# E U R O P E A N  E C O N O M I C  A R E A

S T A N D I N G  C O M M I T T E E
O F  T H E  E F T A  S T A T E S

Ref. 24-187

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**SUBCOMMITTEE II – FREE MOVEMENT OF CAPITAL AND SERVICES**

**EEA EFTA Comment**

**on the proposal for a regulation laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679 (COM(2023) 348)**

## 1. EXECUTIVE SUMMARY

- *The Agreement on the European Economic Area (EEA Agreement) extends the Single Market of the European Union to the EEA EFTA States (Iceland, Liechtenstein and Norway). The incorporation of EEA-relevant EU legislation into the EEA Agreement, such as Regulation (EU) 2016/679 (General Data Protection Regulation (GDPR)), ensures legal homogeneity throughout the EEA.*

- *The EEA EFTA States welcome the European Commission's proposal for a regulation laying down additional procedural rules relating to the enforcement of the GDPR in cross-border cases. The EEA EFTA States support the overall ambition to ensure legal homogeneity and enhance efficiency in the cooperation and consistency mechanism established by the GDPR.*

- *The EEA EFTA States see a need to clarify from which stage in the process of assessing cross-border cases the new procedural rules should apply. This is important to provide the necessary guidance to national data protection authorities (DPAs), as well as to ensure the rights and obligations of all parties concerned.*

- *The EEA EFTA States have concerns that some of the additional procedural rules, for example regarding translation and the obligation to provide summaries of early-phase investigations, will increase the administrative burden for national DPAs without contributing to the swifter resolution of cases and quicker redress for individuals.*

## 2. INTRODUCTION

1. The EEA EFTA States have studied with great interest the European Commission's 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 (COM(2023) 348). The EEA EFTA States acknowledge that a well-functioning cross-border enforcement system is essential to ensure the right of EEA citizens to the protection of personal data. However, they believe that certain procedural rules in the proposal should be revised to better fulfil its objective.

2. Point 5 below expresses the views of Iceland and Norway only.

## 3. REMARKS ON THE PROPOSAL

3. Article 1 of the proposal states that the procedural rules in the regulation are applicable in cross-border cases. The EEA EFTA States are of the opinion that it will not always be evident in which event a case should be classified as a cross-border case or as a case solely for the national data protection authority (DPA). The EEA EFTA States' experience with the cross-border processing rules in the General Data Protection Regulation (GDPR) has shown that additional investigations are often necessary to determine whether all the criteria laid down in Article 4(23) GDPR are met. This classification is important to determine which administrative rules the DPA should apply, as well as the rights and obligations of the parties concerned. Therefore, the EEA EFTA States consider it necessary to **clarify in the proposal from which stage in the process the new procedural rules should apply**.

4. Article 6 of the proposal sets out an obligation for the DPA with which the complaint was lodged to translate all relevant documents into the language used by the lead DPA and the complainant. In addition to translating the documents into the language of the lead DPA, translation into English will probably also be necessary to accommodate all the DPAs concerned. The EEA EFTA States are concerned that the proposed rules on translation will entail additional costs for the national DPAs. Furthermore, according to the European Data Protection Board (EDPB) Rules of Procedure, English is the working language of DPAs in cross-border cases today, and to our understanding this has worked satisfactorily. In light of this, the EEA EFTA States believe that **translation into English is sufficient and the most convenient arrangement for all DPAs concerned**.

5. Iceland and Norway recognise that the proposal harmonises rules on access to information for the complainant and the parties under investigation, as well as access for the public in general. However, they find that the proposed limitations on access to information and documents, including on how such information may be used and the use of confidentiality declarations, are too restrictive.[1] While Iceland and Norway recognise the need for some information to be kept confidential, they **find the duty of**

[1] In the case of Iceland and Norway, the proposed limitations on access to information do not align with national administrative law. According to Icelandic and Norwegian administrative law most documents submitted to a public authority, except documents containing personal information or information that for competition reasons should be kept secret, are publicly available. Also, there are no restrictions as for what purposes publicly available documents or information may be used.

**confidentiality, particularly concerning non-confidential information, to be too extensive in the proposal**.

6. The EEA EFTA States encourage further clarification on access to information, in particular the interplay between Article 20 of the proposal and the general right to effective judicial remedy in Article 78 GDPR. They find that the wording "pursuant to this Article" in 20(4) could inadvertently limit the right of parties to information, since the sole purpose of granting access under this provision is to exercise the "right to be heard" in 20(1), which does not encompass starting other proceedings in light of Article 78(2) GDPR. The EEA EFTA States call on the co-legislators to **clarify the interplay between Article 20 of the proposal and Article 78 GDPR in the recitals of the proposed regulation**.

7. According to Article 9 of the proposal, the lead DPA is obliged to prepare a "summary of key issues" in all cross-border cases. The EEA EFTA States are of the opinion that this obligation would lead to an unnecessary procedural delay in many cases, and would not be conducive to the objective of the proposal. As viewed by the EEA EFTA States, most cross-border cases are non-controversial, and decisions are adopted by consensus between the DPAs involved. Therefore, the EEA EFTA States believe that **the requirement to summarise key issues should only apply to extensive and controversial cases, or where at least one of the DPAs requests such a summary**. This will also reduce the workload and costs for both the lead DPA and those DPAs concerned in non-controversial cases.

8. The EEA EFTA States are of the opinion that **Article 5 of the proposal regarding amicable settlement should not exclude the case being handled through the mechanism laid down in Article 60 GDPR**. The EEA EFTA States have observed that an amicable settlement is sometimes reached in cases where the infringement addressed in a single complaint is in fact part of a systemic problem that may affect many data subjects. The EEA EFTA States emphasise that other DPAs concerned should be involved where amicable settlement is being considered, in accordance with the established procedure for amicable settlements as set out in the EDPB Guidelines 06/2022.[2] This would also ensure the appropriate identification of systemic issues that need to be dealt with by instruments other than amicable settlements.

9. Given the importance of ensuring the homogenous and effective enforcement of the GDPR in the entire EEA, Iceland, Liechtenstein and Norway remain dedicated to maintaining their roles as constructive partners in the ongoing legislative process of this proposal.

[2] Paragraph 35 of the EDPB Guidelines 06/2022 on the practical implementation of amicable settlements.