

EVALUATION OF THE GDPR UNDER ARTICLE 97 – QUESTIONS TO DATA PROTECTION AUTHORITIES / EUROPEAN DATA PROTECTION BOARD

**ANSWERS FROM THE SWEDISH SUPERVISORY AUTHORITY**

**I. CHAPTER V**

1. Has any stakeholder raised with your authority any particular question or concern regarding any of the adequacy decisions adopted under the 1995 Directive (with the exception of the EU-US adequacy decision which is not covered by this evaluation process)?
2. Does your authority have any information on the developments of the data protection system of any of the countries/territories subject to a Commission adequacy decision under the 1995 Directive that you would consider relevant for the Commission's evaluation?
3. In your view, should any third country or international organisation be considered by the Commission in view of a possible adequacy decision?

**Most of the questions raised with the Swedish DPA as regards adequacy decisions are related to the EU-US adequacy decision. Aside from that we occasionally receive questions as to if decisions are being considered for Mexico and recently also regarding UK.**

**II. CHAPTER VII**

**1. Cooperation Mechanism**

1.1. OSS – Article 60

- a. Has your DPA been involved in any OSS cases? If so, in how many cases since May 2018?

**The Swedish DPA has been involved in 57 OSS cases (Article 60 draft and final decisions), either as a concerned supervisory authority or as Lead supervisory authority.**

- b. Did you encounter any problems/obstacles in your cooperation with the lead/concerned DPA? If yes, please describe them

**By and large, we have not experienced problems or obstacles in our cooperation. There has however been situations where we have identified issues or questions that would require a closer cooperation to gain an understanding of how the different national SAs work and the administrative procedures they have. See more under 1.1. f. below.**

- c. How would you remedy these problems?

**Depending on the issue/question at hand we would opt for different solutions such as communication via the IMI systems art 60 - informal consultation or via email. In some instances, we have initiated a discussion within the EDPB subgroups.**

- d. Is your national administrative procedure compatible with the OSS? (e.g. do you identify a clear step which can be referred to as a “draft decision”? Are the parties heard before you produce such draft decision?)

**The Swedish DPA is of the opinion that first, the procedural rules set out in the GDPR should be applied. The national administrative rules should be used alongside of the GDPR. However since the procedural rules of the GDPR are not clear and there is a margin for interpretation, this might result in the unwanted scenario that different interpretations of these rules will lead to different applications of the regulation.**

**There is no legal definition of what constitutes a decision in the Swedish administrative law; The legislator did not deem it possible to define the concept in a consistent and exhaustive manner. However, in our preparatory work to our administrative law, it is stated that a decision normally involves a statement from an authority that is intended to have certain effects for the addressee of the decision. Furthermore, it is the purpose and the content of the statement that determines the character of the statement, and not the form. The statement also usually aims at influencing how the addressee acts in a given situation. A decision should be distinguished from mere information or advice which does not impose any obligations on the addressee.**

**Depending on the circumstances of the case, complaint or tips at hand, the parties might be heard or not before a draft decision is produced.**

- e. Were you 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)?

**The Swedish DPA has not yet applied the derogation provided for in Article 56(2).**

- f. Is the OSS living up to its expectations? If not, what would you identify as its shortcomings? How can they be remedied?

**We have noted that there are differences in national procedures that have effect on cross border cases. These have effect on the possibility to cooperate effectively in cross border cases and may also result in that a DPA cannot take into account investigations already conducted by another authority when a case for example is handed over. This might have unintended consequences such as that investigations ready for decision are prolonged or forum shopping by the companies. This was not the intention of the OSS and the DPAs and the Commission must be vigilant to see any tendencies of such and make sure it is prevented. Differences in national procedures that might lead to these consequences must be mapped in order to find a solution for a harmonised approach so that the enforcement of the regulation stays effective and ensures maximum effect. To some extent such work is already ongoing within the EDPB.**

1.2. Mutual assistance – Article 61

- a. Did you ever use this tool in the case of carrying out an investigation?

**Yes**

- b. Did you ever use this tool in the case of monitoring the implementation of a measure imposed in another Member State?

**Yes**

- c. Is this tool effectively facilitating your work? If yes, how? If not, why?

**This is an effective tool when carrying out investigations and for monitoring measures imposed in another member state. However, for the time being it is probably not used as effectively as it might be in the years to come. This is probably due to the high burden of work at the DPAs right now, especially taking into account that we are also learning how to best use these tools.**

- d. Do you encounter any other problems preventing you from using this tool effectively? How could they be remedied?

