

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

**ANSWERS FROM THE CZECH SUPERVISORY AUTHORITY**

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.

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)? *No.*
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? *No.*
3. In your view, should any third country or international organisation be considered by the Commission in view of a possible adequacy decision? *Signatory countries of the Council of Europe Convention 108.*

## 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?  
*Yes, we were involved as follows:*  
*Cases in the Case Register: 8 as LSA and 188 as CSA*  
*Article 60 procedures: 5 procedures initiated per LSA, 29 received per CSA*
- b. Did you encounter any problems/obstacles in your cooperation with the lead/concerned DPA? If yes, please describe them

*The interaction with other SAs was not always smooth in so far some of them devoted less attention to the notifications (alerts) which left us in uncertainty as to their willingness to contribute.*

- c. How would you remedy these problems?

*Involvement of direct mailing or usage of “prioritised” notifications (e.g. by way of different colours to mark the level of importance or urgency) could be of help.*

- 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?)

*We issue just right a decision (i.e. we do not prepare any “draft decision” in sense of this questionnaire). However, parties have the opportunity to be heard beforehand and to comment on the complete file related to the case: effectively all the evidence and documents gathered by the SA. This applies generally to all stages of the proceedings.*

*It must be noted that proceedings before the Office have several stages (typically). During inspection phase an Inspection report is issued. It contains primarily factual findings and preliminary legal considerations. The party has right to raise objections (as a form of appeal to President of the Office) and Inspection Report is finalised. Subsequently, based on Inspection Report, formal administrative proceeding is started. After the first instance decision is delivered, it may be subject to an appeal (to President of the Office). The decision of the President of the Office may be subject to judicial review.*

*Draft decision of the President of the Office (i. e. draft decision of the second instance) can be with no doubt considered as a draft decision within the meaning of art. 60 (there are doubts about such qualification in relation to the first instance decision). It means that in the Czech practice the right of the party to be heard (to access to file, to comment, to challenge opinion of the Office) is ensured generously and is realized repeatedly before draft decision is produced.*

- 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)?

*Yes, we were.*

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

*Timely lengthiness of procedures due to slow communication among SAs (see also point b). Improvement of communication tools might bring a result.*

## 1.2. Mutual assistance – Article 61

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

*Yes, we used it often. This procedure works very well.*

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

*No experience.*

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

*Yes, it is effective and enables to learn swiftly the opinions from other SAs. We have positive experience here.*

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

*A problem in our view is the issue of missing feedback from all SAs. It would be useful to receive a response, at least, informing that the given SA would not/cannot reply or would reply at a later stage.*

### 1.3. Joint operations – Article 62

*We possess no experience as our SA has neither entered or become recipient of any Article 62 cases.*

- 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 an investigation?
- b. Did you ever use this tool in the case of monitoring the implementation/enforcement of a measure imposed in another Member State?
- c. Is it effectively facilitating your work? If yes, how? If not, why?
- d. Did you encounter any problems (e.g. of administrative nature) in the use of this tool? How could they be remedied?

## 2. Consistency mechanism

### 2.1 Opinion - Article 64 GDPR

- a. Did you ever submit any draft decision to the Board under Art 64(1)? *Yes, in two instances (DPIA 35(4) lists and certification criteria for CoC monitoring bodies).*
- b. Did you ever submit any draft decision to the Board under Art 64(2)? *No.*
- 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.  
*No problems.*
- d. Was the “communication of the draft decision” complete? Which documents were submitted as “additional information”?  
*No negative experience.*
- e. Were there any issues concerning the translations and/or any other relevant information?  
*Costs appeared to be the most sensitive issue. We regard it as essential also for the future.*
- f. Does that tool fulfil its function, namely to ensure a consistent interpretation of the GDPR?  
*Yes, in our view. It facilitates common approach to and interpretation of the GDPR. It also strengthens the right to be heard among the SAs.*

### 2.2 Dispute resolution - Article 65 GDPR

- a. Was this procedure used? If yes, what was your experience during the process?  
*Yes, it was. However, the submission has been withdrawn subsequently due to formal reasons after clarification in EDPB expert subgroups.*
- b. Which documents were submitted to the EDPB?  
*Submitted were the IMI report, the proposed decision, CSA’s objections, privacy policies of the inspected party together with all its relevant statements.*
- 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?  
*The entire documentation was translated into English. We partly managed the translation ourselves (shorter papers), whereas the more voluminous documents were translated by an external agency.*

*Time was not so much a factor, but the costs of the outsourced translation were quite an issue. The expenses for translation will be a subject of concern in future as well.*

2.3 Urgency Procedure – Article 66

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

*We do not have any experience as this procedure has not been used yet.*

**3. Exchange of information: Standardised communication**

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

*Initially, we considered usage of this system for inter-SAs consultations rather awkward. Generally, the day-to-day operation has been improving. We suggest to improve the system of comments.*

#### 4. European Data Protection Board

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

<b>Year</b>	<b>Full-time staff</b>
2016	101
2017	99
2018	101
2019	101
2020	109

*The above figures represent total numbers including service staff. For illustration, the net number of full-time employees directly involved in GDPR-related activities is 54 in 2019.*

- 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.

