



SUPPORT SMALL AND MEDIUM ENTERPRISES ON THE DATA PROTECTION REFORM II

Report on DPA efforts to raise awareness among SMEs on the GDPR

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1. Background to the STAR II project

The STAR II project (Support small and medium enterprises on the data protection reform II) commenced in August 2018 and is intended to run for a two-year period. It is co-funded by the European Union under the Rights, Equality and Citizenship Programme 2014-2020 and is aimed at: (i) assisting European Union (EU) Data Protection Authorities (DPAs) raise awareness about the General Data Protection Regulation (GDPR) among small and medium enterprises (SMEs); and (ii) assisting SMEs to comply with the GDPR.

There are 22 million SMEs in the EU who form the core of the EU enterprise policy. These SMEs face distinctive challenges from data protection law and can often not afford professional legal advice. As such, they merit special support from public authorities as recognised by Recital 132 of the GDPR which specifies that when undertaking awareness-raising activities addressed to the public, data protection authorities should include specific measures directed towards, among others, SMEs.

This report is a review of the state-of-the-art in DPA awareness-raising activities aimed at SMEs (Deliverable D2.1). The results found within the report, along with the associated report analysing the SME experience of the GDPR during its first year (Deliverable D2.2), will serve to inform the tools produced by the STAR II consortium partners to assist both DPAs and SMEs with their respective responsibilities. The STAR II project outputs will include:

- 1) An email hotline run by the *Nemzeti Adatvédelmi és Információszabadság Hatóság* (NAIH) in both Hungarian and English;
- 2) A guidance document for DPAs on good practices in awareness-raising techniques among SMEs;
- 3) A handbook for SMEs to help them comply with the GDPR.

At the time of writing, the NAIH is currently operating the email hotline and has completed an awareness-raising campaign in Hungary to promote the hotline among SMEs. An analysis of this effort along with Deliverables D2.1 and D2.2. and the validation workshops will ensure that the guidance document for DPAs and the handbook for SMEs is innovative and responsive to the core aim of assisting SMEs comply with their GDPR obligations.

1.1. STAR projects, 2017-2019

The STAR II project follows on from the STAR project (Support training activities on the data protection reform), which is nearing completion and focused on providing support to the

training activities of DPAs and data protection officers (DPOs) on the EU data protection reform, especially the GDPR. The STAR project was also co-funded by the EU under the Rights, Equality and Citizenship Programme 2014-2020. The outputs from the STAR project have included:

- 1) Training scenarios for each training category,
- 2) A Seminars' Topics List, based on the training scenarios,
- 3) Seminar Material for each one of the seminars,
- 4) Webinars (selected from the Seminars' Topics List),
- 5) A training Handbook,
- 6) A takeaway reference GDPR checklist,
- 7) A ten-point GDPR introductory list.

2. Executive summary

This report presents the findings from a research study into awareness-raising efforts by EU data protection authorities (DPAs) among small and medium enterprises (SMEs) about the General Data Protection Regulation (GDPR). The project team conducted interviews with and received questionnaires from a total of eighteen DPAs to establish the state-of-the-art in this area.

The intent of the study was to understand what methods and resources DPAs were using to raise awareness of the GDPR and its provisions, specifically among SMEs, and to understand the DPA evaluation of these activities in the hope of identifying some best practices. To ascertain this information, DPAs were asked general questions around their view on levels of SME awareness of the GDPR, as well as whether the DPA conducts any structured research to establish this precisely. They were also asked about the specific issues that SMEs raise with DPAs on data protection and through what channels, for example a hotline or helpdesk advice service, as well as whether the DPA provides specific guidance documents targeting SMEs. In development of these questions, DPAs were also invited to provide information around their own processes and external relationships and to give evaluative comments on what works well and what is challenging. The responses to these questions revealed information around three broad areas, namely: how DPAs identify the data protection needs of SMEs; what kinds of resources DPAs provide for SMEs; and what awareness-raising activities DPAs undertake to target SMEs. The report has therefore been arranged in Sections 6 – 8 around these three areas respectively. Each of sections 6 – 8 concludes with a summary of key take-aways from the chapter and section 9 provides some ideas that have emerged from this research and Deliverable D2.2 in terms of moving the STAR II project forward. These key take-aways are as follows:

Concerning how SME needs are identified and perceived by DPAs, we found that:

- Most DPAs neither conduct specific research aimed at establishing levels of SME awareness nor general awareness of the GDPR. However, they are interested in learning about the GDPR awareness level.
- Although some DPAs had carried out specific research, it was unclear from the questions asked and information received whether this specific research would be part of an ongoing monitoring and evaluation programme. The information received from one DPA, where they were mapping improvement after awareness raising activities was helpful in this regard.

- DPAs that had conducted specific research on SME levels of GDPR awareness appeared to express a higher level of confidence in terms of understanding the needs of SMEs. Therefore, awareness raising activities and the identification of SME needs appear to be closely intertwined.
- The most substantial source for DPAs in terms of understanding SME needs appeared to come from personal interaction with SMEs, especially one-to-one interaction such as occurs through DPA advice and consultation services. This may be because this forum allows SMEs to express ongoing practical problems to DPAs on which they desire specific advice.
- The size of the Member State may have a bearing on the effectiveness of specific communication methods on the part of the DPA with SME representatives, e.g. it may be easier to facilitate a genuine two-way exchange/personal interaction between SMEs and DPAs at SME conferences in smaller member states.
- SME association representatives were occasionally mentioned by DPAs but not as much as would have been anticipated from the SME association interviews. This is based on the conclusion that SME associations appear to be able to capture the broader attention of SMEs in a way that is difficult for DPAs to achieve.
- Many DPAs were engaged or plan on getting engaged in EC supported projects targeting SMEs either specifically or broadly, suggesting that in some cases EC funding might be relied on as a prerequisite for undertaking specific awareness raising or needs identification programs with SMEs.
- It may be helpful if national legislation aimed at SMEs directs them to the DPA resources.

Concerning SME needs identified by DPAs, we found that:

- The needs identified by DPAs are likely to pertain overwhelmingly to SMEs with at least a basic awareness of the GDPR. This is based on DPAs gaining most knowledge about substantive needs from personal interaction with SMEs and the fact that unaware SMEs are unlikely to approach a DPA advice line or attend a DPA event.
- SMEs need assistance and guidance that differs from general guidance documents on the GDPR. They need practical advice entailing a step-by-step approach.
- The difference between what the legal obligations within the GDPR require of SMEs (i.e. ongoing and proactive leadership) and the preferred approach to legal compliance issues by SMEs (i.e. relatively passive, one-off implementation actions) needs to be addressed to facilitate appropriate GDPR compliance. SMEs should understand that the GDPR requires some level of ongoing resource allocation, even though this should be small after initial implementation measures are undertaken.

- The lack of legal and technical expertise within SMEs to properly understand the GDPR may be unlikely to evolve in the event of additional budgetary resources becoming available because of competing priorities for SMEs, such as marketing activities.
- DPAs rarely formally distinguished between the communications from SMEs and those from larger businesses, but this was not identified as a problem. The substantive needs of SMEs vis-à-vis larger business were confidently and consistently expressed as having little difference. The core difference concerns capacity and the reality that larger business can absorb professional costs in this area, whether external or internal.
- There was no obvious hierarchy of substantive needs with which SMEs approach DPAs. However, the project was able to group the needs mentioned by amount of references. The top four concerns DPAs expressed awareness of included: whether the SME should appoint a DPO; what information the SME should provide to data subjects; clarification on what legal basis can the SME process personal data, especially concerning 'consent'; and whether a record/register of processing activities is needed.

Concerning the provision of guidance materials, we found that:

- A quarter of DPAs who responded had SME specific guidance.
- However, it was widely commented that the general guidance and issue specific guidance developed by almost all DPAs are also of direct relevance to, and are sometimes most suitable for, SMEs.
- A few further DPAs indicated that SME specific guidance is either in development or intended, suggesting there may be some momentum around developing SME specific material at present.
- Beyond the question-based tool for SMEs, the EC has not formally developed any SME specific guidelines.
- The four SME specific guidance available in English, French and Slovenian covered a broad range of issues and some effort was apparent to offer SMEs practical tools, such as checklists, examples and templates. Such guidance appears to broadly meet the requests of SMEs.

Concerning the hotline/helpdesk advice service, we found that:

- All DPAs operated a form of telephone or email and telephone advice service. In most cases, this service was not an SME specific hotline/helpdesk service.

