

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

ANSWERS FROM THE ROMANIAN 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)?

Yes. The Romanian DPA received several questions regarding the applicability of the adequacy decisions adopted under Directive 95/46/EC, respectively if they are still in force after the 25th of May 2018 when the Regulation (EU) 2016/679 became applicable.

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?

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?

The Romanian DPA was lead authority in only one case.

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

No.

- c. How would you remedy these problems?

Not the case.

- 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?)

Yes.

- 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?

Yes.

1.2. Mutual assistance – Article 61

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

Yes

- 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?

This tool is beneficial as you can obtain information regarding the activity of data controllers from other Member States.

- 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 and 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?

Not the case.

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

Not the case.

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. The Romanian DPA submitted the list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4).

- 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?

Not the case.

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?

Not the case.

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?

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.

Please find below the figures for the Romanian DPA at the end of each year:

Year	Staff at the end of each year
2016	40
2017	36
2018	36
2019	39
2020	47

The number of staff at the end of the year includes the 2 dignitaries in 2019 (president and vice-president of the Romanian DPA) and 1 dignitary for the period 2016-2018 (president of the Romanian DPA).

As for 2020, Law no. 102/2005 on the set up, organisation and functioning of the RO SA provides for 85 positions plus 2 dignitaries (the president and the vice-president). However, the budgeted positions for 2020 are of 47.

- 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.

Please find below the figures corresponding to the budget of the Romanian DPA for the period 2016-2019:

Year	Budget in lei	Budget in euros
2016	4.851.000	1.068.243
2017	4.287.000	920.016
2018	4.735.000	1.015.245
2019	5.270.000	1.103.388
2020	6.219.000	1.304.813

- 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.

Yes. The Romanian DPA is also dealing with the tasks provided by Law no. 363/2018 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, educational and safety measures and on the free movement of such data (the law transposing the Directive (EU) 2016/680 in the Romanian legislation), by Law no. 284/2018 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (the law transposing the Directive (EU) 2016/681 in the Romanian legislation), by Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, by Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

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

Regarding the financial resources of the supervisory authority, we inform you that the budget of the authority for 2019 is 5.270.000 lei, approximately 1.103.388 euros. With regard to human resources, Article 25 (2) of the Law no. 102/2005 on the establishment, organization and functioning of the National Supervisory Authority for Personal Data Processing, republished, stipulates that “the maximum number of positions, excluding dignitaries, is 85”.

Taking into account the tasks entrusted to the Romanian DPA, we consider that the Romanian DPA could use additional human, financial and technical resources.

- 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?

Taking into account the tasks entrusted to the Romanian DPA, we consider that the Romanian DPA could use additional human, financial and technical resources.

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?

From the 25th of May 2018 up to the 29th of November 2019, a number of 8285 complaints have been registered at the Romanian DPA.

Pursuant to Article 20 paragraph (1) of Law no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for Personal Data Processing, republished, any data subject who considers that the processing of his or her personal data violates the legal provisions in force has the right

to submit a complaints to the National Supervisory Authority, especially if his or her habitual residence, place of work or alleged violation is or, as the case may be, takes place on the territory of Romania.

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

The Romanian DPA has used the following corrective powers:

- to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;
- to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;
- to 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;
- to impose a temporary or definitive limitation including a ban on processing;
- to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case.

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

There have been situations where the complaints have been handled without the supervisory authority using the corrective measures, for example the cases in which the controller has remedied the issues brought to the attention of the supervisory authority, and its fact did not require the application of corrective measures.

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

The Romanian DPA imposed 16 administrative fines. The amount of the fines imposed under the GDPR is of 456,502 euros.

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

For the application of the corrective measures, the Romanian DPA took into account the following:

- the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
- the intentional or negligent character of the infringement;
- any action taken by the controller or processor to mitigate the damage suffered by data subjects;
- the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
- any relevant previous infringements by the controller or processor;

- the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- the categories of personal data affected by the infringement;
- the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
- where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
- adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
- any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

Additional questions:

- Data breach notifications between 25 May 2018 and 30 November 2019: 521
- Initiatives for SMEs:

For 2018:

- in order to celebrate the European Data Protection Day, RO SA organised the Conference on “Applying the General Data Protection Regulation”, at the Palace of Parliament, on the 26th of January 2019;
- “Open Doors Day” was organised at the premises of the RO SA;
- the Supervisory Authority prepared and made available to the public some informative materials (brochures, leaflets) dedicated to the European Data Protection Day;
- a message of public interest regarding the main issues regulated by Regulation (EU) 2016/679 was disseminated in the means of public transport and was also broadcast through the television system available in the subways;
- RO SA has also launched a Guidelines for the application of the General Data Protection Regulation by the data controllers issued by the National Supervisory Authority for Personal Data Processing;
- RO SA adopted Decision no. 174 of 18th of October 2018 on the list of the kind of processing operations which are subject to the requirement for a data protection impact assessment
- RO SA has actively participated in the most important events in the field of data protection, organised by various public institutions or private entities, including non-governmental organizations;
- RO SA participated in a series of conferences, symposia and seminars, in Bucharest and in the country;
- RO SA participated in a series of radio and TV interviews;
- RO SA participated in the meetings of inter-institutional working groups in order to discuss on draft normative acts initiated by some ministries, but also on various complex issues regarding the protection of personal data;
- RO SA also participated in the specialised parliamentary committees in order to support the proposals or draft laws regarding aspects of personal data protection;

- concerning the controllers from the private sector, there were working numerous meetings at the premises of the Supervisory Authority, during which discussions were held on issues regarding the legal conditions of data processing in different fields of activity, as well as on the drafting of the codes of conducted by some controllers' associations;
- press releases posted on the RO SA's website in the "News" section;
- information in the special section dedicated to the Regulation Data Protection General.

For 2019:

- in order to celebrate the European Data Protection Day, RO SA organised the Conference on "Ensuring compliance with the European Regulation on data protection and applicable national regulations", at the Palace of Parliament, on the 28th of January 2019;
- the Supervisory Authority prepared and made available to the public some informative materials (brochures, leaflets) dedicated to the European Data Protection Day;
- an anniversary debate – 1 year of GDPR – was organized on the 24th of May 2019, at the premises of RO SA, in which representatives of professional associations and unions participated;
- RO SA has also launched a Guidelines on questions and answers regarding the application of Regulation (EU) 679/2016;
- a message of public interest regarding the main issues regulated by Regulation (EU) 2016/679 was disseminated in the means of public transport and was also broadcast through the television system available in the subways and at the Henri Coandă International Airport;
- "Open Doors Day" was organised at the premises of the RO SA;
- RO SA has actively participated in the most important events in the field of data protection, organised by various public institutions or private entities, including non-governmental organizations;
- RO SA participated in a series of conferences, symposia and seminars, in Bucharest and in the country, such as:
 - o 4 meetings to hold lectures on data processing by NGOs;
 - o 2 at the Institution of the Prefect of different counties County for supporting seminars with the theme "Data protection in the local public administration";
 - o 6 conferences for holding lectures on the data protection rules;
- RO SA participated in a series of radio and TV interviews;
- RO SA participated in the meetings of inter-institutional working groups in order to discuss on draft normative acts initiated by some ministries, but also on various complex issues regarding the protection of personal data;
- RO SA also participated in the specialised parliamentary committees in order to support the proposals or draft laws regarding aspects of personal data protection;
- concerning the controllers from the private sector, there were working numerous meetings at the premises of the Supervisory Authority;
- 48 press releases posted on the RO SA's website in the "News" section;
- information in the special section dedicated to the Regulation Data Protection General.