



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 ?

India.

* 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.

India - India adopted its Digital Personal Data Protection Act this August. This is a very positive step for the protection of personal data, which comes a few years after the landmark judgement of the Supreme Court of India that recognized the right to privacy as a constitutional right. Given the leading role of India in the global digital services ecosystem, these legislative evolutions will certainly have a positive impact to all countries that engage in commerce with India. As regional and global power, these developments will surely influence other countries in the Indo-pacific region and beyond.

UK - Tools should be put in place to maintain the link with the UK, which remains a privileged partner, including in the protection of personal data and the promotion of a high standard in this area.

USA - The leading digital companies, including in the field of AI, are located in the USA. Enforcement agreements would be the means to extend the DPAs' ability to influence these players, and would serve as a lever to encourage the federal government to regulate them better/more.

3.4 Reasons for prioritisation if there should be any:

India -In order to strengthen the momentum for a better privacy protection framework, notably through the creation of an independent protection authority, which is not the current direction.

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?

No.

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?**

18 since 2018.

*** 4.1.1.5 Which topics were addressed?**

The majority of the RROs formulated by the CNIL aimed to obtain from the LSA the addition of an infringement (i.e. When the LSA hasn't find an infringement linked to the legal basis of the processing at stake or to the completeness and transparency of information provided to data subjects) and/or the aggravation of the corrective measures envisaged by the LSA (i.e. With the aim of increasing the amount of the fine proposed by the LSA or to add to the decision an order to comply within a certain delay).

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

Among the 18 cases for which the CNIL formulated a RRO, a consensus was found with the LSA on 12 occasions.

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?**

The need never occurred for it.

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

CNIL used it only a few times in order to get formal answers from another LSA on ongoing procedures.

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

*** 4.1.3.3 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?**

The need never occurred for it.

*** 4.1.3.5 What is your experience when using Joint operations - Article 62 procedure?**

CNIL needed to obtain the communication of an investigation document against a controller for which we were LSA but only a CSA could provide.

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	9
2021	9

2022	11
2023	12
2024 (Forecast)	14

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	225	N/A
2021	245	N/A
2022	270	N/A
2023	288	N/A
2024 (Forecast)	298	N/A

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

	BUDGET (€)
2020	20 144 000
2021	21 507 000
2022	23 950 000
2023	26 029 549
2024 (Forecast)	27 900 000

* 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.

- ePrivacy directive - represents ¼ of our resources
- Directive 2016/680 - 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 – represent 10% of our resources.
- Skills not yet implemented :
 - o Data altruism management provided for by the DGA
 - o Control of certain DSA measures: jurisdiction over provisions relating to advertising on online platforms (Article 26) and the online protection of minors (Article 28).

4.4.5 Please explain, if needed:

Yes, the French Authority is competent to handle complaints, investigate and take corrective measures within the scope of the e-privacy directive. It is an important part of our tasks.

For instance, the CNIL has received since 2020, around 1 400 complaints relating to tracers or cookies. In the same period, it has adopted 9 fines for a total amount of 421 050 000 euros and delivered more than one hundred orders to comply on this topic.

In application of the ePrivacy directive, the CNIL is also competent for the subject of unsolicited commercial prospecting.

CNIL is also in charge of investigating the respect by national authorities of very specific European legislations (Schengen (SIS and VIS), Eurodac, Europol, etc.). On the past 4 years, about 20 investigations have been conducted by the French Authority.

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	11 077	14 137	13 585	14 143	12 193	(up to October 27) 12 800

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	17	77	60	44	16	14 (up to October 27, 2023)
The number of complaints received from another DPA through the OSS.	13	57	49	59	31	30 (up to October 19, 2023)

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	N/A	N/A	N/A	N/A	70	100 (from January 1, 2023 to October 19, 2023)

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	11 066	13 849	13 259	13 574	11 412	12 344

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	1	9	9	15	15	16
Number of complaints resolved through an Article 60(8) GDPR decision	0	0	0	0	1	4
Number of complaints resolved through an Article 60(9) GDPR decision	0	0	0	0	0	1

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	0	4	2	6	22	34

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

We have a fairly broad view of what qualifies as a complaint. We include what meets the criteria laid down by the RGPD, as well as by our national law.

Thus, any denunciation of non-compliance with data protection regulations (RGPD, national law) by a concerned person, an administration, a trade union or an authority is considered a complaint.

Anonymous reports are also accepted and may give rise to investigations, but are not considered or counted as complaints as such.

General questions that do not mention a failure to comply with regulations concerning the person who has referred the matter to the CNIL (for example, a question about the rules applicable to right of access, about how to contact the CNIL...) are treated as requests for information on regulations by the public relations department.

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	The average processing time in current year is 6 months
Median Time	We haven't got the possibility to determine this information.

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	127 (+ 43 on complaints =>total of formal inspections 170)	179 (+122 on complaints=> total of formal inspections 301)	148 (+99 on complaints=> total of formal inspections 247)	151 (+136 on complaints=> total of formal inspections 287)	181 (+136 on complaints=> total of formal inspections 317)	Status on 24/10/2023 : 169 (+80 on complaints=> total of formal inspections 249)

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	8	8	8	6	6	4
Median Time	We do not have these figures	We do not have these figures	We do not have these figures	We do not have these figures	We do not have these figures	We do not have these figures
Total number of closed investigations	23	200	232	231	293	191

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	59	51	87	90	178	111

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	N/A	2	2	2	N/A	N/A
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	N/A	2	38	45	29	41
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	48	47	53	50	152	55
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	N/A	N/A	N/A	N/A	N/A	N/A
Order the controller to communicate a personal data breach to the data subject	N/A	N/A	N/A	N/A	N/A	N/A
Impose a temporary or definitive limitation including a ban on processing	N/A	N/A	N/A	N/A	N/A	N/A

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	N/A	N/A	N/A	N/A	N/A	N/A
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	N/A	N/A	N/A	N/A	N/A	N/A
Order the suspension of data flows to a recipient in a third country or to an international organisation.	N/A	N/A	N/A	N/A	N/A	N/A

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	10	7	9	13	17	23

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.

