



Brussels, 19 September 2023
DG JUST.C3

QUESTIONS TO GDPR MULTISTAKEHOLDER EXPERT GROUP FOR COMMISSION 2024 REPORT ON THE APPLICATION OF THE GDPR

The General Data Protection Regulation ('GDPR') entered into application on 25 May 2018, repealing and replacing Directive 95/46/EC. The GDPR has a two-fold objective. The first is to protect fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. The second is to allow the free flow of personal data and the development of the digital economy across the internal market.

In line with Article 97 GDPR, the Commission adopted a first report on the evaluation and review of the GDPR on 24 June 2020 (the '2020 report').¹ The next report is due by mid-2024 (the '2024 report').

Article 97 GDPR requires the Commission to examine, in particular, the application and functioning of:

- Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC; and
- Chapter VII on cooperation and consistency.

As you are aware, the functioning of Chapter VII is addressed by the Commission's proposal for a Regulation on GDPR procedural aspects adopted on 4 July 2023² and takes into account the input received from the Group. Therefore, the present exercise does not cover this matter.

Article 97 GDPR also requires the Commission to take into account the positions and findings of the European Parliament and the Council, and of other relevant bodies and sources. The Commission may also request information from Member States and supervisory authorities.

¹ Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, 24.6.2020, COM(2020) 264 final.

² COM(2023) 348 final.

The GDPR Multistakeholder Expert Group was established in 2017 to assist the Commission in identifying potential challenges in the application of the GDPR from the perspective of different stakeholders, and to advise the Commission on how to address them. In view of the preparation of the 2024 report, and as for the preparation of the 2020 report³, the Commission is seeking feedback on your experiences with the application of the GDPR.

As communicated separately, the Commission has planned a meeting of the Multistakeholder Expert Group for **27 October 2023**. This meeting will provide an opportunity for members to provide feedback orally to the questions below and to raise other points if deemed necessary.

You will then be invited to provide your final feedback in writing (in English) to the questions below by **18 November 2023**, at the following e-mail address: JUST-C3-MULTISTAKEHOLDER-GDPR@ec.europa.eu

Please note that, as for the 2020 report, the Commission will prepare a report summarising the written feedback provided, which is intended to be made publicly available. Individual contributions may be disclosed in response to access to documents requests under Regulation (EC) No 1049/2001.⁴

QUESTIONS

1. General comments

- a. What is your overall assessment (benefits/challenges, increase in trust and awareness, etc.) of the application of the GDPR since May 2018? Are there priority issues to be addressed?

2. Exercise of data subject rights

- a. From the individuals' perspective: please provide information on the exercise of the data subject rights listed below, including on possible challenges (e.g. delays in controllers/processors reply, clarity of information, procedures for exercise of rights, restrictions on the basis of legislative measures, etc.).

From the controllers and processors' perspective: please provide information on the compliance with the data subject rights listed below, including on possible challenges (e.g. manifestly unfounded or excessive requests, difficulty meeting deadlines, identification of data subjects, etc.).

- Information obligations, including the type and level of detail of the information to be provided (Articles 12 to 14)
- Access to data (Article 15)
- Rectification (Article 16)

³ Report – Contribution from the Multistakeholder Expert Group to the Commission – 2020 evaluation of the GDPR, 17 June 2020:
<https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/41708/download>

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L 145, 31.5.2001, p. 43–48.

- Erasure (Article 17)
- Data portability (Article 20)
- Right to object (Article 21)
- Meaningful explanation and human intervention in automated decision making (Article 22)

Where possible please provide a quantification and information on the evolution of the exercise of these rights since the entry into application of the GDPR.

