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CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA

CONVENTION 108

Report on the Funding of Data Protection Authorities

by

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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe

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This study is a comparative analysis of the funding of data protection authorities intended to supplement the first compilation prepared on governance models of data protection authorities[1].

PURPOSE OF THE STUDY

The aim of the study was to take stock of the various funding arrangements set up to secure the financial independence of data protection supervisory authorities.

Providing data protection authorities with human, technical and financial resources is a prerequisite for them to able to perform their functions and tasks fully and effectively, and for their independence to be guaranteed. Article 15 of Convention 108+[2] provides that the supervisory authorities should have the necessary infrastructure and financial, technical and human resources to take prompt and effective action. The Explanatory Report to the Convention explains that the appropriateness of resources should be kept under review. Furthermore, it emphasises that these rules apply to supervisory authorities covering processing activities for national security and defence purposes, which are subject to the same requirements regarding independence.

At the same time, paragraph 120 of the Preamble to the General Data Protection Regulation of the European Union (GDPR) requires EU member states to provide protection authorities with the necessary funds for them to deliver their missions, including those related to mutual assistance and co-operation with other supervisory authorities in Europe.

To achieve the aim of the study, it was necessary:

- to examine the legal texts which govern the funding of authorities and its procedures as well as the relevant controls and oversight that are provided for;

- to consider the trends in funding over the three years from 2018 to 2020 and to examine the levels of funding available in relation to the missions of the authorities. In this context, it was considered useful to know what their recent budgetary requests were, such as requests for extra staffing posts.

SCOPE OF THE STUDY

Initially, the main focus was the national authorities of the States Parties to Convention 108 and the observer states to the Committee of Convention 108, but the scope of the study gradually widened to include the funding arrangements for authorities at cantonal and local level in federal states and the European Data Protection Supervisor (EDPS).

The non-state observers to the Committee of Convention 108+ were also consulted.

[1] https://rm.coe.int/t-pd-2018-24-rev2-compilation-supervisory-authorities-06-05-2019-en-cl/1680a054e4

[2] Amending Protocol ETCS 223 to the Convention for the protection of individuals with regard to the automatic processing of personal data

METHODOLOGY

1) To collect reliable and up-to-date information, it was decided to make use of a questionnaire as not all the applicable texts are necessarily in English. Besides, the current legal framework is not stable as many texts are being revised to adapt to Convention 108+, to the GDPR and to the EU Directive 2016/680. Lastly, to discuss the issue of trends in funding and resources, direct contact with the authorities seemed appropriate.

2) This broad-based consultation seemed a good opportunity to gather useful information to update the website of the Committee to Convention 108, and particularly the page dedicated to national information and observers. The questionnaire was thus enlarged to this purpose.

CONTENT OF THE QUESTIONNAIRE (see appendix)

The questionnaire focuses on two types of information relevant to the issue of funding:

1. Information on the authority itself, as some details can have a direct impact on its funding, i.e.:

- its administrative status: independent authority, independent public institution or ministerial department; and its precise areas of competence, its composition and the origin of its staff;

- its competence: the question is whether the authority covers areas other than data protection, such as the right to information or human rights in general and if, where it comes to files properly speaking, national security and defence files fall within its remit;

- detailed information on the number of staff and their status: civil servants, contractual employees, etc.

2. On the subject of funding arrangements, the authorities are asked to explain:

- what legal text or texts govern the funding;

- what are the available funding sources: public or private financing; budgetary financing; or supplementary funding through donations, fees, transfer of financial penalties to the authority's budget or a specific tax.

Respondents are also asked to specify:

- the total amount of funding provided and how this has grown in the last three years, especially to cater for new tasks linked with the application of the GDPR and incumbent to the concerned authorities;

- what requirements authorities have in relation to their budget to enable them to carry out their tasks, particularly in terms of staff increase.

Lastly, questions of public disclosure and oversight of funding are raised.

ASSESSMENT OF THE REPLIES TO THE QUESTIONNAIRE

In total 57 replies were received from 54 ministries and national supervisory authorities, the EDPS and 2 associations among which member states of the Council of Europe, including 26 member states of the EU or of the EEA, non-members of the Council which have ratified Convention 108 and observers.

Added to these, were 43 replies from the authorities in the federal states (*Länder*) of Germany and Cantons of Switzerland.

Given that not all Parties have answered, the analysis aims at providing general indications on the established funding structures as well as underlining main trends of the evolution of these financings.

1. Status of the supervisory authority

- In general, the study shows that data protection authorities that have been set up are independent bodies enjoying administrative and financial autonomy. Their status varies according to the national institutional framework: they may have a specific administrative status as an independent body (such as an independent administrative authority (*autorité administrative indépendante)* in **France** or an autonomous constitutional body in Mexico), be a public establishment (as in **Luxembourg**), a public institution (in **Brazil**) or a public legal entity (in**Turkey**) or be directly attached to a ministry, such as in **Austria**, for example.
- Their staff is mostly made up of civil service personel but some employ contractual staff for administrative, computing or technical support functions.
- The size of the authorities varies considerably, the number of employees going from 17 to over 200 people.
- The mission of the authority may just be personal data protection or also include the right to access to information, or human rights.
- With regard to data files, their area of activity also varies: they may deal with all public and private files or they may only be responsible for certain public files, as files relating to specific fields (police, intelligence, etc.) are assigned to other authorities.

Regarding the authorities subject to the GDPR, the national legislations have mostly been recently amended or are being amended to assign them the new tasks it entails. At the same time, some states which are not subject to the GDPR have decided to align their legislation with the new Convention 108+, to the GDPR and to the EU Directive 2016/680, and to revise the missions of their authority accordingly **(Brazil** and **Georgia**, for example).

