators** and removing procedural or other legal barriers to cooperation.

1. Establishing appropriate deadlines

The enforcement of the GDPR cannot be considered a success if it takes so many years for authorities to adopt finals decision on complaints. This has been the case for BEUC members[2] and other NGOs.[3] To ensure the effective enforcement of the GDPR and to protect consumers' personal data, it is indispensable to establish comprehensive deadlines that guarantee the adoption of a final decision within a reasonable and predictable timeframe in particularly impactful cases. In the digital space, authorities should adapt and match the speed of their enforcement to the speed of developments and of infringements

We welcome that both the Council and the European Parliament have introduced changes to set concrete deadlines for different steps of the procedure, including for Lead Supervisory Authorities (LSAs).

We note that the two co-legislators follow similar approaches to the establishment of deadlines from the receipt of the complaint by the Concerned Supervisory Authority (CSA) to the opening of an investigation by the LSA. This would prevent problems such as those experienced by BEUC members when lodging their 'Fast Track To Surveillance' complaints in 2022. Our members have

[2] See, for example, BEUC, 'The Long and Winding Road: Two Years of the GDPR: a Cross-Border Data Protection Enforcement Case from a Consumer Perspective' (2020).

[3] See, for example, some complaints lodged by Noyb at https://noyb.eu/en/project/cases. At the time of writing, four cross-border complaints lodged in 2018, and nine cross-border complaints lodged in 2019 are still pending a decision. (Last consulted: 19/11/2024)

BEUC The European Consumer Organisation

had to wait over a year to have an investigation opened by the LSA – only to have the investigation halted following a court challenge by Google.[4]

We note that the co-legislators take different technical approaches from the appointment of the LSA up to the submission of the draft decision to the CSAs. From the submission of the draft decision to the CSA until the end of the procedure, they take a very similar approach to the last procedural steps following the submission of the draft decision to the CSAs. In either case, **the LSA should take a maximum of a year to submit a draft decision to the CSAs from the moment the complaint is lodged**.

1.1. From the appointment of the lead supervisory authority to the draft decision

The European Parliament's first reading sets an overall deadline for the LSA to submit a draft decision pursuant to Article 60(3) GDPR no later than 9 months from the receipt of the complaint (**Amendment 89**), which may be subject to minor extensions. We support this approach as a good solution to ensure the timely handling of complaints.

The Council's general approach establishes step-by-step deadlines that cover the process from the receipt of the complaint by the concerned supervisory authority until the submission of the draft decision in **Articles 3, 6(bis), 9, 10, 12, 14 and 15**. BEUC could support this alternative approach provided the text contains safeguards. These safeguards include allowing a degree of flexibility on the time allocated for reaching different milestones of the procedure, or that all extensions to deadlines are limited, in order to create legal certainty and that deadlines on the LSA are proportionate to its tasks:

1. **Deadline extensions should not be open-ended.** Under the Council's approach, a draft decision would be submitted within a reasonable time limit for all admissible cross-border complaints only if the LSA does not grant itself excessively lengthy extensions. In two key instances of the procedure (communication of the preliminary findings to the parties under investigation and submission of the draft decision to the concerned supervisory authorities)[5] the LSA may grant itself an extension of the time-limit as prolonged as it considers necessary.

2. **LSA's deadlines and extensions must be proportionate.** Various time limits, and their possible extensions (where specified), as set in the Council's General Approach are excessively long and disproportionate compared with other deadlines set in the general approach. It is hardly justified that, after spending up to six months to draft a summary of key issues upon which authorities find consensus, the LSA requires six additional months to draft preliminary findings to be shared with the parties to the procedure **(Article 10(1)(a))**, or that the LSA may take up to three months to incorporate the views of the parties to its preliminary findings. In contrast, the parties only have four weeks to submit views since they are presented with the preliminary findings **(Articles 14(4), 14(7), 15(1))**.

We urge the co-legislators to ensure that the LSA does not take more than a year from the receipt of the complaint to submit a draft decision to the CSAs.

[4] BEUC, 'Fast Track to Surveillance' (2022).

[5] The Council's General Approach specifies the maximum duration of the extension of each time limits that supervisory authorities or the parties to the procedure are subject to including in Articles 3(4)(a), 5(3)(b), 9(2), 9(3), 9(4), 11(2), 14(2)(bis) 14(4), 15(1), 17(2) but it does not in 10(1)(a), 10(6)(bis) and 14(7).

