Report on remote inspection of publicly accessible registers under Article 31(5) of the Regulation (case 2020-0209)

Under Article 31(5) of Regulation 2018/1725 ("the Regulation") "… Union institutions and bodies shall keep their records of processing activities in a central register. They shall make the register publicly available."

The EDPS has published guidance to EU institutions and bodies ("EUIs") regarding the records of processing operations. The EDPS had previously clarified[1] that making the register **"publicly available" means publication on the internet.** While initially May 2020, i.e. two years after the entry into force of the GDPR, had initially been announced by the EDPS as target date for implementation of this obligation, the EDPS noticed upon entry into force of Regulation 2018/1725, that the new Regulation contained no grace period regarding this obligation.

Beginning 2020, i.e. after more than one year following the entry into force of the new Regulation, the EDPS decided to inspect how EUIs comply with the obligation to make the register of such records publicly accessible in the sense of Article 31(5) of the Regulation.

Scope of the inspection: The inspection was conducted remotely and unannounced to simulate availability to the general public. Due to resource limitations, it did not cover the content of the over 65 websites investigated and it did not test whether the registers found were comprehensive, which would have been impossible to assess at a distance with an appropriate degree of accuracy. The inspection did, however, look into whether
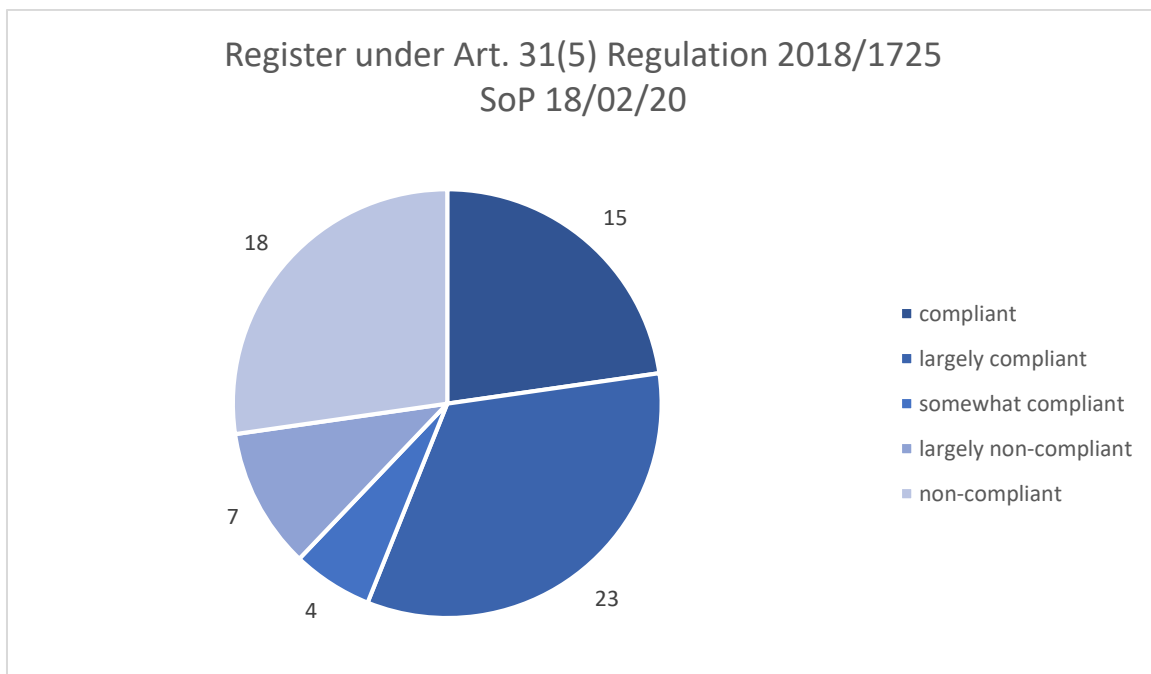
- Any form of listing of processing operations was indeed available on the EUI's website (**availability**);
- The register contained records following the template published in EDPS guidance[2] or comparable formats – as opposed to only providing links to data protection statements (**format**);
- the plausibility of the number of records listed (given staff baseline needs, any register only consisting of four or less records will be incomplete) **(coverage)**.