- b. Do you avail of / are you aware of tools or user-friendly procedures to facilitate the exercise of data subject rights?
 - c. Do you have experience in contacting representatives of controllers or processors not established in the EU?
 - d. Are there any particular challenges in relation to the exercise of data subject rights by children?
3. **Application of the GDPR to SMEs**
- a. What are the lessons learned from the application of the GDPR to SMEs?
 - b. Have the guidance and tools provided by data protection authorities and the EDPB in recent years assisted SMEs in their application of the GDPR (see also the EDPB data protection guide for small business⁵)?
 - c. What additional tools would be helpful to assist SMEs in their application of the GDPR?
4. Use of **representative actions** under Article 80 GDPR
- a. From the controllers and processors' perspective: are you aware of representative actions being filed against your organisation(s)?
 - b. For civil society organisations: have you filed representative actions in any Member State (please specify: complaint to DPA or to court, claim for compensation; and the type of GDPR infringement) and if yes, what was your experience? Do you intend to take actions under the Representative Actions Directive⁶?
5. Experience with **Data Protection Authorities (DPAs)**
- a. What is your experience in obtaining advice from DPAs?
 - b. How are the guidelines adopted so far by the EDPB supporting the practical application of the GDPR?
 - c. Are DPAs following up on each complaint submitted and providing information on the progress of the case?
 - d. Are you aware of guidelines issued by national DPAs supplementing or conflicting with EDPB guidelines? (please explain)

⁵ [The EDPB data protection guide for small business | European Data Protection Board \(europa.eu\).](https://eudpa.europa.eu/the-edpb-data-protection-guide-for-small-business)

⁶ Directive (EU) 2020/1828.

6. Experience with **accountability** and the **risk-based approach**
 - a. What is your experience with the implementation of the principle of accountability?
 - b. What is your experience with the scalability of obligations (e.g., appropriate technical and organisational measures to ensure the security of processing, Data Protection Impact Assessment for high risks, etc.)?
7. **Data protection officers (DPOs)**
 - a. What is your experience in dealing with DPOs?
 - b. Are there enough skilled individuals to recruit as DPOs?
 - c. Are DPOs provided with sufficient resources to carry out their tasks efficiently?
 - d. Are there any issues affecting the ability of DPOs to carry out their tasks in an independent manner (e.g., additional responsibilities, insufficient seniority, etc.)?
8. **Controller/processor relationship (Standard Contractual Clauses)**
 - a. Have you made use of Standard Contractual Clauses adopted by the Commission on controller/processor relationship⁷?
 - b. If yes, please provide feedback on the Standard Contractual Clauses?
9. **International transfers**
 - a. For controllers and processors: Are you making use of the Standard Contractual Clauses for international transfers adopted by the Commission⁸? If yes, what is your experience with using these Clauses?
 - b. For controllers and processors: Are you using other tools for international data transfers (e.g., Binding Corporate Rules, tailor-made contractual clauses, derogations)? If yes, what is your experience with using these tools?
 - c. Are there any countries, regional organisations, etc. with which the Commission should work in your view to facilitate safe data flows?
10. Have you experienced or observed any **problems with the national legislation** implementing the GDPR (e.g., divergences with the letter of GDPR, additional conditions, gold plating, etc.)?
11. **Fragmentation/use of specification clauses**
 - a. Please provide your views on the level of fragmentation in the application of the GDPR in the Member States (due to Member State implementation of the GDPR or the use of facultative specification clauses, such as Articles 8(1) and 9(4) GDPR).
 - b. Please specifically identify the area in which you consider there to be fragmentation and whether it is justified.

⁷ Commission Implementing Decision (EU) 2021/915.

⁸ Commission Implementing Decision (EU) 2021/914.

12. Codes of conduct, including as a tool for international transfers

- a. Do you consider that adequate use is made of codes of conduct?
- b. Have you encountered challenges in the development of codes of conduct, or in their approval process?
- c. What supports would assist you in developing codes of conduct?

Please clearly distinguish in your reply when Codes are used for international transfers.

13. Certification, including as a tool for international transfers

- a. Do you consider that adequate use is made of certifications?
- b. Have you encountered challenges in the development of certification criteria, or in their approval process?
- c. What supports would assist you in developing certification criteria?

Please clearly distinguish in your reply when certification is used for international transfers.

14. GDPR and innovation / new technologies

- a. What is the overall impact of the GDPR on the approach to innovation and to new technologies?
- b. Please provide your views on the interaction between the GDPR and new initiatives under the Data Strategy (e.g., Data Act, Data Governance Act, European Health Data Space etc.)