



Brussels, 8 March 2019
DG JUST.C3

**Multi-stakeholder expert group to support the application of Regulation (EU)
2016/679**

**QUESTIONS TO PREPARE THE STOCK-TAKING EXERCISE OF JUNE 2019
ON THE APPLICATION OF GDPR**

As discussed at the meeting of the Multi-stakeholder group on 5 March 2019, the European Commission would like to gather further feedback from the group in writing on the application of the GDPR. The report based on the group's feedback is intended to be made publicly available.

For organisations representing civil society and individual members, we are interested in receiving feedback on the experience gathered from individuals or businesses or based on your own observations, as appropriate (and not necessarily from an own internal compliance perspective).

1. General comments

- a. *For members representing businesses:* please explain what were the main issues experienced by the organisations you represent in complying with the GDPR.
- b. *For other members:* please explain what were the main issues your stakeholders experienced, or you have observed, on the application of GDPR.

2. Impact of the GDPR on the exercise of the rights

- a. How have the information obligations (in Articles 12 to 14) been implemented? Has there been a change of practices in this respect?
- b. Is there an increase of requests (where possible provide estimates):
 - i. to access data?
 - ii. for rectification?
 - iii. for erasure?
 - iv. to object?
 - v. for meaningful explanation and human intervention in automated decision making?
- c. Are there requests on data portability?
- d. On which rights do these requests mostly relate to?
- e. Are there any difficulties in the application of the rights (by controllers, by DPAs), including for meeting the deadlines for responding to the requests?
- f. What percentage of the requests was manifestly unfounded or excessive? Please describe why these requests were unfounded or excessive.

3. Impact of Article 7(4) regarding the **conditions for valid consent** on your business model/consumers
 - a. Are there any issues with the use of consent as legal basis for specific processing operations? (e.g. complaints received) When requesting consent, how did individuals respond?
 - b. Have organisations switched the legal ground for processing from consent to another legal ground?
 - c. How are businesses addressing the issue of tied consent? How are they distinguishing between contract as legal basis and consent?

4. **Complaints and legal actions**
 - a. Are there any complaints against your organisation(s) submitted before DPAs?
 - b. Are there any court actions against your organisation(s)?
 - c. Are there any court actions against decisions, or absence of decisions, of DPAs?
 - d. In all above cases, please explain what is the matter of the complaint or court action and for which types of infringements of GDPR?

5. Use of **representative actions** under Article 80 GDPR:
 - a. Are you aware of representative actions being filed against your organisation(s) or in your Member State? As an organisation representing civil society, have you filed representative actions in any Member State?
 - b. What types of representative actions (complaint to DPA or to court, claim for compensation)? In which country/ies?
 - c. Against whom and for which types of infringements of GDPR?

6. Experience with **Data Protection Authorities (DPAs)** and the **one-stop-shop mechanism (OSS)**:
 - a. Are there any difficulty experienced in the dealings with DPAs (by individuals/businesses)?
 - b. Are there difficulties in obtaining advice or guidance material by the DPAs?
 - c. Are DPAs following up on each complaint submitted, and in a timely manner?
 - d. How many of your business members have declared a main establishment to a DPA and benefit from a Lead Authority? Have they experienced difficulties with the functioning of the OSS?
 - e. Do you have experience with the designation of representatives of controllers or processors not established in the EU?
 - f. Are you aware of guidelines issued by national DPAs supplementing or conflicting with EDPB guidelines? (please explain)

7. Experience with **accountability** and the **risk-based approach** (*for members representing businesses*):
 - a. What is the feedback from your members on the implementation of accountability? And their experience with the scalability of obligations (e.g. Data Protection Impact Assessment for high risks, etc.)?
 - b. What are the benefits/challenges of GDPR in your line of business?
 - c. What do you think the overall impact of GDPR will be on your organisation's approach to innovation?

- d. In which area did your organisation have to invest most in order to comply with the GDPR? How useful do you consider this investment for the overall performance of your organisation?
- e. To which extent could your organisation rely on existing technical and organisational measures or did you establish a new data management system?
- f. Do your members experience an increase of awareness and of trust of their customers due to the implementation of technical and organisational measures to comply with the GDPR?

8. **Data protection officers (DPO):**

- a. Did the organisations you represent designate a mandatory DPO pursuant to Article 37(1) GDPR?
- b. Did the organisations you represent designate a mandatory DPO pursuant to national law implementing Article 37(4) GDPR? Please specify which national law and for which situations.
- c. Did the organisations you represent designate a DPO on their own initiative, without being required to do so by the GDPR or by national law?
- d. Did associations or other bodies representing categories of controllers or processors designate data protection officers?
- e. What is the experience of the organisations you represent with the performance of DPOs?

9. **Controller/processor relationship (Standard Contractual Clauses)**

- a. What is the experience of the organisations you represent on the adaptation of current contracts?
- b. Is there a need for the adoption of standard contractual clauses under Article 28(7) GDPR? Explain what are the main reasons.
- c. If standard contractual clauses were to be prepared, what elements and specifications should be included? (e.g. auditing, liability allocation, duty of cooperation, indemnification)?
- d. Do you have suggestions in terms of how to ensure the “user-friendliness” of such standard contractual clauses?
- e. In case you have drafting suggestions for specific clauses, please share.

10. **Adaptation/further development of Standard Contractual Clauses (SCCs) for international transfers**

- a. What are your practical experiences with the existing SCCs: Do they serve the purpose? If not, where do you see room for improvements? Have you encountered any problems in using the existing SCCs?
- b. Do you see a need to adapt the existing SCCs, generally and/or in the light of the GDPR? (e.g. different structure/design? additional safeguards? combination with Art. 28 standard contractual clauses for processors?)
- c. Do specific clauses require further clarification (e.g. auditing, liability allocation, duty of cooperation, indemnification)?
- d. Is there a need to adapt the SCCs in light of the *Schrems II* court case (concerning access by third country authorities), e.g. with respect to monitoring/reporting obligations on the data importer/exporter? Do you have suggestions on ways and means to strengthen the possible control by the data exporter vis-à-vis the data importer and the measures to enforce such control (e.g. not only suspending the transfer of data but actually

recalling the data already transferred?) Do you have any other suggestions on how to further strengthen data protection safeguards and control mechanisms (including by the DPAs) with regard to government access?

- e. Is there a need to develop new SCCs, e.g. for the processor/sub-processor relationship, joint-controllership, processor-to-controller relationship or specific processing operations?
 - f. Do you have suggestions in terms of how to enhance the “user-friendliness” of SCCs?
 - g. In case you have drafting suggestions for specific clauses, please share.
11. 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.)?