---

[1] See Section 3.5, p. 8 of Accountability on the Ground Part I,
https://edps.europa.eu/sites/edp/files/publication/19-07-17_accountability_on_the_ground_part_i_en.pdf
[2] See Annex I of Accountability on the Ground Part I, https://edps.europa.eu/sites/edp/files/publication/19-07-17_accountability_on_the_ground_part_i_en.pdf

During the first phase of the inspection, **websites of all EUIs were screened** in mid-February 2020 as to whether any register was indeed publicly available. To do so, search terms inserted in the search engine on the EUI's website included "data protection register", then "data protection", then "register". If there no respective search result could be obtained, any link at the bottom of the website ("legal notice", "privacy policy", "data protection" etc.) was screened.

The initial results of the inspection's first phase (state of play 18 February 2020) showed that not all EUIs had made the records of their processing operations publicly available and thus complied with their obligation under Article 31(5) of the Regulation. A slight majority of EUIs (37 of 67) were compliant or largely compliant on 18/02/2020, i.e. well after any grace period. However, more than a quarter of all EUIs (18 of 67) were straightforwardly non-compliant, including several big EUIs (see Annex I to this document for interim results as of 18 February 2020).

Register under Art. 31(5) Regulation 2018/1725
SoP 18/02/20

15
18
7
4
23

- compliant
- largely compliant
- somewhat compliant
- largely non-compliant
- non-compliant

For illustration, the following main groups emerged amongst EUIs:

- Register with proper records in line with EDPS guidance (compliant);
- List of data protection statements, but no register (largely compliant);
- Search function for legacy notifications, but no register (somewhat compliant);
- Some data protection statements (<5), but number not plausible in the light of baseline processing operations present in every EUI (somewhat compliant);
- One-size-fits-all data protection statement (largely non-compliant);
- List of data processing operations, but no link; only invitation to contact DPO (largely non-compliant);
- None of the above (non-compliant).

During a second inspection phase, the Data Protection Officers (DPOs) of those EUIs found "non-compliant" or "mostly non-compliant" were contacted individually, invited to confirm
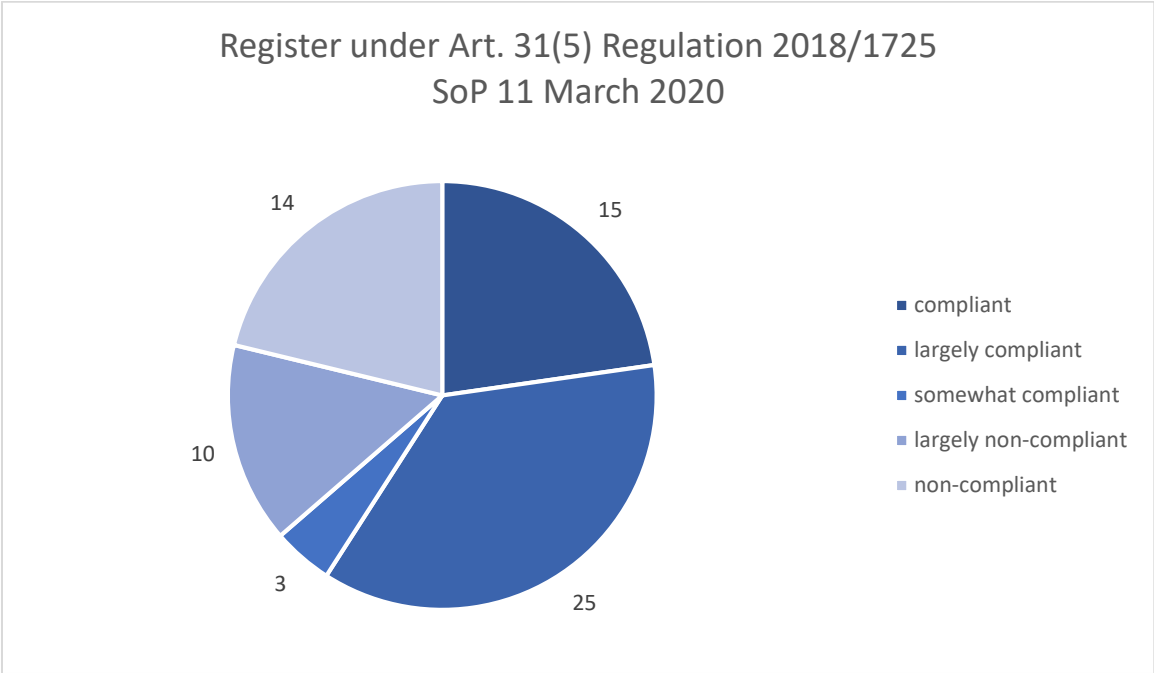
the accuracy of the finding, to report on any barriers they had come across in trying to implement the obligation to make the register publicly available and to commit to a target date for implementation.

