

Evaluation of the LED under Article 62 – Questions to Data Protection Authorities / European Data Protection Board

Fields marked with * are mandatory.

Background

The Data Protection Law Enforcement Directive (LED)^[1] entered into force on 6 May 2016 and the Member States had to transpose it by 6 May 2018^[2]. It applies to the domestic and cross-border processing of personal data by competent authorities for the purposes of preventing, investigating, detecting or prosecuting criminal offences and executing criminal penalties, including safeguarding against and preventing threats to public security . The LED is the first instrument that takes a comprehensive approach to data protection in the field of law enforcement, including by regulating ‘domestic’ processing. It is therefore a significant development compared with the earlier Framework Decision (which covered only transmission between Member States) that it repealed and replaced.

By harmonising the protection of personal data by law enforcement authorities in EU and Schengen countries, it contributes to increased trust and data exchange between authorities for law enforcement purposes, provided such exchange is based on a law, while at the same time ensuring that the rights of individuals are effectively protected.

As required by the LED^[3], the Commission shall present to the European Parliament and to the Council a first report on the evaluation and review of the Directive by 6 May 2022^[4]. Following the review the Commission shall, if necessary, submit appropriate proposals for amendments, in particular taking account of developments in information technology and in the light of the state of progress in the information society^[5].

The LED stipulates that the Commission shall take into account the positions and findings of the European Parliament, of the Council and of other relevant bodies or sources^[6]. The Commission may also request information from Member States and supervisory authorities. The Commission has already started a dialogue with the Member States through the Council Working party on Data Protection. A dedicated questionnaire has also been sent to civil society organisations by the European Union Agency for Fundamental Rights (FRA).

For the purpose of the evaluation and review the Commission shall in particular examine the application and functioning of the LED provisions on international data transfers^[7]. Besides, this questionnaire seeks to cover other aspects with particular relevance for the supervisory authorities, such as the exercise of their tasks and powers and their cooperation with each other, as well as the consistent application of the LED in the EU.

As this questionnaire intends to contribute to evaluating the LED, in your replies please provide information on your activities (e.g. as regards the decision-making, awareness-raising, training etc.) which fall under the scope of the LED.

We would be grateful to receive the replies to this questionnaire in its online form in English, before **5 November 2021**, so that they can be sent to the European Commission as part of the EDPB contribution to the LED review by 17 December 2021.

Please note that your replies may be made public.

When there are several DPAs in your Member State, please provide a consolidated reply at national level.

When replying, please take into account that the questions below concern the **period from the date when the LED was transposed in your Member State to 5 November 2021**, unless otherwise specified.

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

[1] Directive (EU) 2016/680 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.[2] Article 63(1) LED, [3] Article 62(1) LED,[4] Reports should subsequently be issued every four years. [5] Article 62(5) LED,[6] Article 62(4) LED, [7] Article 62(2) LED

QUESTIONNAIRE

We kindly ask the countries that have more than one SA to send us one consolidated reply.

*** Select your Country**

Bulgaria

Powers

*** Q1: In your opinion, did the LED strengthen your investigative powers / corrective powers?**

- Yes
 No

*** Q2: Please list your investigative powers**

- To obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks
- To obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union or Member State procedural law
- To carry out investigations in the form of data protection audits
- Other(s)

*** Q2.1: Please specify the other investigative powers not listed above**

We consider that the investigative powers are effective enough in order for the Commission for Personal Data Protection (hereafter the "CPDP") to be provided with all and any information that may be required for an investigation. The powers of the national DPA under the LED are listed in Art. 80 of the PDPA:

"Article 80. (New, SG No 17 of 2019) (1) In exercising supervision under this Chapter, the Commission or, respectively, the Inspectorate, shall have powers:

1. to obtain from the controller or from the processor access to all personal data that are being processed;
2. to obtain from the controller or from the processor all information necessary for the performance of the tasks referred to in Article 79;
3. to issue warnings to a controller or processor that intended processing operations are likely to infringe the provisions of this Chapter;
4. to order the controller or processor to bring data processing operations into compliance with the provisions of this Chapter, including to order the rectification, completion or erasure of personal data or restriction of the processing pursuant to Article 56;
5. to impose a temporary or definitive limitation, including a ban, on data processing;
6. to advise the controller and the processor in accordance with the prior consultation procedure referred to in Article 65;
7. to issue, on its own initiative or on request, opinions on draft laws and other statutory instruments, as well as on administrative measures related to the protection of the personal data of natural persons;
8. to issue, on its own initiative or on request, opinions on issues related to the protection of personal data.