- There was, however, no suggestion from the data that DPAs felt that an SME specific hotline/helpdesk advice service was needed. This may be because many advice services report an already high volume of enquiries from SMEs.
- DPA mention of priority areas for improvement concerned instead the capacity of the hotline/helpdesk in terms of operating hours and personnel allocation, as well as expertise. (The ability of DPA employees to give precise and practical advice was sometimes identified as a problem with hotline/helpdesk services by SME associations in Deliverable D2.2.)
- Some DPAs mentioned taking up to 30 days to respond to queries from the hotline/helpdesk and rarely longer. While DPAs appear for the most part to attempt to respond as soon as possible, SME associations advise that maximum benefit is achieved for SMEs if the service is perceived as quick, i.e. where responses are received within one week.
- Most DPAs do not use internal guidance to direct hotline/helpdesk advisers. Just over a quarter of DPAs did. The ones having such documents were not willing to share them with the consortium.
- Most DPAs did not consider that the hotline/helpdesk advice service would incur legal liability.
 - However, at least for routine enquiries, DPAs appeared more comfortable giving advice via telephone because it mitigates liability concerns.
 - DPAs appeared roughly divided in terms of whether a formal disclaimer was provided to the SME seeking advice or not.
- Most calls/queries were facilitated in the national language of the respective country which was also the language in greatest demand from SMEs.
- While English was also widely facilitated across the EU DPAs, a small number of DPAs expressed that it would be beneficial to develop their English language capacity.
- Most DPAs did not appear to consult each other formally or informally when either developing guidance or establishing a hotline/helpdesk. That said, some DPAs mentioned cooperation at the EU level and awareness and knowledge of other DPAs resources.

Concerning awareness-raising activities, we found that:

- A very small number of DPAs questioned the appropriateness of their role in awareness-raising among SMEs; the vast majority assumed this role as part of their responsibilities.

- When trying to capture levels of SME awareness about the GDPR, there is a need to distinguish between a basic awareness of the existence of the GDPR and awareness and understanding of various provisions within the GDPR.
- DPAs were however confident in expressing that awareness about the GDPR had increased vis-à-vis the previous data protection regime due to media attention, the existence of fines and the heightened activity of private consultants.
- DPAs identified the print media, social media and events as the most common general awareness-raising methods when asked.
- A multi-method approach was identified by quite a few DPAs as the best approach for raising awareness among SMEs. This may be because of the varied nature and needs of SMEs.
- Although the multi-method approach came out strongest, of the specific methods identified, DPAs referred to events as the most effective awareness-raising strategy for SMEs. This appears to sit comfortably with the fact that DPAs feel they understand SME needs best through personal interaction, for example, on-site consultation and helpline/helpdesk advisory services were identified as the next most effective methods for SMEs after events.
- Dissemination of examples of compliance strategies from larger organisations could be a helpful educational and awareness-raising tool for SMEs.
- There may be a need for DPAs to establish separate strategies around the format of educational resources available for SMEs and the dissemination and awareness activities about those resources.
- There may be a need to distinguish between awareness-raising activities for SMEs who are not likely to be engaged with the data protection framework in any capacity (e.g. not members of SME associations or DPO network) and awareness-raising activities for SMEs who are part of organised business networks. More traditional methods of awareness-raising such as through TV and radio networks may be best suited to the former group.
- Both the size of the country and the cultural landscape may have an impact on the most appropriate awareness-raising activities for SMEs.
- Many DPAs are evolving in terms of how they conduct awareness-raising activities. However, there was no consistent message in terms of what ways. Some DPAs identified innovative awareness-raising techniques such as engaging with social media influencers on compliance.
- Where the content of awareness-raising activities was raised, DPAs suggested that SMEs require specific content with examples and not generic advice. This tallied with

the advice received by the STAR II campaign that the focus on content should be on its accessibility for DPAs through simplified and relevant forms of communication.

- Awareness-raising content that identifies the potential consequences of a failure to comply, e.g. cases and fines, does have an impact on the attention of SMEs. DPAs may therefore need to consider the balance to be achieved between communication of potential liabilities for failure to comply and a friendlier approach which encourages proactivity and engagement with the DPA on GDPR issues.
- It would benefit SMEs to convey the strategic and financial benefits of the GDPR through business language to which they can relate. This can be done by advertising the advantages of maintaining consumer trust, operational efficiency, sustainability and data security.
- If the GDPR is promoted as simple, it may be best if SMEs are educated on the distinction between the concepts and the application of these concepts. Application through self-evaluation/risk assessment and the implementation of technical and operational measures do not at present appear simple for SMEs.

3. List of Abbreviations

DPA	Data Protection Authority
DPIA	Data Protection Impact Assessment
DPO	Data Protection Officer
EC	European Commission
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
ePrivacy Directive	Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (ELI: data.europa.eu/eli/dir/2002/58/oj)
EU	European Union
GDPR	General Data Protection Regulation (Regulation EU 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, ELI: data.europa.eu/eli/reg/2016/679/oj)
SME	Small and medium enterprise
STAR	Support training activities on the data protection reform
STAR II	Support small and medium enterprises on the data protection reform II
WP29	Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up under Article 29 of Directive 95/46/EC (Article 29 Working Party). WP29 was replaced by the EDPB on 25 May 2018. The EDPB has endorsed many WP29 GDPR-related guidelines.

4. Introduction

This report is the first publicly deliverable of the STAR II Project (Deliverable D2.1). Its purpose is to review the state-of-the-art in data protection authorities (DPAs) awareness-raising concerning the General Data Protection Regulation (GDPR) among small and medium enterprises (SMEs). In doing so it is intended, along with the associated report analysing SME experience of the GDPR (Deliverable D2.2), to inform and direct both the guidance document for DPAs identifying good practices in awareness-raising among SMEs and the handbook for SMEs to help them comply with the GDPR (Deliverables D4.3), which will be produced later in the project.

The core of the information supporting this report derives from interviews with DPAs held between January 2019 and May 2019, along with questionnaires responded to by DPAs during the same period. The interviews and questionnaires followed the same semi-structured pattern, with respondents free in both cases to provide additional information beyond the specifics of the question asked.

To give stakeholders an accurate overview of the consortium's findings, and for the STAR II project's next phases, this report sets out the methodology (section 5) which is then followed by three sections describing the findings concerning different elements of the data gathered by the project partners. These three sections focus on the following broad issues:

- DPA identification of data protection needs (section 6);
- DPA provision of resources for SMEs (section 7);
- DPA awareness-raising activities among SMEs (section 8).

Each section includes a concluding summary of the core take-aways from the data. The final section, section 9, aims towards the future by making tentative suggestions derived out of the findings of both this report and Deliverable D2.2. which might then be considered further.

5. Methodology

To develop this report, the STAR II consortium partners, *Vrije Universiteit Brussel* (VUB), *Trilateral Research Ltd.* (TRI), and *Nemzeti Adatvédelmi és Információszabadság Hatóság* (NAIH), relied on either a semi-structured qualitative interview or a written questionnaire (using the same questions which guided the semi-structured interview) with representatives from European Union (EU) Member State Data Protection Authorities (DPAs). The stakeholder interview approach has been validated by the consortium partners' collaboration in previous projects, such as STAR I, PHAEDRA I and II¹, where the methodology had proved suitable for collecting and understanding DPA perspectives.² The semi-structured approach using agreed templates allows for flexibility and adaptation³ as well as consistency across the different interviewers.

The interview questions were developed and validated by the project consortium towards the end of 2018. The interview templates for interviewing DPAs (STAR II Activity 2.1) were carefully planned to address the information needs of the project, namely gathering the views and experiences of EU based DPAs on their efforts to raise awareness among SMEs about the personal data protection framework, as well as inviting their views on the STAR II primary deliverables. The questions were structured around four parts. Part I was general, asking DPAs for their view on SME awareness of the GDPR as well as enquiring whether the DPA conducts any structured research to establish more exactly the levels of this awareness. It also enquired as to the specific issues that SMEs raise with DPAs on data protection and whether the DPA provides guidance to SMEs. Parts II and III of the interview questionnaire engaged more narrowly than Part I by focusing on any awareness raising campaigns targeting SMEs undertaken by DPAs and the provision of a hotline or helpdesk service by DPAs to SMEs respectively. Finally, Part IV asked the DPAs whether they would be willing to

¹ <http://www.phaedra-project.eu/the-phaedra-project/>

² Barnard-Wills, D., Pauner Chulvi, C., & De Hert, P. "Data protection authority perspectives on the impact of data protection reform on cooperation in the EU", *Computer Law and Security Review*, 32(4), 2016.

³ Fielding, N. & H. Thomas, "Qualitative interviewing" in G. Nigel (Ed.) *Researching Social life*, London, Sage Publications, 2001; Rubin, H.J & I.S. Rubin, *Qualitative Interviewing: The Art of Hearing Data*, London, Sage Publications, 1995.

comment on a draft handbook for SMEs on the GDPR drawn up by the consortium partners (STAR II Deliverable D4.3). The interview questions are included as an appendix to this report.

The interviews were carried out exclusively through the use of technological means, either by phone, by Skype, or by making resort to other conference call services as requested by the interviewees. The interview was the preferred approach of the consortium partners so as to enable follow-up questions and immediate clarification but the DPAs were also offered the opportunity to respond instead to the written questionnaire if it appeared that an interview may be difficult to arrange – mainly due to time constraints on DPAs or the need to enquire of staff members other than the interviewee to answer some of the questions.

