



Report on the application of the GDPR under Article 97

Questions to Data Protection Authorities / the European Data Protection Board

Fields marked with * are mandatory.

1 Introduction

According to Article 97 of the GDPR, the Commission should submit a first report on the evaluation and review of the Regulation to the European Parliament and the Council by 25 May 2020, followed by reports every four years thereafter. The Commission's first report was adopted on 24 June 2020 (the '2020 report'). [1] The next report is due by mid 2024 (the '2024 report').

In this context, the Commission should examine, in particular, the application and functioning of:

- Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC; and
- Chapter VII on cooperation and consistency.

The GDPR requires that the Commission takes into account the positions and findings of the European Parliament and the Council, and of other relevant bodies and sources. The Commission may also request information from Member States and supervisory authorities.

Against this background, this document seeks to obtain the views of the European Data Protection Board on the abovementioned points. As was also done for the 2020 report, this document also seeks to obtain information from data protection authorities (DPAs) on their enforcement of the GDPR and on activities undertaken to promote awareness of data protection rights and obligations.

We would be grateful to receive replies to the below questions (in English) by **15 December 2023**.

In 2020, the European Data Protection Board provided a consolidated contribution of the individual replies of the DPAs to the questionnaire circulated in preparation of the 2020 report.[2] The Commission would be grateful if the Board would again provide such a contribution, in addition to providing the individual replies of DPAs. When there are several DPAs in a given Member State, please provide a consolidated reply at

national level. In the context of the preparation of the report, and following the input from other stakeholders, it is not excluded that we might have additional questions at a later stage.

Please note that your replies might be made public or may be disclosed in response to access to documents requests in accordance with Regulation (EC) No 1049/2001.

[1] Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, 24.6.2020 COM(2020) 264 final.

[2] https://edpb.europa.eu/sites/default/files/files/file1/edpb_contributiongdprevaluation_20200218.pdf

2 Supervisory Authority

* 2.1 Select your supervisory Authority

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- EDPS
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain

3 Chapter V

*** 3.1 In your view, should the data protection framework of any third country or international organisation be considered by the Commission in view of a possible adequacy decision?**

- Yes
 No

*** 3.2 If yes, of which third country or international organisation ?**

We have not received requests from stakeholders regarding any specific third countries or international organizations but the Belgian DPA strongly encourages the adoption of adequacy decisions as these constitute a very useful tool to frame transfers of personal data.

It would be preferable to coordinate within the International transfers ESG to provide a response to this question, in order to ensure EU-consistency on this topic.

*** 3.3 The Commission is interested in the views of the Board on the third countries for which enforcement cooperation agreements under Article 50 GDPR should be prioritised, in particular in light of the volume of data transfers, role and powers of the third country's supervisory authority and the need for enforcement cooperation to address cases of common interest. Please mention the countries that, in your view, should be prioritised and the reasons.**

In the view of the Belgian DPA, in any event enforcement cooperation with the United Kingdom (Information Commissioner's Office) should be reinforced, in light of the numerous data transfers with the UK. Secondly, enforcement cooperation with the United States should get priority, in light of the headquarters of most Big Tech companies, established there. In particular, it could be explored whether a specific agreement with the State of California is feasible. California has a comprehensive data protection law, and a potentially strong DPA.

Other countries that could be prioritized are Switzerland and Canada

3.4 Reasons for prioritisation if there should be any:

See above.

In any event, prioritization is key, to make this a success.

3.5 Are there any other suggestions or points you would like to raise as regards tools for international transfers and/or enforcement cooperation with foreign partners?

The Belgian DPA thinks it would be useful to concentrate on enforcement cooperation, which allows forms of mutual assistance or joint operations, parallel to the system which exists within the EEA itself, notably the system specified in the articles 61 and 62 GDPR.

4 Chapter VII

In July 2023, the Commission adopted a proposal for a regulation laying down additional procedural rules relating to the enforcement of the GDPR.[1] The DPAs and the EDPB provided extensive input to the Commission during the preparation of the proposal and following adoption, the EDPB and the EDPS adopted a joint opinion on the proposal on 19 September 2023.[2] The questions below focus on DPAs' application and enforcement of the GDPR and do not seek DPAs' views on the proposal.