2. Financing: the relevant legislation

In most cases, the principles and the methods for the funding supervisory authorities are provided for by the legislation on personal data protection setting up the supervisory authority. This legislation may be supplemented by regulatory or budgetary texts or regulations adopted by the authority relating to its own procedures.

In some rare cases specific texts have been adopted to complement the Law on Personal Data Protection. For instance, in **Bosnia and Herzegovina**, there are three different texts: the Law

on Personal Data Protection, the Law on Financing of Institutions of Bosnia and Herzegovina ("Official Gazette of BiH", No. 61/04, 49/09, 42/12, 87/12 and 32/13) and the annual Laws on the Budget of BiH Institutions and the International Obligations of BiH. In **Mexico**, besides the Law on Protection of Personal Data, the Federal Law of Budget and Fiscal Accountability establishes the general rules on the authority, the principle of its budgetary autonomy and its obligation to set up strict budgetary procedures.

3. Nature and origin of funding

When assessing the funding of supervisory authorities, it should be borne in mind that they are not all organised in the same way and do not all have the same areas of competence. For example, some authorities cover both personal data protection and the right to information. With regard to files, their area of activity varies: they may deal with all public and private files or they may only be responsible for certain public files, as files relating to specific fields (police, intelligence, etc.) are assigned to other authorities, which must be granted the same resources.

Some states have a federal or cantonal form of organisation (**Belgium, Germany, Switzerland**), which has made it necessary to examine the procedures for the financing of local or regional-level authorities.

The size of authorities can considerably vary (from a staff of 17 to 200) and some employ only civil servants while others also employ staff from the private sector.

The areas covered by the budget can also vary. For instance, in **Malta** and **Mauritius**, the budget voted for the authority covers its functioning and activities but not the staff expenses, which are paid for from another budget. The budget of the Tunisian authority does not include salary expenses either.

Lastly, it is also worth noting that some countries (**the Netherlands, Portugal, Senegal**), which have incorporated the principles and rules of the GDPR into national legislation have also made changes to the funding arrangements of their authorities to help them cope with their new missions.

In the case of states that have recently accessed Convention 108, it is important to underline that they have adopted the necessary legislation to ensure funding of the supervisory authority (**Mexico**). **Brazi**l recently adopted a law on personal data protection and set up a supervisory authority, which powers and funding modes are inspired by Convention 108+ and the GDPR.

To carry out our assessment of funding, we will examine data protection authorities (3-1), “ad hoc” supervisory authorities, namely those set up to supervise processing in the fields of security, policing and intelligence (3-2) and lastly the authorities in the regions or cantons of federal states (3-3).

3.1 Funding of data protection authorities

The aim of the questions was to highlight the various means of funding: budgetary financing, fees, recovery of financial penalties, donations, special taxes, etc.

The examination of the replies reveals that all the supervisory authorities receive funding from the state budget (see 3-1-1), which may in some cases, be supplemented by fees, donations or, more rarely, the recovery of financial penalties (see 3-1-3).

One exception to this overall pattern is the **United Kingdom**. In its functions in relation with data protection, the authority (ICO) is financed exclusively by statutory levies on data controllers (see 3-1-2).

3.1.1 Funding by state budget

The arrangements for such funding may vary. We note four situations:

A Independent budget with its own budget line in the state budget

This is the situation for most national supervisory authorities and, although we cannot speak of state, it is also the case of the European union supervisory authority, the **EDPS**, which is funded by the General Budget of the European Union (Article 54 of Regulation (EU) 2018/1725).

B The budget forms part of a specific ministerial budget or that of a government agency with its own budget line

In this case, the authority has control over its budget and makes budget proposals to the ministry concerned. This is the case in the following countries: **Austria** (Federal ministry of Justice), **Denmark, Estonia, Greece** (ministry of Justice), **Iceland, Ireland** (in 2019, the budget of the Commission formed part of the Department of Justice and Equality Vote), **Malta** (ministry of Justice, Culture and Local Government), **Mauritius** (the Permanent Secretary of the ministry of Information Technology, Communications and Innovation (MITCI)), **the Netherlands** (ministry of Justice and Security), **New-Zealand** (ministry of Justice), **Spain, Switzerland** (Federal Chancellery for the time being awaiting ongoing legislative changes – see below item C), **Tunisia** (the ministry in charge of human rights). In **France**, the authority's budget forms part of the Prime Minister's budget and in **Slovakia** that of the ministry of Finance (General Treasury Administration) but only the National Council of the Slovak Republic may reduce the approved budget. In **Uruguay**, the budget is attached to a government agency, the Agency for Digital Government, but has its own budget line.

Some countries have special budgetary arrangements. In **the Netherlands**, for example, most of the authority's budget forms part of the budget of the ministry of Justice and Security, where it is identified as such with its own budget line. However, another small part of its budget comes directly from the ministry of Finance, without appearing as such. This amount is transferred to the authority's budget and appears in the annual report.

Two authorities have a separate budget for staff costs. In **Mauritius**, the authority has its own budget for its operations under the MITCI budget but a separate one for its staff, which is controlled directly by the ministry. In **Cyprus**, the authority's budget includes the Commissioner's allowances and six statutory posts (2020). It does not include the salaries of administrative and support staff, which are paid by the ministry of Finance.

C The budget forms part of that of the Parliament.

The authority retains control over its own budget, for which it is responsible. This is the case in **Belgium, Cabo Verde, Germany, Hungary, Portugal and São Tomé and Príncipe**. It also applies to some authorities in the **Swiss** cantons and, when the new Law on Data Protection enters into force, it will also apply to the Federal Commissioner whose budget will be allocated by the Parlement (*Préposé*). The Commissioner will be able to make proposals to the Federal Council to be forward as such to the Federal Chambers.