BEUC The European Consumer Organisation

1.2. From the draft decision to the final decision

We applaud that the co-legislators ensure there is a time-bound process from the submission of a draft decision by the LSA to the CSAs under Article 60(3) GDPR, establishing comprehensive deadlines that prevent that the procedures get stuck indefinitely in consultation to CSAs. This would address the issues BEUC members have faced. For example, more than a year and half after submitting views in early 2023 to a draft preliminary decision drafted in 2022 by the LSA on complaints launched in November 2018, we are still waiting to be informed about the triggering of the EDPB's dispute resolution mechanism under Article 65 GDPR or expect the final decision of the LSA.[6]

We note that the differences between **Articles 22(1)** in the **Council's General Approach** and **Amendments 147-150** of the **European Parliament** relate to the time limit for the LSA to either produce a new draft decision or refer the subject-matter to the EDPB for dispute resolution in cases where CSAs raise relevant and reasoned objections (RROs). We favour the one-month time-limit for the LSA in the European Parliament amendments over the three-month limit established in Article 22(1) of the General Approach. A one-month deadline is coherent and proportionate with the four-week time limit set in Article 60(4) GDPR for the CSAs to draft the very relevant and reasoned objections that the LSA is to assess within that deadline, and therefore, more adequate.

2. Guaranteeing procedural rights of complainants and parties under investigation

BEUC welcomes the extension of the right to be heard of complainants as parties to the procedure in both the General Approach and the Parliament's first reading. We believe the changes are important and complementary. We also believe co-legislators rightly understand the input provided by complainants, when exercising their right to be heard throughout the procedure, as a source of robustness of the decisions resulting from the handling of complaints.

The General Approach of the Council sets a specific time limit (four weeks) for the complainant to make its views on the preliminary findings known. It also removes the requirement that the complainant submits a confidentiality declaration to the LSA before accessing relevant documents (**Article 15)**.

The European Parliament's first reading explicitly aims to protect the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights (**Amendment 1**). The European Parliament grants the right to be heard to the parties before any measure is taken that would adversely affect them. This includes before the decision to uphold or reject the complaint and imposes upon the LSA the obligation to inform and hear the parties to allow them to express their views on all factual findings and legal conclusions it makes (**Amendment 64**). **Amendment 31** clarifies that the EDPB ought to hear the parties before adopting a binding decision pursuant to 65(1)(a).

We note that the General Approach fails to extend the right to be heard of the complainants if the LSA drafts a revised draft decision following a reasoned and relevant objection by a CSA (Article 17). This could pose problems where objections by a CSA, and particularly major objections on scope, legal argument, or factual elements, would lead the LSA to take a decision affecting the

[6] BEUC, 'Every Step You Take' (2018)

complainant without being heard on the elements introduced by the objecting CSA. We also note that the first reading of the European Parliament, by taking a principle-based approach, leaves certain room for ambiguity and interpretation on the specific moments at which authorities must hear the views of the complainants.

In light of the above, BEUC recommends that co-legislators build upon the synergies between Article 15 in the Council text and Amendments 31 and 64 of the Parliament to grant complainants a right to be heard on the preliminary findings of the LSA, on the draft final decision, and on a decision by the EDPB.

It is in the best interest of the procedure to establish the right to be heard of the complainant on the LSA's preliminary findings and on any revised draft decision

We also welcome the amendments by the Council (**Chapter IV**) and Parliament (**Amendments 95-102, 146**) clarifying the procedure to manage confidentiality claims and lifting the imposition on complainants to submit confidentiality declarations.

3. Admissibility of complaints

BEUC shares the common aim to ensure the prompt determination of the admissibility of complaints of the different changes introduced by the Council (**Article 3**) and Parliament (**Amendments 67-81**). BEUC welcomes the clarification of the allocation of tasks and responsibilities between the CSA with which the complaint is lodged and the (assumed) LSA. Tasking the CSA with deciding on the admissibility of the complaint establishes a mutual recognition of complaints and complainants.

BEUC has previously raised concerns that long delays between the lodging of the complaint and the opening of an investigation in cross-border cases unnecessarily delays the adoption of decisions and compliance by GDPR infringers. For example, our members have had to wait for 16 months just to have the LSA open a procedure in a series of cross-border complaints lodged in June 2022.[7]

Whereas both the Council's and the European Parliament's text bring crucial improvements, the requirements for admissibility must be reviewed to ensure that complainants do not face excessive hurdles and burdens.

Complainants must not be required to explain and argue in detail the alleged infringement of the GDPR to have their complaints deemed admissible (Council, **Article 3(1)(f)**) or to be requested to indicate the provisions of the GDPR that have been breached (**Annex 2** of the European Parliament's first reading).

In the same way that an individual reports at a police station that their personal belongings have been stolen and they are not required to refer to the specific article of the Criminal Code, or to indicate whether they have been a victim of theft or robbery, data subjects must be able to lodge complaints when they understand that their right to data protection is infringed upon in line with article 77 GDPR. It should be up to the supervisory authorities to identify and/or confirm the

[7] BEUC, 'Fast Track to Surveillance'

specific breaches of the GDPR that the instance(s) of processing of personal data alluded to in the complaint.

4. Setting different specifications for cooperation between the LSA and CSAs for cases of different nature.

4.1. Tailoring cooperation between SAs to the achievement of early consensus and impact of the case

BEUC welcomes that the co-legislators try to set up different cooperation arrangements for cases of varying complexity and cooperation requirements. We recall the demand by supervisory authorities in the Vienna Declaration[8], and the subsequent EDPB Document on the Selection of Cases of Strategic Importance[9], for supervisory authorities to treat "high impact" cases with priority where justified due to the structural or recurring character of the case, its intersection with other legal fields, or the fact that the case affects a large number of data subjects *inter alia*.

