

**EVALUATION OF THE GDPR UNDER ARTICLE 97 – QUESTIONS TO DATA PROTECTION AUTHORITIES / EUROPEAN DATA PROTECTION BOARD**

**ANSWERS – BULGARIA**

The General Data Protection Regulation ('GDPR') entered into application on 25 May 2018, repealing and replacing Directive 95/46/EC. The GDPR aims to create a strong and more coherent data protection framework in the EU, backed by strong enforcement. The GDPR has a two-fold objective. The first one is to protect fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. The second one is to allow the free flow of personal data and the development of the digital economy across the internal market.

According to Article 97 of the GDPR, the Commission shall submit a first report on the evaluation and review of the Regulation to the European Parliament and the Council. That report is due by 25 May 2020, followed by reports every four years thereafter.

In this context, the Commission shall 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 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. As questions related to Chapter VII concern more directly the activities of the DPAs, the present document focuses primarily on that aspect of the evaluation, while also seeking their feedback on Chapter V related issues.

We would be grateful to get the replies to the questions (in English) by 15 January 2019, at the following e-mail address: [JUST-EDPB@ec.europa.eu](mailto:JUST-EDPB@ec.europa.eu).

Please note that your replies might be made public.

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 evaluation report, and following the input from other stakeholders, it is not excluded that we might have additional questions at a later stage.

**I. CHAPTER V**

The GDPR provides that the adequacy decisions adopted by the Commission under Directive 95/46 remain in force under the GDPR until amended, replaced or repealed. In that context, the Commission is tasked to continuously monitor and regularly evaluate the level of protection guaranteed by such decisions. The 2020 evaluation provides a first opportunity to evaluate the 11 adequacy decisions adopted under the 1995 Directive. This does not include the decision on the Privacy Shield that is subject to an ad hoc annual review

process and the Japanese adequacy decision that was adopted last year under the GDPR and is also subject to a specific evaluation exercise (the first one will be in 2021).

1. Has any stakeholder raised with your authority any particular question or concern regarding any of the adequacy decisions adopted under the 1995 Directive (with the exception of the EU-US adequacy decision which is not covered by this evaluation process)?

**CPDP Answer:** Currently, the Bulgarian Commission for Personal Data Protection has not been approached by the stakeholders with any questions or concerns regarding any of the previously adopted adequacy decisions.

2. Does your authority have any information on the developments of the data protection system of any of the countries/territories subject to a Commission adequacy decision under the 1995 Directive that you would consider relevant for the Commission's evaluation?

**CPDP Answer:** At this stage, no information is provided to the CPDP about data protection developments in the countries with adopted adequacy decisions under the former Directive 95/46/EC.

3. In your view, should any third country or international organisation be considered by the Commission in view of a possible adequacy decision?

**CPDP Answer:** CPDP is of the opinion that a possible decision regarding South Coria would be useful, as our DPA is currently dealing with requests for opinions on possible data transfers towards this country and following our analysis, apparently, its legal system provides for guaranties for the data protection.

## II. CHAPTER VII

The GDPR provided for one single set of data protection rules for the EU (by a Regulation) and one interlocutor for businesses and one interpretation of those rules. This “one law one interpretation” approach is embodied in the new cooperation mechanism and consistency mechanisms. In order to cooperate effectively and efficiently the GDPR equips the Data Protection Authorities (thereafter the DPA/DPAs) with certain powers and tools (like mutual assistance, joint operations). Where a DPA intends to adopt a measure producing effects in more than Member State, the GDPR provides for consistency mechanism with the power to ask for opinions of the European Data Protection Board (EDPB) on the basis of Article 64(1) and (2) GDPR. In addition, in situations where the endeavour to reach consensus in the cases of one-stop shop (OSS) does not work (i.e. there is a dispute between the DPAs in specific cases), the EDPB is empowered to solve the dispute through the adoption of binding decisions.

In this context, the Commission finds it appropriate to request the views of the DPAs / EDPB on their first experiences on the application of the cooperation and consistency mechanisms. To this aim, the Commission established the list of questions below, in order to help the DPAs framing their input. It is understood, that the Commission is also interested in any comments the DPAs may have which goes beyond the answer to the questions and which concerns the application of the two above-mentioned mechanisms.

### 1. Cooperation Mechanism

#### 1.1. OSS – Article 60

- a. Has your DPA been involved in any OSS cases? If so, in how many cases since May 2018?

**CPDP Answer:** Currently, CPDP is a lead supervisory authority in 3 cases, however no Art. 60 notification has been published yet. We are a CSA on 8 cases entered in IMI.

