



**REPUBLIKA HRVATSKA
AGENCIJA ZA ZAŠTITU
OSOBNIH PODATAKA**

KLASA: 018-01/19-01/169
URBROJ: 567-14/06-19-02
Zagreb, 09. December 2019.

EDPB Secretariat
Via e-mail

SUBJECT: Evaluation of the GDPR under Article 97

Dear colleagues,

regarding the received European Commission document on the evaluation of the GDPR and requested input on all questions except for question 4.b, Croatian Personal Data Protection Agency states the following:

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decisions adopted by the Commission under Directive 95/46 remain in force under the GDPR until amended, replaced or repealed.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?

At the time we do not have any suggestion.

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?
No
- b. Did you encounter any problems/obstacles in your cooperation with the lead/concerned DPA?
If yes, please describe them
At the time no.
- 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?)
Our national administrative procedure is compatible with the OSS. There were no related draft decisions yet.
- 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)?
No
- f. Is the OSS living up to its expectations? If not, what would you identify as its shortcomings?
How can they be remedied?
We do not have any remarks at the time.

1.2. Mutual assistance – Article 61

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

Yes, in three cases we asked other SA for mutual assistance in providing us with relevant information.

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?

Yes, especially in the cases where data controller is established in other MS.

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

No

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, the draft decision aimed to adopt a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4)

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”?

N/A

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?

The tool is good and allows the supervisory authority to request the assistance and cooperation of other MS SAs in a simple and fast way. We have small remark regarding providing answers through voluntary mutual assistance in timely manner.

4. European Data Protection Board

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

In our view EDPB was most active in the area of ensuring the correct application of consistency mechanism (Art 70 (1)(a)) and issuing guidelines, recommendations and best practices in order to encourage consistent application of this Regulation (Art 70 (1)(e)). Also, significant effort was aimed to draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 58(1), (2) and (3) and the setting of administrative fines pursuant to Article 83.

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.

in 2016 we had 28 full time employees,
in 2017 we had 26 full time employees,
in 2018 we had 39 full time employees,
in 2019 we have 39 full time employees,
for 2020 additional employment is envisaged up to 60 full time employees (depending on financial capabilities).

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 - 5.443.308,00 HRK (if the exchange rate is 1 EUR = 7.4 HRK, approximately 735.600,00€)

2017 – 6.246.154,00 HRK (if the exchange rate is 1 EUR = 7.4 HRK, approximately 844.000,00€)

2018 – 6.635.537,00 HRK (if the exchange rate is 1 EUR = 7.4 HRK, approximately 896.700,00€)

2019 - 8.563.942,00 HRK (if the exchange rate is 1 EUR = 7.4 HRK, approximately 1.157.300,00€)

forecast for 2020 – 10.396.848,00 HRK (if the exchange rate is 1 EUR = 7.4 HRK, approximately 1.405.000,00€)

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.

According to the Art 6 (1) of the General Data Protection Regulation Implementing Act (OG 42/18) in addition to its powers laid down by the General Data Protection Regulation, the Agency shall perform the following duties:

– when laid down by a special law, it may initiate and has the right to participate in criminal, misdemeanour, administrative and other court and out-of-court proceedings for breaches of the General Data Protection Regulation and this Act.

– adopts the Criteria for determination of the amount of the compensation of administrative costs referred to in Article 43, paragraph 2 of this Act and the Criteria for determination of the amount of the compensation referred to in Article 43, paragraph 3 of this Act

– publishes individual decisions on the Agency's website in accordance with Articles 18 and 48 of this Act

Article 18

(1) The Agency's rulings and opinions relating to the types of processing which, taking into consideration the nature, scope, context and purposes of processing, may involve a high risk for the rights and freedoms of individuals shall be published on the Agency's website.

(2) Opinions and rulings referred to in paragraph 1 of this Article shall be rendered anonymous or undergo pseudonymisation.

(3) By way of derogation of paragraph 2 of this Article, when the Agency's opinions and rulings referred to in paragraph 1 of this Article are regarding minors, the technique of rendering information related to them anonymous shall be applied in order to ensure a high level of protection of their privacy.

