

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

Fields marked with \* are mandatory.

### Background

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The Data Protection Law Enforcement Directive (LED)<sup>[1]</sup> entered into force on 6 May 2016 and the Member States had to transpose it by 6 May 2018<sup>[2]</sup>. 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compared with the earlier Framework Decision (which covered only transmission between Member States) that it repealed and replaced.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<sup>[3]</sup>, 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<sup>[4]</sup>. 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<sup>[5]</sup>.

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<sup>[6]</sup>. 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<sup>[7]</sup>. 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.

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[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**

Lithuania

## **Powers**

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### **\* 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**

- exchange information with personal data protection supervisory authorities of other countries and international organizations to the extent necessary to carry out their functions;
- use technical means during the investigation of violations;
- receive oral and written explanations from legal and natural persons during the investigation of violations and require them to come to the premises of the State Data Protection Inspectorate to give explanations;
- use the existing information (including personal data) obtained during the investigation of violations or exercising other functions;

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

- Yes
- No

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

**\* 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:

1

\* 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

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\* 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

**Q11.1: The respect of the proportionality and necessity principle (Article 4 LED) - raised issues:**

There were issues regarding the concern whether it was necessary and lawful to provide an access to the documents of criminal proceedings for the other parties of these proceedings; also there was one complaint where complainant raised a question whether video surveillance of border control division is lawful.

LT DPA has received few complaints in relation to LED, therefore there is hard to determine most common issues in Law enforcement.

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

- Yes
- No

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

As most of the complaints are found to be unjustified or provided to wrong supervisory authority (for example, in case of data processing in the field of national security), follow up of such case are not required.

Also in the cases when complaint is justified, but data controller (data processor) has made appropriate actions / changes (e. g. stopped the processing, deleted the data, etc.) during the time of investigation and no additional measure are required, follow up of such case are not also required. Same applies to the case, for example, when data subject lodge the complaint saying that data controller refuses to provide the information (right to access) but this information was provided to data subject by other data controller (data processor) so no additional measures and follow up are required.

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

- Yes  
 No

## Consultations and advisory powers

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

- Yes  
 No

**\* Q14.1:In this context, did you provide written advice and/or use your corrective powers pursuant to Article 28(5) LED?**

- Yes  
 No

**\* Q14.1.1: in how many cases did you provide written advice and/or use your corrective powers pursuant to Article 28(5) LED?**

1

**\* 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?**

We do not have separate statistics on opinions in relation with LED.

**\* 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

**Q18.1: The respect of the proportionality and necessity principle (Article 4 LED) - raised issues:**

Also all information system or other legal acts, that involves processing of personal data (including on the basis of LED) have to be provided to LT DPA for assessment and provision of opinion where such legislation would meet GDPR and / or LED, so such draft legal act are being provided and LT DPA has made its assessment. As this obligation come from the law, usually institutions do not raise specific issues but LT DPA notices that one the main issues raised in its opinions concerns scope of the data (e. g. seeking to broaden the scope of data to be shared between public authorities; request massive personal data without specific investigation started; to process data without differentiation of data subjects and their possible connection; etc.)

**Q18.2: Storage limitation principle (Article 4 (1)(e) LED) and appropriate time limits (Article 5 LED)- raised issues:**

see together with answer to 18.1.

LT DPA notices that some of the main issues raised in its opinions concerns retention periods as there is an intention to store the data longer that is necessary for the purpose (e. g. setting two years retention period for potential necessity of data in future even if no link to possible relation to specific crime, criminal or etc. has been detected)

**Q18.4: The determination of the legal basis (Article 8 / Article 10 LED)- raised issues:**

Usage of information received during criminal intelligence investigation for the secondary purpose, not related to this investigation or other crime (usage for disciplinary proceedings).

**Q18.5: Processing of special categories of personal data (Article 10 LED)- raised issues:**

See the answer to 18.1

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

Law enforcement institution were renewing a information system which was intended for sensitive data storing, including confidential there impact on data subject and their rights were high. LT DPA was asked to assess whether such processing meets the requirements of national legal act implementing LED.

## Awareness-raising, training and guidance

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

- Yes
- No

**\* 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?**



There is no specific statistic in this regard, but there were only few (up to 10) trainings in relation with LED

- General questions of processing of personal data and requirements set in applicable legislation.
- Practical implementation of GDPR and LED

## Data breach notifications

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

LT DPA has no separate statistics on data breaches in relation with LED.

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

LT DPA has no separate statistics on data breaches in relation with LED.

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

LT DPA has no separate statistics on data breaches in relation with LED.

**\* 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? (%)**

LT DPA has no separate statistics on data breaches in relation with LED.

## Power pursuant to Article 47(5) LED

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**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

**Q26.1: Please explain what difficulties you face in exercising this power?**

this provision was not transferred to national legislation.

## Exercise of data subjects' rights through the SA

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

none

**\* 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:**

no such request received

\* Q28: Did you encounter any particular problems?

- Yes  
 No

## International transfers

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\* 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

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**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

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

- Yes
- No

## Cooperation

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

- Yes
- No

**\* 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

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**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	see the answer to Q.42.1	see the answer to Q.42.1
* 2018	see the answer to Q.42.1	see the answer to Q.42.1
* 2019	see the answer to Q.42.1	see the answer to Q.42.1

* 2020	see the answer to Q.42.1	see the answer to Q.42.1
* 2021	see the answer to Q.42.1	see the answer to Q.42.1

**\* 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:**

All employees who conducts investigations on the basis of complaints / data breaches / own initiative, works also with all case, no matter on which legal act such investigation is based. Therefore there are no separate statistics which part of the LT DPA members works with this specifically, but main part of the DPA's resources is dedicated to supervision of GDPR and provision of opinion in relation to GDPR (as most of questions / complaints received or breaches happen within the scope of GDPR). It is difficult to specialize in specific sphere / field when there is lack of personnel.

Currently, only small part of investigations are being conducted or complaints are being handled in time limit set in national law as amount of people does not correspond to amount of complaints / breach notifications/ etc. received. Also DPA's employees have to provide awareness raising activities, opinions on initiative for legislation or data processing as such.

**\* 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

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

In general the impact was positive. LT DPA notices stronger interest of competent authorities on the right to the protection of personal data and on the compliance with requirements for the data processing set in Law. It is worth to mention that in Lithuania same rules, implementing LED (even though in a bit limited scope) are applicable not only for Law enforcement institutions, but also for institutions competent for the national security and defense.

**\* 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