What's the problem? Most DPOs confirmed the accuracy of the findings and committed to implementation within a period ranging from several days to several weeks ("end May").

The following was mentioned as constituting barriers to proper implementation:

- The need for translation / linguistic versioning for publication on the EUI's website;
- Misunderstanding of "publicly available";
- Misunderstanding regarding the implementation date.

Does size really matter? Article 31(5) of the Regulation states that "Unless it is not appropriate *taking into account the size of the Union institution or body*, Union institutions and bodies shall keep their records of processing activities in a central register" (emphasis added). The EDPS therefore also looked into whether the size of the EUI was in any correlation with difficulties in implementing the obligation under Article 31(5) of the Regulation, by grouping the results according to staff count of the respective EUI (very small, small, medium and big, i.e. up to 80, up to 200, up to 1000 and above staff respectively)[3]. The **results do not really allow for such a conclusion** (see Annex II to this document for interim results as of 11 March 2020).

Register under Art. 31(5) Regulation 2018/1725
SoP 11 March 2020

- compliant: 15
- largely compliant: 25
- somewhat compliant: 3
- largely non-compliant: 10
- non-compliant: 14

***

Interim inspection results: At the end of the second phase of the inspection (11 March 2020), only 15 out of a total of 67 EUIs examined were considered fully compliant (according to the

---

[3] This grouping was based on numbers initially collected end-2016 and check for plausibility in February 2020 on the basis of information made available on most EUI's websites ("About", annual reports etc.).

limited scope of the inspection). Best practice examples - from all size groups – are listed in Annex III of this document.

<div align="center">

***

</div>

Follow-up? The findings collected so far were supposed to be presented and discussed at the DPO Meeting in Alicante on 8 May 2020, which has in the meantime been cancelled in its original format due to COVID 19 measures.

To make all DPOs aware of the interim results and to raise awareness on the urgency to have registers of records publicly available, this interim report is made available in the context of the DPO Newsletter at this stage. The EDPS will continue to monitor progress in line with commitments made, welcomes several initiatives taken by DPOs since 11 March 2020 and invites all DPOs to make all records publicly available.

During a third inspection phase, which has already been launched, the EDPS will examine the content of the records and whether the coverage of processing operations could be considered comprehensive (plausibility test).

Interim results (SoP 18/02/2020)

21 very small EUIs < 80 staff

- 6: no register or centralised list of DP statements;
- 2: register;
- 10: DP statements listed, but no separate register;
- 3: one-size-fits-all DP statement.

14 small EUIs (80 to 200 staff)

- 4 no register or centralised list of DP statements;
- 3 register;
- 5 DP statements or similar, but no register;
- 1 one-size-fits-all DP statement;
- 1 list of processing operations + invitation to contact DPO.

24 medium-size EUIs (200 to 1000 staff)

- 3 no register or centralised list of DP statements;
- 8 register (+ 1 identified as incomplete);
- 6 DP statements, but no register;
- 4 limited no. of DP statements (two to four);
- 1 reference to the obligation that "The register has to be publically accessible", but then invitation to register with DPO to consult the register;
- OLAF: search function for COM legacy notifications.