**There has been some technical difficulties more related to the IMI system than to the art 61 procedure.**

1.3. Joint operations – Article 62

- a. Did you ever use this tool (both receiving staff from another DPA or sending staff to another DPA) in the case of carrying out an investigation?

**No, not yet**

- b. Did you ever use this tool in the case of monitoring the implementation/enforcement of a measure imposed in another Member State?

**No**

- c. Is it effectively facilitating your work? If yes, how? If not, why?

**N/A**

- d. Did you encounter any problems (e.g. of administrative nature) in the use of this tool? How could they be remedied?

**We have not used the tool, however we can envisage that there might be difficulties given differences of administrative and procedural nature. The DPAs need to work on mutual rules and procedures to apply before these tools can be used as effectively as possible.**

## 2. Consistency mechanism

### 2.1 Opinion - Article 64 GDPR

- a. Did you ever submit any draft decision to the Board under Art 64(1)?

**Yes**

- b. Did you ever submit any draft decision to the Board under Art 64(2)?

**Yes**

- c. Did you have any problems by complying with the obligations under Article 64(7) GDPR, i.e. taking utmost account of opinion of the EDPB? If so please describe them.

**No**

- d. Was the “communication of the draft decision” complete? Which documents were submitted as “additional information”?

**The communication was complete and there was no need to submit additional information.**

- e. Were there any issues concerning the translations and/or any other relevant information?

**No**

- f. Does that tool fulfil its function, namely to ensure a consistent interpretation of the GDPR?

**Yes, the tool has been effective as to ensure a consistent interpretation of the GDPR. However the timeframes set for the tool and the EDPB to respond are short and therefore not always for the benefit of the question at hand.**

### 2.2 Dispute resolution - Article 65 GDPR

- a. Was this procedure used? If yes, what was your experience during the process?

**No**

- b. Which documents were submitted to the EDPB?

**N/A**

- c. Who prepared the translation, if any, of that documents and how much time did it take to prepare it? Were all the documents submitted to the EDPB translated or only some of them?

**N/A**

**2.3 Urgency Procedure – Article 66**

- a. Did you ever adopt any measure under urgency procedure?

**No**

**3. Exchange of information: Standardised communication**

- a. What is your experience with the standardised communication through the IMI system?

**The system is necessary for the cooperation of the DPAs. The IMI system as such is however not tailored to the work and procedures of the DPAs and the GDPR, and thus there are limitations and sometime technical solutions that are time consuming.**

**4. National initiatives to give guidance to SMEs or any other specific support to the SMEs**

**The Swedish DPA has together with the Swedish Agency for Economic and Regional Growth developed an interactive guide specifically for SMEs to help them understand the GDPR and the steps they need to take in order to be in compliance with the regulation. The DPA has frequently participated in conferences and other events specifically geared towards SMEs, as well as giving lectures at venues organised by different actors, e.g. Confederation of Swedish enterprises.**

**The DPA has also conducted a national privacy report that shows SMEs are one of the stakeholder groups that still is struggling with understanding and complying with the Regulation.**

**In addition, the DPAs website and publications are tailor-made to have an easy and understandable language, specifically bearing in mind data subject and SMEs. The checklist, FAQ and guidelines are all designed and language adapted for this purpose as well.**

**5. European Data Protection Board**

- a. Can you provide an indicative breakdown of the EDPB work according to the tasks listed in Article 70?

**Answers will be provided by the EDPB secretariat.**

- b. *For the EDPB Secretariat:* Can you provide an indicative breakdown of the EDPB Secretariat work and allocation of resources (full-time equivalent) according to the tasks listed in Article 75?

**6. Human, technical and financial resources for effective cooperation and participation to the consistency mechanism**

- a. How many staff (full-time equivalent) has your DPA? Please provide the figures at least for 2016, 2017, 2018, 2019 and the forecast for 2020.

2016 – 48

2017 – 47

2018 – 63

2019 – 87

2020 – 91

- b. What is the budget of your DPA? Please provide the figures (in euro) at least for 2016, 2017, 2018, 2019 and the forecast for 2020.