BEUC welcomes that in both the Council's general approach (**Article 6(1)(bis)**) and the European Parliament's first reading (**Amendment 110**), the procedures are adapted depending on the ability of the LSA and CSAs to find consensus at the early stages of the process, while ensuring a high level of procedural rights for complainants (see Section 2) and adequate time limits (see Section 1) for all cross-border cases.

4.2. Ensure amicable settlements or early resolution procedures do not make the GDPR less deterrent and protective of data subject rights.

We are concerned about the proposed "procedure for early resolution of complaints" in the Council's general approach (**Article 5**). This could reopen the GDPR through the back door as this possibility was not contemplated in the law. This procedure could pose significant unintended dangers to consumers' data protection rights, even if only applicable to complaints concerning the exercise of data subjects' rights. It is important to consider three factors:

1. **GDPR enforcement should keep its deterrent effect**. The GDPR introduces the requirement that supervisory authorities impose *effective, proportionate, and dissuasive* administrative fines in respect of a series of infringements of the GDPR, including infringements concerning the exercise of data subjects' rights. By replacing decisions by supervisory authorities that can lead to the exercise of various enforcement powers such as a ban on personal data processing or the imposition of fines with informal settlements that make the complaint "devoid of purpose", the proposed procedure for early resolution would potentially[10]:

    - Reduce the role that other DPA powers play in discouraging violations and encouraging accountability inasmuch they raise the costs of non-compliance.
    - Weaken the moral and supportive signal that corrective powers against non-compliant actors have on law-abiding controllers and processors.

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8 EDPB Statement on enforcement cooperation ("Vienna Declaration"). Available at:

9 EDPB Document on selection of cases of strategic importance.

10 Kotschy, Waltraut, 'Article 83 General conditions for imposing administrative fines', in Christopher Kuner, and others (eds), *The EU General Data Protection Regulation (GDPR): A Commentary* (Oxford University Press, UK).

BEUC The European Consumer Organisation

2. **Complaints should not merely result in an informal decision at the discretion of a DPA**. This would curtail the ability of the complainant to both uphold their rights throughout the procedure (See Section 2) and to seek legal remedies against a decision of the supervisory authority under Article 78 GDPR. Adopting this approach would be contrary to recent CJEU case law that has confirmed that the handling of complaints must be subject to full judicial review[11].

3. **This should not impose a disproportionate burden of vigilance of the procedure on the complainant**, particularly if the complainant is deemed to be in agreement with a settlement reached between a supervisory authority and the party under investigation if it fails to object to it within a short deadline.

Therefore, we strongly support **Amendments 14-15, 91-95** of the European Parliament to ensure that amicable settlements are exclusively based on **explicit agreements** between the party under investigation and the complainant. Supervisory authorities are compelled to open *ex officio* investigations when pertinent and emphasise the need to restrict the application of amicable settlements to cases concerning data subject rights such as requests for data erasure or requests for copies of data.

The GDPR can only succeed in practice if it has enough teeth to deter non-compliant actors from infringing it in the first place. This regulation should create a legal basis for amicable settlements only in very limited, justified cases.

5. Cooperation between Data Protection Authorities and other authorities

BEUC emphasises the need for cooperation between data protection authorities and other authorities, on which the Commission proposal and the Council's general approach are silent.

The CJEU Meta v. Bundeskartellamt (C-252/21) highlighted the interplay between areas such as data protection, competition and consumer protection[12], and the work programme of the EDPB currently includes among its priorities "intensifying engagement and cooperation with other regulators."[13] As highlighted by the Global Privacy Assembly, DPAs around the world are challenged by the evolving nature of digital environments and need to collaborate with other regulators.[14]

In the absence of a legal basis for cooperation and a regulatory framework that neither allows data protection authorities to cooperate nor instructs them to cooperate with other relevant authorities, there is a risk that plans laid out in guidelines and statements cannot be implemented due to procedural issues, e.g. limitations on sharing of information.

In this context, and recalling a letter sent by 11 NGOs to European Commission Vice President Jourová and Commissioner Reynders on June 2023[15], BEUC supports **Amendment 132** of the

[11] Joint cases C-26/22 and C-64/22, paras. 47-70.
[12] Court of Justice of the European Union, Judgement , Meta v Bundeskartellamt' (2023).
[13] European Data Protection Board, 'Work Programme 2023-2024' (. f
[14] Global Privacy Assembly (2024) 'Intersections with Privacy Survey Summary Report' (2024).
[15] EDRi, 'Improvements to the enforcement of the General Data Protection Regulation (GDPR)' (2023).

European Parliament first reading to foster much needed cooperation between data protection authorities and other enforcement authorities.

– END –

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