D The budget is attached to the one of the Presidency of the Republic

This is the case in **Brazil, Senegal** and **Tunisia**, although only temporarily in the latter case, pending the establishment of the new authority.

3.1.2 The exception to funding by the state budget: the **United Kingdom**'s statutory levy on organisations

Although the authority's budget is itemised in the budget of the Department for Digital, Culture, Media and Sports, the authority's data protection work is funded by fees paid by data controllers. It is not funded by the state. The fee is not a tax but a statutory levy.

This funding arrangement was changed in 2018 by a new Act which changed the amount of the levy and added a new element. Organisations which determine the purpose for which data are collected and processed must now pay a special fee unless they are exempt. This fee replaces the previous requirement to "notify" which applied under the legislation of 1998.

In 2018-2019, the number of organisations paying this fee increased by 16% – previously the average yearly increase was 6%. Fee collection procedures are set out in the relevant legislation. The annual amount varies according to the size of the body in terms of turnover and staff numbers.

A specific text sets out the procedures to collect the levy. In order to ensure its correct collection and sensitise stakeholders to its mandatory character, the ICO can carry out several types of actions, such as awareness raising and parties' involvement. As of 31 March 2020, 738 769 data controllers were registered, which was an increase of 139,202 from 31 March 2019.

To ensure that the ICO is adequately resourced, the Act of 2018 increased its ability to fine companies which fail to pay. It is now entitled to impose fines of up to £4,350. Using this new power, the ICO issued 3,335 notices of intent to fine in 2018-2019, which led to 2,941 responses and total payments of £585,490. It also issued 227 penalty notices, as a result of which it was able to recover a further £99,170 in fees and penalties.

3.1.3 Funding from sources other than budgets: fees, donations, financial penalties and international aid

Where they exist, these types of funding are added to funding from budgets.

3.1.3.1 Funding through fees

This type of funding currently exists only in some states and, in some respects, for the EDPS.

In Luxembourg and in Portugal, when amendments were made to personal data protection legislation to enable the application of the GDPR rules, changes were also made to the funding arrangements for supervisory authorities so that they could carry out their new duties. In both cases, they are now entitled to levy fees in the context of their new authorisation and advisory powers. Both authorities have adopted a regulation setting out the procedures relating to these fees.

In **Luxembourg**, until the GDPR began to apply in 2018, the supervisory authority, the CNPD, was issuing authorisations and receiving notifications in accordance with the provisions of the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data. The amount of fees levied represented 1% of its total budget in 2018. The CNPD has adopted a regulation setting the amount and the arrangements for the payment of fees in the context of its authorisation and advisory powers (Regulation No. 7/2020) https://cnpd.public.lu/fr/decisions-avis/2020/07-reglement-redevances.html

Fees must be paid in four sets of circumstances: accreditation of certification bodies, approval of certification criteria, authorisation of contractual clauses and approval of binding corporate rules. The following are subject to fees: certification bodies, owners of certification systems, data controllers and processors, and groups of undertakings having recourse to the authorisation and advisory powers of the CNPD in accordance with Article 58, paragraph 3 (*e*), *(f), (h)* and *(j)* of the GDPR. The Regulation also sets the amount of these fees.

In **Portugal**, the data protection law, which was amended in 2019 to take account of the principles and rules of the GDPR, now provides that the authority may, for its own resources, levy fees on certain specific services (Article 21 of Law 43/2004). Regulation 310/2020, which has been published in the Official Gazette, sets the scope and the procedures for the levying of these fees https://www.cnpd.pt/home/legis/nacional/Reg_310_2020_TaxasCNPD.pdf

These fees may be levied in four sets of circumstances: accreditation of the body in charge of codes of conduct, assessment of impact studies, examination and approval of codes of conduct, and procedures for the authorisation of processing provided for by the GDPR. The amount of these fees is set by a Regulation. An additional charge may also be levied for particularly complex cases. Exemption from the payment of fees is granted to companies that can demonstrate financial difficulty. Lastly, failure to pay the fees owed results in termination of the processing of the pending case or its being filed.

In **Finland**, the authority may envisage levees on accreditation and certification procedures. Although not yet effective, there is a project for the implementation of this measure.

The **Australian** authority can enter into memoranda of understanding with government agencies to assist with oversight on the data protection aspects of certain government programmes.

In Cabo Verde, the National Commission of Data protection may charge fees for the registration of notifications, while in **São Tomé and Príncipe,** the authority may levy fees on various procedures. The authority in **Gabon** can charge fees for services provided for users and in **Senegal**, the draft of the new law provides that the authority may charge for some its activities (training) and levy fees for the issue of authorisations, receipts and certifications.

Regarding the **EDPS,** it is not financed by fees levied for authorisation files or audits. However, it has negotiated an agreement with the European Free Trade Association (EFTA), under which the EDPS carries out EFTA's supervisory work. Provision is made for a payment to cover the staff costs incurred by this work. This payment is regarded as internal assigned revenue (under Article 21 (3) FR).

Such a type of financing and agreement has also been adopted by some national authorities for their supervisory work on data protection-related aspects for programmes or projects run by government bodies.

3.1.3.2 Funding through donations

We will deal first with the national supervisory authorities (A) then with the EDPS (B).

A. Some states (**Albania, Brazil, Cabo Verde, Georgia, Portugal, Tunisia**, for example) have made provision, in addition to budgetary funding, for funding through donations. By donations we mean financial donations or gifts in the form of services and products. International aid is dealt with elsewhere.

Donations are governed by specific legal texts and by the usual national budgetary and legal rules on the subject, particularly public disclosure rules designed to avoid conflicts of interest and ensure transparency. The law may include a strictly defined list of possible donors.