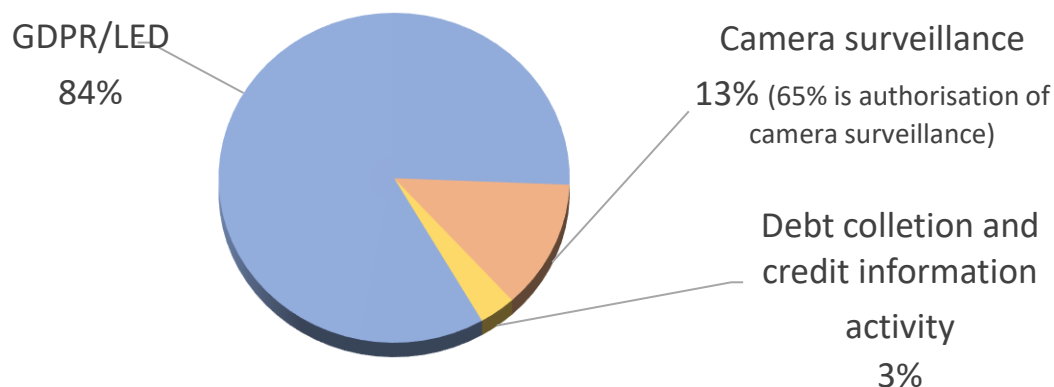
**Appropriations for the Swedish DPA, the numbers below are approximate numbers and not exact. They are converted from Swedish krona to Euro.**

<b>Year</b>	<b>€ in millions</b>
2012	3.4
2012	3.5
2013	3.9
2014	4.1
2015	4.1
2016	4.5
2017	5.1
2018	8.0
2019	8.8
2020	10.3

- c. Is your DPA dealing with tasks beyond those entrusted by the GDPR? If yes, please provide an indicative breakdown between those tasks and those entrusted by the GDPR.

**Aside of the GDPR and the LED the Swedish DPA also has the responsibility to:**

- **Authorize and audit debt collection activity.**
- **Authorize and audit Credit information activity. Sweden has a specific law governing the authorisation and audit of credit information activity.**
- **Audit the use of PNR data**
- **Authorize camera surveillance**
- **Audit national authorities' use of EU information systems such as SIS II, VIS, CIS, Eurodac, Europol, Eurojust and the IMI etc. and coordinated supervision with the EDPS on these**
- **Audit processing of personal data out of EU competence (national security)**



- d. How would you assess the resources from your DPA from a human, financial and technical point of view?

**We have received increased financial resources for 2020 and do not see any immediate need of further resources at this stage.**

- e. More specifically, is your DPA properly equipped to contribute to the cooperation and consistency mechanism? How many persons work on the issues devoted to the cooperation and consistency mechanism?

**The Swedish DPA has an EU-secretariat of 4 persons working full time with tasks related to the EDPB, mostly related to the work carried out in the EDPB subgroups but also related to the cooperation carried out within the IMI-system. Aside of that there are approximately 10 persons working 10% of their time with cooperation carried out within the IMI-system.**

## 7. Enforcement

- a. How many complaints (excluding request for information) did you receive since May 2018? What kind of communication with you/request do you qualify as a complaint?

**The Swedish DPA has received 5 164 complaints since 1 May 2018.**

**A complaint is a submission to a supervisory authority by an identified natural person - or a not-for-profit body, organization or association that fulfils the conditions provided by Article 80 of the GDPR - who considers that "the processing of personal data relating to him or her infringes this Regulation". The term "identified" is understood as consisting of both information about the complainant's identity and contact details. Art 80.2 is not applicable in Sweden.**

- b. National statistics on data breaches

The Swedish DPA has received 4498 data breach notifications during the year of 2019.

In total since 25<sup>th</sup> of May 2018 the Swedish DPA has received 6794 data breach notifications.

- c. Which corrective powers did you use since May 2018?

**Since May 2018, the Swedish DPA has issued reprimands, orders to comply and two administrative fines.**

- d. Are you resolving any possible infringements of the Regulation with the help of so-called “amicable settlements”?

**No, amicable settlements are not a measure available to the Swedish DPA, following national rules.**

- e. How many fines did you impose since May 2018? Please provide examples.

**Since May 2018 the Swedish DPA has issued two administrative fines.**

- f. Which attenuating and or aggravating circumstances did you take into account?

**For one of the cases referred to in 6.e, the attenuating circumstances were the limited time period during which the processing was conducted and that the processing only encompassed a very small number of data subjects. The aggravating circumstances were that the processing concerned special categories of data, biometric data, and that it was related to children when attending school and thus in a situation where there is an imbalance of powers.**

**Additionally requested information on activities for SME:s and data breach notifications:**

**Activities for SME:s**

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**The DPA has also conducted a national privacy report that shows SMEs are one of the stakeholder groups that still is struggling with understanding and complying with the Regulation.**

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**Number of data breaches since 25 May 2018 until 31 December 2019: 6 959 (4 701 in 2019)**