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Honourable Members,

I would like to thank you for your letter of 6 December 2021, in which you are asking a number of questions on the enforcement of the General Data Protection Regulation (GDPR).

Let me first underline that I fully share the conviction that a robust enforcement of data protection rules is essential. I am also fully committed to ensure such an effective enforcement.

As you are aware, on 24 June 2020 the Commission has issued a detailed evaluation report on the GDPR¹, based on an extensive feedback received from various stakeholders. In this context, we have analysed the cooperation mechanism and presented our views. We considered that it was too early to come to definitive conclusions on how the system functions. I believe this conclusion is still valid today: in the last months, the intensive work of data protection authorities, making use of the tools provided by the GDPR, has led to important results.

The cooperation mechanism is used routinely by data protection authorities². As shown by the figures from the European Data Protection Board (EDPB), until December 2021, 848 procedures related to the one-stop-shop (Article 60 GDPR) have been triggered out of which 303 final decisions have been issued.

The figure about the proportion of cases dealt by the Irish DPC mentioned in your letter appears to be a misinterpretation of the statistic produced by the EDPB. The cases listed in the IMI case register used by the EDPB are not all deemed to trigger Article 60 procedures. Among others, they include also cases where informal exchange of information is on-going under mutual assistance, “local cases” (under Article 56 GDPR), cases not meeting the cross-border requirement and other cases that for various reasons do not fall under the scope of application of Article 60. Article 60 procedure is only one of the possible ways to resolve data protection investigations and, therefore, the ratio between

¹ [Communication from the Commission to the European Parliament and the Council - two years of application of the General Data Protection Regulation | European Commission \(europa.eu\)](#)

² With two Article 65 GDPR decisions adopted.

MEP Sophie in 't Veld
MEP Birgit Sippel
MEP Tineke Strik
MEP Cornelia Ernst



the number of Article 60 submissions and the total number of cases registered for a given data protection authority³ is not a relevant indicator.

When looking at Article 60 proceedings, it is also important to distinguish between cases which can be resolved quickly, since they do not require extensive investigations, and cases which require complex legal and economic assessment or pose novel issues. These complex cases, in particular those which require discussions concerning the most contentious issues (see below on the DPC draft decision on WhatsApp), might require several months or years as it is the case for instance for competition law investigations.

Against this background, let me now turn to the specific questions raised in your letter.

Your first question concerns the criteria that the Commission uses to monitor the application of the GDPR in the Member States. The Commission is implementing the approach presented in the Communication issued last year on the GDPR. Among the issues we had identified concerning the application of the GDPR was whether national laws raise questions on the proportionality of the interference with the right to data protection. This is why we initiated infringement proceedings against Poland (disproportionate obligation on judges to provide information for the purposes of publication about specific non-professional activities) and Hungary (legislation on paedophile offenders and amending certain laws for the protection of children), as part of proceedings covering several topics.

Another key priority identified in our Communication was the independence and resources of the national data protection authorities. In this respect, it is positive that there has been an increase in staff around 60% and in budget around 80% for national data protection authorities, taken together in the EEA, between 2016 and 2021⁴. However, despite this overall progress, the situation is uneven between Member States and a majority of the authorities considers their resources still insufficient. This is why we will pursue our efforts to argue for more human and financial resources for data protection authorities.

The Commission did not hesitate to start infringement procedures, where necessary, to ensure the independence of data protection authorities. This is important to preserve citizens' trust that their fundamental rights are duly protected and to guarantee the functioning of the entire data protection system in the Union. In particular, after having carefully analysed the situation, including information provided by complainants, the Commission raised concerns that some members of the Belgian data protection authority do not fulfil the requirements for independence, as they are not free from external influence or have incompatible occupations. The Commission sent a reasoned opinion to Belgium on 12 November 2021 and the Belgian authorities will have to reply by 12 January 2022. Following the launch of the infringement procedure, the Belgian Parliament is now discussing a new legislation on the data protection authority. We will assess a possible new draft legislation, as well as the other information that will put forward by the Belgian authorities to see whether the Commission concerns are addressed. Should similar situations arise in other Member States, the Commission will take the necessary measures as it did in the case of Belgium.

³ We understand this is how the ratio of 98% in the case of the Irish DPC has been calculated.

⁴ As shown in the Commission GDPR report issued last year and the updated figures provided by the EDPB to the Parliament.

On your second and third questions on the application and enforcement of the GDPR in Ireland, we have not so far identified issues with the Irish data protection rules or have evidence that these rules have not been respected. However, the Commission will continue to follow closely the developments, as in any other Member States.