When they exist, donations may be financial in nature or take the form of legal assistance, help with staff training, technical assistance (for example, to set up a website) or provision of equipment. In **Estonia**, for instance, the authority has the right to receive up to €1,000 per year for any training courses it holds.

To ensure transparency, such donations must be made public, particularly when the budget is published, and are subject to the usual budgetary controls (such as those of the Court of Audit). They also appear in the authority's activity report or are published on its website (in **Albania, Cabo Verde, Georgia,** etc.). In **Albania**, donations are covered by public procurement rules and are reported in special notices published on the authority's website and in its activity report. In **Tunisia**, the law provides that donations must be made in accordance with the relevant legislation and regulations.

For some authorities, funding through donations is possible only through government bodies for international co-operation (in Senegal, in Gabon). In **Gabon**, donations are subject to administrative control.

Most authorities which can legally receive donations say that they do not actually receive any.

B. In theory, the **EDPS** may accept donations in accordance with recital 7 and subject to the conditions set out in Article 25 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the European Union. These donations could then be treated as external assigned revenue in accordance with Article 21 (2) (d) of the same regulation, which also provides that they must be made public (Article 37). However, to date no such donations have been received by the EDPS.

3.1.3.3 Funding through recovery of financial penalties

We will deal first with the national supervisory authorities (A) then with the EDPS (B).

A Whereas most authorities have progressively acquired the right to impose financial penalties to the public and private sector – save for **Germany** where the public sector is excluded from any sanctioning powers – these are not usually allocated directly to the supervisory authority's budget. Generally, they are reserved for the state budget.

Some countries do however provide for fines to be allocated directly to the authority, although the amount of such funding is low in relation to the authority's overall budget. This applies to the **United Kingdom** in the limited circumstances of fines levied on crime benefits, and to **Cabo Verde, Gabon**, **Hungary and Portugal.**

In **Hungary**, fines form part of the authority's budget. In **Portugal**, the legislation provides that 40% of fines must be allocated to the supervisory authority. In **Gabon**, the amount collected from financial penalties are broken down as such: 40% of the sums collected go to the state budget and 60% to the Commission (Article 114 of the Commission's Rules of Procedure).

B Under Regulation (EU) 2018/1725, the **EDPS** may impose administrative fines. Funds collected in this way are allocated to the EU General Budget and are not treated as assigned revenue of the EDPS.

3.1.3.4 External funding deriving from international co-operation

Both **Senegal** and **Gabon** provide for the possibility for the Personal Data Commission to receive donations or grants from an individual, a body or a foreign state, but only through the intermediary of a state co-operation body.

3.2 Funding of "ad hoc" authorities in charge of processing of data in the field of defence, security and intelligence

The answers to the questionnaire show that these authorities' circumstances differ greatly. Either they are granted specific funding, or they do not have their own budget. The authorities in question are as follows:

- the authority in **Luxembourg** known as the "judicial supervisory authority", which was set up to deal with files in the criminal justice and national security fields. As an "ad hoc" authority, it does not have its own budget but its members receive a monthly allowance ;

- the various bodies set up in **Belgium** to supervise the police, intelligence and threat assessment services: the Police Information Supervisory Body, the R Committee, the P Committee and the Co-Ordinating Body. These bodies receive separate funding, granted by the Chamber of Representatives. Over the last three years, their budget has increased;

- in **the Netherlands**, the Dutch Committee (CTIVD), is governed by a specific text adopted in 2017 and deals with the files of the General Intelligence and Security Service (AIVD) and the Military Intelligence and Security Service (MIVD). The CTIVD's budget is part of the central government budget. Administratively, it falls under the ministry of General Affairs, which means that it can call on its financial management, IT and HR services. The Secretary may also perform private-law legal acts on behalf of the committee up to a maximum amount if this is necessary to deliver its missions. The CTIVD's budget has decreased slightly over the last three years.

3.3 Funding of authorities in the cantons, regions and federated entities of federal states

3.3.1 The cantonal supervisory authorities of Switzerland

Supervision of data protection in Switzerland is managed by a federal personal data protection authority, 26 authorities in the cantons and certain bodies in the communes and municipalities. The Conference of Swiss Data Protection Officers (privatim) groups together all of

Switzerland's data protection authorities. The Federal Data Protection and Transparency Commissioner (PFPDT) holds regular meetings with the data protection authorities of the cantons and the communes. A mention should also be made of the Co-ordinating Group for Swiss Data Protection Authorities in the context of the Schengen Agreement (and the relevant regulation) and the informal group of data protection officers from French and Italian-speaking cantons (*groupe des préposés latins*).

The Swiss cantons have all adopted data protection legislation, which they are progressively amending to incorporate Convention 108+, the GDPR as well as the EU Directive 2016/680, and established an independent supervisory authority whose task is to supervise data processed by the public authorities of the canton or the data of private persons performing public duties. This data protection authority may be attached administratively to the Canton's Chancellery (Cantons of Fribourg, the Grisons, St. Gallen, etc.), to the directorate of the Interior and Justice (Canton of Bern), or the Parliament (Canton of Basle-City). The Data Protection Commissioner may be elected by the Parliament, sometimes on a proposal by the *Conseil d'État* (the cantonal government) or be appointed directly by the *Conseil d'État*.

In terms of funding, these authorities have their own budget line in the cantonal government budget. In some cantons, the authority's budget is attached to that of the Chancellery. Authorities do not receive donations nor levy fees. In the Canton of the Grisons, the budget is controlled entirely by the Chancellery, meaning that the authority does not have its own budget.