8 big EUIs (> 1000 staff)

- 3 no register or centralised list of DP statements (CJEU, ECB, Europol);
- 2 register (EEAS, Council);
- COM: legacy notification search function;
- EP: only search mask;
- 1 (EIB) DP statements

***

Total: 67 EUIs

- 15 totally compliant (register);
- 23 largely compliant (centralised list of DP statements or incomplete register);
- 4 somewhat compliant (limited, but clearly incomplete list of DP statements);
- 7 largely non-compliant (one-size-fits-all DP statements or mere search functionality, which implies that one needs to know what to look for...);
- 18 non-compliant (neither register nor centralised list of DP statements or invitation to contact DPO to know more).

Summary: A slight majority of EUIs (37 of 67) are compliant or largely compliant on 18/02/2020, i.e. well after any grace period. However, more than a quarter of all EUIs (18 of 67) are straightforwardly non-compliant, including several big EUIs.

Interim results (SoP 11/03/2020)

21 very small EUIs < 80 staff

- 4: no register or DP statements (1 with commitment to fix this "in the coming days");
- 2: register;
- 12: DP statements listed, but no separate register;
- 3: one-size-fits-all DP statement.

***

14 small EUIs (80 to 200 staff)

- 4 no register (for 2: commitment to fix this by "mid-March" and "end April");
- 3 register;
- 5 DP statements or similar, but no register;
- 1 one-size-fits-all DP statement;
- 1 list of processing operations + invitation to contact DPO (for 1, commitment to fix this with no timeline).

***

24 medium-size EUIs (200 to 1000 staff)

- 3 no register;
- 8 register (+ 1 identified as incomplete);
- 6 DP statements, but no register; commitment for one to fix this by "end May"
- 4 limited number of DP statements (two to four);
- 1 reference to the obligation that "The register has to be publicly accessible", but then invitation to register with DPO to consult the register - commitment to fix this (interim solution) by end March;
- 1 search function for COM legacy notifications.

***

8 big EUIs (> 1000 staff)

- 2 register;
- 1 legacy notification search function;
- 1 only search mask;
- 1 list of DP statements;
- 3 no register.

Summary: A slight majority of EUIs (39 of 67) are compliant or largely compliant on 18/02/2020, i.e. well after any grace period. However, more than a quarter of all EUIs (14 of 67) continue to be straightforwardly non-compliant, including several big EUIs.

Selection of best practice examples (SoP 11/03/2020)

At the end of the second phase of the inspection (which happens to coincide with the latest date for implementations mentioned by the EDPS in the run-up to the Regulation), only 15 out of a total of 67 EUIs examined are fully compliant.

Best practice examples - from all size groups – include the following:

- Council: https://www.consilium.europa.eu/en/general-secretariat/corporate-policies/data-protection/search/
- EEAS: via https://eeas.europa.eu/headquarters/headquarters-homepage/3032/data-protection_en
- SRB:https://srb.europa.eu/sites/srbsite/files/srb_public_register_of_records_0419pdf.pdf
- ESMA: https://www.esma.europa.eu/records-register
- EEA: https://www.eea.europa.eu/about-us/data-protection/central-register-of-records-of
- EASA: https://www.easa.europa.eu/data-protection
- EACEA: https://eacea.ec.europa.eu/about-eacea/document-register-eacea/public-register-processing-activities_en
- eu-LISA: https://www.eulisa.europa.eu/AboutUs/DP/Documents/web_DPO_Register.pdf
- EDPS: https://edps.europa.eu/about/data-protection-within-edps/records-register_en
- ACER: https://www.acer.europa.eu/en/The_agency/Data-Protection/_layouts/15/WopiFrame.aspx?sourcedoc=%7bf583e2d7-681a-49a3-b2fb-2db0ce1db9df%7d&action=edit&source=https%3a//www.acer.europa.eu/en/The_agency/Data-Protection/Documents/Forms/AllItems.aspx
- S2R JU: https://shift2rail.org/dpregister/
- EU-OSHA: https://osha.europa.eu/en/about-eu-osha/data-protection/register-records

Caveat: This assessment does not include any assessment regarding the content of the records contained or the comprehensiveness of the coverage of processing operations beyond a mere plausibility test.