



To:
Mr Didier Reynders, European Commissioner for Justice
Dr. Andrea Jelinek, Chairwoman of the European Data
Protection Board

CC:
Members of the Civil Liberties, Justice and Home
Affairs (LIBE) Committee of the European Parliament

16-03-2022

Subject: Civil society call and recommendations for concrete solutions to GDPR enforcement shortcomings

Dear Commissioner Didier Reynders,
Dear Dr. Andrea Jelinek,
Dear Honourable Members of the LIBE Committee,

We, the undersigned organisations, work to promote and safeguard data protection, privacy and other fundamental rights. We call on the European Data Protection Board (EDPB), the European Commission, and all national data protection authorities (DPAs) to urgently address the structural and procedural enforcement issues that prevent the General Data Protection Regulation (GDPR) from fully reaching its potential.

With the GDPR, the European Union (EU) has successfully increased data protection standards, bolstered awareness and created a ripple effect beyond the EU. Thanks to the efforts of policy-makers and civil society, the GDPR is reshaping the way companies and governments handle people's information and is giving individuals more control over the use of their own personal data. The GDPR holds a genuine potential to put an end to data-exploitative business models and to shift the balance of power in favour of data subjects, responsible companies and governments.

Almost four years after the entry into force of the GDPR, the undersigned organisations celebrate the collective achievements of the law and take stock of the persisting shortcomings in its enforcement. While new record high fines were handed out in 2021 and an increasing number of decisions have been issued, we observe several barriers to the effective exercise of people's rights, including their access to remedy and a lack of harmonisation in the enforcement mechanism.¹

1 Some comments on issues and potential solutions for the enforcement of the GDPR in cross-border cases were prepared by EDRi member *noyb*. See here: https://noyb.eu/sites/default/files/2022-03/Follow-up%20meeting_Redacted.pdf. Further information on status and progress of GDPR complaints brought up by *noyb* can be found here: https://noyb.eu/files/case_overview/case_table.html

We call for the harmonisation of national procedures for the application of data protection rules

- We call on the EDPB to publish detailed information on all national procedural laws applicable to a complaint before DPAs. The information should include, among others, details about the process to file, review and resolve complaints; the definition of what constitutes a complaint and its admissibility criteria; the deadlines at all stages of the complaint procedure; the application of the right to be heard for the complainant; and the conditions applicable to representation of data subjects under Article 80 GDPR.
- We call on the European Commission to carry out a study to compare national procedural laws and analyse how their differences may impede the application and enforcement of the GDPR . Particular attention should be paid to the ability for data subjects to exercise their right to effective remedies and to their practical experiences of filing actions directly in courts or with DPAs.
- We call on the EDPB, with the support of the European Commission, to develop guidance for DPAs with the view to ensure that EU rules for the protection of personal data are applied in a harmonised manner. While DPAs exercise their powers in accordance with specific requirements in their Member State's procedural law, these laws must comply with the principles of equivalence and effectiveness and may not render excessively difficult or practically impossible the exercise of the rights conferred by the GDPR. In particular, this guidance should ensure that data subjects have a right to be heard throughout all phases of the complaint procedure and have a right to access all documents relevant to their case. This guidance should seek to harmonise or set the deadlines at each stage of a complaint procedure to help streamline the work of DPAs and the resolution of cases.
- We call on the EDPB to develop a single EU-wide complaint template form. This form should be easily accessible on each DPA's website, it should be available in all official EU languages, and accepted by all DPAs as a valid complaint form. This form would improve the accessibility of the complaint procedure for data subjects and help streamline the work of DPAs, including in cross border cases by helping standardise the way complaints are received.

We call for increased resources for DPAs and the EDPB

- We call on the European Commission and EU Member States to urgently increase the financial, human and technical resources of DPAs and the EDPB. While their budgets and resources may have already increased since 2016, neither the DPAs nor the EDPB are sufficiently equipped to be able to deal with the increase in cases, the cost of legal fees in case of appeal, and the required technical expertise. These resources are critical for the resolution of cases and for the realisation of the GDPR's objectives.



We call on DPAs to make a better use of existing tools for enforcement and cooperation under the GDPR

- Where a data controller is subject to complaints in more than one Member State raising similar compliance issues, relevant DPAs should be required to perform joint investigations and to coordinate their action through task forces. These processes should lead to increased cooperation between DPAs and can be supervised by the EDPB.
- Where a lead DPA fails to act in an effective and timely manner, concerned DPAs should make full use of enforcement tools at their disposal under the GDPR. DPAs should in particular make use of the procedure laid down in Article 66 (1) GDPR to adopt temporary measures under the urgency procedure, with the view to address situations that amount to a denial of justice caused by unjustified delays or excessive requirements. This should also be applicable to scenarios where a lead DPA does not have the capacity to initiate a case due to volume of work or backlog of cases. Similarly, the EDPB should also make use of its powers under Article 65 (1)(b) to address and solve questions about main establishment.
- Where a national DPA is faced with a case of EU-wide relevance and importance, it should defer the case to the EDPB, which could provide assistance and coordination in the investigation and issue guidance on the application of the GDPR to this particular case.

Adopting the GDPR was only a first step in safeguarding the rights to privacy and data protection in the EU. For the rights and requirements of the GDPR to be delivered and realised, DPAs and the EDPB must have the necessary resources to act and national procedures for enforcement must be harmonised. Based on our experience with GDPR implementation and enforcement, we believe that the above recommendations would go a long way to improve its enforcement.

Over the coming months, we will continue providing recommendations and resources for an effective application and enforcement of the GDPR. Our organisations look forward to continue engaging with all institutions and we are available to discuss these proposals in further details.

Sincerely,

Access Now
Amnesty International
Asociatia pentru Tehnologie si Internet (ApTI)
Bits of Freedom
Digitalcourage
Digitale Gesellschaft
Državljan D
Electronic Frontier Finland
European Center for Not-for-Profit Law Stichting (ECLN)



European Digital Rights (EDRi)

Fitug e.V.

Homo Digitalis

IT-Pol Denmark

La Quadrature du Net

noyb

Open Rights Group

Panoptikon

Privacy International