(2) In addition to the powers referred to in Paragraph (1), the Commission or, respectively, the Inspectorate, shall furthermore exercise the powers referred to in Item 2 of Article 10a (2) or, respectively, Item 2 of Article 17a (2).

(3) The Commission or, respectively, the Inspectorate, may bring an infringement under this Chapter to the attention of the court."

*** Q3: Do you consider your investigation powers effective**

- Yes
 No

Q3.2: If needed, please provide more details below:

For the time being, we have not faced any practical difficulties in regards to applying investigative powers. In accordance with Item 1 of Article 80 (1) of the PDPA (Art. 47 LED), the CPDP has the right to obtain from the controller or from the processor access to all personal data that are being processed. The difficulties that can reasonable be highlighted relate to the "investigative" powers applied by the employees of the CPDP over natural persons and the premises where they are processing personal data – a problem which is out of the scope of LED. (The natural persons are processing personal data, especially in cases of CCTV, in their own premises that, as private property, enjoy constitutional protection. In that particular case the CPDP has to dispose with judicial sanction while motivating the impossibility to effect efficient control without the access to those premises, which makes endure the control longer and thus infringes the effective prevention, as the proceedings before the CPDP are exceeding significantly the tree months timeframe.). This problem has practically never occurred when "investigating" legal entities especially when related to data processing under LED.

*** Q4: Do you face any practical difficulties in applying your investigative powers?**

- Yes
 No

*** Q5: Have you conducted investigations and/or inspections on your own initiative or only on the basis of complaints?**

Multiple replies are possible

- On our own initiative
- On the basis of complaints

*** Q6: Do you have all the powers listed under Article 47(2)(a), (b – including rectification, erasure, restriction) and (c) LED?**

- Yes
- No

*** Q7: Do you have the same corrective powers towards all law enforcement authorities?**

- Yes
- No

*** Q8: Do you consider your corrective powers effective?**

- Yes
- No

*** Q9: Have you used your corrective powers?**

- Yes
- No

Q9.1: Which corrective powers have you applied and in how many cases? [Please list the powers used according to article 47(2)(a), (b) and (c) LED. Amongst those cases, how many were related to the supervision of SIS II[1] and VIS[2]??]

[1] Council Decision 2007/533/JHA.

[2] Council Decision 2008/633/JHA.

	SIS II and VIS	Other
47(2)(a)	<input type="checkbox"/>	<input type="checkbox"/>
47(2)(b)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
47(2)(c)	<input type="checkbox"/>	<input type="checkbox"/>

*** Q9.1.5: Art.47(2)(b) : Number of other cases NOT related to the supervision of SIS II and VIS:**

*** Q9.2: Have the competent authorities or processors complied with the decisions that you issued in the exercise of your corrective powers?**

