



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

* 3.3 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.

see answer to question 3.4

3.4 Reasons for prioritisation if there should be any:

With regard to enforcement cooperation with third countries we want to highlight that in cases, in which the GDPR is applicable pursuant to Article 3 (2), the enforcement of the GDPR can be a very challenging task. This is especially true when controllers or processors that don't have an establishment within the EU don't designate a representative in the Union. In these cases there neither seems to be the possibility of implementing administrative fines nor to collect these fines. Therefore, we suggest prioritizing the establishment of enforcement agreements with third countries in which significantly large numbers of controllers and processors without an EU establishment are based.

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?

No

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

* 4.1.1.3 Did you raise relevant and reasoned objections?

- ☒ Yes
☐ No

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

101

*** 4.1.1.5 Which topics were addressed?**

BfDI: Involvement in all major EDPB cases concerning Meta, i.e. WhatsApp, Facebook, Instagram; also proceedings concerning Twitter and TikTok as well as regular participation/consultation in other proceedings (Accor, Furnishicon, Google Maps etc.).

BB: sensitivity of credit card payment data, appropriateness of Art. 58 measures

BE: In 2023: Violation of Art 5 GDPR, amount of fine

BW: Article 58(2), incomplete investigations, Article 13, anonymization ("lossyhash"), Deceptive Design patterns, Article 5(1)(a)

BY-LDA: (1) Right to erasure and retention periods; (2) question of appropriate legal basis for recording phone calls for training/evaluation purposes with the customer support line; (3) amount of fine to be imposed in a case with a very large number of data subjects

HE: Usually we addressed the use of corrective powers set out in Article 58(2) GDPR.

HH: Most objections addressed general topics such as insufficient legal assessment of the infringements of Art. 5, 6 (1), 12, 13, 49 GDPR, suggested measures under Art. 58(2) GDPR or the proposed amount of a fine under Art. 83 GDPR

NI: Art. 6 I GDPR, fines

NW: lawfulness of processing, fines, implementation of data subjects' rights, Art. 5, 6, 12, 13, 14, 17 GDPR,

SN: Is the defendant always a controller and never a processor in cases, where the use of a program is not regulated by the GDPR because of the household exception (Art. 2 II c GDPR)?

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

BfDI:

- there are only a few known cases where an explicit agreement has been reached.

- in the cooperation procedures for WhatsApp entries, an assessment is difficult because Ireland "solves" the cases itself and we are not involved in the decision-making.

BB: 5

BE:

- RRO regarding Art. 5: Went into Art. 65, EDPB agreed that Art. 5 was violated

- RRO regarding amount of fine: still pending

BW: 1

BY-LDA: 2

HB,MV,RP,SH,SL,ST,TH: not specified

HE: In all the cases in which we raised relevant and reasoned objections (4). We have never initiated the dispute resolution procedure provided for in Article 65 GDPR.

HH: In two cases. In one case the LSA suggested a revised draft decision which we accepted, in one case we had withdrawn our objection.

NI: 1

NW: 5

SN: 1

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

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

BfDI: Mutual assistance was used, in particular on the status of further (investigative) measures taken by the DPC against WhatsApp in implementation of the EDPB-WA decision.
Feedback from SAs that did not use Mutual Assistance - Article 61 in the case of monitoring the implementation of a measure imposed in another Member State - for your information:
BB: so far we had no reason to assume that the LSA doesn't take care of the implementation of a measure.
BE: In accordance with the IMI best practices, the Berlin DPA to date relied on Art. 60 voluntary mutual assistance requests, which have sufficed
BW: So far our SA never had the need to use this formal procedure
BY-LDA: There was no case in which we deemed such monitoring to be adequate and useful.
HE: We did not see a need for monitoring the implementation of a measure imposed in another Member State.
MV: No concerned complainant in our jurisdiction in the relevant OSS cases, lack of resources for ex officio monitoring
NI: There has been no need for the application of this procedure so far.
NW: Triggering a formal mutual assistance procedure with narrow time limit corset should be reserved for cases in which an informal request is impossible. Such cases have not emerged here. It was regularly possible to clarify all the necessary issues.
SH: We did not have any relevant cases.
SL: There hasn't been an occasion for using an Article 61 procedure.
SN: So far, the situation, where the SDPTC was a CSA and there was not another national leading Supervisory Authority, there was no reason to doubt the implementation of the imposed measures. ST: Any problems could be resolved by Voluntary Mutual Assistance.
TH: Due to the constellation of the case, it was not appropriate to.

