

James Lawless, TD  
Chair of the Joint Justice Committee  
Members of the Joint Justice Committee  
via the Clerk of the Committee

13 September 2021

**ICCL commends the Justice Committee's recommendations to  
reform the Data Protection Commission**

Dear Mr Lawless,

1. I commend you and the Members of the Oireachtas Justice Committee for your report on the GDPR and its enforcement, arising from the hearing of 27 April 2021. I also write to present a copy of *Europe's enforcement paralysis*, a report that ICCL launched across Europe this morning through *The Financial Times*, *Le Monde*, *Corriere della Sera*, *Poliken*, and other top tier press. Please find a copy enclosed herewith. These new data confirm the urgency of implementing the recommendations proposed by the Justice Committee.
2. The Justice Committee's report charts the route by which Ireland may at last play its proper part in protecting private life and the intimate data of citizens everywhere in Europe.
3. ICCL welcomes the Committee's recommendation that the Government provide for an independent review to assess how the DPC can be reformed and strengthened. Such a review is necessary for Ireland to fulfil its duty of sincere cooperation under Article 4(3) of the Treaty on European Union. It is also an appropriate measure to fulfil the State's duties under Article 52(4) of the GDPR.
4. ICCL believes such a review will be compatible with the DPC's independence. The review must focus on examining how the DPC can effectively execute its functions under the GDPR. At the same time, the review must refrain from

seeking to influence specific enforcement decisions, force the DPC to select specific staff, or undermine its financial independence.

5. We also welcome the Committee's recommendation that the Minister use her power under the Irish Data Protection Act 2018 to appoint two additional Commissioners. ICCL endorses the Committee's recommendation that that an "incoming Commissioner should have expert knowledge of material and procedural law, to ensure that there is a high quality in the decision making by the DPC". ICCL agrees that public hearings should aid in avoiding any suggestion of a political appointment. The Minister will be conscious, too, that she has the power under the Data Protection Act 2018 to designate one of the three Commissioners as chair.
6. ICCL commends the recommendation that the DPC "move from emphasising guidance to emphasising enforcement as a matter of urgency" and that "the DPC increases the use of its sanctioning powers under Article 58(2) of the GDPR, particularly orders stopping infringers from processing data".
7. As the Committee notes (Recommendations 4 – 6 and 8) the DPC's processes and procedures require clarification and codification, and it should define what it means by the words "concluded" and "resolved".
8. ICCL welcomes the Committee's recommendation that the DPC be more transparent, waiving its "broadly interpreted" exceptions of the Freedom of Information Act, and that it should publish quarterly statistics on the use of its investigative powers under Article 58(1) of the GDPR and of its sanctioning powers under Article 58(2) of that Regulation.
9. We thank the Committee for highlighting the DPC's failure to take action on the complaint about the vast Real-Time Bidding (RTB) data breach lodged by an ICCL staff member three years ago. The Committee notes this is "the largest data breach ever recorded and allows data brokers to build dossiers about individuals based on the private things they do online". The DPC's failure to act on RTB is "of particular concern to the Committee due to the significant risk to privacy it entails".
10. We welcome the recommendation that legislation be passed to allow NGOs to lodge GDPR complaints, as envisaged in GDPR Article 80(2). In addition, we endorse the Committee's recommendation "that all legislation passed is in compliance with data processing protections to avoid unintended consequences".

11. ICCL urges the Government and the Data Protection Commission to immediately implement the Committee's recommendations. The Committee has noted that "it is now more than five years since the GDPR went into effect, and more than three years since it was applied. The Committee fears that citizens' fundamental rights are in peril." The Committee is rightly concerned by this.

12. ICCL remains at the Committee's disposal to assist in further deliberation on this matter.

Yours sincerely,



Liam Herrick

Executive Director, ICCL

cc.

Micheál Martin TD, An Taoiseach

Heather Humphreys TD, Minister of Justice

Secretary General, Department of the Taoiseach

Secretary General, Department of Justice