- Yes
- No

Complaints

*** Q10: Has there been an increase in complaints following the LED transposition in your Member State?**

- Yes
 No

*** Q11: Please indicate the issues raised the most in these complaints, in particular as regards data subject rights.**

- The respect of the proportionality and necessity principle (Article 4 LED)
 The respect of the purpose limitation principle, including for subsequent processing
 Data minimisation principle (Article 4 (1)(c) LED)
 Accuracy of the data (Article 4 (1)(d) LED)
 Storage limitation principle (Article 4 (1)(e) LED) and appropriate time limits (Article 5 LED)
 Accountability of the controller (Article 4(4) LED)
 The determination of the legal basis (Article 8 / Article 10 LED)
 The conditions related to the processing of special categories of personal data (Article 10 LED)
 Automated individual decision-making, including the right to obtain human intervention in automated individual decision-making (Article 11 LED)
 Modalities for exercising the rights (Article 12 LED)
 The right to information (Article 13 LED)
 Right of access by the data subject and limitations to this right (Articles 14 and 15 LED)
 The right to rectification or erasure of personal data (Article 16 LED)
 Exercise of the data subject's rights in the context of joint controllership (Article 21 LED)
 Data protection by design and by default (Article 20)
 The obligation to keep track of the logs and purposes of processing regarding the logs (Article 25 LED)
 The obligation to conduct a data protection impact assessment (Article 27 LED)
 The obligation to ensure the security of processing, including data breaches (Articles 4(1)(f), 29 LED)
 Other

*** Q11.19: Other- please specify:**

The most frequent type of complaints covers the lack of pronouncement in due course on request for access to personal data and for data erasure. Complaints deal also with the unlawful and the disproportionate collection of personal data and the storage of personal data long after the legal deadlines for the purpose have expired.

The majority of the data subjects' requests regarding processing of their personal data in the Ministry of Interior (hereafter "Mol") relates to the deletion of personal data which are specifically indicated by the data subjects, concerning events they are aware of, related to combating criminal activity and criminal proceedings under the Penal Procedure Code. Only a small part of the requests (about 15 %) relates to providing the right of access to personal data processed by the Mol or the requests are combined – for access to and for the deletion of data.

*** Q12: Are you following up on all complaints?**

- Yes

No

*** Q12.1: Please explain why you are not following up on complaints?**

CPDP deals with all the complaints filled in due form, which excludes inquiries on the proper manners to exercise rights. Regarding these inquiries CPDP supports the data subjects by providing them with the relevant information on the exercise of their rights but also on the respective obligations of the concerned controllers, on the time limits for response and the options to engage controllers'/processors' responsibility before the supervisory authority. The same applies for the Inspectorate.

*** Q13:Have you received complaints by organisations representing data subjects under Article 55 LED?**

Yes
 No

Consultations and advisory powers

*** Q14:Have competent authorities utilised the prior consultation procedure in accordance with Article 28 (1)(a) or (b) LED?**

Yes
 No

*** Q15:Have you established a list of processing operations subject to prior consultation pursuant to Article 28(3) LED?**

Yes
 No

*** Q16:Does your national parliament / government consult you during the preparation of legislative or other regulatory measures with a data protection dimension ?**

Not at all
 Occasionally
 Systematically

*** Q17:How many opinions under Article 47(3) LED, other than prior consultations pursuant to Art 28 (1) LED, have you issued upon request or on your own initiative?**

- 11 opinions on international agreements under different procedures (data protection consultations and prior legislative consultations);
- 5 opinions on Chapter 8 of the PDPA, 1 of which issued by the Inspectorate (transposing the LED) on MoI instruction for personal data processing;
- 1 opinion on prejudicial request;
- 5 other position.

*** Q18: Please indicate the types of issues on which competent authorities have approached you for advice (e.g. data breach notifications, handling of data subjects' requests, security).**

[Multiple replies are possible – please note that as regards consultations in the context of DPIAs relevant replies should be made to Questions 17 and 18]

- The respect of the proportionality and necessity principle (Article 4 LED)
- Storage limitation principle (Article 4 (1)(e) LED) and appropriate time limits (Article 5 LED)
- Accountability of the controller (Article 4(4) LED)
- The determination of the legal basis (Article 8 / Article 10 LED)
- Processing of special categories of personal data (Article 10 LED)
- Types of processing, in particular, using new technologies, mechanisms or procedures (Article 27 / Article 28 (1)(a) LED)
- Processing for purpose of research and/or innovation (Article 9(2) LED)
- Automated individual decision-making, including profiling (Article 11 LED)
- Modalities for exercising the rights (Article 12 LED)
- Handling of data subjects requests in relation to the exercise of their rights (Chapter III LED)
- Joint controllership, including on the arrangements of the joint controllers' responsibilities (Article 21 LED)
- Controller / processor arrangements (Article 22 LED)
- Data protection by design and by default, including anonymisation and pseudonymisation (Article 20 LED)
- The obligation to keep track of the logs and purposes of processing regarding the logs (Article 25 LED)
- Appropriate security measures (Article 4(1)(f) and Article 29 LED)
- Other

*** Q18.16: Other - raised issues:**

CPDP dealt with a large range of issues - data subject rights, data transfer principles, sufficient safeguards, but the Inspectorate handled the question of the DPO for the courts/prosecution in their judicial capacity, as well as the period of retention for some data processing operations and the establishment of deadlines for erasure.

