

## The Consumer Voice in Europe

Ref.: BEUC-L-2020-142/MGO/stc

Brussels, 25 May 2020

### **Re: GDPR second anniversary – Recommendations for efficient enforcement**

Dear Commissioner Reynders,

On the second anniversary of the entry into application of the General Data Protection Regulation (GDPR), BEUC would like to bring to your attention various concerns regarding its effective enforcement and share with you a series of recommendations regarding how to address them.

The GDPR is the main framework for protecting European consumers' personal data in the digital era. It created an innovative enforcement system for tackling EU-wide data protection infringements by establishing mechanisms for cooperation between national data protection authorities (DPAs) and the consistent application of the rules. The new enforcement system was meant to improve the functioning of the Internal Market – as it gives businesses the possibility to interact with one single authority via the “one-stop-shop mechanism”— and at the same time aimed at increasing effective protection for individuals.

Consumer organisations have high expectations for the one-stop-shop mechanism to ensure an effective application of the GDPR and bring fundamental change to a digital economy where widespread commercial surveillance has become a major concern. However, based on our members' experience and that of other civil society organisations, we have identified a series of obstacles that are hampering the effective application of the GDPR and the correct functioning of its enforcement system.

In particular, we are concerned about the lack of harmonised, binding administrative procedures to deal with cross-border complaints; the generally slow pace of proceedings; the lack of resources for DPAs; and the current concentration of important complaints against key tech players in the hands of one single national authority – which has led to an enforcement bottleneck effect.

BEUC members' experience with the GDPR one-stop-shop procedure illustrates well these concerns. In November 2018, seven of our members issued coordinated complaints to their national DPAs regarding Google's location tracking practices. 15 months later, in February 2020, the lead authority commenced an own volition inquiry which it will then use to decide how our members complaints will be dealt with. Thus, regrettably, 18 months since the complaints were filed, important questions in this regard are pending and the likelihood of having a decision and remedies adopted any time soon is not promising. In the meantime, consumers across Europe continue to be victims of the incriminated practices.

Unfortunately, after two years, the expectations that the GDPR would tackle systemic data protection infringements inherent to the widespread commercial surveillance in our digital world have not materialised. Weak enforcement has a negative impact on the protection of millions of consumers across Europe.

We have reached a turning point. The GDPR must finally show its strength and become a catalyst for urgently needed changes in business practices. For that to happen it is essential to act swiftly to ensure its effective enforcement. To this end, **BEUC recommends:**

1. **The European Data Protection Board (EDPB) to establish the basic elements of a common administrative procedure to handle complaints in cross-border cases under the cooperation mechanism of the GDPR (Article 60).** This should be done by urgent guidance of the EDPB and include *inter alia* common timelines for carrying out investigations and adopting decisions. The EDPB should also provide a uniform interpretation of key GDPR terms such as “without delay”, “amicable settlements” and “decision”.

In addition, the position of the complainants during the proceedings should be harmonised and made clear in national administrative procedures applicable to DPAs. Complainants should not be limited to have a passive role during the procedure. As a way of example, complainants should be able to intervene at different stages (e.g. when the decision to allocate their complaint to a specific DPA is adopted), not only at the very end when a decision on their complaint is taken.

In the long term, this procedural harmonisation should be done via legislation.

2. **DPAs to ensure that the exercise of their discretionary powers to carry out own-initiative investigations does not in any way undermine the rights of the complainants and/or result in delays.** This should particularly apply when an own-initiative investigation is opened alongside an ongoing complaint procedure in the frame of Article 60 GDPR.
3. **DPAs to thoroughly take up their assistance function when dealing with cross-border complaints.** When acting as concerned DPAs (i.e. not as lead authorities) under the GDPR cooperation mechanism, they should be as proactive as possible to contribute to the investigations of the lead authority. Lead authorities should encourage concerned DPAs to fulfil this task. When relevant, concerned DPAs should not hesitate to use their power to adopt urgency measures under Article 66 GDPR. Also, concerned DPAs should take up an assistance function towards their national data subjects, proactively and regularly advising and communicating with them throughout the complaint handling procedure.
4. **Member States to establish specific support for data subjects, or organisations representing them, involved in cross-border complaints.** In case of cross-border complaints, procedural costs quickly become obstacles to the efficient exercise of data subjects’ rights. Thus, measures to limit such costs and support access to legal advice under foreign law, such as access to legal aid, should be put in place.
5. **DPAs – in particular those acting as lead authorities – to fully use their corrective powers under Article 58 GDPR.** This includes adopting interim measures, issuing reprimands and orders and ultimately stopping illegal processing when it significantly affects data subjects.
6. **National DPAs and the EDPB to establish a list of organisations per Member State which should be considered eligible to represent data subjects under Article 80 GDPR.** Such organisations should be considered eligible after a screening by their national supervisory authority. Once considered as such, the principle of

mutual recognition should apply so that they could represent data subjects in all EU countries.

7. **Member States to implement Article 80.2 GDPR in their national law to ensure that eligible organisations have the right to lodge complaints without a mandate from a data subject.** This is necessary to avoid unequal treatment and fragmented protection to fundamental rights across the EU. In the long term, all the rules governing the representation of data subjects should be fully harmonised.
8. **Member States to ensure that DPAs are sufficiently equipped and have enough resources to perform their tasks.** This is clearly required by the GDPR. The Commission should not hesitate to launch infringement procedures if Member States are not meeting their obligations.

BEUC and its member organisations are working relentlessly to make the consumer voice heard. We will continue working to ensure the GDPR is fully enforced and that companies take responsibility for their practices. Likewise, enforcement authorities and Member States must step up to the challenge and be held accountable if they fail to fulfil their duties. More efforts are needed to ensure that the GDPR lives up to its status as global data protection standard and delivers tangible benefits for individuals and society.

We trust you will take our input into consideration for the upcoming GDPR review and that the Commission will do everything in its hands to ensure the GDPR fulfils all its potential to drive positive change.

For your information, we have sent similar letters to Vice-President Vestager, Commissioner Jourova, the European Data Protection Supervisor and the European Data Protection Board.

Yours sincerely,

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BEUC Director General

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