Funding is generally made public through the data protection authority's activity report or the canton's budgetary publications. Audits are carried out by the cantonal authorities, such as the Grand Council in Geneva, the Inspectorate of Finances in Fribourg, the Parliament in Bern and the Audit Office in Jura-Neuchatel.

Levels of funding were generally stable with the occasional slight increase in all cantons. In the Canton of Fribourg, the budget was more substantially increased, but the authority still considers that it does not have sufficient resources to carry out all its tasks. The Commissioner of the cantons of Jura-Neuchatel states that more resources are needed to carry out more controls. On the whole, these authorities regret the lack of resources available to them and are very wary of changes in their funding.

3.3.2 The regional supervisory authorities of Germany

The administrative organisation of data protection in Germany is based on a federal authority and 17 regional authorities in the federal states (*Länder*). Added to these are the authorities set up to supervise data protection in the churches and the media.

The federal authority oversees personal data processing carried out by the federal public sector, which includes tax, law enforcement and intelligence as well as by the private telecommunication and postal sector. The rest of the private sector and the regional public sector are dealt with by the regional supervisory authorities in the *Länder*. These authorities have their own data protection legislation, which has been amended to apply the GDPR. From a statutory viewpoint, they are independent and co-operate with the federal personal data protection authority through an informal body called the "Conference of Personal Data Protection Authorities", which seeks to ensure that the law is applied consistently.

They have their own budget, for which they are responsible, and which may or not be attached to a ministry (for instance, the ministry of the Interior, Sport and Integration in Bavaria), to the regional parliament (Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, and Schleswig-Holstein in particular) or to the budget of the federal state (*Land*) concerned (Saxony-Anhalt, Saarland). Where budgets are attached to the budget of the *Land*,

they are subject to the budgetary rules of the *Land* concerned, which can raise questions about their actual independence (Saxony-Anhalt). Budgets of authorities in the *Länder* are subject to the same rules concerning public disclosure and controls as the federal authority: funding is publicised through budget documents and on the website of the Ministry of Finance and controls are carried out by the usual authorities in this field.

For several authorities (in Bavaria, Brandenburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saxony-Anhalt, Thuringia and Schleswig-Holstein) increases in funding levels are considered "modest" or "marginal" and will not be sufficient to enable them to fund all the new duties entailed by the GDPR, particularly those relating to international co-operation, investigations requiring a high level of technical skills, follow-up to the assessment of technical solutions based on "data protection by design" and the preparation of guidelines. Even the authorities in Berlin and North Rhine-Westphalia, where there have been more substantial increases, allowing new recruitments, consider that this could still be insufficient in view of the major increase in complaints and, in particular, cases of personal data breaches.

3.3.2 The federated entities of Belgium

In Flanders, the *Vlaamse Toezichtcommissie* supervises processing by the Flemish public services.

The other federated entities (the Walloon Region, the Brussels-Capital Region and the Wallonia-Brussels Federation) have entrusted the supervision of data protection to the federal data protection authority.

4. Public disclosure of funding

The funding of supervisory authorities is generally made public in several different ways, which may be combined:

- the supervisory authority's activity report;

- the General State Budget published in the national Official Gazette or on the website of the ministry of Finance (as in Germany for example);

- or direct publication on the authority's website.

In some countries (**Estonia, Mexico, Sweden, and Ukraine**, for example), the authority's budget is considered to be public information. In some countries, the authorities have also a duty to publish their budget on their website to make it accessible to everyone. In **Mexico,** this obligation requires the authority to update the information on its website every three months, unless otherwise stipulated.

In **Brazil**, the authority's budget is published on a public "transparency portal".

In some countries such as **New-Zealand**, the budget is made public through the annual report of the authority. In **Gabon, the Philippine,** and **São Tomé and Príncipe**, the budget is made public through standard budgetary materials, namely the General Appropriations Act and the authority's annual report in the Philippines, the Budget Review Act in Gabon, and the Official Gazette and annual report in São Tomé and Príncipe.

5. Oversight of Funding

Oversight or control of the funding of supervisory authorities is governed by traditional auditing and oversight standards set out in national budgetary rules (Court of Audit, Parliament), which generally provide for an annual audit and sometimes for more targeted financial checks. National parliaments are responsible for the proper execution of the authority's budget.

Some countries also make provision for a special internal auditing procedure. In **Luxembourg**, the authority's accounts are kept in accordance with commercial accounting rules under the supervision of an approved statutory auditor appointed by the government on a proposal by the authority's board. In **Gibraltar**, the authority's accounts are audited and certified every year by an auditor appointed by the authority itself. In **Lithuania**, the financial control carried out by the National Audit Office is accompanied by an internal audit conducted by the Central Internal Audit Division of the ministry of Justice. In **Spain**, the accounts are submitted annually to the Controller General and the Auditor General for auditing and certification. They are then transmitted to the Minister, then to Parliament.

Financial oversight may also be the responsibility of the ministry of Finance (for example in **Bosnia and Herzegovina** and **Slovakia**) or another ministry (**Mauritius**: Permanent Secretary of the ministry of Information Technology, Communications and Innovation (MITCI); **Estonia:** ministry of Justice).

Oversight of the authority's budget may also be carried out by Parliament, as in **Croatia, Denmark** and **Hungary**, for example, where the Parliament is in charge of controlling the authority's resources, and the **United Kingdom**, where the authority is responsible before the Parliament for the exercise of its functions and its independence is prescribed by law. In **Sweden**, a parliamentary authority, the *Riksrevisionen,* is in charge of oversight. In **Finland**, a specific body linked to the Parliament is in charge of controlling public authorities.