Awareness-raising, training and guidance

*** Q19: Have you issued guidance and / or practical tools supporting competent authorities or processors to comply with their obligations?**

- Yes
 No

*** Q19.1: Please list them below**

In 2021, the Inspectorate of the Supreme Judicial Council adopted guidelines aimed to assist the judiciary in complying with the principle of accountability under Art. 5, § 2 of Regulation (EU) 2016/679 and under Art. 45, para. 4 of the Personal Data Protection Act (corresponding to Article 4, § 4 of the Directive). The guidelines were issued after summarizing the outcomes of court inspections carried out by the Supervisory authority in 2020 the subject matter of which was the review of the principle of accountability compliance. Based on Supervisory authority's conclusions, specific practical recommendations have been elaborated. The aim of the recommendations is to assist controllers in compliance with the principle of accountability and to help them better identify their obligations in the process of processing personal data in the course of judicial activity.

As far as the competent authorities or processors outside the judiciary system (e.g. police) is concerned, no specific guidance and/or practical tools aimed at raising their knowledge how to comply with their obligations have been issued so far. However, when the need occurs, these authorities bring to the attention of the Supervisory authority concrete questions and cases asking for an opinion and advice. This practice is deemed appropriate and sufficient as it is based on a case-by-case approach.

*** Q20: Have you provided training to / carried out awareness-raising activities for competent authorities and / or processors (DPOs included)?**

- Yes
 No

*** Q20.1: how many and on which topics?**

At the end of 2018 the Supervisory authority (Commission for Personal data Protection) have conducted two trainings aimed at the competent authorities in the police sector on the new data protection rules with a special focus on Law enforcement Directive. The topic of the trainings was "Protection of Personal Data in the law enforcement activities". Representatives from all territorial divisions of the Ministry of Interior attended the trainings. The trainings were performed a few months prior to the transposition of the LED in order to raise the awareness on the new legal frame and to ensure a smooth and lawful transition period.

No training events have been conducted for the competent authorities in the judiciary. However, raising awareness activities are performed by publication on the Supervisory authority's website of the following documents: the Guidelines mentioned in the answer to question 18, the opinion on principle data protection aspects (refer to answers to questions 16 and 17) as well as the recommendations issued in the inspections findings performed in courts to review the compliance with the principle of accountability.

Data breach notifications

*** Q21: How many data breach notifications have you received?**

One data breach has been notified to the Supervisory authority for the judiciary. The Supervisory authority has performed an inspection of the controller.

* Q22: In what proportion have you followed up with investigations?(%)

NA

* Q23: In what proportion have you advised or ordered competent authorities to take measures mitigating the risks?(%)

Based on the data breach notification and following the inspection, the Supervisory authority for the judiciary has adopted a decision by which it has implemented towards the controller the corrective power under Art. 80, para. 1, p.4 of the Law for Protection of Personal Data (transposing art. 47, para. 2b of the LED) with the aim to undertake risk-mitigating measures. In addition, in the Guidelines mentioned in the answer to question 18, the Supervisory authority has briefly clarified the obligation of the controller under Art. 67 (transposing Art. 30 Of the LED) to notify, in case of a data breach, without undue delay the Supervisory authority.

* Q24: In what proportion has the communication to the data subject been delayed, restricted or omitted on the grounds set out in Article 13(3) LED? (%)

No delay in the communication to the data subject has been identified. NO for the CPDP as well.

