



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?**

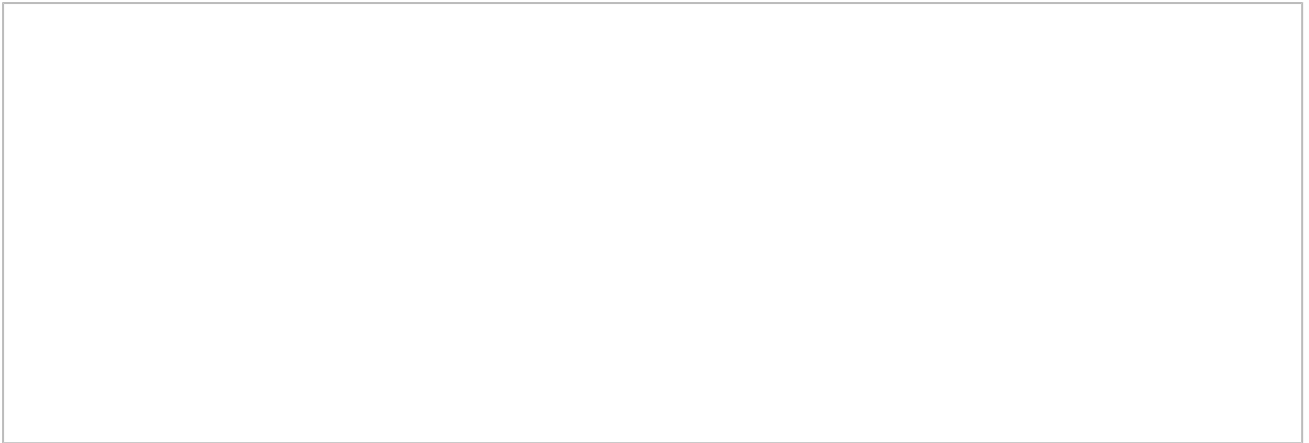
- Yes
 No

*** 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.**

The criteria seems adequate.
No suggestions for now.

3.4 Reasons for prioritisation if there should be any:

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?



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?

In 33 cases.

* 4.1.1.5 Which topics were addressed?

concept of personal data; lawfulness; rights of the data subject; criteria in the calculation of fines.

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

Only in 4 RRO out of 33, the situation was referred to the EDPB under A65(1)(a).
So consensus was reached in relation to 29 objections.

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?

There was no need to do so, either the situation was already solved or the LSA provided the relevant information.

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

Article 61 procedures encompasses a wide range of situations, including what is voluntary mutual assistance and not voluntary. In addition, Article 61 is used by SAs to launch questions (more forum-like), sometimes too general and not directly related to crossborder cases. This is a huge burden that most SAs cannot comply, i.e. do not have the time to answer, even negatively.

Despite the improvements at IMI level to distinguish the cases, Article 61 is still a procedure where almost everything fits.

Real crossborder cases are run through voluntary mutual assistance mechanism rather than mutual assistance, just because it is easier to handle this way in terms of IMI requirements. However, many situations should be bound by mutual assistance legal requirements (deadlines, mandatory reply, justification of not taking the action) and not on a voluntary basis.

It is still very time consuming to fulfill all IMI fields of an Article 61 procedure when not always that is necessary.

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?**

There are very few cases where the PT SA is LSA and none of them so far was complex enough or was considered useful or necessary to launch a joint operation.

* 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?

Apart from the situation referred to in the answer already provided in question 4.1.3.2, the PT SA, as CSA, has never received an invitation from the LSA to participate in a joint operation.

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	1,5
2021	1,5
2022	1,5
2023	1,5
2024 (Forecast)	2

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	24	General rules for public administration which are also applicable to the DPA, along with national budgetary rules containing restraints to increase the budget beyond a certain threshold are the basis of this clearly insufficient staff resources.
2021	25	See comment above
2022	28	See comment above
2023	29	See comment above
2024 (Forecast)	31	An increase of 12 FTE is the minimum, but it is still uncertain whether it is possible. The forecast for budget under discussion at the Parliament keeps the same level of financial resources as last year.