6. Level of Funding

6.1 Trends in funding evolution

With regard to funding levels and trends over three years, we note that for a number of authorities – about thirty – funds have increased, while for some (about seven) they have decreased and for others they have been relatively stable. For details of changes in the budgets of authorities in the EU countries, a useful reference point is the assessment made by the Commission of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0115

The scale of increases differs somewhat from one authority to another. Some have been large, as in **Ireland** (an increase of €10 million in 7 years), **Luxembourg, the Netherlands** or **the United Kingdom** (+84 in 2018-2019 compared to 2017-2018, with an increase of 16% of the entities subject to fees against 6% as previously). Others have been less substantial but nonetheless significant (in **Croatia, Turkey** and **Ukraine** for example) or have been ad hoc increases linked to the recruitment of new staff (in **Cyprus** or **Liechtenstein**), real-estate costs (in **Estonia**) or the establishment of the GDPR (in **Iceland**), which were not repeated in the following years.

In some cases, funding is stable (e.g., in **New Zealand, Switzerland, Uruguay**).

Finally, in the case of some authorities, a relative uncertainty or even a weakening for funding can be noted from 2019/2020 sometimes explained by new budgetary and health situations.

6.2 Appropriateness of resources

Analysing the financial resources of authorities against their missions is made uneasy by the complexity and the uncertainty of legal frameworks and technological developments, such as the adoption of the GDPR, part implementation of new missions thus created complex technological and legal context. These elements must be taken into consideration as well as the new budgetary constraints and the current health situation that put a heavy burden on requests for extra resources.

About 15 authorities consider that they currently have sufficient resources to carry out their tasks, in **the Czech Republic, Hungary, Georgia, Germany, the Territory of Gibraltar, Liechtenstein, Monaco, Norway, Turkey, Uruguay, Ukraine** and in **United Kingdom**. **Hungary**'s authority's budget has increased over the last three years, but it underlines that further increases are necessary to enable skilled staff to be taken on and to cope with increases in international and co-operation activities, particularly in the context of the GDPR. In **France**, the CNIL states that its requests have been heeded but there is a need to keep an eye on developments.

However, many authorities stress that despite this increase, they do not have enough financial resources. For authorities subject to the GDPR, human resources will need to be increased to cope with major increase in the number of complaints and the setting up of all the new tasks and procedures entailed (in **Austria, Croatia, Finland, Greece, Italy, Latvia, North Macedonia, Malta, Poland, Serbia**). Some authorities insist that their teams are currently overworked (in **Austria, Estonia** and others). Others emphasise the difficulty to set up the international co-operation activities which are essential now to supervise transborder data flows. This is the case for example in **Austria** and in **Croatia**, where the authority has nonetheless seen a major increase in resources (+35% in 2019 and +17% in 2020), in **Iceland**, where the authority says that it needs ten extra staff whereas its budget for 2021 has decreased, in **Italy** and in **Malta**. The **Latvian** authority states that despite an increase in resources, it needs 15 additional posts and has only been granted 5. Similarly, in **Lithuania**, the authority says that in the light of the new tasks under the GDPR, a major increase in the number of complaints and the new duties assigned to the authority, 10 additional staff posts will be necessary, requiring extra funding of €190,000. In **Poland**, the UODO declares that over the three-year period the budget allocated was lower than that requested. The **Serbian** authority considers that 23 additional staff members and a budget of RSD 70 million will be needed and the one of **Cyprus** says that it is not able to carry out all its duties. The **Albanian** authority received 9 of the 11 people requested but this should enable it to cope with its new tasks and in **Moldova**, it is pointed out that there are not enough funds to increase wages and strengthen institutional capacities. For the authority in **Ukraine** its budget is inadequate and wishes the current institutional framework to be amended to enable the establishment of an independent authority which would focus exclusively on personal data protection. Lastly, since 2018, **Ireland**'s Commission has seen a large increase in its budget but will be keeping a very watchful eye on the annual increase.

Some authorities' budgets have decreased (particularly in **Burkina Faso, Cabo Verde Mauritius, Mexico** and **Uruguay**). The **Senegalese** authority states that "the budgetary allocation does not cover all the costs connected with the performance of the CDP's duties. Funding is still required for needs in the areas of communication, capacity building (training,

expertise) and investment (computer equipment)." In **Mauritius,** the Data Protection Officer puts its staff shortage at 29.

Like **Senegal, the** Commission in **Burkina Faso** refers to the major budgetary difficulties linked to the Covid-19 pandemic, accounting for cuts in the authorities' budgets, which in Burkina Faso's case have been drastic (a decrease of 20.9%). The authority in **Cabo Verde** also highlights the material difficulties caused by a lack of sufficient funding.

With regard to the authorities from observer countries which replied to the questionnaire, the situation is contrasting. The **Australian** authority has an increasing budget which is considered sufficient, and the authority in **the Philippines** has seen a major increase in its funding and considers that it has sufficient resources for it to engage in the necessary activities.

On the other hand, in **São Tomé and Príncipe** and **Bermuda**, the data protection authorities, which were only very recently set up are faced with funding problems. In **São Tomé and Príncipe**, it says that its resources are not sufficient to implement the personal data protection legislation and to be able to take part in international meetings, although contacts with other authorities would be useful for it. Likewise, in **Gabon**, the Commission says that it needs a computing lab to promote technological awareness and training courses for committee members and staff.

6.3 Contextual aspects

If we wish to examine the proper matching of resources and statutory duties and the way in which this is viewed by data protection authorities more thoroughly, it is important to take account of the current legal and technological context of data protection. In this perspective, the **Dutch** authority recently had a survey of its resources carried out by an auditing firm. The conclusion was that it is difficult as things stand to identify a good match between resources and statutory duties because of current uncertainties in the data protection field, including a changing and complex legal and technical environment, the too recent and, for the time being, partial implementation of the GDPR and the lack of reliable case-law spanning several years.