Regarding the outcome of the investigation phase, if it appears that a data controller/processor have committed several severe infringements, it will generally result in engaging a fining procedure.

Among the most common infringements sanctioned by a fine, we note:

- transparency and information (art 12 et 13): incomplete privacy policies and unclear language
- data retention (art 5-1-e): Controller retains personal data longer than necessary
- security and confidentiality (art 32) : lack of security measures implemented on a website collecting personal data (ie: weak passwords) or linked to the storage of data (data are not crypted and/or the database is accessible to unauthorized staff members)

In 2022, a simplified sanction procedure adapted to cases that do not present any particular legal or technical difficulty was created with a maximum penalty of EUR 20 000.

Among the most common infringements sanctioned through this procedure, we note:

- Failure to answer to a data subject's right to access (art 15), to erasure (art 17) or to object (art 21)
- Failure to cooperate with the services of the CNIL (art 31) by not answering to CNIL 'requests for documents/clarification

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 (€)	1 196 000	51 370 000	3 489 300	3 856 000	25 122 900	46 834 500
Average level of fine	119 600	7 338 571	387 700	296 615	1 477 817	2 036 282
Median level of fine	598 000	25 685 000	1 744 650	1 928 000	12 561 450	23 417 250

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	14 since 2018 (9 with a decision and 5 ongoing challenges)	2.4
Successful challenges	2 fines were reduced (on the total of 9 decisions issued)	22

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

CNIL's decisions are rarely overturned by the French Conseil d'Etat (first and last remedy) Since May 2018, only one decision was reformed by the French Conseil d'Etat, who lowered a fine from 3 000 to 2 500 euros considering one infringement to article 33 was not characterized.

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.**

The CNIL has published many Guides for data controllers since 2020:

- Practical Guide to storage periods (July 2020)
- Guide for Data Protection Officers
- Guide "The responsibility of players in the context of public procurement"
- GDPR awareness Guide for employee's Unions (February 2023)
- Cybersecurity booklet
- Guide on data security (last update August 2023)
- Recruitment guide

The CNIL's public relations department has coordinated a practical GDPR awareness Guide for associations (downloaded 9,304 times from our website in 2022), following the lead of the Guide for small businesses (downloaded 20,947 times from our website in 2022) and local Authorities (downloaded around 1,000 times from our website in 2022).

The CNIL has developed and updated the "Besoin d'aide" ("Need help") online tool, which is a FAQ dedicated to professionals (234 Q/A) and individuals (317 Q/A). A new activity has been created in Spring 2023: a mission to raise awareness of privacy rights among the general public, in an effort to reach out to audiences who do not contact our DPA, with for example the creation and development of a network of organisations in contact with the public in order to disseminate a culture of privacy and provide information on exercising rights. Another major campaign: in 2020, the publication of the guidelines and recommendation on cookies and other trackers was accompanied by the publication of a series of contents and tools for professionals, as well as the organisation of webinars for numerous associations. , a fact sheet dedicated to individuals wishing to understand the issues surrounding cookies has also been published: "Changes in the rules governing the use of cookies: what changes for Internet users?" In addition to redesigning its website (and its tree structure in 2023), the CNIL has also produced and published a number of videos to make Internet users aware of their rights and teach them how to control their personal data. At the same time, the CNIL is designing infographics and posters for the general public to make its publications easier to understand.

Since 2020, the digital education Department is stepping up privacy awareness campaigns aimed at young people, parents and teachers, strengthening partnerships and creating new ones.

Education and awareness initiatives

- Training for trainers in other governmental Authorities, associations and sports federations, digital mediators
- Training for Heads of school and regional administrative managers
- Digital parenting : presentation to parent-employees in a company
- Presentations in primary and secondary school classes, including Safer Internet Day event
- CNIL's stand and workshops on digital citizenship at Educatech Show (2020-2022)
- Exhibition stand at Digital Games Show in Paris

Partnerships

- The CNIL has many partnerships like for example « Educnum » national partners Group : cocreation of an escape game "The Digital Guardians" with a booklet for children parents and teachers

To promote awareness to data controllers and processors, the CNIL offers several types of supports and tools

- General awareness and supports
 - o Mooc "l'atelier RGPD", Webinars (<https://www.cnil.fr/fr/comprendre-le-rgpd/les-webinaires-de-la-cnil-le-programme-de-septembre-decembre-2023>), GDPR Days

The CNIL provided support to individuals through the various phone hotlines.

This support also takes the form of responses to individual requests for advice (1315 legal advices in 2022 and 800 for DPOs only) or in meetings that may be organised with the CNIL's services or through innovative support methods such as a regulatory sandbox or "enhanced" support for digital companies with strong economic development potential.

- https://www.cnil.fr/sites/cnil/files/atoms/files/charter_support_professionals.pdf