Between January and July 2019, the consortium contacted all 28 Member States' national level DPAs to present the project and ask their availability to be interviewed. In addition, the project contacted one sub-state DPA when no response from the central DPA was forthcoming. The majority of DPAs replied positively and more than half were interviewed or responded to the questionnaire in the abovementioned timeframe. About four DPAs showed interest in the project but eventually declined to participate due to lack of available resources within the project timescale. One DPA declined the interview and questionnaire but provided some information regarding awareness raising activities by way of email. The consortium did not receive any response from a limited number of DPAs despite multiple attempts to contact them, by email and phone. In total, the consortium received a questionnaire from or was able to interview **18 DPAs**. This includes ten questionnaires, seven interviews, and one questionnaire with follow up interview. The respondent/interviewed DPAs form the following list:

Belgium	Greece	Luxembourg
Bulgaria	Hungary	Malta
Croatia	Ireland	Poland
Czech Republic	Italy	Romania
Estonia	Latvia	Slovakia
France	Lithuania	Slovenia

Almost all interviews and respondents were directly communicated with in English. On the occasion that this did not occur, the interview material was subsequently translated by the interviewer who conducted the interview, into English. No interviews were audio recorded. The report relies predominantly on paraphrasing the data received and organising it into meaningful topics rather than emphasising direct quotations. Interview answers were

inserted into a single Excel file to which was added the information from the received questionnaires. The Excel file used for analysis has been anonymised to ensure confidentiality by removing any reference to the interviewee name, title, or contact detail.

In addition to the DPA respondents, the report also draws, where appropriate, on some findings from the associated report on the SME experience of the GDPR (Deliverable D2.2). In so doing, the project is mindful that the data from the SME report has a different geographic distribution from the data found in the DPA report. To give one example, the SME report includes many Nordic SMEs whereas no DPA responses were received from the Nordic region. The impact of this is that care should be taken to avoid applying the findings to specific country situations and instead consider them as generally applicable to the EU context unless otherwise specified, e.g. the relationship between SME associations and DPAs may be very familiar in some countries and less so in others but based on the responses/interviews, SME associations were not commonly identified as key partners with whom DPAs regularly work. The aim of this research therefore, is to explore the variety of the experience within the EU as a whole. The data is used to generate ideas (see section 9) and is less strong as a basis for ranking or quantifying.

Finally, the report methodology suggests the first finding of the STAR II project. More than a few DPAs informed the project of their capacity concerns to participate in the interview or complete the questionnaire. It is this factor that has influenced the slightly higher number of written questionnaires returned over interviews held. Beyond this, at least four additional DPAs expressed a keenness to participate but in the end could not do so due to limited capacity. While there may be other factors involved in DPA ability to participate in the STAR II research, such as the need to prioritise DPA projects over an external research project, travel commitments, language barriers and research fatigue, the mentioning of capacity to the project members does suggest that for at least some DPAs, there exists limited capacity to engage in external but highly relevant data protection activities. It can therefore be concluded that researching DPA activities currently faces challenges due to the time and resources constraints upon the participation of DPAs, even in pertinent and relevant data protection research activities.

6. DPA identification of SME data protection needs

6.1. Introduction

The main purpose of this section is to set out the data protection needs of SMEs as expressed by the DPAs that engaged with the STAR II project. The identification of SME needs regarding data protection is an important precursor to the design and effectiveness of both resources and wider awareness-raising activities. Yet getting SMEs engaged with the GDPR can be a difficult pursuit for those involved. Further, it is of note that the mechanisms by which SME needs are identified are at times the same as those used to raise awareness, such as consultations, events and engagement with SME associations (compare section 6.2 and Section 8). It is therefore appropriate to commence this analysis part of the report by considering how DPAs find out about SME needs regarding the GDPR and what these needs are understood to be.

Before articulating the substantive needs, this section sets out some ways through which the DPAs have identified these needs. Although respondents/interviewees were not explicitly asked about how they identify the needs of SMEs, the detail of the questions on: data collection regarding levels of awareness among SMEs; satisfaction with the levels of understanding within the DPA about SME needs; the substantive needs of SMEs; and the hotline advice service, have all helped to tell a story as to how DPAs identify SME needs.

6.2. How SME needs are identified

6.2.1. DPA Research on awareness

A specific question was put to DPAs as to whether they collected data on levels of GDPR awareness among SMEs. The majority of interviewed DPAs do not conduct specific research aimed at gathering data on SME awareness of the GDPR. In the smaller number of cases where specific research concerning awareness had been undertaken, it was common for the DPA to mention that the research had been undertaken around the date of May 2018 when

the GDPR was coming into force.⁴ Some level of awareness was presented by SMEs but without distinguishing general awareness about the existence of the GDPR and awareness in terms of understanding the content of the GDPR, quantifying general awareness levels is difficult.

More helpfully perhaps, the Irish DPA provided information on two surveys designed to map SME progress. The first survey was conducted in May 2017 and the second approximately one year later in 2018. The survey showed a “two-fold increase” in awareness among SMEs over the one-year period.⁵ The survey enquired whether SMEs could name three changes implemented by the GDPR for their organisation as well as knowledge of penalties for failure to comply with the GDPR. The surveys reported a 24% increase in both these areas: in 2018 30% of SMEs could name three changes compared with 6% in 2017, and in 2018 65% of SMEs were aware of the penalties imposed by the GDPR compared with 41% in 2017. The DPA reported “significant investment in awareness raising of the GDPR” over a two-year period with one activity including a dedicated website specifically designed for SMEs and public sector organisations.⁶ It is worth noting that there appeared to be some correlation between the DPAs that have conducted research into SME awareness of the GDPR and higher levels of confidence expressed in terms of understanding what these needs were.

⁴ For examples of general studies on individual perceptions of the data protection law, see the study commissioned by the CNIL, see *Regard des Français sur la protection des données personnelles* (IFOP, April 2018), available at, <<https://www.ifop.com/wp-content/uploads/2018/05/francais-rgpd.pdf>> (accessed 17 June 2019); and the Lithuanian survey of the citizens on personal data protection and privacy issues which reported that at the end of 2018, 71% of citizens had heard of the GDPR, a significant reported increase since 2016. This data was also disaggregated by education and income. See for detail, Valstybinės Duomenų Apsaugos Inspekcija, *Review of Personal Data Protection Supervision in Lithuania* (2019), p 19, available at <https://vdai.lrv.lt/lt/naujienos/2018-metu-asmens-duomenu-apsaugos-prieziuros-lietuvoje-apzvalga-parengta-pagal-valstybines-duomenu-apsaugos-inspekcijos-ir-zurnalistu-etikos-inspektoriaus-tarnybos-informacija> (in English and Lithuanian) (accessed 11 July 2019).

⁵ Data Protection Commission, ‘Commissioner for Data Protection welcomes the new EU General Data Protection Regulation’ (Press release, 25 May 2018), available at, <https://www.dataprotection.ie/en/news-media/press-releases/commissioner-data-protection-welcomes-new-eu-general-data-protection> (accessed 29 May 2019).

⁶ Former website URL: www.GDPRandYou.ie. The content of this website was incorporated into the Irish Data Protection Commission’s newly designed primary website in Spring 2019.

A further DPA described how it preferred to rely for this data (i.e. SME awareness levels regarding the GDPR) on information received from third parties, such as the European Commission and private consultants.⁷ The project was told that there were specific challenges faced by the DPA when asking businesses for this information, namely a reluctance from businesses to engage because of the DPA's status as a regulator.

6.2.2. Personal interaction

Interviewees/respondents pointed to a variety of other ways in which they became aware of the needs of SMEs concerning the GDPR. While consultation feedback provided by SME representative bodies was mentioned, it appeared that the one-to-one interaction that a DPA has with individual SME representatives in a consultation or advisory context provided DPAs with the most substantial benefit in terms of understanding the needs of SMEs. Such interactions occur through established engagement channels such as the public-facing hotline or helpdesk service, participation and presentations at events organised by third parties or other consultation and advisory services. In these contexts, individual SMEs were approaching DPAs with very practical questions that required specific answers.

Individual comments made by various DPAs which appear more context specific also help to highlight some other ways in which DPAs can engage at a personal level with SMEs. For example, the French DPA described their perception that an increased number of SMEs are identifying DPOs who - in the case of that member state - were in turn using the specific DPA administered 'DPO hotline' service. Furthermore, it was separately mentioned that the reporting obligations to notify DPAs when a DPO is appointed also provide DPAs with some basic awareness of SME activity.

In the context of some smaller member states especially, such as Luxembourg and Malta, conferences and workshops were identified as an effective method of two-way communication with individual SMEs.

⁷ For example, the EC public opinion survey known as the 'Eurobarometer'. See especially, *Special Eurobarometer 487a: Report on GDPR* (June 2019), available at <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/index#p=1&search=GDPR> (accessed 11 July 2019).

6.2.3. The role of SME associations

The degree to which DPAs gain knowledge of SME needs from SME/business associations was unclear from the DPA interviews, even though there was some engagement in the form of conferences and public consultation feedback and the Slovenian and Luxembourg DPAs spoke highly of SME associations, seemingly effective on the basis that they hold a captive audience with SMEs (see further Deliverable D2.2). A different DPA also referred to the fact that SME associations were encouraged to feed into the DPAs five-year strategy. Some of the SME association interviews did however point to a stronger relationship between their organisation and the respective DPAs than came out during the DPA interviews, including DPA requests to SME associations to assist them in the development of relevant guidance (see Deliverable D2.2). Deliverable D2.2. also confirms the earlier DPA suggestion that SMEs might be more inclined to approach business sector organisations, such as SME associations for advice around the GDPR than they are the DPA, presumably due to the DPAs role as a regulator. Such organisations are described as having an active audience with SMEs in a way that is difficult for other bodies to achieve. It appears important therefore that the relationship between SME associations and DPAs remains strong for the identification of needs and effective awareness-raising activities.