In the same way, the **EDPS** emphasises that it is difficult as things stand to produce reliable budgetary estimates for two main reasons: the difficulty in assessing the work burden that will be created by new tasks and duties and the recent major budgetary constraints, which make it impossible to ask for more resources.

As a result, the authorities' view of their resources is very much tied up with these uncertainties and changes. In this connection in **France**, the CNIL points out that financial monitoring is constantly required to enable authorities to cope with the implementation of new GDPR-related procedures, the increasing number of complaints and the complexity of the system to be supervised. The **Swedish** authority points out that although its budget has increased since 2018, particularly in 2020, the work it has launched to set up new complaints procedures and the changes that were required as a result of the judgment given in 2020 in the Schrems II case on data transfers from the European Union to the United States will require a particular focus on funding in forthcoming years to ensure that these procedures are effective.

The **Georgian** authority, which is not covered by the GDPR but is intending to modernise its procedures accordingly, comes to the same conclusion. It underlines that while its current budget is sufficient for it to continue operating in the immediate future, it will not be enough for it to meet the new personal data protection needs which are emerging from the extension of

its powers and duties since 2019 and the adjustment of its procedures to bring them closer to the GDPR.

In terms of staffing, the **Slovakian** authority points out that a lack of funds can prevent staff with the right legal and technical skills from being recruited to deal with the new changes, in a highly competitive market in which the private sector offers better pay. This therefore is a clear risk for protection authorities in the future. Like in Slovakia, the **Lithuanian** authority stresses the need not just to hire staff but to retain highly qualified staff to enable data protection legislation to be applied properly.

On the other hand, some authorities' budgets have been amended to help them cope with their new tasks in the light of the changes brought about by the GDPR.

In the **United Kingdom**, which modified the funding model in 2018 basing it on a system of statutory levies, the Commission saw a rise in funds of 84%.

The **Portuguese** authority, anticipating the implementation of GDPR procedures and adjusting to budget cuts, has also changed its funding model. It may now levy fees for certain procedures.

In the same way, the budget of the authority in **the Netherlands**, which had already been increased considerably, was raised still further for the implementation of GDPR procedures, by €1 million in 2017, €7.2 million in 2018, and €10.4 million in 2019 and subsequent years, and then on top of this, a further €4.7 million in 2020 and €6.1 million in 2021.

The authority of **Luxembourg** has changed the rules for the calculation of the funds that it received until now for authorisation and notification files to apply them to the new GDPR procedures.

In **Senegal**, the new draft law on data protection includes plans for changes in the financial rules, including a diversification of funding sources. It is envisaged that the authority will be able to derive resources from some of its activities (training), and collect fees for the issuance of authorisations, receipts and certifications.

CONCLUSIONS

It is clear from the replies to the questionnaire that the personal data protection supervisory authorities in all the different countries have a very similar funding system based on funding by the state budget. Only the authority in the **United Kingdom** has its own special system based on statutory levies. Funding by the state budget may be supplemented by fees or donations or, in some rare cases and in much lower proportions, through the recovery of a share of any financial penalties imposed.

The same type of funding can be seen in non-EU European states and the non-European countries which are signatories to Convention 108 and the Observer states, which have adopted legal measures and forms of organisation for their supervisory authorities which tend to resemble the systems set up by the supervisory authorities of EU member countries subject to the GDPR. Focusing on resources in particular, these countries ensured that their authorities would have financial independence by creating a specific budget for them within the state budget with very similar systems of financial supervision and public disclosure (in **Brazil, Mexico, Turkey**).

Nevertheless, this picture of the funding of supervisory authorities is not a static one. It is worth noting that the introduction of the principles and rules of the GDPR into national legislation and

the notable increase of number of complaints can go together with legislative amendments in the funding arrangements of some authorities (in **Luxembourg, the Netherlands, Portugal, Senegal**) in the form of funding through fees or donations on top of funding through the budget.

Lastly, as some supervisory authorities and the EDPS point out, just as the importance of data protection is increasing as a result of technological developments and current health challenges, their situation could be undermined by budget cuts connected with the current economic crisis. This would pose a major threat to international co-operation, the uniform and consistent implementation of personal data protection legislation and supervision of personal data protection in third countries when data is transferred.

APPENDIX I

List of countries and organisations which replied to the questionnaire

Albania - Commissariat du Droit à l'information et la Protection des Données Personnelles www.idp.al

Australia - Office of the Australian Information Commissioner (OAIC) - www.oaic.gov.au

Austria – Datenschutzbehörde - www.dsb.gv.at

Brazil - Autoridade Nacional de Proteção de Dados - www.gov.br/anpd/pt-br

Belgium - Autorité de protection des données www.autoriteprotectiondonnees.be

Bermudas – Privacy Commissioner - www.privacy.bm

Bosnia and Herzegovina - Agencija za zaštitu ličnih podataka u Bosni i Hercegovini www.azlp.ba

Burkina Faso – Commission de l'informatique et des libertés www.cil.bf

Cabo Verde – Comissão Nacional de Protecção de Dados www.cnpd.cv

Croatia – Agencija za zaštitu osobnih podataka www.azop.hr/

Cyprus – Office of the Commissioner for personal data protection www.dataprotection.gov.cy

Czech Republic - Úřad pro ochranu osobních údajů - www.uoou.cz

Denmark – Datatilsynet https://www.datatilsynet.dk/

EDPS – European Data Protection Supervisor - edps.europa.eu

Estonia – Andmekaitse Inspektioon www.aki.ee

Finland – Tietosuojavaltuutetun Toimisto -https://tietosuoja.fi/en/home

France – Commission nationale Informatique et Libertés – www.cnil.fr

Gabon - Commission Nationale pour la Protection des Données à Caractère Personnel - www.cnpdcp.ga

