



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 ?**

As already pointed out in our reply to the EC questionnaire sent for the 2020 'Report', we would suggest considering, in particular, international organisations working in the field of humanitarian law and human rights; additionally, those countries mentioned in the COMM communication of June 2019 (2019/374) are still suitable candidates as well as Albania and San Marino.

*** 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.**

With a view to allowing effective enforcement of the GDPR, in our opinion, enforcement cooperation agreements under Article 50 GDPR should be established, first of all, with those countries where the largest portion of the entities subject to the GDPR according to Article 3.2 are established. This is based on consideration of the difficulties encountered by the EEA SAs, in several cases, in contacting/getting replies and appropriate information from those entities and in enforcing any decision relating to the processing activities carried out by them outside the EEA. Among those countries, we would like to point out the G7 countries and, in particular, the USA (where there are several relevant public authorities competent for different sectors which may probably be considered as suitable counterparts), Japan and also South Korea. With regard to the latter two countries, we believe that the adequacy decisions in place and the existence of independent data protection authorities may provide a good framework for the negotiation of enforcement agreements.

3.4 Reasons for prioritisation if there should be any:

See above reply

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?

We would like to highlight the need to have appropriate transfer tools for transfers to controllers and processors under Article 3.2 of the GDPR.

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

*** 4.1.1.2 Please enter below any comment to make with respect to the identification and handling of local cases under Article 56(2) GDPR**

We have no particular remarks about this form of cooperation with LSA which has been generally successful. However, it should be pointed out that the time required for obtaining the views of the LSA has been usually considerable and there have been several exchanges of documents and information even after the initial submissions

*** 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?**

In 16 cases .

However, we can add that on several occasions we preferred uploading even long comments in the context of the art. 60 Informal Consultation procedure instead of a RRO, given that the draft DD had been already shared by the LSA with the CSAs in order to reach consensus before being submitted formally

*** 4.1.1.5 Which topics were addressed?**

Legal qualification of infringements of general principles of processing (legal basis, fairness of processing) and data subject rights ; assessment of corrective measures, in particular administrative fines.

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

In 2 cases our RRO was followed and we reached consensus with no need to trigger an art. 65 dispute resolution.

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?**

There was no need to, in particular insofar the LSA did it

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

We have found it a useful tool considering that it helps in exchanging information among the SAs and thereby in reaching consensus; however, we mainly apply the 'special' voluntary mutual assistance procedure that has been introduced operationally in IMI in order to avoid the time constraints envisaged with the Article 61 standard procedure. Therefore, while the use of the 'formal' mutual assistance is limited to a few cases because of the possible legal consequences in case of non-compliance with an assistance request, we usually rely on the 'voluntary' mutual assistance to inform another SA about a received complaint concerning a private body or a non-public body, to submit legal inquiries or to provide updates on the state of play of a case, exchange documents or request other kinds of information and assistance. That is to say, the A61 procedures are very helpful to handle cooperation also outside of the OSS mechanism.

4.1.3 Joint operations – Article 62 GDPR

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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?**

This has never proved necessary so far.

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

It should be pointed out that the A62 procedure has been used to handle cooperation also outside of the OSS mechanism. In the JO case that is still ongoing, regarding a strategic case, the experience has been very positive so far from both a legal and a technical perspective.

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

*** 4.2.1.2 How many measures did you adopt under the urgency procedure?**

*** 4.2.1.3 Did you request an urgent binding opinion or decision of the EDPB under Article 66(2) GDPR?**

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) does your DPA allocate to participation in EDPB activities?

	FTE
2020	8
2021	8
2022	8
2023	8
2024 (Forecast)	8

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	134	131 + 3 contract-based
2021	153	133 + 20 contract-based
2022	148	137 + 11 contract-based
2023	146	+ (about) 10 expected by end of year
2024 (Forecast)	178	-

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

	BUDGET (€)
2020	30.447.905
2021	35.969.515
2022	45.311.541
2023	47.904.060
2024 (Forecast)	50.866.028

