



**2020/2717(RSP)**

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# DRAFT MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the Commission evaluation report on the implementation of the General  
Data Protection Regulation two years after its application  
(2020/2717(RSP))

**Juan Fernando López Aguilar**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**European Parliament resolution on the Commission evaluation report on the implementation of the General Data Protection Regulation two years after its application  
(2020/2717(RSP))**

*The European Parliament,*

- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 24 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR)<sup>1</sup>;
  - having regard to the statement by the Commission of 24 June 2020 on the Commission Communication to the European Parliament and the Council on Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation<sup>2</sup>;
  - having regard to the Commission Communication of 24 June 2020 to the European Parliament and the Council on Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation<sup>3</sup>;
  - having regard to Rule 132(2) of its Rules of Procedure,
  - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
- A. whereas, the GDPR has been applicable since 25 May 2018; whereas, with the exception of Slovenia, all Member States adopted new legislation or adapted their national data protection law;
- B. whereas, since the start of application of the GDPR, supervisory authorities have received a massive increase in complaints; whereas this illustrates that data subjects are more aware of their rights and want to protect their personal data in line with the GDPR; whereas this also illustrates that large amounts of illegal data processing operations continue to take place;

***GENERAL OBSERVATIONS***

1. Welcomes that the GDPR has become a global standard for the protection of personal data and is a factor of convergence in the development of norms; welcomes that the GDPR has placed the EU at the forefront of international discussions about data protection and a number of third countries have aligned their data protection laws with the GDPR;

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<sup>1</sup> OJ L 119, 4.5.2016, p. 1–88

<sup>2</sup> COM (2020)264, 24.6.2020

<sup>3</sup> COM (2020)264, 24.6.2020

2. Concludes that, two years after its entry into application, the GDPR has been an overall success and agrees with the European Commission that it is not necessary at this stage to update or review the legislation;
3. Acknowledge that the focus in the coming years must continue to be on the improvement of implementation and actions to strengthen the GDPR;
4. Acknowledges the need for strong and effective enforcement of the GDPR vis-à-vis large digital platforms and integrated companies, including areas such as online advertising and micro-targeting;

### ***LEGAL BASIS FOR PROCESSING***

5. Reminds that since the start of the application of the GDPR, “consent” means any freely, given, specific, informed and unambiguous indication of the data subject’s wishes, underlines that this also applies to the e-Privacy Directive; notes that the implementation of valid consent continues to be compromised by the use of dark patterns, tracking for commercial purposes and other unethical practices; is concerned that individuals are often put under economic pressure to give consent in return for discounts or other commercial offers, or are forced to give consent by conditioning access to a service through tying provisions, in breach of Article 7 of GDPR;

### ***DATA SUBJECT RIGHTS***

6. Stresses that there is necessity to facilitate the exercise of individual rights provided by the GDPR, such as data portability or rights in the context of automated processing, including profiling; calls on the EDPB to issue further guidance on automated decision-making;

### ***SMALL BUSINESSES AND ORGANISATIONS***

7. Observes that some stakeholders report that the application of the GDPR is challenging especially for small and medium sized enterprises (SMEs);
8. Points out that there should be no derogation for SMEs; calls on the EDPB to provide practical tools to facilitate the implementation of the GDPR by SMEs with low risk processing activities;

### ***ENFORCEMENT***

9. Is concerned by the uneven level of enforcement of the GDPR by national data protection authorities (DPAs);
10. Notes that since the start of application of the GDPR, though some significant fines have been issued for cases of serious breaches, the possibilities of the GDPR in this regard have by far not been used to their full extent with discrepancies in the severity of sanctions applied across the Member States;
11. Is concerned with the length of investigation of cases by some DPAs and its adverse effect on the effective enforcement and on citizens’ trust; urges DPAs to speed up resolution of cases and use all mechanisms available to them under the GDPR,

including resorting to temporary or definitive limitations or a ban on processing;

12. Deplores that DPAs of 21 Member States have explicitly stated that they do not have sufficient human, technical and financial resources to effectively perform their tasks and exercise their power; urges the European Commission to take appropriate measures, including by starting infringement procedures without delay against those Member States that have failed to fulfil this obligation;
13. Regrets that, as regards collective redress, the majority of Member States decided not to implement Article 80(2) of GDPR ; calls on all Member States to make use of Article 80(2);

#### ***COOPERATION AND CONSISTENCY***

14. Points out that the weak enforcement is particularly evident in cross-border complaints, i.e. cooperation and consistency mechanisms; calls on the EDPB to increase its efforts to ensure the correct application of Articles 60 and 63 GDPR and to make use of the urgency procedure of Article 66 GDPR;
15. Observes inconsistencies between the national guidance and the EDPB guidelines;
16. Calls on all Member States to establish specific support for data subjects, or organisations representing them, involved in cross-border complaints; points out that high procedural cost associated with the exercise of data subjects right may act as a deterrent; calls on Member States to limit such costs under their national administrative procedural laws;

#### ***FRAGMENTATION OF GDPR IMPLEMENTATION***

17. Observes a degree of fragmentation, which is notably due to the extensive use of facultative specification clauses; expresses concern that GDPR protections are being undermined by the way that Member States have implemented these specifications derogations (e.g. age of children to consent);

#### ***DATA PROTECTION BY DESIGN***

18. Calls on the supervisory authorities to evaluate the implementation of Article 25 on data protection by design and by default, in particular with a view to implement the principles of data minimisation and purpose limitation, in line with EDPB guidelines;

#### ***GUIDELINES***

19. Calls on the EDPB to develop standards and guidelines that help to implement data protection requirements into practice, i.a. for data protection impact assessments (Article 35), information to data subjects (Articles 12–14), the exercise of data subjects' rights (Articles 15–18, 20–21), and records of processing activities (Article 30);

#### ***INTERNATIONAL PERSONAL DATA FLOWS AND COOPERATION***

20. Stresses the importance to allow free personal data flows at international level without lowering the level of protection guaranteed under the GPDR; supports the practice of the European Commission to address data protection and personal data flows separately

from trade agreements;

21. Stresses that adequacy decisions should not be political but legal decisions;
22. Calls on the European Commission to publish the set of criteria used in determining whether a third country is deemed to provide an “essentially equivalent” level of protection to that afforded in the EU especially with regards to access to remedies, and government access to data;
23. Reiterates that mass surveillance programmes that encompass bulk data collection prevents adequacy findings;
24. Calls on the DPAs to systematically assess whether data protection rules are applied in practice in third countries, in line with the European Court of Justice case-law;
25. Urges the Commission to publish its review of the adequacy decisions adopted under the 1995 Directive without undue delay;

#### ***FUTURE UNION LEGISLATION***

26. Reminds the Commission of its obligation to ensure that measures to be presented in upcoming legislative proposals, in particular on data governance, data act, digital services act, artificial intelligence, must comply with the GDPR (EU) 2016/679 and Directive (EU) 2016/680;

#### ***ePRIVACY REGULATION***

27. Expresses its deep concern about the lack of implementation of the ePrivacy Directive by Member States in view of the changes introduced by the GDPR; calls on the Commission to speed up its assessment and initiate infringement procedures against those Member States that failed to properly implement the ePrivacy Directive;
28. Instructs its President to forward this resolution to the Commission, the European Council, the governments and the national parliaments, the European Data Protection Board and the European Data Protection Supervisor.