6.2.4. European Commission Funded Projects

The Hungarian *Nemzeti Adatvédelmi és Információszabadság Hatóság* (NAIH) is coordinating the present STAR II project focused on the GDPR awareness raising among SMEs. The research also identified additional European Commission funded and co-funded projects targeting SMEs with which DPAs were actively involved. In Slovenia for example the *RAPiD.SI* project aims to assist SMEs with access to information and tools to aid compliance with the GDPR.⁸ Furthermore, although no DPA informed us directly about this project, an H2020 project known as Smooth is aimed at delivering a cloud-based solution to assist SMEs with compliance and itself reports that at least four DPAs have been involved in the project to

⁸ For a short narrative on the project, see <https://www.ip-rs.si/varstvo-osebni-podatkov/projekti/rapidsi/> (accessed 30 May 2019). For a website aimed at assisting SMEs and developed as part of the project see, <https://upravljavec.si/> (accessed 30 May 2019).

date at some level.⁹ Two further DPAs referred to funding proposals in progress and awaiting outcome, again specifically seeking to target SME awareness of the GDPR. Finally, three other non-SME specific European Commission GDPR projects were identified by DPAs as being helpful to gauging an understanding of the issues facing SMEs.¹⁰

6.3. SME data protection needs identified by DPAs

While awareness of the GDPR among SMEs was a need identified by a few DPAs, across the whole of the STAR II research awareness of the basic existence of the GDPR among SMEs seemed to be relatively high (see Deliverable D2.2). The distinction between SME awareness of the *existence* of the GDPR and SME awareness of the *requirements* of the GDPR, however, appeared to be significant. This means that while awareness of the GDPR appeared to have grown, that awareness does not translate to an equivalent awareness and/or understanding of specific GDPR provisions. Furthermore, the SMEs that remain unaware of the GDPRs existence are unlikely to approach the DPA for advice or consultation regarding the GDPR. In fact, the face to face interviews with SMEs revealed that only a few had ever interacted with their national DPA. Following on from Section 6.2. therefore, in the absence of commissioned research, DPAs appear best placed to speak to the detail of the needs of SMEs who have approached the DPA through a hotline/helpdesk or advisory/consultation service or in consequence of a reporting obligation. These SMEs may be at the more knowledgeable end of GDPR awareness and understanding.

⁹ See, <https://smoothplatform.eu/> (accessed 30 May 2019).

¹⁰ H2020 'Business Process Re-engineering and functional toolkit for GDPR compliance' and REC Programme 2014-2020 'Problem Based Training on the Data Protection Reform Package in GR and CY'. The Lithuanian DPA referred to an EC-funded project with Mykolas Romeris University, called SolPriPa 'Solving Privacy Paradox: Promotion of High Standards of Personal Data Protection as a Fundamental Right and one of the Key Factors of Consumer Confidence in the Digital Economy'. STAR II was informed that the project has SME specific activities designed to fulfil one of the project objectives of the 'promotion of better management of business activities' on data protection, namely 10 seminars with SME data controllers/processors and six seminars with healthcare SMEs. See also, Valstybinės Duomenų Apsaugos Inspekcija, *Review of Personal Data Protection Supervision in Lithuania* (2019), p 14, available at <https://vdai.lrv.lt/lt/naujienos/2018-metu-asmens-duomenu-apsaugos-prieziuros-lietuvoje-apzvalga-parengta-pagal-valstybines-duomenu-apsaugos-inspekcijos-ir-zurnalistu-etikos-inspektorius-tarnybos-informacija> (in English and Lithuanian) (accessed 11 July 2019).

The needs of SMEs as identified by DPAs can be separated into two general areas: (1) methodological barriers to understanding and implementing the GDPR requirements; and (2) GDPR content specific issues.

6.3.1. Methodological needs

Concerning the methodological barriers to understanding and implementing the GDPR, it is suggested that the data gained from interviewees and respondents' points to a disjuncture between the GDPR and SMEs in terms of their constituent modes of operation. The GDPR's emphasis on "accountability" requires SMEs to embrace an ongoing and proactive responsibility for personal data protection. SMEs on the other hand, appear more likely to regard their legal obligations under the GDPR narrowly in the sense that they can be complied with through certain very specific and one-off steps. Interviewees/respondents informed the project that SMEs request simplified guidance which emphasises the practical application of the GDPR. Simplified and practical application appears to mean precise actions to be taken with accompanying examples. One DPA, which has provided specific guidance for SMEs, put it simply as follows: "SMEs want a list of what to do and what not to do".

Since the obligations under the GDPR require an ongoing and informed engagement from the SME (and might therefore be conceived as more diffuse in their nature than the legal obligations SMEs may be more accustomed to complying with), the GDPR also requires a certain amount of ongoing resource allocation. In this regard, DPAs recognised that SMEs often have limited resources in terms of both finances and personnel. As such, they often lack the legal and technical expertise to understand and implement the GDPR provisions. Even in cases where the SME has designated a person responsible for data processing this trend holds true as the DPO appointment often means handing over personal data protection responsibilities to an existing employee. Based on one comment, it may be of insight that the lack of SME legal and technical expertise on the GDPR is unlikely to evolve in the event of additional budgetary resources becoming available. This is because of other more pressing demands on that budget from activities such as marketing, which may be perceived as of more direct and immediate benefit to the SMEs. Also, at large SMEs do not appear to consider GDPR compliance to be revenue generating.

6.3.2. GDPR content-specific needs

The content specific issues that interviewed DPA representatives identified as of relevance for SMEs were varied with no obvious hierarchy. This was also the case across the interviews with SME association representatives and SME responses compiled in Deliverable D2.2. To

assist the project, the topics have been divided below into three categories based on the number of DPAs who explicitly mentioned the topic to be one in which SMEs were either requesting assistance and advice or should be provided with assistance in a form of guidance. The first category concerns topics that five or more DPAs identified SMEs needed assistance/advice on. The second category of topics refer to issues that three or four DPAs pointed out as SMEs needed assistance/advice on; and the final category whether the issue was suggested by one or two DPAs. This does not mean that in all cases guidance documents were unavailable on these topics, only that these are the issues DPAs expressed most awareness of SMEs requesting information on.

Category 1 (topics that five or more DPAs identified)

- Whether or not to appoint a DPO; (Articles 38 and 39)
- Information provision to data subjects by SMEs about their rights – a lack of awareness of these rights, an absence of procedures to respond to a data subject request, the provision of missing and incomplete information, and lack of accessible information; (Article 12-22)
- The use of a legal basis, in particular the use of consent for processing personal data: such as when it is necessary to obtain consent, what circumstances can it be legitimately applied to, when it expires, and assistance in drafting consent forms. Beyond consent, there was also concern expressed about a lack of awareness as to legal grounds other than consent, such as the use of a legitimate interest ground. (It was noted that after the expiration of the initial legal basis for processing, SMEs should consider whether an alternative legal basis now applies to that data before it is deleted (Articles 6 and 9), and
- When a record/register of processing activities is needed within an SME as well as what information to keep, for how long to keep it and whether the exceptions under Article 30(5) for SMEs apply. (Article 30)

Category 2 (topics that three or four DPAs identified)

- Data transfer (or “entrusting” data) to third parties which may take place when outsourcing or upon request (including specific mention of transferring data to insurance companies, as well as the international transfer of data outside the EU). In this context, the issue appeared to be less the identification of controller and processor and more the need for an appropriate legal basis for transfer and contractual safeguards;

- Determining who is the data controller and the data processor (and intermediate sub-processors) and establishing the distribution of obligations between them (including how to draft necessary contracts); (Articles 24-29)
- How SMEs should conduct the requisite risk or proportionality assessments under various provisions, e.g.,
 - Art 24(2): implement internal data protection policies where “proportionate” to data processing activities;
 - Art 25: implement technical and organisational measures for data protection by design and by default;
 - Art 32: implement technical and organisational measures for security of data processing;
 - Art 35 and 36: undertake a DPIA and prior consultation with supervisory authority;
- Engaging in direct and electronic marketing activities (including a specific mention in the context of loyalty programs); (Article 21)
- Data security risks and appropriate solutions; (Article 32)
- Handling employee data such as personal data related to the employment/labour contract and the relationship with national employment law, as well as data related to the supervision of employees’ activity while at work.