[1] 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 final.

[2] https://edpb.europa.eu/our-work-tools/our-documents/edpb-edps-joint-opinion/edpb-edps-joint-opinion-012023-proposal_en

4.1 Cooperation Mechanism

4.1.1 One-stop-shop (OSS) – Article 60 GDPR

The EDPB Secretariat will extract from IMI the numbers regarding the OSS cases where your DPA has been in the lead and concerned since 25 May 2018

The EDPB Secretariat will extract from IMI the numbers regarding whether your DPA has been in the situation of the application of the derogation provided for in Article 56(2) GDPR (so-called “local cases”, i.e. infringements or complaints relating only to an establishment in your Member State or substantially affecting data subjects only in your Member State).

4.1.1.1 Do you have any comment to make with respect to the identification and handling of local cases under Article 56(2) GDPR?

- Yes
 No

*** 4.1.1.2 Please enter below any comment to make with respect to the identification and handling of local cases under Article 56(2) GDPR**

The provision on Local cases is in practice very important, especially in smaller enforcement actions. It would be useful if the procedure was clarified, and that the absence of an objection of the LSA would be sufficient for the CSA to continue. Moreover, it would be good to clarify this provision in case of groups of undertakings.

*** 4.1.1.3 Did you raise relevant and reasoned objections?**

- Yes
 No

*** 4.1.1.4 In how many cases did you raise relevant and reasoned objections?**

RROs were raised in at least five confirmed cases, but the Belgian DPA submitted comments in a much bigger number of cases. The low number of RROs is due to insufficient resources, and the need to focus on cases in which the Belgian DPA is the LSA. This shows a weakness in the system, which may to some extent be addressed by the EU Regulation on harmonized procedures.

*** 4.1.1.5 Which topics were addressed?**

1 RRO concerned the principle of lawfulness. The other RROs mainly concerned the LSA's right to dismiss complaints without investigating them (for example, when it believes that no processing is taking place), and the compatibility of such a practice with article 57.1.f) GDPR.

*** 4.1.1.6 In how many did you reach consensus with the LSA?**

None of these cases have reached the stage of a final decision. Two cases were closed by the LSA after informing the CSAs. The others seem to be still pending, but the LSA has not answered a request for an update.

4.1.2 Mutual assistance – Article 61 GDPR

*** 4.1.2.1 Did you ever use Mutual Assistance - Article 61 procedure in the case of carrying out an investigation?**

- Yes
 No

*** 4.1.2.3 Did you ever use Mutual Assistance - Article 61 procedure in the case of monitoring the implementation of a measure imposed in another Member State?**

- Yes
 No

*** 4.1.2.4 Could you explain why you have never used Mutual Assistance - Article 61 procedure for monitoring the implementation of a measure imposed in another Member State?**

The problem has not yet arisen.

*** 4.1.2.5 What is your experience when using Mutual Assistance - Article 61 procedure?**

For the purpose of this survey, the Belgian DPA has looked at the 19 VMAs that it has initiated according to IMI:

- In 12 of the VMAs, there is a response that provides a sufficient follow-up that addresses the issue /request at hand. In some of those cases, the request was only partially fulfilled or handled, or in some cases there is still interaction at present. For example, when a VMA was broadcast to multiple supervisory authorities, it is possible not all of those answered to the request. In general, however, these 12 cases represent a successful interaction where the article 61 GDPR procedure worked.
- For the other 7 VMAs, there is no response on behalf of the supervisory authority or authorities to which the request was broadcast. However, in some cases, the request that was broadcast had a rather informative nature (this is the case in 3 of the 7 “unsuccessful” VMAs) – such as when there was a closure of the case where there is no need for any formal follow-up on the side of an SA to which the request was broadcast, or in the case the VMA was broadcast just to state that the Belgian DPA confirms its status as LSA.

In conclusion, the Belgian DPA deems in general – and certainly for important issues – the VMA procedure to be successful. In some cases however, the VMA is not immediately successful. This requires additional action on the part of the Belgian SA, either to answer questions the receiving SA might have, or to ask it to provide an answer or follow-up to the VMA. These additional steps within the IMI system can sometimes lead to longer delays in handling the cases. One additional issue is that the Belgian SA sometimes struggles to keep up with all the communications occurring through the IMI system.