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

*** 4.1.3.3 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?**

BfDI: not involved, as no joint action in the area of responsibility of Department 23 (Telemedia and Messenger services), there has so far been no reason to use such a procedure for the implementation /enforcement of a measure imposed in another Member State. For the rest, the implementation of pan-European responsible persons is mostly carried out uniformly across Europe.

BE: In accordance with the IMI best practices, the Berlin DPA to date relied on Art. 61 voluntary mutual assistance requests, which have sufficed.

BY-LDA: There was no case in which we deemed this to be appropriate and useful.

HE: We did not see a need for monitoring the implementation of a measure imposed in another Member State.

*** 4.1.3.5 What is your experience when using Joint operations - Article 62 procedure?**

The Berlin DPA has participated in one Art. 62 procedure with the CNIL where information regarding data breaches was exchanged. The case is still ongoing.

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

*** 4.2.1.2 How many measures did you adopt under the urgency procedure?**

1

*** 4.2.1.3 Did you request an urgent binding opinion or decision of the EDPB under Article 66(2) GDPR?**

- ☒ 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
20*20	16 This is only the sum of the SAs that were able to provide numbers. Figures for three German SAs, including the two largest SAs, are missing. The total number for Germany is higher.
20*21	16 This is only the sum of the SAs that were able to provide numbers. Figures for three German SAs, including the two largest SAs, are missing. The total number for Germany is higher.
20*22	17 This is only the sum of the SAs that were able to provide numbers. Figures for three German SAs, including the two largest SAs, are missing. The total number for Germany is higher.
20*23	26 This is only the sum of the SAs that were able to provide numbers. Figures for two German SAs, including the second largest SA, are missing. The total number for Germany is higher.
20*24 (Forecast)	25 This is only the sum of the SAs that were able to provide numbers. Figures for three German SAs, including the second and third largest SAs, are missing. The total number for Germany is higher.

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
20*20	911,77	-
20*21	999,81	-
20*22	1045,57	-
20*23	1099,97	-
20*24 (Forecast)	1094,97	The value for 2024 is only the sum of the SAs that were able to provide numbers (17 out of 18). The total number for Germany is higher.

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

	BUDGET (€)
20*20	85.491.920
20*21	97.450.800
20*22	112.999.530
20*23	120.628.140
20*24 (Forecast)	77.957.130 This is only the sum of the SAs that were able to provide numbers (17 out of 18). Figures for BfDI as the largest SA are missing. The total number for Germany is higher.

* 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.

In addition to the tasks entrusted by the GDPR, most German DPAs perform tasks entrusted by the national legislation implementing Directive (EU) 2016/680 and all German DPAs perform tasks entrusted by the national legislation implementing Directive (EU) 2002/58. In addition, some German DPAs control public bodies with regard to rights of access to documents and information ("freedom of information"), as provided in the respective national legislation. Tasks entrusted by the GDPR amount from 80-95 % while other tasks may amount from 5-20 %, all depending on the respective national legislation. An exact indicative breakdown can therefore not be given.

4.4.5 Please explain, if needed:

BfDI: The Federal Commissioner for Data Protection and Freedom of Information is in charge of data protection supervision at the public federal authorities within the scope of the GDPR. Besides this competence in the public sector, the supervisory competence in the private sector is limited to supervision of companies providing telecommunications or postal services.