Germany - Bundesbeauftragte für den Datenschutz und die Informationsfreiheit - www.bfdi.bund.de

Georgia – State Inspector's Service – www.personaldata.ge

British Overseas Territory of Gibraltar - Gibraltar Regulatory Authority - www.gra.gi

Greece - Hellenic Data Protection Authority

Hungary – Nemzeti Adatvédelmi es Információszabadság Hatóság - www.naih.hu

Iceland – Persónuvernd - www.personuvernd.is

Italy – Garante per la Protezione dei Dati Personali - www.garanteprivacy.it

Latvia – Datu valsts inspekcija - www.dvi.gov.lv

Liechtenstein - Datenschutzstelle Fürstentum Liechtenstein - www.datenschutzstelle.li

Lithuania – Žurnalistų Etikos Inspektoriaus Tarnyba - www.zeit.lt

Luxembourg - Commission nationale pour la protection des données - www.cnpd.lu

Malte - Office of the Information and Data Protection Commissioner - www.idpc.org.mt

Mauritius – Data Protection Office - dataprotection.govmu.org

Mexico – Instituto Nacional de Transparencia, acceso a la información y protección des datos personales – www.inai.org.mx

Moldova – Centrul Naţional pentru Protecţia Datelor cu Caracter Personal – www.datepersonale.md

Monaco – Commission de contrôle des informations nominatives – www.ccin.mc

New-Zealand - Office of the Privacy Commissioner – www.privacy.org.nz

North Macedonia – Personal Data Protection Agency - www.dzlp.mk

Norway – Datatilsynet – www.datatilsynet.no

The Netherlands - Autoriteit Persoonsgegevens – www.autoriteitpersoonsgegevens.nl

The Philippines – National Privacy Commission – www. privacy.gov.ph

Poland - Urząd Ochrony Danych Osobowych - www.uodo.gov.pl

Portugal - Comissão Nacional de Proteção de Dados - www.cnpd.pt

Slovak Republic – Úrad na ochranu osobných údajov – www.dataprotection.gov.sk

Russian Federation – Roskomnadzor - http://eng.rkn.gov.ru/

Sao Tome and Principe - Agência Nacional de Protecção de Dados Pessoais - www.anpdp.st

Senegal - Commission de protection des Données Personnelles - www.cdp.sn

Serbia - Commissioner for Information of Public Importance and Personal Data Protection www.poverenik.rs

Slovenia - Informacijski pooblaščenec - www.ip-rs.si

Sweden - Integritetsskyddsmyndigheten - www.imy.se

Switzerland - Préposé fédéral à la protection des données et à la transparence - www.leprepose.ch

Tunisia - Instance nationale de protection des données personnelles - www.inpdp.tn

Turkey - Kişisel Verileri Koruma Kurumu - www.kvkk.gov.tr

Ukraine - Ukrainian Parliament Commissioner for Human Rights - www.ombudsman.gov.ua

United Kingdom - Information Commissioner's Office - www.ico.org.uk

Uruguay - Unidad Reguladora y de Control de Datos Personales - www.gub.uy

APPENDIX II

Questionnaire

Questionnaire on Data Protection Authority resources

Country:

Address of the DPA:

Website address:

I-THE DATA PROTECTION AUTHORITY

Question 1: Are there one or several Authorities in charge of Data Protection? Indicate their names and the internet link to their website.

Question 2: Is the DPA in charge of Data Protection only or does it have another mission (Public Information, Human Rights for instance)?

Question 3:

3a) Which legal text specifies the nature, status and missions of the DPA? Please indicate the internet link to the English version if possible.

3b) Which changes have been introduced to take into account the new rules set by Convention 108+ or the GDPR especially concerning the DPA competence field, its sanctioning power and its resources?

Question 4:

4b) What is the number of persons and the origin of the staff (civil servant, contract agent).

Question 5: What is the status of the Authority? Is it:

- An independent Authority?
- A public institution (" établissement public") ?
- A service of a ministry?
- Other?

Question 6: Area of competence of the DPA:

6a) Is the DPA in charge of the private files only? Of both private and public files? Of all public files including police files, judiciary and defence files, tax files, files on electronic communications, police and criminal justice?

6b) When several authorities exist concerning Data Protection what are their legal and financial links? Do they have specific resources and which one?

II- DATA PROTECTION AUTHORITY RESOURCES

Indicate the resources for each authority if there are several.

Question 7: What is the legal basis of the DPA resources? Indicate the internet link for the English version of the text.

Question 8: **Nature of the resources**?

8a) Is it a Budgetary financing? : is the DPA identified as such in the State Budget? Does it have its own budget line? Is it part of a ministry budget? Or is the DPA subject of a budget annex?

Indicate the DPA budget presentation if it is neither the state budget nor a Budget annex.

8b) Is the DPA financed by a specific tax? Which one?

8c) Is it financed by financial donations?

Are they made public and how?

8d) Is the DPA financed by fees levied for authorization files or audits? Is it the only source of resources or complementary to others?

8e) Is it financed by the return of the financial sanctions?

8f) Others

Question 9: **Amount of resources**

9a) What is the DPA's budget for 2018/2019/2020? Indicate the total amount and the amount for each source of financing.

9b) Has the DPA Budget increased those last years? especially to take into account the new GDPR missions?

9c) Are those resources sufficient to carry out all your missions? If not, what are your needs and remarks?

Question 10: Are the resources (budget, donations, fees and other sources) **made public**? How (Annual Activity Report, other)?

Question 11: **Control of the resources**

11a) Who is in charge of the control (Parliament, Ministry, Court of Auditors? etc.)? under which procedure and frequency?

11b) How donations and other sources of financing are controlled?