- b. Did you encounter any problems/obstacles in your cooperation with the lead/concerned DPA? If yes, please describe them

**CPDP Answer:** We did not find any particular problems cooperating with our colleagues on the cases. Generally, we are of opinion that the set deadlines are sometimes hard to be followed, since every case is very specific and also the national requirements for complaints and alerts handling allow for longer deadlines than the already set ones.

- c. How would you remedy these problems?

**CPDP Answer:** We try to be as expedite as we can, however, on some occasions it is not possible, which creates periodical exchange of information and communication with the colleagues.

- d. Is your national administrative procedure compatible with the OSS? (e.g. do you identify a clear step which can be referred to as a “draft decision”? Are the parties heard before you produce such draft decision?)

**CPDP Answer:** The national procedures are based on two different specific acts, depending on the type of the received request (complaint or alert). The complaints are dealt under the Administrative Procedural Code and the alerts are handled following the provisions of the Administrative Violations and Sanctions Act. However, in both cases, all complaints and/or alerts should cover the minimum requirements for admissibility, e. g. they should contain all necessary requisites set by the Electronic Document and Electronic Certified Services Act or a handwritten signature. Often those requirements are not met in cases uploaded by DPA’s that do not have those in their national legislative system. On the other hand, we do have a requirement of a non-mandatory public hearing of the parties before a decision is taken by the CPDP and this requirement is set up in the Rules of Procedure of the same. A possible “draft decision” proposed by the Lead authority would be a useful tool for the authorities that can eventually be involved in the procedure, and it can be of great help in case that this decision becomes mandatory in their own countries.

- e. Were you 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)?

**CPDP Answer:** Currently, none of the published complaints by CPDP in the IMI are considered as “local cases”. However, we had several complaint about Google search results that cannot be handled by the Irish DPA, because of the division of competences on Google cases with the headquarters of the company in USA, which probably can be considered as local cases.

- f. Is the OSS living up to its expectations? If not, what would you identify as its shortcomings? How can they be remedied?

**CPDP Answer:** We support the exchange of information and cooperation between the authorities in the IMI system. The lack of direct linking of the procedures opened on a relevant case might be pointed out as one particular shortcoming, meaning that numbers are automatically generated for every procedure started, and

if the case, published in IMI, goes through different procedures (as most of them do), it will have at least 2 different numbers. So, when the development of the case is handled via several procedures, the connection between them is made by the expert as follow up activity rather by the system itself. Meanwhile, it is our impression that in some member-states often actin as Lead authorities, the deadlines for conducting and concluding an investigation are largely elapsed, which can impact our national administrative procedure that provides for strict and mostly time limited terms for pronounciation.

#### 1.2. Mutual assistance – Article 61

- a. Did you ever use this tool in the case of carrying out an investigation?

**CPDP Answer:** The CPDP hasn't yet used this tool for investigation information exchange purpose.

- b. Did you ever use this tool in the case of monitoring the implementation of a measure imposed in another Member State?

**CPDP Answer:** The CPDP hasn't so far used this tool for this purpose.

- c. Is this tool effectively facilitating your work? If yes, how? If not, why?

**CPDP Answer:** The information exchange under this Article is facilitating our work. However, sometimes it is not possible to answer or provide information in the set period of time, which requires multiple entering in the IMI system and exchange of comments in the communication menu.

- d. Do you encounter any other problems preventing you from using this tool effectively? How could they be remedied?

**CPDP Answer:** We haven't encountered particular problems preventing the tool's effective use, however, as mentioned above, occasionally, the time limits need to be extended and this situation has an impact on the data protection authorities working together on a case .

#### 1.3. Joint operations – Article 62

- a. Did you ever use this tool (both receiving staff from another DPA or sending staff to another DPA) in the case of carrying out and investigation?

**CPDP Answer:** The CPDP hasn't used this tool yet.

- b. Did you ever use this tool in the case of monitoring the implementation/enforcement of a measure imposed in another Member State?

**CPDP Answer:** N/A

- c. Is it effectively facilitating your work? If yes, how? If not, why?

**CPDP Answer:** N/A

- d. Did you encounter any problems (e.g. of administrative nature) in the use of this tool? How could they be remedied?

**CPDP Answer:** N/A

## 2. Consistency mechanism

## 2.1 Opinion - Article 64 GDPR

- a. Did you ever submit any draft decision to the Board under Art 64(1)?

**CPDP Answer:** The CPDP has submitted its list of data processing operations, requiring PDIA following the procedure under Art. 64 (1) (a) of the GDPR.