The tasks of the Federal Commissioner for Data Protection and Freedom of Information beyond those entrusted by the GDPR are the following:

- Monitoring and enforcement of the implementation of Directive (EU) 2016/680 at federal public bodies (e.g. Federal Police or Federal Criminal Police Office).
- Supervision of bodies which do not fall within the scope of Union law (e. g. intelligence services, Federal Armed Forces, the Bundestag and companies falling under the Security Clearance Act).
- In addition, there are special tasks alike certification according to the De-Mail-law.
- The Federal Commissioner acts as ombudsperson as regards requests for access to information according to the German Federal Freedom of Information Act.

Breakdown: Tasks entrusted by GDPR: approximately 85 %; other tasks: 15 %

BY-LDA: No other tasks beyond GDPR

MV: 90 % GDPR / 10 % IFG (access to documents)

SN: This supervisory Authority functions not only as a Supervisory Authority according to the GDPR and in the scope of the Law Enforcement Directive, but also as a Transparency Commissioner.

TH: 85 % to 15 %

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?

24.2 (This is only the sum of the SAs that were able to provide numbers (16 out of 18). The total number for Germany is higher.)

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	20.220 This is only the sum of the SAs that were able to provide numbers (15 out of 18). The total number for Germany is higher.	28.337 This is only the sum of the SAs that were able to provide numbers (16 out of 18). The total number for Germany is higher.	22.776 This is only the sum of the SAs that were able to provide numbers (16 out of 18). The total number for Germany is higher.	37.090 This is only the sum of the SAs that were able to provide numbers (16 out of 18). The total number for Germany is higher.	32.300 This is only the sum of the SAs that were able to provide numbers (16 out of 18). The total number for Germany is higher.	19.197 This is only the sum of the SAs that were able to provide numbers (15 out of 18). The total number for Germany is higher.

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	13 This is only the sum of the SAs that were able to provide numbers (9 out of 18). The total number for Germany is higher.	35 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	25 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	55 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	22 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	7 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.
The number of complaints received from another DPA through the OSS.	12 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	51 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	33 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	39 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	18 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	29 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.

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	134 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.	305 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.	421 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.	376 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.	255 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.	152 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.

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	5310	8209	9809	9379	8291	6316
	This is only the sum of the SAs that were able to provide numbers (8 out of 18). The total number for Germany is higher.	This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	This is only the sum of the SAs that were able to provide numbers (9 out of 18). The total number for Germany is higher.	This is only the sum of the SAs that were able to provide numbers (9 out of 18). The total number for Germany is higher.

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
Nu*umber of complaints resolved through an Article 60(7) GDPR decision	2 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	11 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	28 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	19 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	26 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	12
Nu*umber of complaints resolved through an Article 60(8) GDPR decision	-	1 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	-	-	3 This is only the sum of the SAs that were able to provide numbers (12 out of 18). The total number for Germany is higher.	17
Nu*umber of complaints resolved through an Article 60(9) GDPR decision	0	0	0	0	1	0

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	8 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	20 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	12 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	53 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	26 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	3 This is only the sum of the SAs that were able to provide numbers (12 out of 18).

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

Any request or communication irrespective of form, where a natural person seeks intervention by the DPA in circumstances where processing of personal data relating to him or her infringes GDPR.

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	Those SAs that were able to provide numbers (4 out of 18) reported an average time between 3,1 to 10 months.
Median Time	Those SAs that were able to provide numbers (3 out of 18) reported a median time between 4 to 7 months.

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	1651 This is only the sum of the SAs that were able to provide numbers (6 out of 18). The total number for Germany is higher.	1143 This is only the sum of the SAs that were able to provide numbers (6 out of 18). The total number for Germany is higher.	1202 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	1673 This is only the sum of the SAs that were able to provide numbers (9 out of 18). The total number for Germany is higher.	1145 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.	833 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher.