4.1.3 Joint operations – Article 62 GDPR

* 4.1.3.1 **Did you ever use the Joint Operations - Article 62 procedure (both receiving staff from another DPA or sending staff to another DPA) in the case of carrying out an investigation?**

- Yes
- No

* 4.1.3.2 **Could you explain why you have never used Joint Operations - Article 62 procedure for carrying out an investigation?**

As is known to the Commission, the use of Art 62 has been very exceptional, also because of practical and legal obstacles (mostly under national law) to joint operations. It would be good if the Evaluation of the GDPR would pay attention to the possibilities of removal of the obstacles.

* 4.1.3.3 **Did you ever use Joint Operations in the case of monitoring the implementation/enforcement of a measure imposed in another Member State?**

- Yes
- No

*** 4.1.3.4 Could you explain why you have never used Joint Operations - Article 62 procedure for implementation/enforcement of a measure imposed in another Member State?**

See 4.1.3.2.

4.2 Consistency mechanism

4.2.1 Urgency Procedure – Article 66 GDPR

*** 4.2.1.1 Did you ever adopt any measure under the urgency procedure?**

- Yes
 No

4.3 European Data Protection Board

The EDPB Secretariat will provide an indicative breakdown of the EDPB work according to the tasks listed in Article 70 GDPR and of the EDPB Secretariat resources allocated to complete the tasks listed in Article 75 GDPR, including on Article 64, 65 and 66 GDPR procedures, as well as on litigations.

4.3.1 How much resources (Full-time equivalent) does your DPA allocate to participation in EDPB activities?

	FTE
2020	NA.
2021	NA.
2022	NA.

2023	3.8. It is challenging to give a precise number regarding the allocation of resources to participation in EDPB activities given that we don't have staff that is exclusively devoted to EDPB activities. This is therefore a very broad estimate and corresponds to the time currently allocated to the EDPB activities and does not cover the time that would need to be allocated to the activities should we have the available resources.
2024 (Forecast)	3.8It is challenging to give a precise number regarding the allocation of resources to participation in EDPB activities given that we don't have staff that is exclusively devoted to EDPB activities. This is therefore a very broad estimate and corresponds to the time currently allocated to the EDPB activities and does not cover the time that would need to be allocated to the activities should we have the available resources.

4.4 Human, technical and financial resources for effective cooperation and participation to the consistency mechanism

4.4.1 How many staff (full-time equivalent) has your DPA?

	FTE	Comments
2020	67	FTE's calculated on 31/12 of the concerned year.
2021	70	FTE's calculated on 31/12 of the concerned year.
2022	66	FTE's calculated on 31/12 of the concerned year.
2023	83	This number corresponds to the staffing plan, not the actual staff.
2024 (Forecast)	93	The staffing plan is for maximum of 93 members of staff. This is subject to the approval of the Belgian Parliament due in December 2023.

4.4.2 What is the budget of your DPA? Please provide the figures (in euro)

	BUDGET (€)
2020	9.267.609,05
2021	9.535.251,52
2022	9.993.740,56
2023	13.274.000 (allocated budget)
2024 (Forecast)	14.998.100 (requested budget, subject to the approval of the Belgian Parliament due in December 2023)

*** 4.4.3 Is your DPA dealing with tasks beyond those entrusted by the GDPR, including under the new EU legislation adopted under the Data Strategy?**

- Yes
- No

*** 4.4.4 Please provide an indicative breakdown between those tasks and those entrusted by the GDPR.**

Audits of the FPS Foreign Affairs and the Immigration Office in the context of European regulations SIS II and VIS.
The Belgian DPA has not yet received additional tasks in the context of the Data Strategy.

4.4.5 Please explain, if needed:

4.4.6 How would you assess the sufficiency of the resources from your DPA from a human, financial and technical point of view?