- b. Did you ever submit any draft decision to the Board under Art 64(2)?

**CPDP Answer:** Currently, the CPDP hasn't submitted any draft decision under Art. 62 (2) of the GDPR.

- c. Did you have any problems by complying with the obligations under Article 64(7) GDPR, i.e. taking utmost account of opinion of the EDPB? If so please describe them.

**CPDP Answer:** The CPDP did not had any problems with the opinions.

- d. Was the "communication of the draft decision" complete? Which documents were submitted as "additional information"?

**CPDP Answer:** The documents exchanges during the procedure under Art. 64 (1) (a) were connected with the first comments of the EDPB on the proposed list.

- e. Were there any issues concerning the translations and/or any other relevant information?

**CPDP Answer:** The overall issue with the translations is that they need financial and often also human resources in order to be effectively fulfilled and sometimes they also take a lot of additional time and coordination by the national experts. The same is relevant for the proofreading process, which although we fully understand the reason behind, we should point out that this is a time-consuming enterprise.

- f. Does that tool fulfil its function, namely to ensure a consistent interpretation of the GDPR?

**CPDP Answer:** This tool fulfils its function with regard to the final opinion adopted by the EDPB.

## 2.2 Dispute resolution - Article 65 GDPR

- a. Was this procedure used? If yes, what was your experience during the process?

**CPDP Answer:** The procedure under Art. 65 of the GDPR hasn't yet been applied.

- b. Which documents were submitted to the EDPB?

**CPDP Answer:** N/A

- c. Who prepared the translation, if any, of that documents and how much time did it take to prepare it? Were all the documents submitted to the EDPB translated or only some of them?

**CPDP Answer:** N/A

## 2.3 Urgency Procedure – Article 66

- a. Did you ever adopt any measure under urgency procedure?

**CPDP Answer:** The procedure under Art. 66 of the GDPR hasn't yet been applied, so no information was exchanged under it.

## 3. Exchange of information: Standardised communication

- a. What is your experience with the standardised communication through the IMI system?

**CPDP Answer:** The standardised communication via the IMI system is an effective tool, which we find very useful. Sometimes, the experts need more time in order to provide an answer to a set question or inquiry, however, this cannot be considered as problem of the system rather than the reality of the everyday work, which occasionally leads to work overflow and inability to answer within the set deadline.

#### 4. European Data Protection Board

- a. Can you provide an indicative breakdown of the EDPB work according to the tasks listed in Article 70?

**CPDP Answer:** The CPDP provided a draft decision under art. 46, § 3, p. “b” which was approved by opinion under art. 70, § 1, p. “t” and a draft decision under art. 64, § 1, subject to publication under art. 70, § 1, p. “y”.

- b. *For the EDPB Secretariat:* Can you provide an indicative breakdown of the EDPB Secretariat work and allocation of resources (full-time equivalent) according to the tasks listed in Article 75?

#### 5. Human, technical and financial resources for effective cooperation and participation to the consistency mechanism

- a. How many staff (full-time equivalent) has your DPA? Please provide the figures at least for 2016, 2017, 2018, 2019 and the forecast for 2020.

**CPDP Answer:** The following figures do not include the 5 members of the board of CPDP:

- 2016 – 82 according to the RoP, but due to insufficient financing only 70 employed;
- 2017 – 82 according to the RoP, but due to insufficient financing only 64 employed;
- 2018 – 82 according to the RoP, but due to insufficient financing only 64 employed;
- 2019 – 78 according to the RoP, but due to insufficient financing only 60 employed;
- 2020 – 78 according to the RoP, but due to insufficient financing only 60 to be employed.

- b. What is the budget of your DPA? Please provide the figures (in euro) at least for 2016, 2017, 2018, 2019 and the forecast for 2020.

**CPDP Answer:** The Inspectorate with the Supreme Judicial Council, which deals with the data protection in the judiciary, has its own budget that is not exclusively dedicated to data protection tasks, but rather to its controlling obligations including data protection. For its part, the CPDP disposes with an independent budgetary chapter, which provides as follow:

- 2016 – 2 283 000 BGN, equivalent to 1 167 279 €;
- 2017 – 2 450 000 BGN, equivalent to 1 252 665 €;
- 2018 – 2 430 000 BGN, equivalent to 1 242 439 €;
- 2019 – 2 830 000 BGN, equivalent to 1 446 956 €;
- 2020 – 2 830 000 BGN, equivalent to 1 446 956 €.