*** 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.**

- The Italian SA is competent for dealing with complaints under Law No 71/2017 containing provisions to protect minors for the prevention and fight against cyberbullying, and with complaints related to exercise of the rights set out in Articles 15 to 22 in respect of deceased persons.
- Competence lies with the Italian SA also in respect of the so-called 'revenge porn'; under Section 144-a of the Data protection Code, complaints may be lodged with the SA by individuals having reasons to flag the online dissemination of sexually relevant materials concerning them. The complaint along with the relevant materials are assessed quickly (48 hours) and the Garante is empowered to ban further processing by the specific platform.
- The Italian SA is also the competent supervisory authority for the supervision of the application of the Directive 2002/58/EC, and accordingly (with regard to Article 13 of the latter) of Regulation 2006/2004 on cooperation for consumer protection (now replaced by Regulation 2017/2394); furthermore, it is the competent supervisory authority for processing activities under directive 2016/680 (law enforcement directive) pursuant to the national transposition legislation (Decree No 51/2018), under directive 2016/681 (EU PNR Directive), under Regulation 2019/493 to prevent inappropriate use of personal data in the context of EP elections, and for supervising national security activities (in accordance with specific procedures set out in Section 58 of legislative decree No 196/2003).
- The Italian SA discharges supervisory or assistance tasks concerning personal data processing as provided for by laws ratifying international agreements and conventions or else by Community or EU regulations (second-generation Schengen Information System (SIS II); European Union Agency for Law Enforcement Cooperation (Europol); 'Eurodac'; VIS Regulation; 'the IMI Regulation'; Chapter IV of Convention No. 108).
- Furthermore, in line with Article 58.6 GDPR, the following additional powers have been conferred on the Italian SA by the national law adapting the domestic legal system to the GDPR. More specifically, the Italian SA is tasked with, inter alia:
 - a. Carrying out annual security audits on the national population register, under the terms of Section 62 of legislative decree No 82/2005;

- b. Issuing an opinion on any review request submitted to the anti-corruption and transparency officers (or to the competent Ombudsperson, where regions or local authorities are concerned) whenever FOIA-type access requests are rejected, remain unanswered or are deferred on personal data protection grounds; the Garante's opinion must be acquired on a mandatory basis pursuant to Section 5(7) and (8) and Section 5-a of legislative decree No 33/2013;
- c. Supervising operation of 'SPID', i.e., the public system for management of the digital identity of citizens and businesses, under Section 30-a of the SPID implementing regulations;
- d. Carrying out checks on the public opt-out register to counter unsolicited direct marketing (Section 12 of Presidential decree No 178/2010);
- e. Supervising operation of the national DNA database at the Minister of the Interior – Public Security Department (Presidential decree No 87/2016);
- f. Issuing opinions on requests for access to administrative records containing personal data, upon request of the competent Committee for the access to administrative records (Law No 241/1990);
- g. Supervising the services committed to call-centres located outside the EU, and imposing the relevant sanctions, pursuant to Law No 232 of 11 December 2016.

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		
* Financial resources		
* Technical Means		

*** 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?**

8

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	7458	9689	9665	12921	30880	-

The figures regarding above also include what under Italian law are 'alerts', i.e., complaints not lodged by data subjects (complaints 'strictu sensu') but claiming infringements of the GDPR

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	1	0	0	0	0	0
The number of complaints received from another DPA through the OSS.	2	8	6	6	2	3

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	0	7	2	3	1	16

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	5330	8092	8984	9184	9218	-

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	2	2	1
Number of complaints resolved through an Article 60(8) GDPR decision	-	-	-	-	-	2
Number of complaints resolved through an Article 60(9) GDPR decision	-	-	-	-	-	-

5.1.6 The total number of complaints resolved through amicable settlement

	2018	2019	2020	2021	2022	2023
Number of Complaints	-	-	-	-	-	1

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

A 'complaint' according to Section 142 of the Italian Data Protection Code is lodged by a natural person and must specify, in as detailed a manner as possible, 'the underlying facts and circumstances, the allegedly infringed provisions and the remedies sought and [containing] the identification data concerning the controller and the processor, if known'

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	8,82
Median Time	4,73

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	-	-	-	-	-	-

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	-	-	-	-	-	-
Median Time	-	-	-	-	-	-
Total number of closed investigations	-	-	-	-	-	-

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	130	80	135	236	222	203

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	1	0	7	8	7	5
Issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation	1	4	45	43	44	47
Order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation	2	18	21	23	28	19
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	1	7	18	31	35	28
Order the controller to communicate a personal data breach to the data subject	1	3	2	0	3	3
Impose a temporary or definitive limitation including a ban on processing	14	14	22	32	25	42
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	0	17	14	18	23	18
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	0	0	0	0	0	0
Order the suspension of data flows to a recipient in a third country or to an international organisation.	0	0	0	0	3	0

5.3.3 The number of fines you imposed

	2018	2019	2020	2021	2022	2023
Number of Fines	51	40	58	163	152	134

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.