	Sufficient	Insufficient
* Human Resources	<input type="radio"/>	<input checked="" type="radio"/>
* Financial resources	<input type="radio"/>	<input checked="" type="radio"/>
* Technical Means	<input type="radio"/>	<input checked="" type="radio"/>

*** 4.4.7 is your DPA properly equipped to contribute to the cooperation and consistency mechanisms?**

- Yes
- No

*** 4.4.8 How many persons (FTE) work on the issues devoted to the cooperation and consistency mechanisms?**

5 Enforcement

5.1 Complaints

5.1.1 The number of complaints (excluding requests for information) received by your DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	385	459	685	1928 (of which 1.120 complaints regarding the data leak at Facebook)	604	560 (Until 25/10/23)

5.1.2 The number of complaints where your DPA was in the lead

	2018	2019	2020	2021	2022	2023
The number of complaints received directly from complainants	-	-	-	-	-	-
The number of complaints received from another DPA through the OSS.	18	20	11	18	8	17 (Until 25/10/23)

5.1.3 The number of complaints received by your DPA and forwarded to the lead DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	30 (for 2018 and 2019)	30 (for 2018 and 2019)	10 (for 2020 and 2021)	10 (for 2020 and 2021)	13	14 (Until 25/10/23)

5.1.4 The number of complaints relating to national cases resolved through a decision adopted by your DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	13	41	98	160	193	150 (Until 25/10/23)

5.1.5 The number of complaints relating to cross-border cases, resolved through an Article 60 GDPR decision adopted by your DPA[1]. Please indicate a breakdown of the decisions adopted under Article 60(7), (8) or (9) GDPR.

[1] This does not include amicable settlements.

	2018	2019	2020	2021	2022	2023
Number of complaints resolved through an Article 60(7) GDPR decision	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable
Number of complaints resolved through an Article 60(8) GDPR decision	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	1
Number of complaints resolved through an Article 60(9) GDPR decision	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	Numbers unavailable	Numbers unavailable	Numbers unavailable	Numbers unavailable	8	Numbers unavailable

*** 5.1.7 What kind of communication or request do you qualify as a complaint?**

Our law provides for the possibilities to submit a complaint, a request for mediation or a request for information. A complaint can, under the jurisprudence of the Belgian DPA, be submitted by a data subject or by anyone else who has a qualified interest in the outcome of a complaint procedure. In the absence of a qualified interest a complaint cannot be submitted.

More in general: The Belgian DPA suggests on its website that mediation should be preferred, before submitting a formal complaint.

5.1.8 For complaints handled by your DPA which you consider to be closed, provide the average and the median time (in months) from receipt of the complaint (either directly from the complainant or from another DPA) to closure (e.g. by decision or amicable settlement).

	In months
Average Time	10.2 (These numbers are based on the files created in 2022 and 2023)
Median Time	13 (These numbers are based on the files created in 2022 and 2023)

5.2 Own-initiative investigations

5.2.1 The number of “own-initiative” investigations launched by your DPA since 25 May 2018

	2018	2019	2020	2021	2022	2023
Number of Complaints	3 (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).	19 (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).	24 (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).	13 (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).	14 (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).	7 (number at the end of September 2023) (The own-initiative investigations remains limited in view of the (annual) total number of complaints (and the limited resources of the Belgian SA).

5.2.2 The number of these investigations that you consider to be closed. Provide the average and the median time (in months) from launch of the investigation to closure.

	2018	2019	2020	2021	2022	2023
Average Time	All own vol. closed (the investigation as such is closed but not necessarily the case file).	All own vol. closed (the investigation as such is closed but not necessarily the case file)	All own vol. closed (the investigation as such is closed but not necessarily the case file)	3 open	4 open	4 open (number at the end of October 2023)
Median Time	Impossible to measure	Impossible to measure	Impossible to measure	Impossible to measure	Impossible to measure	Impossible to measure
Total number of closed investigations	NA	NA	NA	NA	NA	NA

5.3 Corrective measures

5.3.1 The number of decisions in which you used your corrective powers [1]

[1] Please reply per number of decisions, not per number of corrective powers used per decision. For instance, if one decision ordered both a ban and a fine, please reply "1".