- c. Is your DPA dealing with tasks beyond those entrusted by the GDPR? If yes, please provide an indicative breakdown between those tasks and those entrusted by the GDPR.

**CPDP Answer:** We are dealing also with all relevant tasks pursuant to the E-Privacy Directive, as we are the only competent supervisory authority for data protection under this legal act as well. The tasks under the GDPR can be summed up to  $\frac{3}{4}$  in comparison to  $\frac{1}{4}$  under the E-Privacy.

- d. How would you assess the resources from your DPA from a human, financial and technical point of view?

**CPDP Answer:** We are considering the actual allocated resources as largely insufficient both from human, financial and technical point of view. The reduction of the staff is due mostly to the reduced financing and this tendency is to persist with the new budget for 2020. Since May 2018 43 employees quitted and at the moment we have 18 vacancies.

- e. More specifically, is your DPA properly equipped to contribute to the cooperation and consistency mechanism? How many persons work on the issues devoted to the cooperation and consistency mechanism?

**CPDP Answer:** Currently, we do not have a specific person designated to work solely on the cooperation and consistency mechanism. One or two employees will be designated as soon as need occurs.

## 6. Enforcement

- a. How many complaints (excluding request for information) did you receive since May 2018? What kind of communication with you/request do you qualify as a complaint?

**CPDP Answer:** 31 complaints and 13 alerts through the Inspectorate with the Supreme Judicial Council (ISJC). 531 complaints for the time period May – December 2018, 1550 complaints between January and the end of November 2019 and 1271 alerts between May 2018 and the end of November 2019 through the CPDP.

- b. Which corrective powers did you use since May 2018?

**CPDP Answer:** The ISJC used the one of art. 57, § 2, p. "b" – reprimands and the CPDP the ones of art. 57, § 2, p. "b", "c", "d", "g" and "i"

- c. Are you resolving any possible infringements of the Regulation with the help of so-called "amicable settlements"?

**CPDP Answer:** The administrative procedure provides for such resolution, although they are rare – the ISJC had none, the CPDP has only several.

- d. How many fines did you impose since May 2018? Please provide examples.

**CPDP Answer:** For the ISJC – none; for the CPDP – for 2018: 13 in relation to complaints and 1 in relation to an alert and for 2019: those related to complaints are 68 and 4 for the alerts.

- e. Which attenuating and or aggravating circumstances did you take into account?

**CPDP Answer:** For the ISJC – those under art. 83, § 2, p. "a", "c", "f" and "g", for the CPDP – the same and in addition under the Guidance of the WP29 – the number of the data subjects, the damage that occurred, the level of public danger and the damaging consequences of the infringement.

By the end of November 2019 we have dealt with 98 data breach notifications under art. 33 of the GDPR;

The national initiatives to give guidance to SMEs cover, on the one hand, a permanent hot-line for consultations (national phone number available every working day from 9:00 am to 5:30 pm) and a dedicated project named “SMEDATA” focused solely on the SME. The project aims at ensuring the highest degree of privacy and personal data protection through innovative tools for SMEs and citizens. SMEDATA is organizing a series of awareness and training events and is developing a self-assessment tool and a mobile application. All relevant information on the SMEDATA project can be found on its official website : <https://smedata.eu/>. The results for one year of work on this project can be summarized as follow:

- ✓ Survey on challenges faced by Small and Medium-sized Enterprises and their associations while implementing GDPR; (results: [https://smedata.eu/wp-content/uploads/2019/05/D3.1\\_SMEDATA\\_Survey\\_Report.pdf](https://smedata.eu/wp-content/uploads/2019/05/D3.1_SMEDATA_Survey_Report.pdf) as well as [https://smedata.eu/wp-content/uploads/2019/12/D2.2\\_SMEDATA\\_Survey\\_Report.pdf](https://smedata.eu/wp-content/uploads/2019/12/D2.2_SMEDATA_Survey_Report.pdf));
- ✓ 13 training events for more than 800 representatives of SMEs in 8 Bulgarian cities – Blagoevgrad, Vratsa, Plovdiv, Sofia, Varna, Burgas, Pleven and Veliko Tarnovo in September and October 2019;
- ✓ ‘GDPR in your pocket’ – Mobile application (<https://smedata.eu/index.php/2019/09/30/the-beta-version-of-the-smedata-mobile-application-is-now-available-for-free-download/>);
- ✓ International conference „SME Challenges and GDPR” for more than 200 participants on the 2019, 19<sup>th</sup> December (<https://www.cdpd.bg/en/index.php?p=pages&aid=57>)