Power pursuant to Article 47(5) LED

Q25: Have you exercised your power to

	Yes	No
* bring infringements of your national law(s) transposing the LED to the attention of judicial authorities?	<input type="radio"/>	<input checked="" type="radio"/>
* commence or otherwise engage in legal proceedings?	<input type="radio"/>	<input checked="" type="radio"/>

* Q26: Did you face difficulties in exercising this power?

- Yes
 No

Exercise of data subjects' rights through the SA

* Q27: How many requests under Article 17 LED have you received?

Pursuant to Art. 57 of PDPA, data subjects are instituted to exercise their rights before the supervisory authority. This is a regular practice and currently we are dealing mainly with request for access to SIS II system, as follows:

2018 - 9

2019 - 5

2020 - 2

2021 - 15

On its side the Inspectorate has not dealt with such requests.

*** Q27.1: What were the outcomes of the cases?**

Multiple choices are possible

- Request declared inadmissible
- All or some data requested provided to data subject
- SA informed data subject that it has conducted all necessary verifications or a review
- Controller ordered to provide (partial) access to the personal data
- Controller ordered to rectify personal data
- Controller ordered to erase personal data
- Controller ordered to restrict the processing of personal data
- SA applied other corrective powers (e.g. a ban on processing and/or fines)
- Others

*** Q27.1.2: Other - Please specify:**

CPDP did not face any problem with those requests and as far as no complaints were lodged as a follow up to them, we consider the outcome to be positive.

*** Q28: Did encounter any particular problems?**

- Yes
- No

International transfers

*** Q29: Have you encountered cases where a controller transferred personal data based on a 'self-assessment' pursuant to Article 37(1)(b) LED?**

- Yes
- No

- * **Q30: Have you carried out any investigations into data transfers based on derogations, in particular those set out in Article 38(1)(c) and (d) LED?**
- Yes
 No
- * **Q31: Have you received any information pursuant to Article 39(3) LED about data transfers based on Article 39(1) LED?**
- Yes
 No
- * **Q32: Have you carried out activities to promote the awareness of controllers/processors (specifically) with respect to their obligations under Chapter V of the LED?**
- Yes
 No
- * **Q33: Have you exercised your advisory powers towards the government and/or competent authorities with respect to data transfers under Chapter V of the LED, for instance as regards the level of appropriate safeguards under Article 37(1)(a), (b) LED)?**
- Yes
 No
- * **Q33.1: Have you issued any guidelines, recommendations and/or best practices in this regard?**
- Yes
 No
- * **Q34: Have you provided (or been asked to provide) assistance to Member States in assessing and, where necessary, reviewing their international agreements involving international data transfers (for instance, relating to mutual legal assistance, police cooperation) that were concluded prior to 6 May 2016?**
- Yes
 No
- * **Q35: Have you received/handled complaints (by data subjects and/or bodies, organisations or associations in accordance with Article 55) specifically addressing the issue of data transfers?**
- Yes
 No
- * **Q36: Have you exercised your investigative and/or enforcement powers with respect to data transfers?**
- Yes
 No
- * **Q37: Have there been cases in which you have cooperated with foreign data protection authorities (for instance, exchange of information, complaint referral, mutual assistance)?**
- Yes

No

Judicial review

* **Q38: Have data subjects / competent authorities / processors contested your decisions (or inaction) before national courts?**

- Yes
 No

* **38.1: Please indicate the number of cases respectively for data subjects and competent authorities /processors:**

Currently, one decision of the CPDP is subject to judicial review on request by the data subject, but also of the competent authority. The judicial review is in two stages and for the instance we are awaiting the pronouncement of the first judicial instance.

For the Inspectorate - 9 decisions are challenged before the courts, from which one is pending before the High administrative court and one is subject to prejudicial request before the ECJ.

38.2: What was the outcome?

Multiselection is possible

- Complaints declared inadmissible
 Decisions upheld
 Decisions overturned

Q38.2.1: If possible, please provide additional information on decisions upheld

The cases are pending.

