

Comments of the Commission on a request for information from the European Ombudsman
- Complaint by the Irish Council for Civil Liberties (ICCL), ref. 97/2022/PB

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The Irish Council for Civil Liberties (ICCL) wrote to Commissioner Reynders on 13 September 2021 about an alleged failure of the GDPR application. It argued notably that the resources of data protection authorities were decreasing, that the Irish data protection authority was not properly enforcing the GDPR against big tech firms and asked the Commission to start infringement procedure against Ireland (some of these points had already been raised and answered by the Commission in previous CHAP complaints).

Commissioner Reynders replied on 1 December 2021 notably on how the Commission was monitoring the implementation of the GDPR by Member States and on the resources of data protection authorities.

The ICCL wrote again to the Commissioner on 14 December 2021 focussing on the statistics produced by the European Data Protection Board (EDPB) which, according to ICCL, would prevent the Commission from monitoring the GDPR implementation.

Commissioner Reynders replied to this second letter on 9 March 2021, explaining notably that the statistics from the EDPB case register had to be interpreted correctly, pointing to the ongoing work by the EDPB and data protection authorities on those statistics, and referring to the various sources of information used by the Commission in monitoring the GDPR implementation.

The Ombudsman wrote to the Commission on 10 February 2022 informing that, following a complaint lodged by the ICCL on 7 January, she had decided to open an enquiry regarding the collection of information by the Commission to inform itself on the application of the GDPR in Ireland.

II. THE COMPLAINT

The ICCL complains that the Commission collects insufficient information about Ireland's implementation of the General Data Protection Regulation.

III. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

The Commission attaches particular importance to the proper implementation of the EU's General Data Protection Regulation (GDPR) in all EU Member States, including in Ireland. In this context, the Commission believes that the complainant's concern that the Commission does not collect sufficient information to monitor the implementation of the GDPR, in particular in Ireland, is unfounded.

(i) First, since the entry into force of the GDPR, the Commission has maintained close contacts with the various actors and stakeholders involved in the GDPR, including through:

- the Member States expert group on GDPR set up by the Commission¹,
- the Commission's multi-stakeholder expert group on GDPR where both industry and civil society are represented²,
- the European Data Protection Board (EDPB) which gathers the independent data protection authorities and in which the Commission participates actively (to date the EDPB Plenary has met 61 times since May 2018, each time preceded by several experts sub-groups meetings);
- bilateral contacts with individual data protection authorities, e.g. between Commissioner Reynders and the Irish Data Protection Commissioner in November 2021;
- bilateral contacts with the authorities of Member States, e.g. between Commissioner Reynders and the Irish Minister of Justice in December 2021.

On 24 June 2020, as required by the GDPR, the Commission issued a detailed report on the various aspects of the implementation of the Regulation³. It is based on an extensive feedback from the various actors involved, notably the position and findings from the Council, input from private and public stakeholders including from the GDPR multi-stakeholder group, as well as contributions from the data protection authorities and the EDPB.

(ii) Second, the Commission notably uses the statistics produced by the EDPB. As indicated to the complainant in previous correspondence, the EDPB data coming from the case register (making use of the Internal Market Information System or IMI) are the most authoritative but have to be interpreted correctly and taking into consideration the methodology governing their collection⁴. The register is aimed primarily at supporting the cooperation between data protection authorities and not at producing detailed statistics on individual data protection authority for the general public. In particular, one should not draw conclusions as to the number of investigations that will lead to the submission of a draft decision by the lead data protection authority to the concerned authorities⁵. Moreover, it is important to make a distinction between cases which are relatively straightforward and do not require extensive investigations and cases which require complex legal and economic assessment or pose novel issues. Those complex cases, for instance those touching on issues relating to the business model of big tech multinational companies, might require several months or years of investigations, similarly to what happens for competition law investigations. This is particularly relevant for Ireland since many of such companies have their main establishment in this Member State.

The EDPB is currently working on the nature of the data that it makes public, so that its activity and that of the data protection authorities are easier to understand also by stakeholders. The Commission very much welcomes this approach.

¹ Set up during the 2016-2018 transition phase and reactivated in 2021: [Register of Commission expert groups and other similar entities \(europa.eu\)](#)

² [Register of Commission expert groups and other similar entities \(europa.eu\)](#)

³ [Communication from the Commission to the European Parliament and the Council - two years of application of the General Data Protection Regulation | European Commission \(europa.eu\)](#).

⁴ For instance, the cases listed in the case register can correspond to several complaints; one decision by a data protection authority can lead to the closures of a number of complaints in one go; actions encoded as “cross border” include cases where informal exchange of information is on-going under mutual assistance, “local cases” (under Article 56 GDPR) or cases not meeting the cross-border requirement; a data protection authority can also decide to start own volition investigations after receiving complaints.

⁵ Under Article 60 GDPR.

Furthermore, the EDPB's work on guidelines covering the various elements of the consistency mechanism established by the GDPR⁶, some of which having already been subject to public consultations, will also contribute to providing information to the public which will capture more adequately the different ways data protection authorities cooperate.

Finally, the Commission considers that the decision of the EDPB members to discuss in the spring how to further their cooperation and harmonise their approach⁷ is a very positive step forward, also in order to pass a united and positive message by the authorities in charge of enforcing the GDPR. In relation to the reference of diverging views expressed by those authorities about the implementation of the GDPR, including about the action of the Irish data protection authority, we would also like to point to the statement issued last December by the EDPB (i.e. on behalf of all EU data protection authorities) on the elaboration of guidelines, stressing the importance that the data protection authorities are able to hold open exchanges of views within the consistency mechanism⁸.

(iii) Third, the Commission also has at its disposal the annual activity reports to be produced by the data protection authorities and made available to the Commission in line with the GDPR⁹. The Irish data protection authority has published in February its 2021 report¹⁰ and complemented it by a detailed document on one-stop-shop cross-border complaint statistics¹¹.

The combination of the above mentioned sources of information provides the Commission with the necessary information on the way the GDPR is implemented and enforced in Member States, in particular Ireland.

The Commission agrees with the complainant that enforcement by data protection authorities, notably by that of Ireland, is essential. This is why the Commission has consistently called on data protection authorities to ramp up their enforcement actions, both in the 2020 report on the implementation of the GDPR, in public statements¹² and in bilateral meetings with national authorities. The positive trend seen in 2021, with several high-profile cases resulting in significant fines, has to be pursued and amplified in the coming months and years.

IV. CONCLUSIONS

The Commission considers that it gathers the necessary information to properly monitor the implementation by the Member States, including Ireland, of their obligations under the GDPR. If we come to the conclusion that some Member States are not properly implementing those obligations, we will take all necessary measures, including by launching infringement procedures as we have already done in the last years.

*For the Commission
Didier REYNDERS
Member of the Commission*

⁶ Chapter VII GDPR.

⁷ See the minutes of the plenary of 18 January 2022: [20220118plenfinalminutes59thplenarymeeting_public.pdf \(europa.eu\)](#)

⁸ [EDPB Statement : EDPB cooperation on the elaboration of guidelines | European Data Protection Board \(europa.eu\)](#)

⁹ See Article 59 GDPR.

¹⁰ [Data Protection Commission publishes 2021 Annual Report | 24/02/2022 | Data Protection Commission](#)

¹¹ [DPC statistical report on OSS cross-border complaints.pdf \(dataprotection.ie\)](#)

¹² See for instance the statement issued on the occasion of the 2022 Data Protection Day: [Data Protection Day \(europa.eu\)](#)