

Client alert

Data protection

7 August 2024

Commission Report on Six Years Application of GDPR

On 25 July 2024, the European Commission (the Commission) published its second report (the Report) on the application of the General Data Protection Regulation (GDPR). This follows the initial report adopted on 24 June 2020 - available [here](#) - and confirms the broad consensus among stakeholders, data protection authorities (DPAs), and Member States that the GDPR, despite some challenges, has substantially benefited both individuals and businesses. This report took into account several sources, including feedback from stakeholders through the GDPR Multi-stakeholder group, the public call for evidence (including [Van Bael & Bellis' feedback](#)) as well as contributions from DPAs, a [report by the Fundamental Rights Agency](#) and the [findings of the Council of the European Union](#).

The Report highlights several areas where it considers that the GDPR has proven particularly effective:

- **Enhanced cooperation and enforcement:** The number of cross-border cases has increased significantly in recent years and DPAs have demonstrated increased willingness to make use of the collaboration tools offered by the GDPR (especially the mutual assistance tool (Article 61 GDPR) and the dispute resolution (Article 65) by the European Data Protection Board (the EDPB). In contrast, the Commission notes that the joint operation tool (Article 62 GDPR) has been used less. This collaboration has led to a significant rise in enforcement actions, including major fines against large multinational tech firms, which the Commission argues contributed to convincing private companies to “take data seriously” and fostering a culture of compliance in organisations. Most fines were imposed for the infringement of the lawfulness and security of processing, the processing of special categories of personal data and the failure to comply with individuals’ rights.
- **Increased awareness and exercise of data subjects’ rights:** the Report states that public awareness and understanding of data protection rights have significantly increased under the GDPR. Indeed, 72% of respondents across the EU are aware of the GDPR, including 40% who understand its implications. Additionally, 68% have heard of a national authority responsible for data protection rights, with 24% knowing the specific responsible authority. This surge in awareness is due in part to high-profile cases, as well as targeted public campaigns, educational efforts, and accessible digital resources from DPAs. Future legislative measures, such as the Data Governance Act, are expected to further enhance individuals’ abilities to exercise their rights. The Commission found that the heightened awareness extends to the business community, especially among small and medium-sized enterprises (SMEs) and organisations with limited resources. These entities have increasingly used practical tools like standard contractual clauses, codes of conduct, and certification mechanisms to meet GDPR requirements more easily.
- **Increased budget for DPAs:** Most DPAs have experienced increases in both staff and budget, bolstering their capacity to enforce the GDPR effectively. All but one DPA reported budget increases, with more than a 50% increase observed in 13 Member States.

However, the Report also identifies several areas that are in need of improvement:

- **Inconsistent interpretation by DPAs and fragmentation:** the Report reveals that DPAs continue to adopt inconsistent interpretations on key data protection concepts, leading to legal uncertainties and increased operational costs for businesses (e.g. by requiring different documentation for several Member States). For instance, stakeholders have pointed out that DPAs in three Member States hold varying opinions on the appropriate legal basis for the processing of personal data when conducting a clinical trial. Additionally, there is often disagreement on whether an entity is a controller or processor. In some instances, DPAs either disregard the EDPB's guidelines or publish guidelines at national level that contradict those of the EDPB. Moreover, this divergence hampers the free movement of personal data within the EU, affects cross-border business and stifles research and innovation in addressing societal challenges. Some stakeholders also consider that certain DPAs and the EDPB adopt interpretations that deviate from the fundamental risk-based approach of the GDPR.

The Report further highlights that inconsistencies between Member States are exacerbated by the fragmentation in national rules, in cases where Member States have the ability to specify the application of the GDPR, such as: (i) the minimum age for children to consent to information society services (Article 8(1) GDPR); (ii) national conditions concerning the processing of genetic data, biometric data or data concerning health (Article 9(4) GDPR); and (iii) the processing of personal data relating to criminal convictions and offences (Article 10 GDPR).

- **Guidance from the EDPB:** As of November 2023, the EDPB had adopted 35 guidelines which, while useful, were often seen as too theoretical and lengthy, and not fully reflective of the GDPR's risk-based approach. Stakeholders are calling for more, and better, guidelines, especially on issues like anonymisation, pseudonymisation, legitimate interest, and scientific research. Guidelines should be accessible and comprehensible to those without legal expertise, such as individuals in SMEs. To facilitate this, the preparation of the guidelines should be made more transparent. Additionally, consulting stakeholders at an early stage can enhance understanding of market dynamics and business practices, thereby improving the practical application of these guidelines.
- **In need of more human resources for DPAs:** Despite the general increase in resources, DPAs still face a shortage of specialised technical expertise, particularly expertise needed to deal with emerging technologies. This impacts the quality and extent of their regulatory activities and poses recruitment challenges vis-à-vis the private sector. Many DPAs are voicing concerns about the potential burden of additional responsibilities under new digital legislation.

Conclusion

Although the Commission praises the GDPR for empowering individuals to control their data and creating a level playing field for businesses, it recognises the need for further improvements in several key areas. According to the Commission, these areas include robust enforcement of the GDPR, starting with the swift adoption of the Commission's proposal on procedural rules to provide quick remedies and legal certainty for individuals across the EU ([see, our Client Alert of 8 August 2023](#)). Additionally, the Commission stresses the importance of DPAs proactively supporting stakeholders, especially SMEs and small operators, and facilitating their compliance efforts. Other priorities include ensuring consistent interpretation and application of the GDPR throughout the EU, enhancing cooperation between national and EU-level regulators to ensure a unified approach to EU digital rules, and advancing the Commission's international data protection strategy. Six years after its implementation, the Report concludes that the GDPR continues to grow in significance and remains a cornerstone of the EU's strategy for digital transformation.

Thibaut D'hulst
Malik Aouadi

Lawyer to contact



Thibaut D'Hulst
Counsel
tdhulst@vbb.com



Malik Aouadi
Associate
maouadi@vbb.com

Brussels office
Glaverbel Building
Chaussée de La Hulpe 166
B-1170 Brussels
Belgium

Phone: +32 (0)2 647 73 50

Geneva office
26, Bd des Philosophes
CH-1205 Geneva
Switzerland

Phone: +41 (0)22 320 90 20

London office
Holborn Gate
330 High Holborn
London
WC1V 7QH
United Kingdom

Phone: +44 (0)20 7406 1471

VAN BAEL & BELLIS

www.vbb.com