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

	BUDGET (€)
2020	2.385.701,00
2021	2.369.317,00
2022	2.547.220,00
2023	2.976.534,00
2024 (Forecast)	the same as 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.**

No precise metrics for this. See next answer.

GDPR:65

LED:10

ePrivacy: 25

4.4.5 Please explain, if needed:

It is very difficult to have clear distinctions between areas of competence, since they are interlinked (e.g. a complaint can cover both GDPR and ePrivacy or both GDPR and law enforcement in criminal field). Therefore, this a very empiric breakdown: the metrics of complaints do not reflect the effective work. In the law enforcement area, the complaints are much fewer but the inspection action, in particular with some in-depth verifications are more significant in this area than under GDPR or ePrivacy.

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 checked="" type="radio"/>	<input 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?

2

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	551	968	1127	1263	1797	1513 (until end of Q3)

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	0	3	5	4	3	2 (until end of Q3)
The number of complaints received from another DPA through the OSS.	0	3	5	4	3	2 (until end of Q3)

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	0	0	0	1	4	3 (until end of Q3)

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	206(after 25/5/2018)	120	298	677	500	424 (until end Q3)

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	0	0	0	0	0	0
Number of complaints resolved through an Article 60(8) GDPR decision	0	0	0	0	0	0
Number of complaints resolved through an Article 60(9) GDPR decision	0	0	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 report of facts that are an indication of potential infringement of GDPR.

Note: It should be highlighted that the statistics related to the number of complaints represent indeed the number of proceedings opened during the referenced year. They encompass complaints related to GDPR, ePrivacy or LED without any specific distinction. The statistics also encompass complaints submitted directly by individuals, trade unions, other associations, referrals from other authorities. They also encompass own-volition inquiries, following complaints or media reports, though we provide specific statistics on that.

* The first OSS decisions are about to be issued.

* In Portugal the law does not provide for amicable settlements.

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	n/a
Median Time	n/a

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	12	9	6	3	67	25

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	n/a	n/a	n/a	n/a	n/a	n/a
Median Time	n/a	n/a	n/a	n/a	n/a	n/a
Total number of closed investigations	n/a	n/a	n/a	n/a	n/a	n/a

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	1	7	6	19	69	- (not available yet)

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	1	1	-
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	0	0	0	0	5	-
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	1	2	1	-
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	2	2	48	-
Order the controller to communicate a personal data breach to the data subject	0	0	0	0	0	-
Impose a temporary or definitive limitation including a ban on processing	0	0	2	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	2	-
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	-
Order the suspension of data flows to a recipient in a third country or to an international organisation.	0	0	0	1	0	-

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	1	7	1	13	12	40 (end of Q3)

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.

lawfulness (articles 6 and 9 GDPR)

Data subject rights (Article 15)

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 (€)	400.000,00	12.000,00	2.000,00	1.312.000,00	4.496.500,00	261.950,00
Average level of fine	(only 1 fine)	1714,00	(only 1 fine)	100.923,00	374.708,00	6.548,75
Median level of fine	n/a	n/a	n/a	n/a	n/a	n/a

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	n/a	n/a
Successful challenges	n/a	n/a

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

Most of the appeals have not been decided yet.
There have been some negative conflicts of competence from the courts.
Some courts decreased the level of fine.

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.**

- There are some specific guidance issued by the PT SA on issues considered more relevant at national level available at <https://www.cnpd.pt/>
- FAQs and brief thematic-oriented explanations for organisations available at <https://www.cnpd.pt/>
- Several ad-hoc guidance for data processing GDPR compliance in the context of COVID19 pandemic.
- Edition of a semestrial Review by CNPD, called 'Data Protection Forum', containing scientific articles, opinions, commentary on case-law, DPO testimonies,
- Echoing EDPB guidance and public consultations through dedicated news in the PT SA website.
- Publication of CJEU case-law on privacy and data protection in the PT SA website

Also, there have been an intense participation from representatives of the PT SA in many conferences and seminars about data protection in general and very often on specific topics. The SA also participated in some initiatives addressed to SMEs and to DPOs.