	2018	2019	2020	2021	2022	2023
Number of Decisions	16	20	51	71	107	77 (Until 25/10/23)

5.3.2 The number of times you used any other corrective power than fines. Please specify the type of measure by reference to Article 58(2) GDPR

	2018	2019	2020	2021	2022	2023
Issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation	0	1	2	13	27	27
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	0	7	22 (warning & repimand)	23 (warning & repimand)	31 (warning & repimand)	11 (warning & repimand)
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	16	8	21	39	42	47
Order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period	0	2	18	12	16	2
Order the controller to communicate a personal data breach to the data subject	0	0	0	0	0	0
Impose a temporary or definitive limitation including a ban on processing	0	1	8	2	5	1

Order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17 (2) and Article 19	0	1	4	2	1	0
Withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met	0	0	0	0	0	0
Order the suspension of data flows to a recipient in a third country or to an international organisation.	0	0	0	0	0	0

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	0	6	18	8	14	3

5.3.4 Please provide examples of the type of circumstances and infringements that normally resulted in a fine and include the provisions of the GDPR breached.

Fines are imposed to sanction situations of past behaviour, sometimes in combination with a remedial sanction.

Fines were imposed on smaller and bigger companies, and sometimes even on private persons.

The decrease in the number of fines is due to a strict judicial review of fines, but also on a growing emphasis on remedial sanctions.

Finally, the Belgian DPA is now starting to use the EDPB Guidelines on the calculation of fines.

5.3.5 The average and median level of fines and the total amount of fines imposed by your DPA

	2018	2019	2020	2021	2022	2023
Total amount of fines (€)	0	39.000,00 €	885.000,00 €	301.000,00 €	738.900,00 €	80.000,00 €
Average level of fine	0	6.500,00 €	49.166,67 €	37.625,00 €	52.778,57 €	26.666,67 €
Median level of fine	0	5.000,00 €	15.000,00 €	30.000,00 €	20.000,00 €	30.000,00 €

5.4 Challenges to decisions in national courts

5.4.1 How many of your decisions finding an infringement of the GDPR have been challenged in national courts? Please provide the absolute figure and the percentage.

	Absolute figure	%
Decisions finding an infringement of GDPR challenged in national court	36	10,53 %
Successful challenges	14 successful 8 partially successful 9 ongoing	4,09 % of decisions – 38,9 % of challenges 2,34 % of decisions – 22,22 % of challenges 2,63 % of decisions – 25 % of challenges

* 5.4.2 Where challenges were successful, what were the reasons of the national courts?

In many cases the Court of Appeal (in Belgium, these are centralized at the Brussels Market Court) reformed or annulled the decision of the Belgian DPA on procedural grounds (reasoning of the DPA decision and rights of the defendant). The Court of Appeal is also very strict on the use of the instrument of a fine. On substance, in a few cases (3), the Market Court asked preliminary questions to the CJEU. In a few cases the Belgian DPA successfully appealed decisions of the Market Court, before the Court of Cassation (the supreme court of the Belgian judiciary).

6 Promoting awareness of rights and obligations

* 6.1 Provide details of activities undertaken (publication of guidance, publicity campaigns, etc.) to promote awareness of data protection rights and obligations among the public and data controllers and processors. Where relevant, provide links to materials.

For minors and youth:

- maintenance and update of a website on data protection for children, parents and teachers (teaching material, videos, information for children and youth, awareness raising): <https://www.jedecide.be/>;
- presentation to school teachers on data protection;
- awareness raising of minors via media events promoting data protection (contest on data protection topic with concert tickets as prize, theatre piece on data protection);
- printing awareness raising material and sending it to schools.

For data protection professionals / SMEs:

- publication of a toolbox for DPOs and SMEs, including a cookies checklist, a template for record of processing activities, FAQs... (<https://www.autoriteprotectiondonnees.be/professionnel/premiere-aide/toolbox>);
- recommendations (on direct marketing, data transfers from the public sector, data sanitization and destruction techniques, and biometric data);
- webinar on data protection for SMEs ;
- publication of an updated cookie checklist for controllers.

For the broader audience:

- information material on many topics of data protection, FAQs (<https://www.autoriteprotectiondonnees.be/citoyen/themes>);
- template letters for exercising data subject rights (<https://www.autoriteprotectiondonnees.be/citoyen/vie-privee/quels-sont-mes-droits>);
- answering individual requests for information from a broad audience;
- giving tailored presentations and trainings in various fora.