Category 3 (topics that one or two DPA(s) identified)

- Guidance on the material scope of the GDPR:
 - lack of clarity as to whether the GDPR applies to the SME, as well as a lack of clarity as to what constitutes personal data and data profiling;
 - Dealing with data processing activities prior to 25 May 2018 must also comply with the GDPR;
- A lack of clarity around the meaning of “large-scale” processing or monitoring, especially in the context of a small SME with many clients/users; (Articles 35 and 36)
- In the context of data breaches: what constitutes the boundary between risk and high risk; when to notify the DPA of a data breach; and concerns over gathering information within 72-hour timeframe; (Articles 33 and 34)
- Compliance with transparency principles and accompanying obligations;
- Using and purchasing accountability tools (e.g. policies, documentation);
- When to obtain certifications;
- Filming of persons for either surveillance or business advertising purposes;
- Photocopying of personal ID cards;

- Collecting visitor registrations on a registration page for an event;
- Processing of data for statistical or other analytical purpose (with consent obtained);
- The use of cookies on websites.
- How prior authorisation works in the context of the GDPR.

The range of issues that SMEs need advice on is therefore vast. This corresponded with Deliverable D2.2. where a wide range of issues were also identified by SME associations and SMEs. Here, the data revealed, among others, a relatively strong desire for more guidance/assistance on technical and organisational measures; as well as on new mechanism introduced in the GDPR – the principles of data protection by design and default; and DPIAs. It also revealed that SMEs face core challenges in the areas of: getting staff to understand the importance of data protection; developing and describing new organisational procedures and processes; and understanding what exact changes have to be made to ensure compliance.

6.3.3. SMEs versus larger businesses

In terms of the content specific issues, the majority of DPAs identified that the substantive needs of SMEs did not differ significantly from larger companies. The two exceptions to this general stance concerned a prevalence in larger companies for greater complexity of processing activities and a greater quantity of employee data to handle. Otherwise, the biggest difference between SMEs and larger businesses appeared to be operational, in terms of the reduced capacity of SMEs concerning both personnel and time to spend on professional compliance issues such as the GDPR. Larger organisations will often have legal or technical professionals because they have the internal resource capacity. In this sense, they do not require a list of precise actions to be undertaken. They both understand the importance of their personal data and may even have pre-established global compliance programs with accompanying tools already in operation. When a larger organisation approaches the DPA therefore, it was sometimes mentioned that these queries tended to be more complex and concrete because they would be made by compliance personnel who were confused about an issue. SME queries, it was suggested, tend to be easier handled, however, they may entail more follow up as questions may need to be clarified.

Finally, some DPAs mentioned that close to 100% of businesses in their member state fulfilled the definition of a SME. As such, they could not distinguish between the needs of SMEs and larger business. For those that could, it was observed that although DPAs do not formally categorise the queries they receive by size of organisation, interviewees/respondents appeared confident in noting that SMEs and larger organisations

have distinctive resource needs but generally the same content focused needs (the latter of which would be taken care of by compliance professionals within the larger business). As such, the lack of categorisation between SMEs and larger organisations did not appear to be a significant gap in DPA data collection.

6.4. Key take-aways from Section 6

Concerning how SME needs are identified and perceived by DPAs, we found that:

- Most DPAs neither conduct specific research aimed at establishing levels of SME awareness nor general awareness of the GDPR. However, they are interested in learning about the GDPR awareness level.
- Although some DPAs had carried out specific research, it was unclear from the questions asked and information received whether this specific research would be part of an ongoing monitoring and evaluation programme. The information received from one DPA, where they were mapping improvement after awareness raising activities was helpful in this regard.
- DPAs that had conducted specific research on SME levels of GDPR awareness appeared to express a higher level of confidence in terms of understanding the needs of SMEs. Therefore, awareness raising activities and the identification of SME needs appear to be closely intertwined.
- The most substantial benefit for DPAs in terms of understanding SME needs appeared to be derived from personal interaction with SMEs, especially one-to-one interaction such as occurs through DPA advice and consultation services. This may be because this forum allows SMEs to express ongoing practical problems to DPAs on which they desire specific advice.
- The size of the Member State may have a bearing on the effectiveness of specific communication methods on the part of the DPA with SME representatives, e.g. it may be easier to facilitate a genuine two-way exchange/personal interaction between SMEs and DPAs at SME conferences in smaller member states.
- SME association representatives were occasionally mentioned by DPAs but not as much as would have been anticipated from the SME association interviews. This is based on the conclusion that SME associations appear to be able to capture the broader attention of SMEs in a way that is difficult for DPAs to achieve.
- Many DPAs were engaged or plan of getting engaged in EC supported projects targeting SMEs either specifically or broadly, suggesting that in some cases EC funding might be relied on as a prerequisite for undertaking specific awareness raising or needs identification programs with SMEs.

- It may be helpful if national legislation aimed at SMEs directs them to the DPA resources.

Concerning SME needs identified by DPAs, we found that:

- The needs identified by DPAs are likely to pertain overwhelmingly to SMEs with at least a basic awareness of the GDPR. This is based on DPAs gaining most knowledge about substantive needs from personal interaction with SMEs and the fact that unaware SMEs are unlikely to approach a DPA advice line or attend a DPA event.
- SMEs need assistance and guidance that would have a different methodology in comparison to general guidance documents on the GDPR. They need practical advice entailing a step-by-step approach.
- The difference between what the legal obligations within the GDPR require of SMEs (i.e. ongoing and proactive leadership) and the preferred approach to legal compliance issues by SMEs (i.e. relatively passive, one-off implementation actions) needs to be addressed to facilitate appropriate GDPR implementation. SMEs should understand that the GDPR requires some level of ongoing resource allocation, even though this should be small after initial implementation measures are undertaken.
- The lack of legal and technical expertise within SMEs to properly understand the GDPR may be unlikely to evolve in the event of additional budgetary resources becoming available because of competing priorities for SMEs, such as marketing activities.
- Although there was limited formal categorisation identified by DPAs between the communications from SMEs and those from larger businesses, this was not identified as a problem. The substantive needs of SMEs vis-à-vis larger business were confidently and consistently expressed as having little difference. The core difference concerns capacity and the reality that larger business can absorb professional costs in this area, whether external or internal.
- There was no obvious hierarchy of substantive needs with which SMEs approach DPAs. However, the project was able to group the needs mentioned by amount of references. The top four concerns DPAs expressed awareness of included: whether the SME should appoint a DPO; what information the SME should provide to data subjects; clarification on what legal basis can the SME process personal data, especially concerning 'consent'; and whether a record/register of processing activities is needed.

7. DPA provision of resources for SMEs

7.1. Introduction

The provision of knowledge based GDPR resources, e.g. guidance documents, has been separated in this report from awareness raising activities by DPAs, e.g. ad campaigns, newsletters, events. That said, there is a recognition that the provision of knowledge-based resources can be considered part of a broad definition of awareness-raising. By distinguishing the existence of these resources from awareness raising activities - the latter of which is likely to include awareness raising about the existence of these resources - the project is better able to separate the two awareness raising elements. For example, if a DPA has excellent resources for SMEs, SMEs must be aware of the existence of these resources to gain benefit from such resources. Considering this background, this section looks at DPA provision of resources only, while broader DPA awareness raising strategies are considered in section 8.

The following information is based on the information conveyed to the STAR II project by DPAs. While efforts have been made to verify the material or projects referenced below by the drafters of this report, especially where publicly available, it was not possible to verify all the information in all cases. The direct information provided by the relevant DPAs has therefore been heavily relied upon. Language translation tools were also used to provide a basic assistance reviewing any materials in EU languages not spoken by the consortium partners.

7.2 Guidance material

7.2.1. DPA guidance materials

Almost all DPAs that took part in the research provide access on their website to some form of publicly accessible guidance to which they can refer SMEs on the data protection framework. Most commonly, this guidance was generally applicable or issue specific, for example on the use of 'cookies', 'CCTV', 'marketing', 'encryption' etc. It was common for DPAs to identify such guidance as relevant also for SMEs. The Irish DPA told us that queries about direct marketing were previously common but appeared less so now, suggesting that the guidance developed in response to the initially high queries has had an impact.

Five DPAs have also developed SME specific guidance on the data protection framework, while a few more DPAs informed the project that they are either in the process of or have

the intention of developing SME specific guidance. Two additional DPAs did not have SME specific guidance but referred on their websites to a European Commission SME specific resource which takes the form of a question-based tool with short instructions on what the SME must do in certain circumstances.¹¹ It is important to also mention that although the UK Information Commissioner's Office (ICO) and the Spanish *Agencia Española Protección Datos* (AEPD) were not interviewed due as part of the STAR II project, they both have developed SME specific guidance which was mentioned by SME associations during the course of the STAR II research.¹² Figure 1 conveys the distribution of SME specific guidance among STAR II participants.

