



Report on the application of the GDPR under Article 97

Questions to Data Protection Authorities / the European Data Protection Board

Fields marked with * are mandatory.

1 Introduction

According to Article 97 of the GDPR, the Commission should submit a first report on the evaluation and review of the Regulation to the European Parliament and the Council by 25 May 2020, followed by reports every four years thereafter. The Commission's first report was adopted on 24 June 2020 (the '2020 report'). [1] The next report is due by mid 2024 (the '2024 report').

In this context, the Commission should 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 the 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.

Against this background, this document seeks to obtain the views of the European Data Protection Board on the abovementioned points. As was also done for the 2020 report, this document also seeks to obtain information from data protection authorities (DPAs) on their enforcement of the GDPR and on activities undertaken to promote awareness of data protection rights and obligations.

We would be grateful to receive replies to the below questions (in English) by **15 December 2023**.

In 2020, the European Data Protection Board provided a consolidated contribution of the individual replies of the DPAs to the questionnaire circulated in preparation of the 2020 report.[2] The Commission would be grateful if the Board would again provide such a contribution, in addition to providing the individual replies of DPAs. 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 report, and following the input from other stakeholders, it is not excluded that we might have additional questions at a later stage.

Please note that your replies might be made public or may be disclosed in response to access to documents requests in accordance with Regulation (EC) No 1049/2001.

[1] Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, 24.6.2020 COM(2020) 264 final.

[2] https://edpb.europa.eu/sites/default/files/files/file1/edpb_contributiongdprevaluation_20200218.pdf

2 Supervisory Authority

* 2.1 Select your supervisory Authority

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- EDPS
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain

3 Chapter V

* 3.1 In your view, should the data protection framework of any third country or international organisation be considered by the Commission in view of a possible adequacy decision?

- Yes
 No

* 3.2 If yes, of which third country or international organisation ?

Argentina
Uruguay
Mexico
Colombia
Perú
Brasil
Panamá
Costa Rica

* 3.3 The Commission is interested in the views of the Board on the third countries for which enforcement cooperation agreements under Article 50 GDPR should be prioritised, in particular in light of the volume of data transfers, role and powers of the third country's supervisory authority and the need for enforcement cooperation to address cases of common interest. Please mention the countries that, in your view, should be prioritised and the reasons.

In general terms, we are always extremely interested in promoting cooperation with the Latin American countries. These 8 countries we are quoting have regulation and authorities in the field of data protection. Their inclusion would greatly contribute to promoting commerce between these nations and the EEA. Secondly, it would encourage those Latin American countries that do not have data protection regulation /authorities/adequacy decisions to improve their situation. Thirdly, considering that the requests for adequacy decisions issued by some of these countries are stopped (Mexico, Colombia), the USA is promoting an alternative framework which is less appropriate than ours. We should promote their inclusion within our system

3.4 Reasons for prioritisation if there should be any:

3.5 Are there any other suggestions or points you would like to raise as regards tools for international transfers and/or enforcement cooperation with foreign partners?

4 Chapter VII

In July 2023, the Commission adopted a proposal for a regulation laying down additional procedural rules relating to the enforcement of the GDPR.[1] The DPAs and the EDPB provided extensive input to the Commission during the preparation of the proposal and following adoption, the EDPB and the EDPS adopted a joint opinion on the proposal on 19 September 2023.[2] The questions below focus on DPAs' application and enforcement of the GDPR and do not seek DPAs' views on the proposal.

[1] Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679, COM/2023/348 final.

[2] https://edpb.europa.eu/our-work-tools/our-documents/edpb-edps-joint-opinion/edpb-edps-joint-opinion-012023-proposal_en

4.1 Cooperation Mechanism

4.1.1 One-stop-shop (OSS) – Article 60 GDPR

The EDPB Secretariat will extract from IMI the numbers regarding the OSS cases where your DPA has been in the lead and concerned since 25 May 2018

The EDPB Secretariat will extract from IMI the numbers regarding whether your DPA has been 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).

4.1.1.1 Do you have any comment to make with respect to the identification and handling of local cases under Article 56(2) GDPR?

- Yes
- No

*** 4.1.1.3 Did you raise relevant and reasoned objections?**

- Yes
- No

*** 4.1.1.4 In how many cases did you raise relevant and reasoned objections?**

5 in the last two years

*** 4.1.1.5 Which topics were addressed?**

Lack of legal basis for the processing, lack of transparency, failure to respond to the complainant, right to be forgotten not properly addressed, failure to adopt corrective measures (including not imposing a fine).

*** 4.1.1.6 In how many did you reach consensus with the LSA?**

1 so far

4.1.2 Mutual assistance – Article 61 GDPR

*** 4.1.2.1 Did you ever use Mutual Assistance - Article 61 procedure in the case of carrying out an investigation?**

- Yes
- No

*** 4.1.2.3 Did you ever use Mutual Assistance - Article 61 procedure in the case of monitoring the implementation of a measure imposed in another Member State?**

- Yes
- No

*** 4.1.2.4 Could you explain why you have never used Mutual Assistance - Article 61 procedure for monitoring the implementation of a measure imposed in another Member State?**

No need to use it so far.