Infringement of general principles of processing

Infringement of data subject rights

Non compliance with a request for information pursuant to Section 157 of the Italian Data Protection Code in the context of the powers provided for by Art. 58

- Articles 5(1) lett. a), c), e), f), 5(2), 6, 7, 12, 13, 15, 17, 21, 25, 28, 29, 30, 31 and 32 GDPR

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 (€)	2.992.675,00	15.904.790,00	60.635.147,00	50.015.863,00	42.850.782,00	24.658.900,62
Average level of fine	58.679,90	397.619,75	1.045.433,57	306.845,79	281.913,04	184.021,65
Median level of fine	10.000,00	6.400,00	10.000,00	10.000,00	10.000,00	-

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	661	-
Successful challenges	98 NOTE: Not all judicial proceedings have gone through all the instances envisaged by the law	-

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

It should be pointed out that a considerable part of the challenges brought against the SA's decisions concern the imposition of and/or the amount of administrative fines. That is to say, the substance of the appeals does not concern, as a rule, the legal reasoning as such or the findings of infringements, but the criteria applied for calculation of the fine.

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 awareness-raising activities carried out by the IT SA over the past years can be grouped under four main areas.

Books have been published to collect proceedings of conferences organised by the Italian Garante (for instance, on the occasion of the European DP Day, where Metaverse and its challenges were addressed - <https://www.gpdp.it/web/guest/home/docweb/-/docweb-display/docweb/9939113> - or else at a conference organised in July 2022 to celebrate the IT SA's 25 years of activity - <https://www.gpdp.it/web/guest/home/docweb/-/docweb-display/docweb/9905382>) ; vademecums and handbooks have been also issued to collect, e.g., the EDPB Guidelines from 2019 to 2022 in an Italian version - <https://www.gpdp.it/web/guest/home/docweb/-/docweb-display/docweb/9887426> - or to provide key guidance on data protection in schools - <https://www.gpdp.it/temi/scuola> - or generally on application and interpretation of the GDPR - <https://www.gpdp.it/regolamentoue> .

Several information campaigns have been implemented, both of a general nature and targeted at specific audience. Among the former, reference can be made to the campaign that started in 2022 in collaboration with the Ministry of enterprise and Made in Italy; 9 TV commercials were produced and broadcast on TV and radio channels, via digital billboards in stations and airports and through social media to disseminate information and awareness on various topics regarding data protection, digital education and IT security - <https://www.gpdp.it/finalmente-un-po-di-privacy>. Among the latter, campaigns were implemented on online dating - <https://www.gpdp.it/temi/internet-e-nuove-tecnologie/dating-online> - , sharenting - <https://www.gpdp.it/temi/minori/sharenting> - , cookies and privacy - Cookie - Garante Privacy (gpdp.it) – and many other issues – see Campagne di comunicazione - Garante Privacy (gpdp.it) .

Participation by the SA's Board Members and/or staff in various events, meetings and conferences was also an effective means for addressing data protection-related issues. This includes the annual conference organised by the SA on the occasion of the Data Protection Day (see <https://www.gpdp.it/web/guest/home/docweb/-/docweb-display/docweb/9848543>), the participation in the 'Forum PA' event, which is a fair on innovation in the world of the public administration, where workshops were held by the IT SA (see - <https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9885957>) or in the Didacta Italy Fair 2023 (on innovation in the world of schools, where two workshops were organised by the

IT SA - <https://www.garanteprivacy.it/temi/scuola>), and the conferences organised to address the DPOs' role and activity (<https://www.gdpd.it/web/guest/home/docweb/-/docweb-display/docweb/9901692>), the 'State of Privacy 2023' event (<https://www.garanteprivacy.it/state-of-privacy-2023>) dealing with data protection, digital technology, AI, digital education and IT security.

Many training-oriented activities were implemented by the IT SA over the past years, starting from the awareness-raising campaign for SMEs (ARC I and ARC II projects, with the Croatian SA), the T4Data project (focusing on DPOs' training and competences) and the contributions provided via TAIEX-funded conferences and training initiatives (mainly involving DPAs in neighbouring and candidate countries).