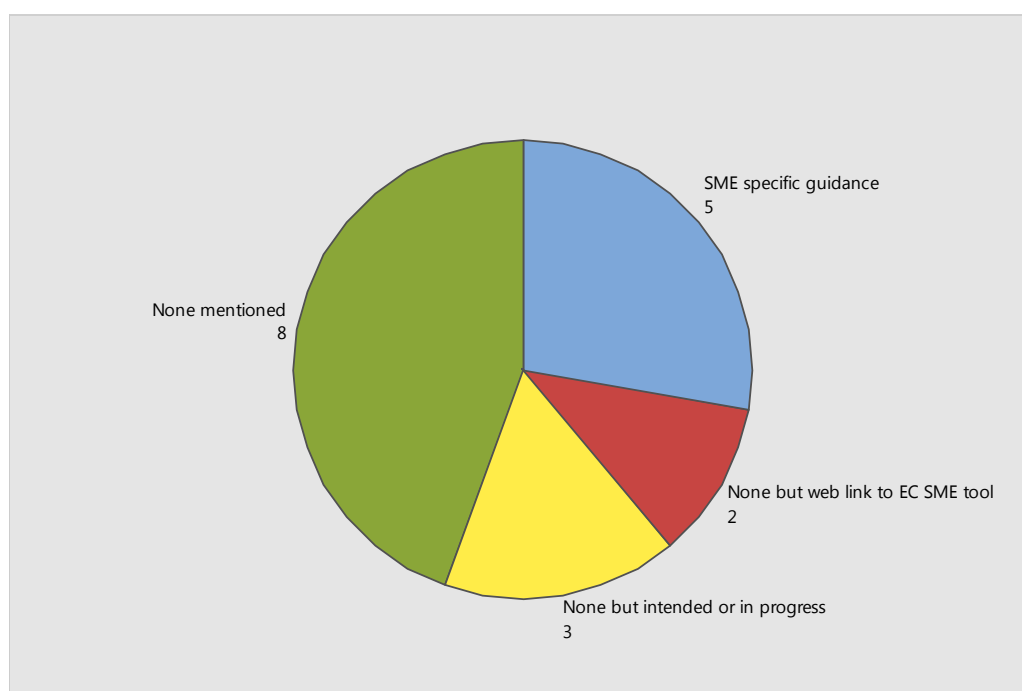


Figure 1: Distribution of specific DPA-developed guidance for SMEs

¹¹ EC, *Data Protection: Better Rules for Small Business*, available at <https://ec.europa.eu/justice/smedataprotect/> (in English) (accessed 11 July 2019).

¹² In April 2019, the AEPD updated their 'Facilita' website tool for SMEs. This tool received positive feedback from SME association members. It is available at the following link: <https://www.aepd.es/herramientas/facilita.html> (in Spanish) (accessed 11 July 2019). The ICO website has a page dedicated to SMEs containing a 'Self-Assessment Toolkit for SMEs', and FAQs specifically for 'small hospitality business' and for 'Small retailers', as well as more general 'GDPR Guide for Organisations', available at <https://ico.org.uk/for-organisations/in-your-sector/business/> (accessed 11 July 2019).

The five SME-specific DPA developed guidance mentioned by respondents/interviewees took the form of three documents,¹³ a further document (which changed from a DPA website section during the course of the project)¹⁴ and one dedicated website.¹⁵

Figure 2a(below) provides an overview of the table of contents of these specific SME guidance documents. Based on the information received from DPAs, SME associations and SMEs, a review was also carried out in Figure 2b (below) of whether the specific SME guidance identified includes: a checklist for SMEs, such as a series of short basic questions or a tick box list which they can work through systematically; any practical examples seeking to help make the guidance more relatable for SMEs; any template forms that can be followed and modified by the SME; and finally, whether the DPA contact details are accessible from the SME guidance.

¹³ CPVP, *RGPD vade-mecum pour les PME* (January 2018), available at

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/PME_FR_0.pdf (Belgium); Valstybinės Duomenų Apsaugos Inspekcija, *Rekomendacija smulkiajam ir vidutiniam verslui dėl Bendrojo duomenų apsaugos reglamento taikymo* (September 2018), available at https://vdai.lrv.lt/uploads/vdai/documents/files/Rekomend_SVV_BDAR_2018.pdf (Lithuania); CNIL, *Guide Pratique de Sensibilisation au RGPD pour les petites et moyennes entreprises* (April 2018), available at https://www.cnil.fr/sites/default/files/atoms/files/bpi-cnil-rgpd_guide-tpe-pme.pdf (France), (all accessed 10 July 2019).

¹⁴ Data Protection Commission, *Guidance Note: GDPR Guidance for SMEs* (July 2019), available at <https://www.dataprotection.ie/sites/default/files/uploads/2019-07/190708%20Guidance%20for%20SMEs.pdf> (Ireland). Note that Ireland has a separate guidance note on data security within micro-enterprises. See, <https://www.dataprotection.ie/sites/default/files/uploads/2019-07/190709%20Data%20Security%20Guidance%20for%20Micro%20Enterprises.pdf> (all accessed 10 July 2019).

¹⁵ Informacijski Pooblaščenec, *Varstvo Osebnih Podatkov, Spletna stran za pomoč majhnim in srednje velikim podjetjem* (2018), see <https://upravljavec.si/> and <https://www.ip-rs.si/varstvo-osebni-podatkov/projekti/rapidsi/> (Slovenia) (accessed 10 July 2019).

STAR II Deliverable D2.1 – Report on DPA efforts to raise awareness among SMEs on the GDPR

Ireland		Belgium	France	Slovenia	Lithuania
- Key GDPR Definitions	Basics: Am I processing personal data?		- Why this new regulation?	- Forms	- What is personal data?
- Key steps to take to ensure compliance	- Legal basis	o Purpose	- What are the 6 benefits for your SME?	- Notice to individual of processing activities (Art 13 and 14)	- Do I handle personal data?
- A risk-based approach to being compliant	o Accuracy and quality of the data	▪ Minimal data processing	- Personal Data, Data Processing: What are we talking about?	- Record of Processing Activities (Manager & Worker)	- Does the GDPR apply to me?
- GDPR readiness checklist tools	▪ Shelf life	▪ Transparency	- Outsourcing/Sub-contracting	- Notification of Breach (Art 30)	- When can personal data be processed?
o personal data	▪ Security	o Protective measures adapted to the risks	- Processing risky data: Are you concerned?	- Appointment of DPO (Art 33)	- What steps does the company have to take in the processing of personal data?
o data subject rights	o Step 1: Establish a survey using the record of treatment activities	o Step 2: Designate a Data Protection Officer (DPO)	- Improve and Master the Client Relationship	- Check Your Knowledge – Q&As	- For how long can I store personal data?
o accuracy and retention	o Step 3: Conduct a Data Protection Impact Analysis	Obligations: What should I consider?	- Protecting Your Employee Data	- Frequently Asked Questions	- Data subject rights and procedures for their implementation
o transparency requirements	The Rights of the Persons Concerned		Know What to Do When Your Business Communicates Online		- General conditions for implementing the data subject's right to be informed
o other data controller obligations	- What if Things go Wrong? A Checklist for the Sub-contractor				- The right to access your data
o data security					- The right to rectify your data
o data breaches					- The right to delete data ('the right to be forgotten')
- International data transfers					

	- The right to data minimisation
	- The right to data portability
	- The right to disagree
	- Not automatic solutions, including profiling
	- Responsibilities of data controllers
	- Do you have a DPO?
	- Do you have to do an impact assessment?
	What is a code of conduct?

Figure 2a: Summary of Contents Page of DPA produced SME specific guidance

	Checklist	Examples	Templates	Contact Details
Ireland	✓	✗	✗	✗
Belgium	✓	✓	✗	✗
France	✓	✓	✗	✓ (explanation of CNIL role)
Slovenia	✓	✓ (part of Q&As)	✓	✓ (hotline)
Lithuania	✓ (for dpia)	✓	✓ (link provided in document)	✗

Figure 2b: Tools and contact information contained in DPA produced SME specific guidance

In terms of the substantive content (Figure 2a), there appeared to be a broad overlap between the issues DPAs consider that SMEs want to know about (see especially categories 1 and 2 in section 6.3.2.), the issues SME associations and SMEs expressed that they want to know about and the contents of the SME guidance (see Deliverable D2.2). As Figure 2b demonstrates, all SME specific guidance included some form of checklist, most included some examples, and two provided accessible contact details and at least one template. On this basis, they appear therefore to be helpful tools to which DPAs can direct SMEs speaking the languages of the guidance: English, French, Lithuanian and Slovenian. No analysis was conducted on the direct levels of helpfulness of any specific tool. Based on the data from both Deliverables D2.1 and D2.2, assessing levels of helpfulness is likely to come down to accessibility such that the guidance can be quickly understood by SMEs, e.g. the nature of the practical examples.

Concerning the development of GDPR guidance, the project asked whether there had been cooperation between DPAs or whether the DPA had drawn on the guidance of another DPA. Most received answers to this question were in the negative. A few DPAs pointed to drawing on, or being aware of, the guidance produced by another member state. There did seem to be some common reference across the D2.1 and D2.2 research data to a few member states guidance being especially helpful to follow. These were typically DPAs of larger member states, such as the UK Information Commissioner's Office (ICO), the Spanish *Agencia Española Protección Datos* (AEPD) and the French *Commission Nationale de l'informatique et*

des Libertés (CNIL). One DPA referred to direct cooperation with other DPAs in the content of the European Union and the development of EDPB guidance.

