

**From:** European Ombudsman (Do not reply) noreply@ombudsman.europa.eu  
**Subject:** [EOWEB#36591] New complaint from: [REDACTED]  
**Date:** 26 November 2021 at 09:47  
**To:** [REDACTED]

EO

Your complaint has been submitted to the European Ombudsman. We will send you an acknowledgement of receipt within a few days.

NB - Please note that this e-mail was sent from a notification only e-mail address. If you wish to contact technical support, please use the link below:

[Contact technical support](#)

## Sender

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**From:** [REDACTED]  
**Date:** 26/11/2021 09:47:31

## Complaint about maladministration

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### Part 1 - Contact information

**First name:** Johnny  
**Surname:** Ryan  
**Nationality:** Irish  
**Country:** Ireland  
**Tel.:**  
**Language preference:** English  
**On behalf of (if applicable):** Association/Organisation/NGO  
**E-mail address:** [REDACTED]  
**Entity Name:** Irish Council for Civil Liberties  
**Country of registered office:** Ireland

### Part 2 - Against which European Union (EU) institution or body do you wish to complain?

European Commission

### Part 3 - What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

Decision by DG Justice to not initiate infringement procedure against Ireland regarding Ireland's application of 2016/679 (the GDPR).

### Part 4 - What do you consider that the EU institution or body has done wrong?

Enclosures:

1. "Europe's enforcement paralysis", ICCL report on GDPR enforcement, September 2021  
<https://www.iccl.ie/digital-data/2021-gdpr-report/>
2. Report from Irish parliament & senate joint justice committee on the application of the GDPR, July 2021  
[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_justice/reports/2021/2021-07-22\\_report-on-meeting-on-27th-april-2021-on-the-topic-of-gdpr\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2021/2021-07-22_report-on-meeting-on-27th-april-2021-on-the-topic-of-gdpr_en.pdf)
3. "Commission evaluation report on the implementation of the General Data Protection Regulation (GDPR)"

Regulation two years after its application”, European Parliament, 2020/2717(RSP), (URL: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2717\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2717(RSP)))

4. “Opinion of Advocate General Bobek, Case C-645/19 Facebook Ireland Limited, Facebook Inc., Facebook Belgium BVBA v Gegevensbeschermingsautoriteit”, 13 January 2021 (URL: <https://curia.europa.eu/juris/document/document.jsf?docid=236410&doclang=EN>), paragraph 114 and 135.

European Commission DG Justice has decided to not send a letter of formal notice to Ireland, initiating an infringement procedure regarding Ireland's application of Regulation 2016/679 (the GDPR).

This decision to not act is contrary to the Commission's duty under Article 17 of the Treaty on European Union (TEU) to monitor the application of EU law, and to ensure its uniform application throughout the EU.

Data protection is one of the Union's objectives. Jeopardising it is a failure to fulfil Member States' obligations under Article 4(3) of the TEU.

Ireland has responsibility under Regulation 2016/679 (GDPR) to supervise Google, Facebook, Apple, Microsoft, and other large technology firms. Three and a half years after the introduction of the Regulation, enforcement of EU data protection against “Big Tech” is paralysed by Ireland's failure to deliver draft decisions on major cross-border cases. A continued failure by Ireland to apply Regulation 2016/679 (GDPR) jeopardises the fundamental right to data protection, and to privacy, of all citizens across the Union.

Therefore, the Commission should send a letter of formal notice to Ireland. Failure to do so puts the fundamental rights of Europeans across the Union at hazard.

There is no reasonable basis for the Commission to not “consider that a Member State has failed to fulfil an obligation under the Treaties”, per Article 258 of the TFEU.

i. We have presented statistical evidence (enclosure 1) to the Commission that Ireland has not properly applied Regulation 2016/679 (the GDPR), and that its failure to do so jeopardises the fundamental rights of citizens across the Union. The statistics on cross-border cases demonstrate that it impossible to apply the GDPR to firms that claim Ireland is their main establishment in the Union.

ii. There is a formal acknowledgement across all Irish political parties that Ireland has failed to properly apply Regulation 2016/679 (GDPR). See enclosure 2. The Oireachtas Justice Committee (Irish parliament and senate cross-party committee) reported on Ireland's application of Regulation 2016/679 (GDPR) in July 2021. It concluded that “fears that citizens' fundamental rights are in peril”.

iii. Ireland's failure to apply the Regulation has been highlighted in a resolution by the European Parliament. See enclosure 3. The European Parliament passed a resolution saying it is “particularly concerned ... that cases referred to Ireland in 2018 have not even reached the stage of a draft decision”.

iv. Advocate General Bobek of the ECJ referred to the pattern of facts about the Ireland's handling of the Belgian data protection authority's request for investigation of Facebook as one of “persistent administrative inertia”. See enclosure 4. His reasoning in the case was confirmed by the Court.