Article 48

Final ruling shall be published on the Agency's website without anonymising data on the offender, if that ruling establishes a breach of this Act or the General Data Protection Regulation regarding the processing of personal data of minors, special categories of personal data, automated individual adopting of a decision, profiling, if the breach was committed by a controller or a processor who has already breached the provisions of this Act or the General Data Protection Regulation or if, in connection with the ruling, a decision was made on the administrative fine in the amount of at least HRK 100,000.00 which has become final.

– initiates and conducts appropriate procedures against responsible persons for breaches of the General Data Protection Regulation and this Act

– carries out its duties of the independent supervisory authority for monitoring the implementation of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, unless otherwise laid down by special regulations and

– carries out other duties laid down by law.

Additional task of the Croatian SA according to the Art 42 of the General Data Protection Regulation Implementing Act is providing expert opinions.

Article 42

(1) At a written request of a natural or legal person, the Agency shall provide an expert opinion in the area of personal data protection, no later than within 30 days from the day of submission of the request, depending on the complexity of the request.

(2) If, for the provision of expert opinion, it is necessary to involve other bodies in the country or abroad for the purpose of obtaining data or information essential for providing the expert opinion, the deadline for providing the opinion referred to in paragraph 1 of this Article may be extended for another 30 days.

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

Overall, looking at period before 25.5.2018, the Agency notes an increase in staff number and financial resources which enable it to perform its tasks in accordance with GDPR and other EU and national legislation as supervisory authority.

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?

Yes, both through technical and human resources. Currently five experts are involved, but if the situation will require, more colleagues are able to contribute.

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?

Since 25.5.2018. we have received 1543 complaints. Out of that number 596 cases were qualified as data subjects request in which data subject considered that the processing of personal data relating to him or her infringed GDPR. Other cases were more general in nature (more in the form

of question or request for information or advice) and they were not received in the form/content required by the national procedural law.

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

Most of the corrective measures that the Agency has issued so far relate to:

- a) order the controller or the processor to comply with the data subject's requests to exercise his or her rights (Art 58 (2)(c);
- b) 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, e.g. ban further processing without appropriate legal ground for processing (Art 58(2)(d);
- c) order the rectification or erasure of personal data or restriction of processing (Art 58 (2)(g);

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

N/A

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

None

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

N/A

7. Number of Data Breach notifications in the period 25 May 2018 until 30 November 2019: 115 data breach notifications

8. Initiatives for SMEs:

The Croatian DPA cooperates in different ways with stakeholders from public and private sector in order to raise awareness on personal data protection of small and medium entrepreneurs and to help them to comply with the GDPR. This includes activities such as seminars, workshops, conferences, where employees of the Croatian DPA participate as a speakers.

Although for the time being, we didn't develop education materials specifically intended to meet the needs of this target group, in our work we use the EDPB guidelines, opinions, promo materials which we promote among the SMEs. We also prepared and published online the DPIA list.

Despite all our efforts, we have noticed that there is still a lot of ambiguity in the application of the GDPR by the SMEs. These findings are also supported by a large number of written queries and even greater number of phone calls we receive each day from this target group on our info-lines. For this reason, in cooperation with our partners from Ireland and Belgium, we are planning to implement project co-financed by the European Commission in duration of 24 months, titled ARC- Awareness Raising Campaign for small and medium enterprises. The main objectives of the Awareness Raising Campaign for SMEs (ARC project) are: raising awareness of SMEs about the GDPR obligations, helping SMEs to comply with those obligations and answering their questions about the implementation of the GDPR. These objectives will be achieved through the following activities planned

within the project: running a survey to identify SMEs needs, preparation of educational materials about the GDPR (based on a previous survey of needs), organization of onsite consultations in all major Croatian regional centres, during which SMEs will be able to receive direct support to resolve their specific problems, organization of two international conferences to exchange experiences and show best practices and preparation of publications on outcomes of the project. Overall expected direct result of ARC project is increased knowledge and understanding among SMEs on the principles of data protection.

Respectfully,

DIRECTOR

Anto Rajkovača

Deliver to:

1. EDPB Secretariat
2. Archives, here