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	Those SAs that were able to provide numbers (2 out of 18) reported an average time between 4 to 6 months.	Those SAs that were able to provide numbers (3 out of 18) reported an average time between 4,5 to 14 months.	Those SAs that were able to provide numbers (3 out of 18) reported an average time between 5 to 8,5 months.	Those SAs that were able to provide numbers (3 out of 18) reported an average time between 5 to 14,2 months.	Those SAs that were able to provide numbers (3 out of 18) reported an average time between 4,5 to 6 months.	Those SAs that were able to provide numbers (3 out of 18) reported an average time between 4,5 to 6,7 months.
Median Time	Those SAs that were able to provide numbers (2 out of 18) reported a median time between 3,5 to 6 months.	Those SAs that were able to provide numbers (2 out of 18) reported a median time between 4 to 6 months.	Those SAs that were able to provide numbers (2 out of 18) reported a median time between 5,5 to 6 months.	Those SAs that were able to provide numbers (3 out of 18) reported a median time between 4,5 to 15,65 months.	Those SAs that were able to provide numbers (3 out of 18) reported a median time between 4 to 6,4 months.	Those SAs that were able to provide numbers (2 out of 18) reported a median time between 4 to 6 months.
Total number of closed investigations	3021 This is only the sum of the SAs that were able to provide numbers (2 out of 18). The total number for Germany is higher.	3172 This is only the sum of the SAs that were able to provide numbers (3 out of 18). The total number for Germany is higher.	5295 This is only the sum of the SAs that were able to provide numbers (3 out of 18). The total number for Germany is higher.	4988 This is only the sum of the SAs that were able to provide numbers (3 out of 18). The total number for Germany is higher.	3541 This is only the sum of the SAs that were able to provide numbers (2 out of 18). The total number for Germany is higher.	2795 This is only the sum of the SAs that were able to provide numbers (2 out of 18). The total number for Germany is higher.

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	489 This is only the sum of the SAs that were able to provide numbers (10 out of 18). The total number for Germany is higher	1431 This is only the sum of the SAs that were able to provide numbers (13 out of 18). The total number for Germany is higher.	2594 This is only the sum of the SAs that were able to provide numbers (13 out of 18). The total number for Germany is higher.	2648 This is only the sum of the SAs that were able to provide numbers (13 out of 18). The total number for Germany is higher.	3261 This is only the sum of the SAs that were able to provide numbers (14 out of 18). The total number for Germany is higher.	1096 This is only the sum of the SAs that were able to provide numbers (11 out of 18). The total number for Germany is higher.

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	373 This is only the sum of the SAs that were able to provide numbers (8 out of 18).	653 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	1254 This is only the sum of the SAs that were able to provide numbers (13 out of 18).	406 This is only the sum of the SAs that were able to provide numbers (5 out of 18).	1616 This is only the sum of the SAs that were able to provide numbers (4 out of 18).	519 This is only the sum of the SAs that were able to provide numbers (13 out of 18).
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	82 This is only the sum of the SAs that were able to provide numbers (9 out of 18).	346 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	1004 This is only the sum of the SAs that were able to provide numbers (13 out of 18).	778 This is only the sum of the SAs that were able to provide numbers (13 out of 18).	835 This is only the sum of the SAs that were able to provide numbers (14 out of 18).	324 This is only the sum of the SAs that were able to provide numbers (13 out of 18).
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	7 This is only the sum of the SAs that were able to provide numbers (8 out of 18).	13 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	34 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	78 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	60 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	43 This is only the sum of the SAs that were able to provide numbers (9 out of 18).
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	18 This is only the sum of the SAs that were able to provide numbers (8 out of 18).	30 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	103 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	95 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	96 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	21 This is only the sum of the SAs that were able to provide numbers (10 out of 18).
Order the controller to communicate a personal data breach to the data subject	5 This is only the sum of the SAs that were able to provide numbers (8 out of 18).	13 This is only the sum of the SAs that were able to provide numbers (9 out of 18).	7 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	6 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	32 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	17 This is only the sum of the SAs that were able to provide numbers (9 out of 18).

