

***INPUT FOR THE EU
COMMISSION SUPPORTING
ITS EFFORTS IN FURTHER
SPECIFYING PROCEDURAL
RULES RELATING TO GDPR
ENFORCEMENT***

Civil Liberties Union for Europe

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Introduction

The Civil Liberties Union for Europe (hereinafter Liberties) welcomes the European Commission's initiative aimed at further specifying procedural rules relating to the enforcement of the General Data Protection Regulation (hereinafter GDPR).

Liberties an EU-level watchdog and network organisation representing 19 human rights organisations from 18 Member States. One of our focus areas is the protection of personal data from state and corporate surveillance in the digital space.

We highly appreciate that the European Commission does not propose to reopen issues already settled by the GDPR for, we believe, the Regulation itself is a piece of legislation European legislators can be rightfully proud of. The GDPR hugely contributed to raising the standards of acceptable data processing practices within the European Union, and, with the spill-over effect, also across the globe.

Nevertheless, we find that due to the numerous impediments in its enforcement, GDPR holds much more potential than it can currently reach. The new initiative launched by the European Commission represents an opportunity to ensure a more efficient, coherent, consistent and equal enforcement of the GDPR across the European Union.

In order to contribute to the European Commission's efforts in addressing the shortcomings in the enforcement of the GDPR, in the following we describe the difficulties Liberties'

members and partners faced in the framework of a quasi-simultaneous coordinated complaint filing campaign with multiple European data protection authorities (hereinafter FixAdTech campaign) and formulate a handful of recommendations aimed at eliminating the problems that led to these very difficulties.

Liberties' members' and partners' experience with GDPR enforcement, Liberties' recommendations

The GDPR became applicable in May 2018. Shortly after its one-year anniversary, in June 2019 Liberties has organised a series of (identical) complaints filed with the Belgian, Bulgarian, Czech, Estonian, French, German, Hungarian, Italian and Slovenian data protection supervisory authorities against Google and IAB Europe. The complaints were typically filed by individuals working for or leading at Liberties member or partner organisation in the listed member states (participating organisations: Български хелзинкски комитет, Coalizione Italiana Libertà e Diritti Civili, Deutsche Vereinigung für Datenschutz, Digitalcourage, Digitale Gesellschaft, Inimõiguste Instituut, Ligue Des Droits Humains, Liga Lidských Práv, Mirovni inštitut, Netzwerk Datenschutzexpertise, Társaság a szabadságjogokért). The complaints were based on complaints filed in Ireland by Johnny Ryan and in the United Kingdom by Jim Killock and Michael Veale a few months earlier.

The purpose of this campaign was twofold. Firstly and foremostly, to call the attention of national data protection authorities to the biggest unlawful exploitation of personal data ever recorded and encouraging them join forces and investigate into the behavioural advertising industry together.

As the cases seemed not to have moved much forward, in December 2020 Liberties, as a part of a digital rights defender consortium formed by Liberties, Open Rights Group and Panoptikon, organized the filing of a set of new complaints. These (somewhat modified) complaints were filed with the Croatian, Cypriot, Greek, Maltese, Portuguese, Romanian and Swedish supervisory authorities (participating organisations: Asociația pentru Tehnologie și Internet, D3 – Defesa dos Direitos Digitais, Civil Rights Defenders, GONG, Global Human Dignity Foundation, Homo Digitalis, Institute of Information Cyprus).

As IAB Europe is headquartered in Belgium and Google is headquartered in Ireland, APD/GBA and DPC became the lead supervisory authorities.

In late 2020, the Belgian supervisory authority (APD/GBA) sent a letter to a handful of complainants informing them on the language of the procedure regarding their complaints against IAB Europe. The majority of the complainants organized by Liberties or filed independently of Liberties did not become parties to the procedure.

Over the course of two years after filing the first set of Liberties' complaints, the Irish

supervisory authority (DPC) asked a few complainants for evidence that their own personal data were unlawfully processed. Many complainants, however, have never heard about them or were informed about the decision (if any) DPC reached.

While the Belgian procedure involved a host of difficulties for the parties, in the following we will delimit our observations to the developments before the parties identified by APD/GBA were asked by APD/GBA to present their cases.

Difficulties faced

Not all supervisory authorities engaged with the complaints filed with them.

A number of supervisory authorities declared that they have no jurisdiction without taking any further steps, or simply failed to start corresponding with the complainants.

Not all authorities took the complaint as a complaint.

A few supervisory authorities simply treated the complaints as ‘tips’ informing them about a potentially serious issue.

Not all complainants had the same rights and it was unclear from the communications received what their rights are and what can they expect to happen.

Some complainants were informed by the supervisory authority they filed their complaint with that their complaints will be handled by the Irish/Belgian authorities as they are the lead authorities. One was informed that the supervisory authority they filed with declared itself as concerned authority (but seeming has not referred the complaint to Ireland and/or Belgium). Another was encouraged to turn to the data controller first with the complaint. Yet another was told that the lead authority will be the DPC, and the supervisory authority they filed with will not conduct separate proceedings (it was unclear, however, whether the complaint was referred to the DPC and the supervisory authority did not engage with the part about IAB Europe at all).

Recommendations

It is crucial to *define* what “handle a complaint” (Article 78, GDPR) means, and therefore, what are the *precise obligations* supervisory authorities must meet once receiving a complaint. Obligations must include *adopting* and *communicating* a final, *binding decision within a set time*, so that complainants can have access to *effective judicial remedy*.

The notion of “complaint” (Article 77, GDPR) must also need to be *clearly defined*.

The procedure before the supervisory authorities must be clearly *defined* and standardized. Clear explanation should be communicated to the complainant on the *status of their complaint* (i.e., dismissed, referred etc.), and on their *rights along the process* (i.e., whether they will become a party in the proceeding, whether they will have the right to be heard, etc.).

Difficulties faced

It was unclear to the complainants who and on what basis became or failed to become a party to the Belgian procedure.

Liberties were told by organisations that became parties that APD/GBA seem to have received only 9 complaints, 4 of them filed directly with the APD/GBA. While some of the complainant suspected from the generally unclear communication they received from their GPA that they will not become a party, many were surprised.

The handling of the complaints took much longer than acceptable, with no regular updates communicated to the complainants.

Generally, supervisory authorities acknowledged the receipt of the complaints but with a few exceptions took no steps thereafter, leaving the complainants uncertain whether their case is closed, further steps are to be expected or whether they can turn to the courts.

Recommendations

See in the cell above.

Clear *deadlines* for each steps to be taken by supervisory authorities after receiving a complaint must be established.

In the case of cross-border complaints the *responsibilities* of different authorities must be clearly set, including responsibilities regarding transparency.

Additional recommendations

In addition to the recommendations formulated based on the experience Liberties gained with the FixAdTech campaign described above, we would like to express our utmost agreement with Access Now's recommendation that the new Regulation should apply not only to cross-border cases but to national cases too.

We also fully agree with EDRI's suggestion that procedures harmonised by the new Regulation must be harmonised to the top, providing data subjects with the highest level of procedural rights that exist.

Transposing these recommendations to the new Regulation would ensure that personal data would enjoy the same and appropriate level of protection across the EU.

Conclusion

The GDPR is in effect for almost 5 years, but has yet to be truly enforced and thereby to achieve its full potential. The new initiative launched by the European Commission represents a real opportunity to ensure a more efficient, coherent, consistent and equal enforcement of the GDPR across the European Union. Liberties calls on European co-legislators to use this opportunity to the fullest.

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