

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

ANSWERS FROM THE DANISH DATA PROTECTION AGENCY

I. CHAPTER V

- a) 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.

- b) 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?

We are aware that the Faroe Islands is in the process of updating their privacy regulation to meet the requirements of the GDPR

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

We have no actual proposals concerning this.

II. CHAPTER VII

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.

LSA cases: 2

CSA cases: 62

(the numbers mentioned only include formal OSS art. 60 procedures which starts with the draft art. 60 decisions)

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

N/A

- c. How would you remedy these problems?

N/A

- 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?)

The Danish administrative procedure is compatible with the OSS, and the Danish Data Protection Agency can identify a clear step which can be referred to as a "draft decision". In Danish public administration law there is an obligation for public authorities, such as the Danish Data Protection Agency, to provide the parties with the opportunity to comment on the material which will form the basis for the decision of the Danish Data Protection Agency. The right to be heard in Danish public administration law is not unconditional but will apply in most situations.

- 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

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

Generally yes, but we find that the many different national procedural rules that has to be applied cause delays in the process in some situations, resulting in very long case handling times before a draft decision can be presented. In addition, there is an issue that needs to be addressed regarding when and when not a draft decision has to be made. There seems to be different practices concerning this.

1.2. Mutual assistance – Article 61

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

No

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

No

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

N/A

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

N/A

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 an investigation?

No

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

No

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

N/A

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

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)?

Yes

- 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

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

Yes, it was complete

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

No

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

Yes

2.2 Dispute resolution - Article 65 GDPR

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

No

- b. Which documents were submitted to the EDPB?

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?

N/A

2.3 Urgency Procedure – Article 66

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

No

3. Exchange of information: Standardised communication

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

Our experience has in general been positive. In the long term the Danish DPA believes that it would improve the OSS if the IMI system could be replaced with a case management system built specifically for the handling of OSS cases. One major problem is that for each new “procedure” a new module has to be created, and in some cases this means that it is somewhat difficult to get an overview.

4. European Data Protection Board

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

N/A

- 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.

2016 (32)

2017 (35)

2018 (54)

2019 (66)

2020 forecast (63)

- 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.

2016 (2 792 077,55)

2017 (2 973 887,26)

2018 (4 740 038,64)

2019 (5 610 127,92)

2020 forecast (5 623 114,33).

- a. 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.

The Danish Data Protection Agency is also the national supervisory authority in relation to the Law Enforcement Directive (Directive (EU) 2016/680), the PNR directive implementing law and a number of EU information systems (e.g. the Schengen Information System (SIS) and the Visa Information System (VIS)). A rough estimate of time spent on GDPR and on other tasks is that more than 75 % of the time is spent on GDPR.

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

For the time being the Danish DPA assesses that its resources are adequate, both from a human, financial and technical point of view.

- c. 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?

The Danish DPA considers itself to be properly equipped to contribute to the cooperation and consistency mechanism. The Danish DPA does not have a certain number of staff members specifically devoted to the cooperation and consistency mechanism but devotes necessary staff when relevant.

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?

Approximately 3.700. The Danish Data Protection Agency takes the definition in the Guidance on local cases as its point of departure but generally differentiates between a tip, an inquiry and a complaint.

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

Warnings, reprimands, orders and fines. Please note that as stated in recital 151, the legal system of Denmark does not allow for administrative fines. Fines can only be imposed by the national courts, which means that the Danish Data Protection Agency reports the infringement to the Police, which then takes the case to court.

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

No

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

So far, two cases (primarily concerning deletion of data) have been reported to the Police. Information about the two cases (in Danish) can be found on the website of the Danish Data Protection Agency:

- <https://www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2019/mar/datatilsynet-indstiller-taxaselskab-til-boede-paa-1-2-mio-kr/>
- <https://www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2019/jun/moebelfirma-indstillet-til-boede/>

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

Case 1) The aggravating circumstances taken into account were: the nature, gravity and duration of the infringement, the intentional or negligent character of the infringement, the number of data subjects affected and the manner in which the infringement became known to the supervisory authority. The attenuating circumstances taken into account were that no special categories of personal data were affected by the infringement.

Ad case 2) The aggravating circumstances taken into account were: The nature, gravity and duration of the infringement, the number of data subjects affected and the intentional or negligent character of the infringement. The attenuating circumstances taken into account were that no special categories of personal data were affected by the infringement.

7. Additional requests

7.1. Data Breaches

The European Commission has asked the SAs to also provide figures regarding the personal data breaches notified to the SAs.

The number of personal data breach notifications to the Danish SA in the period 25.05.18 - 30.11.19 is 9,418.

7.2 Initiatives for SMEs

The European Commission asked the SAs whether they have taken any initiative with regard to SMEs, and if so, which ones.

The Danish SA has

- developed an interactive guide to assist SMEs with their GDPR compliance (the Privacy Compass)
- participated in conferences and events addressed to SMEs
- published information addressed to SMEs on its website
- maintained a telephone hotline
- produced podcasts with topics focusing on SMEs
- produced checklists, FAQs, guidelines and other publications