Im*pose a temporary or definitive limitation including a ban on processing	11 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	15 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	24 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	8 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	26 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	7 This is only the sum of the SAs that were able to provide numbers (10 out of 18).
Or*der 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 This is only the sum of the SAs that were able to provide numbers (9 out of 18).	6 This is only the sum of the SAs that were able to provide numbers (10 out of 18).	20 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	27 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	51 This is only the sum of the SAs that were able to provide numbers (12 out of 18).	14 This is only the sum of the SAs that were able to provide numbers (11 out of 18).
Wi*thdraw 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 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).
Or*der the suspension of data flows to a recipient in a third country or to an international organisation.	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).	0 This is only the sum of the SAs that were able to provide numbers (11 out of 18).

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	29 This is only the sum of the SAs that were able to provide numbers (15 out of 18). The total number for Germany is higher.	168 This is only the sum of the SAs that were able to provide numbers (17 out of 18). The total number for Germany might be higher.	335 This is only the sum of the SAs that were able to provide numbers (17 out of 18). The total number for Germany might be higher.	411 This is only the sum of the SAs that were able to provide numbers (17 out of 18). The total number for Germany might be higher.	769 This is only the sum of the SAs that were able to provide numbers (17 out of 18). The total number for Germany might be higher.	394 This is only the sum of the SAs that were able to provide numbers (15 out of 18). The total number for Germany is higher.

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.

BfDI:

- Non or insufficient technical and organizational measures, including lack of proper authentication of externals, lack of instructions to employees on how to handle external access requests to personal data, lack of internal procedures to evaluate adequacy of security measures (Art. 32 GDPR).
- No DPO despite situation of mandatory appointment, no communication of DPO's contact details to DPA, appointment of a person as DPO despite obvious conflict of interest (Art. 37 GDPR).
- So far, we have not carried out any fine proceedings in our department. Normally, only particularly serious violations of the provisions of the GDPR would lead to a fine. An internal example would be the fine proceedings against German telco operator 1&1 (lack of authentication in a call centre), in which BfDI imposed the only fine (so far), but this was a purely national case within Germany.

BE: There are no normal circumstances and infringements that result in a fine at our DPA, each case that has been fined in accordance with Article 83(4) or Article 83(5) GDPR was an individual case. No standard fining cases have emerged, yet.

Further examples:

- Use of permanently recording Dashcams by individuals and undertakings. Violation of Article 6(1) of the GDPR. The interests of the data subjects are higher than the interest of the controller in a complete documentation of his driving behaviour.
- Generation of score values for advertising management by credit institutions from extensive inventory data, partly from payment transaction data. For example, to find out which customers should be particularly receptive to credit card or real estate advertising. Violation of Article 6(1) of the GDPR. Data subjects have not reasonably to expect that the data deposited with banks will be used for such purposes (recital 47 sentence 1 GDPR)
- Collection of partly extensive personal data by real estate agents at an early stage prior entering a contract. For example, salary certificates, social assistance certificates, scoring values from credit reporting agencies. Violation of Article 6(1) of the GDPR. Insofar as the data may be collected, this is only necessary after selecting specific tenants.
- Storage of personal data for a significantly longer period than the permitted retention period. Violation of Article 17(1) of the GDPR.
- Infringement of Art. 58 section 1 letter a GDPR, the controller doesn't answer to our information request Use of permanently recording dashcams by individuals and undertakings.
- Violation of Article 6(1) of the GDPR. The interests of the data subjects are higher than the interest of the controller in a complete documentation of its driving behaviour.
- Creation of score values for advertising management by credit institutions from extensive inventory data, partly from payment transaction data. For example, to find out which customers should be particularly receptive to credit card or real estate advertising. Violation of Article 6(1) of the GDPR. Data subjects have not reasonably to expect that the data deposited with banks will be used for such purposes (recital 47 sentence 1 GDPR)
- Collection of partly extensive personal data by real estate agents at an early stage prior entering a contract. For example, salary certificates, social assistance certificates, scoring values from credit reporting agencies. Violation of Article 6(1) of the GDPR.
- Storage of personal data for a significantly longer period than the permitted retention period. Violation of Article 17(1) of the GDPR.
- Non or insufficient technical and organizational measures, including lack of proper authentication of externals, lack of instructions to employees on how to handle external access requests to personal data, lack of internal procedures to evaluate adequacy of security measures (Art. 32 GDPR).