7.2.2. European Commission guidance materials

Quite a few DPAs also included links to European Commission guidelines on data protection. These links were more commonly to the European Commission's formal guidance on aspects of the GDPR and generally not to the SME specific tool mentioned above. Most respondents did not consider that the European Commission provided SME specific information. If understood in terms of guidance produced by the EDPB (or the previously constituted Article 29 Working Party),¹⁶ this appears to be correct. Where commented on, DPAs suggested that any guidance provided by the EDPB was always helpful. The one comment for improvement referred to the benefit that could be derived for SMEs from practical examples.

7.3. Hotline/helpdesk advice service

As with the GDPR guidance, most DPAs responded that they did not consult with other DPAs when establishing their respective hotline/helpdesks. Similar references were made to cooperation at EU level and awareness of other services but only a small number stating directly that they consulted other DPAs before setting up the hotline/helpdesk.

All DPAs had a public facing helpline or helpdesk service which SMEs could use to contact the DPA. For all DPAs, a telephone service was in operation. Just under half of the interviewees/respondents also referred to an additional email service which for some could

¹⁶ This Working Party was set up under Article 29 of Directive 95/46/EC (WP29). It was an independent European advisory body on data protection and privacy. See Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC for WP29 tasks. On 25 May 2018, WP29's functions were replaced and absorbed into the EDPB. The EDPB endorsed many of the GDPR-related WP29 guidelines, see <https://edpb.europa.eu/our-work-tools/general-guidance/gdpr-guidelines-recommendations-best-practices_en> (accessed 20 June 2019).

then also lead to an in-person consultation depending on the specific issue raised. This email service appeared at times to be the general information enquiries email address (e.g. info@dpa.com). No DPAs referred to an email service without the existence of an accompanying telephone service. Importantly however, one DPA did not frame their service as a helpline or helpdesk but rather informed the project that they answer queries through their general contact details. This DPA emphasised that they did not provide legal advice, nor even specific advice but rather a response to the general question. This was considered important so as not to limit the SME's individualised solution or give the impression that there was only one available solution.

Although the overwhelming majority of these services were also accessible to the general public, data controllers, and SMEs on an equal basis, a few interviewees/respondents suggested that SMEs account for a large proportion of these calls and that it is a key way they have become familiar with the issues of concern to SMEs. The clear lack of an SME specific hotline or helpdesk however does not appear to equate with a perceived need for one. When asked what they would change if more funding was available, only one DPA suggested that they would institute a separate hotline for businesses and data subjects. For the rest of the DPAs, about half felt that their advice service was working well as is, with the other half instead prioritising an increase in operating hours (e.g. from a morning to a full day) or in the expertise of staff giving the advice rather than opting for an SME specific hotline. This seemed to correlate with the fact that DPAs report medium to large uptake of the service creating an overall impression that the demand already exists for the advice service and that the limiting factors on its success are capacity and expertise rather than awareness or indeed the need for an SME specific advice service. That said, it could be argued that an SME specific advice service would aid expertise of call and email handlers within the DPA. This point was not however raised among interviewees. As discussed in Deliverable D2.2., the ability of DPA employees to give precise and practical advice was sometimes identified as a problem with hotline/helpdesk services by SME associations. Indeed, as mentioned above, this was actively avoided in the case of one of the DPAs interviewed. On the whole however, Deliverable D2.2. reports relatively positive levels of satisfaction with the hotline/helpdesk service by SMEs who responded to the online survey.

7.3.1. Basic hotline/helpdesk statistics

Where DPAs provided statistics for 2018, these mostly ranged from a few hundred to a few thousand calls/requests for advice during that year. Staff members involved in the hotline/helpdesk services were quite varied, ranging from 1 to 25 persons. However, it was not always clear to what extent persons worked on the hotline/helpdesk at any one time

(i.e. the full-time equivalent (FTE) was not always provided). All phone advice was regarded as being provided instantly unless follow up was required. The standard response time for written queries primarily ranged from 1-2 days to 30 days. Thirty days was accompanied on occasion with a reference to the legal maximum (presumably in reference to the one-month time frame stipulated by the GDPR in various circumstances e.g. data subject requests, mutual assistance between DPAs, prior DPA consultation etc.) but also with reference to the fact that the response would be given “as soon as possible”. As discussed in Deliverable D2.2, SME associations responded most positively to a DPA hotline/helpdesk service if that advice provided was practical and quick, with suggestions that quick meant within one week.

All hotline/helpdesk services were offered in the national language(s) and this was the language most in need for SMEs. The most commonly referenced second language which many DPAs indicated that they could also respond in was English. On occasion, a lack of English was mentioned as a limiting factor for the service. Although DPAs were not directly questioned on accessibility of communication for persons with disabilities, it was of interest that one DPA pointed to a telephone service which they could also phone to assist in communicating with persons of hearing difficulties.

7.3.2. Internal guidance documents for staff

Most DPAs do not appear to use internal guidance documents for hotline/helpdesk advisers. That said, these DPAs did at times point to training in advance of starting the role and the ability of staff to also draw on the publicly available guidance documents when giving advice (e.g. see section 7.2). One DPA expressed the opinion that such guidance would not necessarily be of help because introducing a formality to the phone call may hamper staff ability to give tailored and responsive advice, e.g. late calls at the end of business day.

Just over a quarter of DPAs however, responded that they did use internal guidance for hotline/helpdesk advisers. This took the form of standardised responses/paragraphs to be used where suitable, sample answers and a frequently asked question and answer document. One DPA also mentioned that staff were trained four times a year off site. This internal guidance was not available to be shared with the STAR II project but DPAs suggested that an awareness of DPA guidance which is publicly available on the DPA website offers a good sense of the internal advice, which is simply adapted for DPA staff.

7.3.3. Perceptions on liability for advice provided

Not all DPAs provided an answer to the question posed on the authority's stance on liability for the advice service. Among those that did, the advice provided via the telephone advice service was for the most part considered to be informal consultation and advice only, with limited bearing on the DPA's legal liability for the answers. Only one DPA considered that they would be liable for any advice given in this manner. Another DPA made the important point that while technically only advice, it was crucial to train staff that their advice would be relied upon and that they should only give it if they are confident on the answer.

Where some DPAs considered that the matter may give rise to legal liability or was complex, they requested that the enquiry be made in writing. The data suggests that a telephone advice line leads to less liability concerns than an email advice line.

In terms of a formal disclaimer when responding to queries, DPAs were broadly divided with some providing one either on the website or at the end of the email correspondence or as routine during the call, while others did not. For most DPAs without a formal disclaimer, it was unclear whether the DPA chose this route deliberately or simply by omission. One DPA did however offer the rationale for deliberately omitting a formal disclaimer by telephone on the grounds that it would undermine the advice given by the organisation.

Finally, a couple of DPAs (e.g. Slovenian and Malta) pointed to either national law or the GDPR recitals which they considered to distinguish between legally binding decisions of DPAs and non-binding opinions of DPAs. In this case, the advice service was considered an opinion and therefore not binding (presumably -in the case of the GDPR - relying on Recital 143).¹⁷

¹⁷ Recital 143 states in part, 'the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority.'

7.4. Other DPA resources

Beyond guidance material and the hotline/helpdesk service, further educational or knowledge-based resources available from DPAs to SMEs included on-site consultation services for SMEs, sometimes dependent on the specifics of the case at hand; Frequently Asked Questions (FAQs) sections of the website, one of which took the form of a podcast; videos on specific issues available to watch back, either from a video conference or designed for social media dissemination; and specific training sessions for DPOs. One DPA mentioned facilitating an online ‘laboratory’ with data processors and controllers in which the DPA acts as a moderator. The aim of the laboratory is to identify best practices. While a laboratory has not to date been held for SMEs specifically, this was an intended activity of the DPA in question.

Finally, some DPAs also expressed an awareness of the guidance materials available from other DPAs. It appeared that at times these were helpful to the interviewed DPA but it was unclear from the interviews whether SMEs would be directly referred to the guidance material from other DPAs.

7.5. Reference to external resources

When asked about awareness of other (non-DPA) sources of support available to SMEs, DPAs pointed to a collection of: law firms/private GDPR consultancies; local chambers of commerce; social media support groups; technical software; DPO officers associations and NGOs in no particular order. As with the guidance of other DPAs, it was unclear whether DPAs would refer SMEs to these sources of support. Perhaps contrary to the general perspective and certainly to the perspective of SME associations in Deliverable D2.2, the Luxembourg DPA spoke more positively of the consultant market and their capability in filling a market gap for GDPR advice noting for example, the availability of products to purchase that map data flows. This atypical response could be a consequence of the type of companies which do business in Luxembourg – described as often small in terms of size with less than 50 employees but with the capacity to be GDPR compliant due to their business in

the financial industry and global reach. There was also one mention of the EU Fundamental Rights Agency (FRA) European Handbook on Data Protection Law.¹⁸

7.6. Key take-aways from Section 7

Concerning the provision of guidance materials, we found that:

- A quarter of DPAs who responded had SME specific guidance.
- However, it was widely commented that the general guidance and issue specific guidance developed by almost all DPAs are also of direct relevance to, and sometimes most suitable for, SMEs.
- A few more DPAs indicated that SME specific guidance is either in development or intended suggesting there may be some momentum around developing SME specific material at present.
- Beyond the question-based tool for SMEs, the EC has not formally developed any SME specific guidelines.
- The four SME specific guidance available in English, French and Slovenian covered a broad range of issues and some effort was apparent to offer SMEs practical tools, such as checklists, examples and templates. Such guidance appears to broadly meet the requests of SMEs.