*** 4.1.2.5 What is your experience when using Mutual Assistance - Article 61 procedure?**

The A61 is a multi-purpose procedure, which can be used both in cross-border cases to assist or exchange information, as well as in other assistance requests related to national cases, or not related to any specific case at all. They are usually requested in a voluntary manner, meaning there is no legal 1-month deadline to provide the response, but in any case they are responded and they are responded on time. They work fine for exchanges related to cross-border cases. On the other hand, the amount of time and effort invested when the requests pertain to national cases of other authorities is usually very limited. In our SA we currently make use of the A61 almost exclusively in the context of cross-border cases, to request or provide information.

4.1.3 Joint operations – Article 62 GDPR

*** 4.1.3.1 Did you ever use the Joint Operations - Article 62 procedure (both receiving staff from another DPA or sending staff to another DPA) in the case of carrying out an investigation?**

- Yes
- No

*** 4.1.3.2 Could you explain why you have never used Joint Operations - Article 62 procedure for carrying out an investigation?**

It is a complex procedure that requires long preparations and paper work. Though it has been initially requested once and prepared to some extent, it was not eventually executed.

* 4.1.3.3 **Did you ever use Joint Operations in the case of monitoring the implementation/enforcement of a measure imposed in another Member State?**

- Yes
 No

* 4.1.3.4 **Could you explain why you have never used Joint Operations - Article 62 procedure for implementation/enforcement of a measure imposed in another Member State?**

No need to use it so far.

4.2 Consistency mechanism

4.2.1 Urgency Procedure – Article 66 GDPR

* 4.2.1.1 **Did you ever adopt any measure under the urgency procedure?**

- Yes
 No

4.3 European Data Protection Board

The EDPB Secretariat will provide an indicative breakdown of the EDPB work according to the tasks listed in Article 70 GDPR and of the EDPB Secretariat resources allocated to complete the tasks listed in Article 75 GDPR, including on Article 64, 65 and 66 GDPR procedures, as well as on litigations.

4.3.1 How much resources (Full-time equivalent*day) does your DPA allocate to participation in EDPB activities?

	FTE*day
2020	6
2021	6
2022	7
2023	8
2024 (Forecast)	10

4.4 Human, technical and financial resources for effective cooperation and participation to the consistency mechanism

4.4.1 How many staff (full-time equivalent) has your DPA?

	FTE	Comments
2020	203	No
2021	204	No
2022	218	No
2023	245	No
2024 (Forecast)	on study	No

4.4.2 What is the budget of your DPA? Please provide the figures (in euro)

	BUDGET (€)
2020	14 mill.
2021	16 mill.
2022	17 mill.
2023	19 mill.
2024 (Forecast)	on study

*** 4.4.3 Is your DPA dealing with tasks beyond those entrusted by the GDPR, including under the new EU legislation adopted under the Data Strategy?**

- Yes
- No

*** 4.4.4 Please provide an indicative breakdown between those tasks and those entrusted by the GDPR.**

on study

4.4.5 Please explain, if needed:

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

	Sufficient	Insufficient
* Human Resources	<input type="radio"/>	<input checked="" type="radio"/>
* Financial resources	<input type="radio"/>	<input checked="" type="radio"/>
* Technical Means	<input type="radio"/>	<input checked="" type="radio"/>

* 4.4.7 is your DPA properly equipped to contribute to the cooperation and consistency mechanisms?

- Yes
 No

* 4.4.8 How many persons (FTE) work on the issues devoted to the cooperation and consistency mechanisms?

5 Enforcement

5.1 Complaints

5.1.1 The number of complaints (excluding requests for information) received by your DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	13005	11590	10324	13905	15128	16762 (YTD)

5.1.2 The number of complaints where your DPA was in the lead

	2018	2019	2020	2021	2022	2023
The number of complaints received directly from complainants	5	0	4	10	1	0
The number of complaints received from another DPA through the OSS.	13	19	23	35	16	25

5.1.3 The number of complaints received by your DPA and forwarded to the lead DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	56	52	120	75	51	57

5.1.4 The number of complaints relating to national cases resolved through a decision adopted by your DPA.

	2018	2019	2020	2021	2022	2023
Number of Complaints	11665	11182	10443	14098	14937	15234

5.1.5 The number of complaints relating to cross-border cases, resolved through an Article 60 GDPR decision adopted by your DPA[1]. Please indicate a breakdown of the decisions adopted under Article 60(7), (8) or (9) GDPR.

[1] This does not include amicable settlements.