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 (€)	142.083,50 This is only the sum of the SAs that were able to provide numbers (16 out of 18).	16.783.838,05 This is only the sum of the SAs that were able to provide numbers (16 out of 18).	48.168.314,88 This is only the sum of the SAs that were able to provide numbers (17 out of 18).	2.676.162,14 This is only the sum of the SAs that were able to provide numbers (17 out of 18).	5.894.641,20 This is only the sum of the SAs that were able to provide numbers (17 out of 18).	6.177.051,50 This is only the sum of the SAs that were able to provide numbers (14 out of 18).
Average level of fine	Those SAs that were able to provide numbers (7 out of 18) reported an average level of fine between 90 to 50.000 €.	Those SAs that were able to provide numbers (11 out of 18) reported an average level of fine between 238,80 to 455.000 €.	Those SAs that were able to provide numbers (13 out of 18) reported an average level of fine between 400 to 391.225 €.	Those SAs that were able to provide numbers (13 out of 18) reported an average level of fine between 415,79 to 67.475 €.	Those SAs that were able to provide numbers (12 out of 18) reported an average level of fine between 245,17 to 65.909,33 €.	Those SAs that were able to provide numbers (9 out of 18) reported an average level of fine between 219 to 123.061,91 €.
Median level of fine	Those SAs that were able to provide numbers (7 out of 18) reported a median level of fine between 90 to 50.000 €.	Those SAs that were able to provide numbers (9 out of 18) reported a median level of fine between 300 to 20.000 €.	Those SAs that were able to provide numbers (10 out of 18) reported a median level of fine between 225 to 1.039,25 €.	Those SAs that were able to provide numbers (10 out of 18) reported a median level of fine between 400 to 1.200 €.	Those SAs that were able to provide numbers (10 out of 18) reported a median level of fine between 178,50 to 3.101 €.	Those SAs that were able to provide numbers (10 out of 18) reported a median level of fine between 150 to 2.500 €.

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	%
De*cisions finding an infringement of GDPR challenged in national court	463 This is only the sum of the SAs that provided numbers (12 out of 18).	-
Su*ccessful challenges	48 This is only the sum of the SAs that provided numbers (12 out of 18).	-

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

BfDI (Federal Commissioner for Data Protection and Freedom of Information)

Further mitigating factors during court proceedings/ different weighing of factors in the individual case.

BE SA Berlin (Berlin Commissioner for Data Protection and Freedom of Information)

Unfortunately, we do not have any statistics regarding this.

BW SA Baden-Württemberg (Lander Commissioner for Data Protection and Freedom of Information)

In only one case the court provided a specific reasoning at all, which was the reduction of the fine due to the economic circumstances of the person concerned. In one other case the court rejected the existence of a GDPR infringement.

BY-LDA SA Bavaria - Private Sector (Bavarian Lander Office for Data Protection Supervision)

Three decisions relate to the same scenario: Individuals (acting as controllers) took photographs of cars committing parking violations and sent the photographs to the police. While we held that there is no legal basis on which such photographs could be taken, the court held that the controllers validly relied on Article 6.1.f GDPR. Fourth case: We issued a fine for infringement of the purpose limitation principle by a person acting as administrator in an apartment building. The court considered the case to be a minor infringement and hence repealed the fine. Fifth case: The controller was fined for refusing to provide access to its premises (Art. 58(1)(f) GDPR); the court reduced the amount of the fine due to the circumstances of the case (arguing that the controller incurred considerable costs for its lawyers' fee, and for the considerable "time elapsed" between the infringement and the judgment!) while upholding the fine in principle.

