



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.

India, China, Brazil. It is particularly important to ensure the best possible cooperation with countries of global economic importance, to which a particularly large amount of personal data is transferred from the EEA.

3.4 Reasons for prioritisation if there should be any:

Need to ensure data protection of personal data being transferred.

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?

It seems to be important to discuss with further countries the adoption of further adequacy decisions under Article 45 of the GDPR. Indeed, each such decision contributes to facilitating international data transfers.

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?**

49

*** 4.1.1.5 Which topics were addressed?**

The most frequently raised issues are the lack of information on the right to an effective judicial remedy in accordance with (129) of the GDPR, failure to notify the personal data breach of the GDPR or the failure to apply a corrective powers adequate to the breach.

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

Consensus is always reached. There has not been a case where, as a result of a relevant and reasoned objection expressed by the President of the Polish supervisory authority, it was necessary for the EDPB to resolve the dispute in accordance with the procedure under Article 65 of the GDPR.

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?**

In its cooperation with other supervisory authorities, the Personal Data Protection Office did not identify any indication of the need to monitor the implementation of a measure imposed in another Member State.

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

The Personal Data Protection Office considers the mutual assistance procedure as adequate and capable of achieving the purposes for which it was designed.

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?**

In the course of its investigations, the Personal Data Protection Office has not identified any indications justifying the use of Joint Operations - Article 62 procedure.

*** 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?**

In the course of its investigations, the Personal Data Protection Office has not identified any indications justifying the use of Joint Operations - Article 62 procedure for implementation/enforcement of a measure imposed in another Member State.

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*day) does your DPA allocate to participation in EDPB activities?

	FTE*day
2020	247 days
2021	280 days
2022	262 days
2023	264 days
2024 (Forecast)	273 days

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	254	Persons, without the President and Deputy of the Personal Data Protection Office
2021	265	Persons, without the President and Deputy of the Personal Data Protection Office
2022	259	Persons, without the President and Deputy of the Personal Data Protection Office
2023	264	Persons, without the President and Deputy of the Personal Data Protection Office
2024 (Forecast)	344	Persons, without the President and Deputy of the Personal Data Protection Office

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

	BUDGET (€)
2020	7 689 890
2021	8 468 351
2022	8 811 816
2023	9 611 653
2024 (Forecast)	14 146 356

* 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.

The Personal Data Protection Office also performs tasks resulting from national legislation directly related to personal data protection. Regarding the implementation of the acts adopted under the European Data Strategy, there is still a discussion on the assignment of competences to the appropriate authorities.

4.4.5 Please explain, if needed:

The President of the Personal Data Protection Office, apart from the matters indicated in the GDPR, deals with matters resulting from other legal acts:

- 1) the Act on the Protection Of Personal Data
- 2) the Act on the protection of personal data processed in connection with preventing and combating crime (the Police Act)
- 3) the Act on Participation of the Republic of Poland in the Schengen Information System and the Visa Information System
- 4) the Act on Processing of Passenger Name Record Data
- 5) the Act on Telecommunications Law in connection with the Commission Regulation (EU) No 611/2013 of 24 June 2013 on the measures applicable to the notification of personal data breaches under Directive 2002 /58/EC of the European Parliament and of the Council on privacy and electronic communications.

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	5565	9304	6442	8318	6995	5288

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	no data	no data	0	0	0	0
The number of complaints received from another DPA through the OSS.	no data	no data	10	5	4	3

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	No data	No data	50	63	61	30

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	No data	No data	1823	1992	1936	1237

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	No data	No data	0	4	2	2
Number of complaints resolved through an Article 60(8) GDPR decision	No data	No data	0	10	4	1
Number of complaints resolved through an Article 60(9) GDPR decision	No data	nO data	0	0	0	0

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	0	0	0	0	0	0

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

The President of the Personal Data Protection Office qualifies as complaints the applications meeting the requirements resulting from the provisions of the Act of 14 June 1960 the Code of Administrative Procedure. According to the Act, the application should:

1. be signed in one of the indicated ways (see Article 14 paragraph 1a in conjunction with Article 14 paragraph 1d of the Code of Administrative Procedure):
 - a. if the letter will be in paper form, a handwritten signature is sufficient - preferably readable;
 - b. if he/she prefers to contact the Office by the use of electronic communication, one of the following methods should be used:
 - i. sign the application with a qualified electronic signature,
 - ii. sign the application with a trusted signature or a personal signature.
2. include the complainant's postal address, which will allow individualisation as a party to the procedure;
3. contain a specified request (Article 63 paragraph 2 of the Code of Administrative Procedure), i.e.:
 - a. The President of the Personal Data Protection Office shall investigate complaints on the actions of specific entities - indicated by name and address of the registered office, or by name, surname and address in the case of a natural person
 - b. information on what the notified infringement consists of, including an indication to what extent the processing of personal data concerning him/her violates the GDPR;
 - c. information on what action in the case the data subject expects from the President of the Personal Data Protection Office.

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	No data
Median Time	No data

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	0	0	45	53	64	34

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	0	0	5	6	4	3
Median Time	0	0	4	6	3,5	3
Total number of closed investigations	No data	No data	No data	No data	No data	No data

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	0	0	13	20	36	16

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	0	0	0	0	0
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	0	0	18	33	45	22
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	0	0	0	0	0	0
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	0	11	3	7	3
Order the controller to communicate a personal data breach to the data subject	0	0	5	3	3	6
Impose a temporary or definitive limitation including a ban on processing	0	0	0	0	0	0
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	0	0	0	0	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	8	11	17	19	19

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.

- 1) Failure to notify a personal data breach to the supervisory authority (Article 33(1) GDPR) and failure to communicate the personal data breach to the data subject (Article 34(1) GDPR).
- 2) Failure to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks of the processing and failure to regularly test, measure and evaluate the effectiveness of technical and organisational measures to ensure the security of the processing of personal data - resulting in a breach of the "integrity and confidentiality" principle (Articles 5(1)(f), 25(1) and 32(1) and (2) GDPR).
- 3) Entrusting the processing of personal data without a written entrustment personal data processing agreement and without verifying that the processor provides sufficient guarantees for the implementation of appropriate technical and organisational measures (Article 28(1), (3) and (9) GDPR).
- 4) Failure to cooperate with the supervisory authority in the performance of its tasks (Article 31 GDPR) in relation to the failure to provide the supervisory authority with access to the information necessary for the performance of its tasks (Article 58(1)(a) and (e) GDPR).
- 5) Failure to comply with an order ordered by the supervisory authority in an administrative decision pursuant to Article 58(2) 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 (€)	0	958.654,26	805.440,06	482.923,61	1.669.304,28	115.398,28
Average level of fine	0	119.831,78	73.221,82	28.407,27	87.858,12	6.073,59
Median level of fine	0	11.163,50	11.683,88	5.000	5.000	5.000

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	872	9,49
Successful challenges	191	21,90

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

Differences in interpretation of the legislation.

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 main activities of the Personal Data Protection Office undertaken to promote awareness of personal data protection among the listed entities include:

- Development and continuous updating of a website providing information on the current activities of the DPA including administrative decisions and related court proceedings. The website is an extensive knowledge base, including collections of documents and legal acts.
- Social media presence - maintenance of a Twitter profile
- Infoline activities (approximately 12,800 phone calls per year)
- Educational activities for DPOs, personal data controllers and the society
- DPA Newsletter - monthly newsletter sent to over 11500 subscribers and published, with a monthly delay, on the Office's website
- Publication of numerous reports (examples: Accessibility - DPA; - DPA)
- Annual data protection awareness survey "Knowledge of personal data protection in Poland" - research organised by the National Debt Register, and the ChrońPESEL service under the auspices of Personal Data Protection Office. Link: <https://www.uodo.gov.pl/en/553/1351>
- Participation of the spokesperson in numerous meetings, seminars and industry conferences

Publication of communications:

- Decisions of the President of the Personal Data Protection Office and other authorities
- Opinions of the Polish supervisory authority
- Guidance and instructions (e.g.: <https://archiwum.uodo.gov.pl/pl/138/2164>)
- Activities of the EDPB and the EDPS
- Guidance and problem-solving texts
- Publication of press releases
- Media relations - answers to questions from journalists (241 questions in 2023)

Programmes:

- Your Data-Your Concern - a cyclical, school-year-long programme that aims to increase the knowledge in the field of data protection, online safety and new technologies among teachers and students. The programme offers educational materials, webinars, training, workshops, participation in competitions. Link: <https://www.uodo.gov.pl/en/641>

- GDPR Summer Leaders Academy - a project aimed at students of selected faculties, enriching them with practical knowledge on data protection rules. Link: <https://www.uodo.gov.pl/en/553/1511>
- Personal Data Protection Law Institute (in Polish: "IPODO") - The first institute in Poland dealing with personal data protection issues. It was established at the University of Economics and Human Sciences in Warsaw under the patronage and in cooperation with the Personal Data Protection Office. Its aim is to increase public awareness of data protection law and to promote best practices and solutions through research, reports, education, counselling and cooperation with other institutions, as well as participation in the processes of creating legal regulations in this field. Link: <https://www.uodo.gov.pl/en/553/1500>

The most important events:

- Michal Serzycki Award - Awarded periodically to individuals and organisations recognised for promoting the values of data protection and the right to privacy. Link <https://www.uodo.gov.pl/en/p/michal-serzycki-data-protection-award>
- Webinar "Personal data - do we know how to protect them?" to discuss the results of the report "Knowledge of personal data protection in Poland". Link: <https://www.uodo.gov.pl/pl/138/2758>
- Data Protection Day - a regular event to celebrate the European Data Protection Day, Link: <https://www.uodo.gov.pl/en/553/1323>
- New Technologies Forum - a two-day event dedicated to the topic of personal data protection in relation to the development of new technologies. It was attended by numerous experts and academics from various fields covering IT, legal and social sciences. Link: <https://www.uodo.gov.pl/en/553/1552>
- Children's Day with the Polish DPA - online lessons organised on the occasion of Children's Day, during which the fictional character 'Roduś' presents issues in the area of personal data protection in an accessible way for children. Link: <https://www.uodo.gov.pl/en/553/1508>

7 Additional Policy Messages

In the previous GDPR report, the EDPB provided general policy messages, highlighting additional areas and topics that the EDPB considered worth mentioning. For example, the EDPB underlined the need to provide DPAs with sufficient resources, acknowledged the challenges of SMEs and addressed the topic of international transfers more in depth, among others.

*** 7.1 Would you like the future EDPB GDPR report to include an additional section on General policy messages?**

- Yes
 No

*** 7.2 Please add the topics and/or policy messages you would like to include in the EDPB report. Elaborate the reasons why, in your view, such topic should be included.**

The proposals on the policies of the DPAs should stem from the conclusions of the responses of the supervisory authorities and those policies should have a real impact on the effective implementation of the legal obligations of supervisory authorities.

From the point of view of the Personal Data Protection Office, the issues that have influence on the effectiveness and efficiency of the supervisory authority are:

- insufficient funding given to authorities, which implies: limited capacity to hire competent staff, lengthy investigations, limited IT resources, particularly related to cyber-security cases
- data protection issues in the face of the development of advanced technologies with particular reference to: chat GPT, artificial intelligence, big data, behavioural advertising

- the drafting of a publication setting out the Union's common position on the abovementioned issues and providing practical guidance on the use, design and development of these technologies
- the use of social media by public administration authorities.

It is also worth mentioning that DPAs are on the eve of the challenges arising from the evolving EU legislation, and therefore the current competences of DPAs will be enhanced. The conclusions of the survey should be a contribution to the discussion on the vision of the functioning of the authorities in a dynamically developing legal and technological environment. - cooperation with Data Protection Officers and monitoring the legislative process and giving opinions on the compliance of draft legislation with the GDPR.

Contact

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