

# Past, present and future of DPC activity — the 2020 Regulatory Activities Report

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**Mark Ellis, Senior Associate, and Aishwarya Jha, with McCann FitzGerald, provide a high level overview of the DPC's Regulatory Activities Report on its regulatory work since the coming into force of the GDPR**

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**M**arking the completion of its second year as Ireland's Supervisory Authority under the GDPR, the Data Protection Commission (the 'DPC') has published a report on its regulatory activities since the GDPR's commencement on 25th May 2018 ('the Report', copy at [www.pdp.ie/docs/10967](http://www.pdp.ie/docs/10967)).

Whilst the DPC's regular statutory Annual Reports review all aspects of the DPC's administration, the purpose of the Report is specifically to assess the DPC's experience of its functions under the GDPR, including its regulatory responsibilities and activities, and the allocation of its resources. The Report notes that the second anniversary of the GDPR provides a valuable opportunity to take stock of the early years of its implementation and consider how this might influence the DPC's regulatory approach going forward. The Report also covers the DPC's continued, but declining, legacy work under the Data Protection Acts 1988 and 2003.

## Two years in numbers

The Report recognises that data protection as a concept has grown exponentially, and notes the increased media attention which has led to greater scrutiny of the DPC itself. Giving a sense of the degree of change over the Report's period, the Report notes the DPC's view of the 'seismic impact' of the GDPR.

The Report also gives a more concrete picture of the DPC's regulatory work. For example, in the two years leading up to 25th May 2020, the DPC received over 84,000 communications, opened over 15,000 cases in support of individuals' rights and concluded 80% of these cases. The most frequent data protection issues in those cases over this period were:

- access requests (22.62%);
- general queries (22%);
- fair processing (15%);
- disclosure (12%);
- right to be forgotten (8%); and
- direct marketing (6%).

Separately, the Report says that, since

May 2018, the DPC has:

- issued its first two fines under the GDPR;
- opened 53 national inquiries;
- opened 282 new direct marketing complaints (of which it has concluded 247);
- prosecuted 11 companies for a combination of 42 offences under SI No 336/2011 (on European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011);
- handled 44 Law Enforcement Directive complaints;
- completed the inquiry into, and forwarded its first Article 60 draft decision to the EDPB in respect of, Twitter; and
- applied to the Irish High Court to refer questions regarding the validity of the Standard Contractual Clauses to the CJEU (the CJEU issued its judgment on 16th July 2020 after the publication of the Report — see page 1).

## Recurring patterns and complaint resolution timelines

Given Ireland's popularity as a venue for an EU headquarters for many multinational companies (including major technology firms), the DPC's regulatory operations have accordingly been substantial in the 'big tech' domain. Since May 2018, the Report notes that the DPC has commenced 24 statutory inquiries into multinational tech companies. This was in addition to supervisory engagement which resulted in the postponement or revision of six planned big tech projects until they aligned with data protection requirements.

Equally, reflecting the GDPR's impact on a wide variety of organisations, the Report notes that the DPC has continued its less publicly visible work with all types of controllers and complaint types. The Report highlights that, albeit not covered in high-profile headlines, the range of regulatory concerns these cases present have required an

*(Continued on page 6)*

[\(Continued from page 5\)](#)

'equally considered approach to regulation' by the DPC, showing that the DPC is mindful of its broad role.

The Report notes that a substantial portion of the cases before the DPC concern a small, but frequently arising, set of data protection concerns (for example, access request issues). Data breach notification, too, is a frequent issue in the cases before the DPC. In the reporting period, the DPC notes it received close to 12,500 breach notifications (93% of which were found to be in scope of the GDPR).

The DPC has successfully processed and closed 95% of these cases. Notably, the Report states that — despite the high number of cases — the DPC does not believe there is any indication that organisations are over reporting data breaches to the DPC. However, the Report also states that many data breaches notified to the DPC could have been prevented by the controller putting in place 'more stringent technical and organisational measures at source', hinting that it expects controllers can (and should) do more to reduce certain potentially avoidable data breaches. Unauthorised disclosures were the most cause of such breaches (80% of reported breaches).

As controllers will attest, the Report acknowledges that nuances within each complaint have had a great impact on timescales and resolution process. In that regard, the Report explains that, in the past two years, the DPC has reviewed and refined its approach to case handling which has reduced wait times for case resolution by 54%. This, and any further reduction of the resolution times, will clearly be welcomed by most controllers.

## Supporting controllers and DPOs

In an effort to seek to promote efficient and improved data protection practices amongst controllers, the DPC is keen to highlight that it has established support groups at both Data Protection Officer ('DPO') level as well as SME level. The Report notes

that the DPC established a Data Protection Officer Network in 2019 to facilitate knowledge sharing and peer-to-peer support. It has also partnered with the Croatian Data Protection Authority and Vrije University in Brussels on an EU-Funded project specifically targeted at extending further support to SMEs. In response to one of the many challenges of the coronavirus crisis, the DPC has facilitated online supports in place of planned conferences with a view to providing support particularly to DPOs (who now also have a dedicated DPC website section).

Further, the Report highlights the DPC's continued commitment to sharing knowledge with its many stakeholders to seek to ensure and improve compliance. The Report notes that in its first two years under the GDPR regime, the DPC published 40 guidance documents, 29 blogs and 10 podcasts to promote compliance. In addition, the DPC has attended over 330 stakeholder events since May 2018. The Report itself also attempts to provide guidance to controllers in the form of 19 case studies covering a wide range of issues, including inadvertent disclosures to third parties, fair collection and retention, insufficient organisational and technical measures for data security, data minimisation and excessive processing of personal data as well as location tracking.

## Role of the DPO

In the two years since the introduction of the role of DPOs under the GDPR in May 2018, the Report notes that 1,823 DPOs have registered with the DPC. The DPC anticipates that this figure will grow consistently over the coming years in line with processing operations becoming more complex and more public sector bodies and organisations falling within the scope of high-risk and far-reaching data processing. The Report specifically identifies DPOs as stakeholders in need of particular additional support.

The DPC's continued engagement with DPOs (through establishing networks, garnering on-the-job insights into their challenges and opportunities, and assessing resources availa-

ble to them) exemplifies the DPC's desire to provide such support.

However, the Report also highlights the DPC's acknowledgment of "a prevailing sense of disconnect between the role of the DPO as described in the GDPR and its manifestation in reality". Notably, the Report points out that the mere appointment of a DPO does not by itself indicate compliance, and that DPOs are not solely accountable for data protection infringements. The DPC reaffirms that data protection is the responsibility of all staff.

## Roadmap for the future

It is clear that the last two years have been very active and busy ones for the DPC. Anticipating a further increased workload and expecting the coronavirus crisis to have future funding implications, the Report cautions that the DPC's approach going forward must reflect the "twin aims of maximising its resources and increasing efficiencies in its processes".

Part of the solution — which the DPC's initiatives reflect cognizance of — is the promotion of greater data protection knowledge amongst the various stakeholders. However, the Report is also clear that education alone will not be enough, and the DPC notes that it intends to consult on approaches to find efficiencies in its complaint and investigation work. Based on the findings of the Report, as well as extensive engagement with the many stakeholders involved in the past two years, the DPC notes that an important next step will be the publication of its Draft Regulatory Strategy for formal public consultation. This is intended to provide a roadmap for the upcoming five years of the DPC's regulatory work in upholding the fundamental right to data protection. PDP will be tracking the developments regarding the document.

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