	2018	2019	2020	2021	2022	2023
Number of complaints resolved through an Article 60(7) GDPR decision	0	0	10	4	20	12
Number of complaints resolved through an Article 60(8) GDPR decision	0	21	14	19	8	2
Number of complaints resolved through an Article 60(9) GDPR decision	0	0	0	0	0	0

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	0	0	0	0	0	0

*** 5.1.7 What kind of communication or request do you qualify as a complaint?**

A communication by which any person informs our SA of the existence of a certain fact that allegedly infringes the regulation and could justify the initiation of an administrative procedure. This includes infringements in exercising the rights under articles 15 to 22.

5.1.8 For complaints handled by your DPA which you consider to be closed, provide the average and the median time (in months) from receipt of the complaint (either directly from the complainant or from another DPA) to closure (e.g. by decision or amicable settlement).

	In months
Average Time	2
Median Time	1,5

5.2 Own-initiative investigations

5.2.1 The number of “own-initiative” investigations launched by your DPA since 25 May 2018

	2018	2019	2020	2021	2022	2023
Number of Complaints	45	94	107	85	43	40

5.2.2 The number of these investigations that you consider to be closed. Provide the average and the median time (in months) from launch of the investigation to closure.

	2018	2019	2020	2021	2022	2023
Average Time	-	7	9	10	10	11
Median Time	-	5	8	10	10	10
Total number of closed investigations	-	33	62	103	49	27

5.3 Corrective measures

5.3.1 The number of decisions in which you used your corrective powers [1]

[1] Please reply per number of decisions, not per number of corrective powers used per decision. For instance, if one decision ordered both a ban and a fine, please reply "1".

	2018	2019	2020	2021	2022	2023
Number of Decisions	1245	502	537	788	774	503

5.3.2 The number of times you used any other corrective power than fines. Please specify the type of measure by reference to Article 58(2) GDPR

	2018	2019	2020	2021	2022	2023
Issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation	-	-	-	-	-	-
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	238	139	163	222	126	46
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	641	251	202	302	263	165
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	-	42	45	77	63	121
Order the controller to communicate a personal data breach to the data subject	-	-	-	-	-	-
Impose a temporary or definitive limitation including a ban on processing	-	-	-	-	-	-
Order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and						

18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17 (2) and Article 19	-	-	-	-	-	-
Withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met	-	-	-	-	-	-
Order the suspension of data flows to a recipient in a third country or to an international organisation.	-	-	-	-	-	-

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	371	112	167	258	378	310

5.3.4 Please provide examples of the type of circumstances and infringements that normally resulted in a fine and include the provisions of the GDPR breached.

Infringements of articles 15 to 22 are generally handled through orders to comply and do not result in fines. Minor infringements can be handled through reprimands, and not fined either. Other than that, infringements of any article are subject to result in fines.

5.3.5 The average and median level of fines and the total amount of fines imposed by your DPA

	2018	2019	2020	2021	2022	2023
Total amount of fines (€)	13180655	6295923	8018800	35074800	20775361	16828710
Average level of fine	35527	56214	48017	135949	54961	54286
Median level of fine	-	-	-	-	-	-

5.4 Challenges to decisions in national courts

5.4.1 How many of your decisions finding an infringement of the GDPR have been challenged in national courts? Please provide the absolute figure and the percentage.

	Absolute figure	%
Decisions finding an infringement of GDPR challenged in national court	181	6
Successful challenges	12	7

*** 5.4.2 Where challenges were successful, what were the reasons of the national courts?**

Specific to the case.

6 Promoting awareness of rights and obligations

*** 6.1 Provide details of activities undertaken (publication of guidance, publicity campaigns, etc.) to promote awareness of data protection rights and obligations among the public and data controllers and processors. Where relevant, provide links to materials.**

Spanish SA has published a great variety of documents of guidance, frequently asked questions including and interactive Chatbot addressed to promote awareness as well as to provide answers in data protection issues addressed to data subjects and controllers. These materials can be found in its website (<https://www.aepd.es/>) in different sections: data subject rights, controller and processor obligations, specific fields such as education and minors, health, Internet and social networks, video surveillance, non-solicited publicity, public administration, telecommunications, gender violence and innovation and technology (<https://www.aepd.es/areas-de-actuacion/innovacion-y-tecnologia>) where there is a repertoire of the tools developed by the Spanish SA to assist controller and processor in the compliance of their obligations under GDPR. Finally, Spanish SA has launch several publicity campaigns in order to raise awareness among data subjects in general, and, in particular, among parents, children and telecommunications providers about the necessary precautions and guidance when using mobile phones by minors. The initiative of the so-called priority channel (Canal prioritario) (<https://www.aepd.es/canalprioritario>) that allows the urgent removal of sexual or violent content published on the Internet without the consent of the people who appear in it deserves to be highlighted.

Canal Prioritario has been awarned with the 2023 Dispute Resolution and Enforcement Awards by the GPA