HE SA Hesse (Hessian Commissioner for Data Protection and Freedom of Information)

The warning that was the subject of the proceedings was rescinded. The court decided - in contrast to the supervisory authority - that the balancing of interests to be carried out pursuant to Article 6 (1) (1) of the GDPR was in favor of the plaintiff and that there was a permissible change of purpose within the meaning of Article 6 (4) of the GDPR.

HH SA Hamburg (Hamburg Commissioner for Data Protection and Freedom of Information)

Depending on the individual case.

MV SA Mecklenburg-Western Pomerania (Lander Commissioner for Data Protection and Freedom of Information)

No sufficient proof that a personalized employee user account was indeed used by that person therefore a fine was challenged successfully.

NI SA Lower Saxony (Lander Commissioner for Data Protection)

- The authority ordered the deletion of video recordings after a retention period of 72 hours. The court considered, that in this single case a prolonged retention period of up to 2 weeks was admissible. The decisive factor was, that the specific employee responsible for reviewing video recordings was not available more frequently. The court found it was not possible to review the recordings more quickly or frequently with appropriate cost and effort due to organizational reasons in the sphere of the undertaking.
- The authority ordered that the controller shall not monitor quality and quantity performance data of its employees every minute. The court considered that the performance monitoring is necessary and appropriate for the management of logistics processes, the qualification of employees, the provision of objective feedback and as a basis for personnel decisions. The appeal is pending with the Higher Administrative Court of Lower Saxony.
- The authority issued a reprimand against an undertaking that has conferred with the previous employer about an applicant. The court considered that this exchange was admissible, since the applicant had indicated an intended breach of confidentiality rules. The appeal has been applied for with the Higher Administrative Court of Lower Saxony.
- The authority issued a reprimand against an university that provided the court with personal data of applicants not involved in competition protection procedure. The court found that national law, that is in line with the primary and secondary law, required the university to provide all files of the recruitment process. Including personal data of other applicants, since those can be relevant for the decision of the court.
- The authority issued a reprimand against a community association. During the proceedings, it became clear that controller was a natural person, not the association. The chosen addressee was therefore incorrect.

Please note, that the data provided with question 5.4.1 do

- a) include 8 pending cases (of 35).
- b) not include challenges regarding (only) administrative fees.
- c) not include challenges regarding administrative fines. The fining procedure is detached from the administrative procedure. The fine decision of the authority changes in the proceedings before the court to the indictment of the public prosecutor's office. However, there were 25 decisions by the court. In 1 case the proceedings were discontinued for reasons of opportunity by the court, as the prosecution did not appear necessary. In other cases the court decided like the authority or the authorities decision regarding the infringement became final. However, the court decided routinely on lower fines than proposed by the authority.

NW SA North Rhine-Westphalia (Lander Commissioner for Data Protection and Freedom of Information)

lack of jurisdiction and statute of limitations

RP SA Rhineland-Palatinate (Lander Commissioner for Data Protection and Freedom of Information)

lack in fact finding, formal legality of the administrative act, jurisprudence on fundamental legal questions

SL SA Saarland (Independent Data Protection Center Saarland - Lander Commissioner for Data Protection and Freedom of Information)

Discontinuation of the proceedings.

SN SA Saxony (Saxon Data Protection Commissioner)

inadequate examination of the complaint; no proof of infringement of a norm by the controller

ST SA Saxony-Anhalt (Commissioner for Data Protection)

- In 1 case: Lack of local jurisdiction of the Saxony-Anhalt SA.
- In 6 cases the fine was reduced.
- In 2 cases the proceedings were terminated for lack of public interest.

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.

The activities undertaken by the German SAs are described in the EDPB Contribution to the report on the application of the GDPR under Article 97, adopted on 12 December 2023, section 6.2.