On the specific issue of the enforcement by the Irish DPC, we note that the DPC has submitted 7 cases to the Article 60 procedures, including one on Facebook in October and the latest one on Instagram on 3 December. One of the results of these submissions has been the imposition by the DPC of a fine of EUR 225 million on WhatsApp in August, the second largest fine after the one imposed by the Luxembourgish data protection authority on Amazon.com Inc, also this summer (EUR 746 million according to available information⁵). Since then, these two fines have been challenged by the companies concerned. We now need to await the result of the judicial process. In addition, on 1 November WhatsApp lodged a direct action before the General Court of the European Union against the EDPB decision addressed to the DPC in this case⁶. This case will bring very important clarifications as to the nature of the consistency mechanism. These high-level cases against big techs are only part of the activity of the Irish DPC.

In addition, not all investigations carried out by data protection authorities lead to a “decision” and therefore are included in the EDPB statistics of cases closed with a decision. The DPC, as other data protection authorities, may close cases without a decision. The GDPR gives individuals the right to submit a complaint and to be informed of the progress of the complaint and its outcome. The Irish implementing legislation provides that, in the case of complete resolution of a complaint by amicable settlement, the complaint is understood to be withdrawn. Such cases are closed without a decision. This possibility exists only if the complainant agrees to withdraw the complaint. The GDPR does not preclude the complaint to be withdrawn. The resolution of a matter which was subject to a complaint through amicable settlement gives the complainant a quick and effective remedy and spares the supervisory authority’s resources. This is true for local and cross-border cases. The GDPR refers to “amicable settlement” in Recital 131. Many data protection authorities apply this instrument, even if in different ways.

Your fourth and fifth questions concern the launch of infringement procedures. As indicated above, the Commission started infringement proceedings against three Member States for violations of the GDPR, in line with the approach presented in our Communication on the GDPR. I can assure you that we will continue to pursue this approach in the months and years to come and not hesitate to intervene, where needed, to ensure an effective enforcement of the GDPR.

On your sixth question, in my introductory comments I already stressed the need to consider with great prudence the robustness of the indicators. Furthermore, in July 2021, the cross-party Justice Committee of the Irish Parliament and Senate adopted a report which includes a series of recommendations on the work of the DPC. While I cannot comment on such report, I find it positive that steps are taken at national level to discuss how to address any possible issues with the GDPR implementation. It is indeed in the first place for Member States to ensure the implementation of EU legislation.

⁵ The Luxembourgish DPA has not confirmed officially the amount of the fine since it is not allowed to communicate about individual case (it will be able to do so only after the deadline for appeal has expired).

⁶ T-709/21WhatsApp v EDPB.

On your seventh and eight questions, I would like to clarify that, during the discussions within the EDPB, all DPAs are expressing their views how different provisions of the GDPR should be interpreted. Indeed, while establishing the EDPB the legislator provided that the very purpose of the consistency mechanism is to allow for an open discussion and transparent and honest exchange of different points of view on how the GDPR should be interpreted⁷.

The question which data can be processed on the basis of contract⁸ is a complex matter, which is now subject to two ongoing preliminary rulings proceedings at the CJEU⁹. There are different views and approaches expressed concerning this matter. The discussion led to the publication of the guidelines initially for public consultation and then to the final adoption in the form which you refer to. As a general remark, the Commission would like to stress in this context that the six legal bases for the processing of personal data under the GDPR are equally valid and protective. Whatever the legal basis that the controller chooses to rely on, it has to comply with all GDPR requirements, including the principles of accountability, fairness and data minimisation.

The Commission is very closely following the work of the EDPB. It participates to all EDPB meetings (plenaries and subgroups), offering its experience and expertise, albeit without voting right. I was informed that the independent data protection authorities gathered in the EDPB were working on the guidelines on the processing of personal data under Article 6(1)(b) GDPR in the context of provision of online services to data subjects.

It is however not for the Commission to comment on the exchanges of views in the context of the EDPB, and certainly not to launch infringement proceedings against a Member State for the views expressed by its data protection authority in this context, irrespective of whether the Commission agrees or disagrees with it.

To conclude, let me reiterate that the Commission is committed to ensure the effective application of the GDPR and will not hesitate, if necessary, to make full use of its powers under the Treaty to ensure its enforcement.

Yours sincerely,

(e-signed)

Didier REYNDERS

⁷ See also EDPB statement of 16/12/21: https://edpb.europa.eu/news/news/2021/edpb-statement-edpb-cooperation-elaboration-guidelines_en

⁸ Art 6(1)(b) GDPR.

⁹ Case C-446/21 but also C-221/21.