Cooperation

* **Q39: Have you used the mutual assistance tool under Article 50 LED?**

- Yes
 No

Q39.1: Please provide numbers for:

Requests you received - please indicate the type of cooperation requested, differentiating between:

	Nbr
* Request for information	0
* Request to carry out investigations	1
* Request to carry out inspections	0
* Other	The request for information was about the implementation of the LED in the Bulgarian national legislation. The CPDP explained that the LED is implemented via the general Personal Data Protection Act and the relevant specific laws regulating the police and justice authorities activities.

Q39.2: Please indicate how you replied to those requests.:

	Nbr
* Requests declined	0
* Information provided	0
* Investigation carried out	0
* Inspection carried out	0
* Other	0

Q39.3: Requests you sent - please indicate the type of cooperation requested, differentiating between:

	Nbr
* Request for information	0
* Request to carry out investigations	0
* Request to carry out inspections	0
* Other	CPDP currently has not sent any request for information/carrying out investigations or inspections related to LED.

*** Q40: Have you encountered any obstacles (e.g. of an administrative nature) when requesting or providing assistance to another DPA?**

Yes

No

Human, financial and technical resources

Q41: How many persons (in full time equivalents) in your DPA (respectively EDPB Secretariat) work on issues that fall within the scope of the LED specifically?

	Number (FTE)	%
* 2017	0 (Inspectorate only)	0 (Inspectorate only)
* 2018	0 (Inspectorate only)	0 (Inspectorate only)
* 2019	12 (Inspectorate only)	10 (Inspectorate only)
* 2020	12 (Inspectorate only)	9 (Inspectorate only)
* 2021	12 (Inspectorate only)	9 (Inspectorate only)

*** Q42: How would you assess your DPA's resources for its work on the LED from a human and financial point of view?**

- Sufficient
 Insufficient

Q42.1: Please explain why the resources are insufficient:

The Supervisory authority – CPDP, suffers serious shortage of human and financial resources in general (not specifically for LED issues) - an issue for which the Supervisory authority has alerted the relevant national authorities as from 2015. The constant lack of resources is a significant impediment for the qualitative and timely execution of Supervisory tasks, also in the light of LED. Overall self-assessment for the Supervisory authority: insufficient.

Bearing in mind the practice in the supervision activities for the judiciary and the total number cases thereof, the self-assessment for the Supervisory authority for the judiciary is sufficient.

*** Q43: Do you face any specific challenges when supervising competent authorities in terms of expertise (criminal law / technical / IT) and IT resources?**

- Yes
 No

Horizontal questions

*** Q44: In your opinion, what has been the main impact(s) of the transposition of the LED in your Member State?**

The main impacts may be seen in the following directions:

- harmonisation between Member-States and with the provision of the GDPR;
- codification of all rules for data processing in the law enforcement sector under the realm of the Law for Protection of Personal Data;
- clear distinction on national level between the processing of data within the scope of GDPR and the processing under LED;
- the empowerment of the Inspectorate to the Supreme Judicial Council with supervisory tasks and powers when the processing is carried out by the prosecution and the investigating authorities when acting in the judicial capacity for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

The main impact of the LED transposition is based on the unified procedures regarding the investigation of the competent authorities. The CPDP has elaborated and approved key documents as follows:

1. Instruction for the practical implementation of the supervisory activity of the CPDP (the instruction is entirely in compliance with the guidelines adopted by the European Data Protection Board in January 2021;
2. Methodology for assessing the level of risk in cases of personal data breaches (the methodology is an appendix to the Instruction for the practical implementation of the supervisory activity of the CPDP. The document is a toolkit for assessing the risks for the rights and freedoms of individuals whose data are breached;
3. Questionnaire for carrying out inspections as part of the CPDP supervision operations (the questionnaire is applicable to all types of inspections carried out by the Commission and its administration).

*** Q45: Have you identified any specific challenges regarding the application of the LED in relation to new technologies? Please explain?**

- Yes
 No

*** Q46: Have you identified any important problems regarding the transposition of the LED in your Member State?**

- Yes
 No

*** Q47: Is there anything else you would like to mention relevant for the LED evaluation that is not covered in this questionnaire?**

- Yes
 No

