

Overview of the Proposal for a Regulation laying down additional procedural rules relating to the enforcement of GDPR

Background - The aim of the proposed Regulation is to clarify and harmonize the procedural rules that apply when national Data Protection Authorities (DPAs) investigate cross-border cases. If adopted, **the Regulation will not revise the existing cooperation and consistency mechanisms set forth in Chapter VII of the GDPR**, but it will provide additional details as to enhance and harmonise certain procedural rules. As a reminder, the GDPR establishes a “one-stop-shop” mechanism for enforcement of cross-border cases. Under this mechanism, a “lead” DPA conducts the investigation and cooperates with other “concerned” DPAs to reach consensus on a final decision. However, over the past five years, **conflicting national procedures when enforcing the GDPR has hindered cooperation among DPAs** as well as the functioning of the dispute resolution mechanism through the European Data Protection Board (EDPB). Following the publication of a [“wish list”](#) for better GDPR enforcement by the EDPB in October 2022, the European Commission undertook a careful analysis supported by stakeholders’ feedback which resulted in a proposal for a Regulation to address these concerns.

Rights of parties under investigations - The suggested Regulation would grant defendants the **right to review and respond to the lead DPA’s preliminary findings** (Art.14), draft decisions (Art.17), and any statements of reasons regarding an EDPB binding decision under the GDPR Article 65 dispute resolution procedure (Art.24). Once the lead DPA notifies the party under investigation of its preliminary findings, the latter would have **access to all documents in the administrative file**, except for correspondence and “exchange of views” among DPAs (Art.19-20). It is worth noting that the proposed Regulation lays down harmonized **rules on the treatment of confidential information** provided by the defendant. Specifically, the party under investigation shall specify and justify if any of the information it submits is confidential and provide a separate non-confidential version of the submission to be shared with the complainant (Art.21).

Rights of complainants - The proposal harmonizes rules on assessing the admissibility of a complaint relating to a cross-border GDPR violation. Article 3 also introduces in the [Annex](#) a **standardized complaint form** which specifies the information that must be included in a complaint, and precludes Member States from requiring additional information. The DPA that received the complaint will have one month to determine the completeness of the information provided by the complainant. That DPA will then transmit the complaint to the lead DPA. Complainants will have the right to be heard before the DPA decides to reject their complaint in full or in part within a time limit of no less than three weeks (Art.11). A complainant will also be able to challenge the DPA’s decision to reject the complaint in court.

Cooperation among DPAs - The proposed Regulation delineates the specific documents that the lead DPA must provide other concerned DPAs, at the earliest convenience, such as information on the opening of an investigation, the use of investigative powers, preliminary findings, the response of both complainants and defendants to the preliminary findings, etc. (Art.8). In order to facilitate consensus building without resorting to the dispute resolution mechanism, **the lead DPA shall send a 'summary of key issues' identifying the main findings of fact and its views on the case to DPAs concerned** (Art.9). The latter will be able to express disagreement with the scope of the lead DPA's investigation. When not able to reach consensus, the lead DPA may request that the EDPB takes a binding decision on the scope of the investigation (Art.10).

The procedure for dispute resolution - With the aim to enhance the GDPR's existing dispute resolution procedures, Article 22 of the proposal clarifies the documents that the lead DPA must provide when submitting a draft decision to the cooperation procedure and / or request a decision from the EDPB, such as a summary of the relevant facts, the preliminary findings, the views by both the defendants and the complainants, the reasoned objects by other concerned DPAs, etc. (including an "urgent" decision or opinion under Article 66 GDPR) and specifies timelines. Article 24 requires the Chair of the EDPB to prepare **a "statement of reasons" prior to any binding decision the Board makes, which the parties under investigation and / or complainant will have one week** (or two weeks where the Board has extended its own deadline for adopting a binding decision from one month to two months in complex cases) **to give their views on this statement of reasons.**

FEDMA's takeaways - The proposed Regulation introduces some positive improvements with new procedural rules to address shortcomings and gaps in cross-border GDPR enforcement cases. However, we have identified four possible areas where further work might be needed:

1. It will be up to the lead DPA's discretion to allow the parties under investigation to provide their views on a draft decision.
2. The proposal would only provide defendants with one week (two weeks in complex cases) to respond to the EDPB's statement of reasons before the adoption of a binding decision.
3. The proposal does not provide for a right for the parties to appear before the EDPB even at an earlier stage than the binding decision.
4. It will be up to each Member State's discretion to adjust their procedural rules for cases on data protection even for cases in other areas of law.

Next steps - This proposed Regulation is at the start of the European legislative process. The European Parliament and Council of the EU will each now develop their own positions on the proposed Regulation, before engaging in negotiations across the three institutions to finalize the text. It nevertheless seems unlikely that a final agreement will be reached before the next European elections in May 2024.