<b>Year</b>	<b>Annual budget (EURO)</b>
2016	5 933 043
2017	6 247 455
2018	6 473 781
2019	6 541 288
2020	6 720 533 ( <i>allocation claimed but not approved yet</i> )

*(Exchange rate 1 EURO= 25,6 CZK, Czech National Bank)*

*The annual budget relates to all office's competencies as listed below under sub-item c.*

- 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.

- *Freedom of information – new competence anchored in the 2019 data protection law, to be performed as of 1 January 2020*

- *Competence related to the law enforcement directive implementation*

- *The unsolicited commercial communication (spam) – complaint handling, investigating, and decision making.*

- *Administration of one of the basic government registers (This system shall principally secure the protection of personal data across the basic registers by way of replacing the birth numbers, used so far, with a set of anonymous identifiers)*

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

*The financial resources reflect the “art of possible” and enable to deliver timely and satisfactorily. The technical equipment is at highest level. As goes for human resources, we have been confronted with relatively large fluctuation among the young staff and have difficulties in hiring IT-specialized experts.*

*It should be noted that the Office is subject to the Law on Civil Service (governing the rights and duties of civil servants). The number of employees is exclusively regulated by the decision of the government (annually).*

- 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?

*We do think yes. As there is currently no dedicated FTE position, the tasks are shared by 6 persons.*

## 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?

*We handled 4 995 complaints and instigations.*

*We regard as a complaint any submission where the complainant is directly concerned with the processing in question (i.e. the complainant is the data subject). In case of an instigation, on the contrary, the author of the submission is not concerned directly, but expresses a concern about a third party’s processing operation.*

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

*We used the following corrective powers: GDPR Article 58(2)(a), (b), (c), (d), (g), and (i).*

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

*CZ SA does not have the tool of “amicable settlement”. We make use of the possibilities provided in the GDPR Article 57(4).*

*More specifically, the Czech Data Protection Act (No. 110/2019 Coll., Section 65(a)) provides for yet another solution (citation):*

*“The Office may, during an infraction proceeding, discontinue a proceeding the case if by its resolution if it is clear, given the significance and degree of violation of or danger to the protected interest*

*affected, the manner of committing the act, its consequences, the circumstances under which the act was committed, and given the conduct of the accused after committing the offence, that the purpose of the proceedings on the infraction has been achieved or could be achieved in another manner.”*

*In fact, we used the possibility to adjourn a case (pursuant the CZ data protection act).*

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

*We imposed 17 fines altogether Another one fine will most probably be imposed until the end of 2019. The penalties were mostly imposed for breaches of data subject’s rights, principles of data processing as well as for insufficient legal grounds for processing or failure to keep the storage period.*

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

*Attenuating circumstances: negligence by omission, non-systematic nature of processing, responsive approach by the controller (willingness to remedy the problem upon notice).*

*Aggravating circumstances: breach of more than one GDPR provisions, breach in connection with the processing of special categories of data, breach committed by a professional in the industry (typically a big IT company).*

#### **Addendum (Post-December-plenary)**

National statistics on IMI (end date of November 2019):

*CZ SA acted as LSA in 11 cases (some of them still ongoing) and as CSA in 76 cases.*

Number of data breach notifications since 25/5/2018 to end of November 2019: *665 notifications*

National initiatives to give guidance to SMEs:

*CZ SA mostly takes advantage from the published EDPB guidelines and opinions by promoting them among the SMEs (via the office’s website primarily). Beside this, we prepared and published online the DPIA lists, both 35(4) and 35(5).*

Other specific support to the SMEs:

*We established a telephone hotline operated throughout the office’s working hours and staffed with colleagues from the consultation department.*

*We organized a series of 16 seminars for DPOs since 25/5/2018, both at the office’s premises and outside at different places over the republic to enhance the outreach*

*We organized an event targeted specifically at SMEs that are not bound by the obligation to install a DPO. Majority of over 120 conferences and seminars where representatives of the DPA participated with the GDPR focused presentations were organized for SMEs.*