Failure by the Commission to consider that Ireland has failed to fulfil its obligations, and to take action to correct the matter, is therefore not reasonable.

**Part 5 - What, in your view, should the institution or body do to put things right?**

Two remedies are required.

## 1. MONITORING

The Commission must effectively monitor the application of 2016/679 (the GDPR) in order to fulfil its duty as guardian of the treaties. However, the Commission has not gathered adequate information to monitor the application of the GDPR as is its duty under Article 17 TEU.

However, the Commission has not gathered adequate information to monitor the application of the GDPR as is its duty under Article 17 TEU.

ICCL surveyed supervisory authorities (DPAs) across the Union and learned that there is no consistent record of whether or how often lead DPAs in major cross-border cases use their investigative powers, or what specific powers are used. Nor is there an adequate account of what specific sanctioning powers are used.

There is no coherent data on whether supervisory authorities are supervising and enforcing, and therefore no basis to judge Member States' provisions for those supervisory authorities.

Data provided by supervisory authorities through the European Data Protection Board (EDPB) are also inadequate. We highlight two, by way of example:

a. EDPB statistics about the "average time to issue a decision" in cross border cases are defective in two respects.

First, there are data for only twenty Member States. There is, for example, no statistic for how many months it takes Luxembourg to issue a decision in cross border cases.

Second, the statics are meaningless: Ireland is listed as issuing a decision after an average of 23 months. But, since Ireland has issued a decision in almost none of the cases for which it has responsibility, and since we show in Europe's enforcement paralysis that 98% of those cases remain outstanding, the "average time" to issue a decision is infinity.

b. The EDPB has published statistics about the number of complaints "resolved" versus those still pending. This is also defective.

First, at least one key supervisory authority uses the term "resolved" in a manner that makes this statistic meaningless. The EDPB indicates that Ireland has "resolved" 14,500 complaints. However, the Irish Justice Committee Report challenged Irish DPC's use of the word "resolved" and recommended that it be clarified.

Second, the EDPB statistic indicates that Germany's performance is the second lowest in the EEA. This is unlikely to be correct. Europe's enforcement paralysis shows that Germany has the second highest clearance percentage in cross-border cases, and twice the number of staff for every complaint received. We therefore caution that the statistics, and the process for gathering them, should be carefully re-examined by the EDPB.

We note that Italy is missing from this statistic, too.

The Commission must equip itself to fulfil its duty under Article 17 of the TEU. It should, for example, request that the EDPB and supervisory authorities publish the following data each quarter:

- Time (days) to progress each case from first complaint or proactive investigation to draft decision and then to final decision.
- How many cases each DPA is the LSA for. This should also specify the number of separate cases or complaints combined in each cases.
- How many times each LSA used each investigative power provided in GDPR Article 58(1), in that quarter.
- How many times each LSA used each sanctioning power provided in GDPR Article 58(2), in that quarter.

Each of the above should include the types and scale of controllers concerned, and whether a case is domestic or cross-border. In exceptional cases where national law precludes case-level data, robust aggregated data may suffice.

## 2.ACTION

The European Commission should use its power under Article 258 of the TFEU to launch an infringement procedure against Ireland for jeopardising the protection of personal data, and for failing to properly apply Regulation 2016/679 (GDPR).

### **Part 6 - Have you already contacted the EU institution or body concerned in order to obtain redress?**

Yes (please specify and submit copies of the relevant correspondence)

Letter to Commissioner Didier Reynders, copying Vice President Věra Jourová, 13 September 2021.

We enclosed the "Europe's enforcement paralysis" report (enclosure 1) with this letter.

We have received no reply.

### **Part 7 - If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable

### **Part 8 - Has the object of your complaint already been settled by a court or is it pending before a court?**

No

### **Part 9 - Please confirm that you have read the information below**

You have read the information note on data processing and confidentiality

### **Part 10 - Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he or she is not entitled to deal with it?**

Yes