Concerning the hotline/helpdesk advice service, we found that:

- All DPAs operated a form of telephone or email and telephone advice service. In most cases, this service was not an SME specific hotline/helpdesk service.
- There was, however, no suggestion from the data that DPAs felt that an SME specific hotline/helpdesk advice service was needed. This may be because many advice services report an already high volume of enquiries from SMEs.
- DPA mention of priority areas for improvement concerned instead the capacity of the hotline/helpdesk in terms of operating hours and personnel allocation, as well as

¹⁸ FRA, *Handbook on European data protection law* (2018 edition), available at <https://fra.europa.eu/en/publication/2018/handbook-european-data-protection-law> (accessed 12 July 2019).

expertise.(The ability of DPA employees to give precise and practical advice was sometimes identified as a problem with hotline/helpdesk services by SME associations in Deliverable D2.2.)

- Some DPAs mentioned taking up to 30 days to respond to queries from the hotline/helpdesk and rarely longer. While DPAs appear for the most part to attempt to respond as soon as possible, SME associations advise that maximum benefit is achieved for SMEs if the service is perceived as quick, i.e. where responses are received within one week.
- Most DPAs do not use internal guidance to direct hotline/helpdesk advisers. Just over a quarter of DPAs did. The ones having such documents were not willing to share them with the consortium.
- Most DPAs did not consider that the hotline/helpdesk advice service would incur legal liability.
- Most calls/queries were facilitated in the national language of the respective country which was also the language in greatest demand from SMEs.
- While English was also widely facilitated across the EU DPAs, a small number of DPAs expressed that it would be beneficial to develop their English language capacity.
- At least for routine enquiries, DPAs appeared more comfortable giving advice via telephone because it mitigates liability concerns.
- DPAs appeared roughly divided in terms of whether a formal disclaimer was provided to the SME seeking advice or not.
- Most DPAs did not appear to consult each other formally or informally when either developing guidance or establishing a hotline/helpdesk. That said, some DPAs mentioned cooperation at the EU level and awareness and knowledge of other DPAs resources.

8. DPA awareness-raising activities among SMEs

8.1. Introduction

As mentioned in the Section 1 of this report, Recital 132 of the GDPR specifies that when undertaking awareness-raising activities, data protection authorities should include specific measures directed towards SMEs. SMEs were asked directly about their awareness-raising activities and whether they had any tips for the STAR II project's own awareness-raising campaign. DPAs were not asked for their thoughts on Recital 132 of the GDPR but one DPA did express a perception that awareness-raising activities among SMEs was “more a task” of the local chamber of commerce, with the DPA instead focused on “conduct[ing] proceedings”. This was a unique message however, that did not appear to be widely shared among the DPA respondents/interviewees.

As mentioned in section 6.2.1., DPAs were also asked whether they conduct research on levels of GDPR awareness among both the wider public and SMEs. As detailed above, the majority of DPAs do not conduct specific research aimed at gathering data on SME awareness of the GDPR. In the smaller number of cases where specific research had been undertaken, it was common for the DPA to mention that the research had been undertaken around the date of May 2018 when the GDPR was coming into force. Some level of awareness was presented by SMEs but without distinguishing general awareness about the existence of the GDPR and awareness in terms of understanding the content of the GDPR, it was noted that quantifying general awareness levels is difficult. Section 6 found however that DPAs that conducted some research into SME awareness of the GDPR appeared to express higher levels of confidence in terms of understanding what SMEs needs were. The most helpful presentation of research by DPAs on levels of awareness was the research which was subsequently followed up on a year later, clearly demonstrating an improvement in levels of GDPR awareness among SMEs. This led to the suggestion that DPAs might consider establishing ongoing monitoring and evaluation strategies for assessing GDPR awareness among SMEs.

8.1.1 Target levels of awareness

Not all DPAs answered the question on the target levels of GDPR awareness among SMEs. The research conducted with SME associations and SMEs in Deliverable D2.2. points more clearly to a perception that awareness of the basic existence of the GDPR is in fact high. Of the DPAs that identified target levels of awareness, the most consistent message was that because understanding was considered relatively low (even if awareness itself might be

higher), the focus should be on increasing understanding around basic concepts within the GDPR. Improving understanding of specific obligations should be a second stage effort. One DPA suggested that the aim should be for 90% of SMEs to have some level of awareness, with 60% achieving high levels of awareness. It is of note that Deliverable D2.2. also identified that awareness of individual provisions can be variable within the one SME.

Despite the general lack of research on SME levels of awareness (section 6.2.1.), the majority of DPAs felt confident in expressing the view that awareness of the GDPR had increased when compared to the previous data protection regime. The main reason given for this was the effectiveness of the general media attention given to the GDPR. The fact that the GDPR includes fines was also identified as a reason for the increased awareness along with the activity of private consultants in this area.

8.2. General DPA awareness-raising methods

DPAs were given a list of five ways in which they might raise awareness and asked to inform the project which they used. These five prompts were: (1) TV; (2) Radio; (3) Print Media; (4) Social Media; and (5) Video. There was also an ‘Other’ option to prompt DPAs to identify additional methods not included on the list. The responses are presented in decreasing order in the pie chart below. Information provided under the ‘Other’ category formed four additional groups of: (i) ‘events’ (ii) the ‘DPA website’; (iii) ‘word of mouth/individual meetings’ and (iv) ‘newsletter’. Although this question followed specific questions on awareness-raising among SMEs, it was not an SME specific question itself.

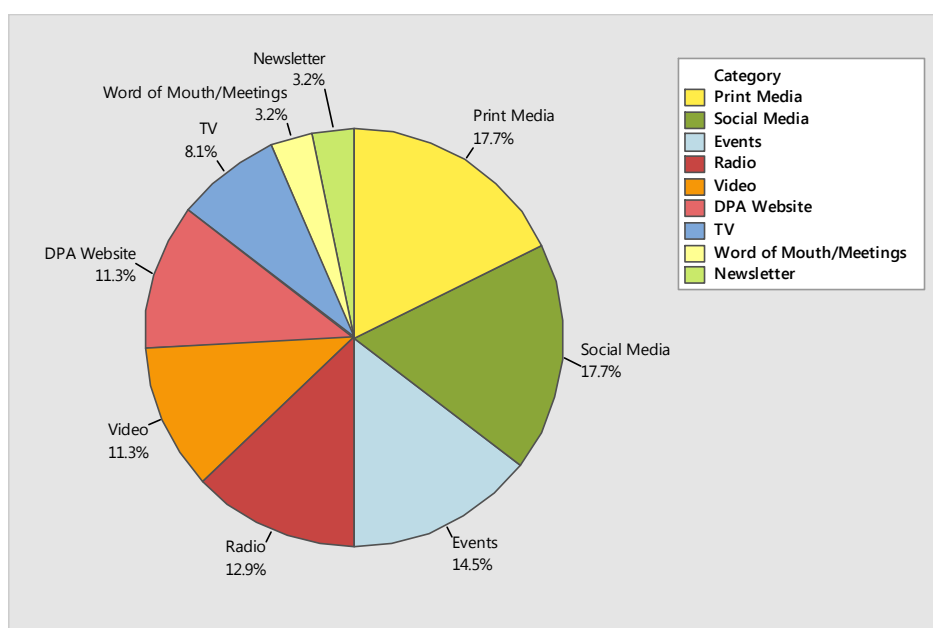


Figure 3: Awareness-raising methods used by DPAs

The data shows that the print media and social media are the two most common methods of disseminating information on data protection by the interviewees/respondents, and that DPAs also put a high emphasis on either attending or hosting events. The ‘events’ category included references to conferences, seminars, workshops, information days and press conferences. In the context of social media, LinkedIn and Twitter were referenced as well as YouTube. One DPA mentioned operating its own YouTube channel while another referred to engaging with popular and relevant compliance focused influencers to share DPA information.

It might also be noted that ‘video’ and ‘newsletter’ refer to the form the shared information takes, as opposed to the dissemination tool. A video for example, could be shared on social media and/or embedded in the DPA website. From the information provided, it appears that at least some newsletters are disseminated by way of a (free) subscription email service. Furthermore, mention of the DPA website under the ‘Other’ category was relatively common as a way to raise awareness on data protection. The importance of an accessible DPA website where SMEs can intuitively find relevant resources was clearly understood by some DPAs who referred to a website redesign (e.g. a specific section on the homepage targeting ‘organisations’). Both these comments perhaps suggest that there is a need for greater clarity between the format and layout of the educational resources available for SMEs and dissemination and awareness activities about these resources.

Finally, ‘word of mouth’ was explained as including discussion with SME representatives and individual meetings.

8.3. Most effective SME awareness-raising methods

DPAs were asked to give their opinion on the most effective awareness-raising strategies for SMEs and to tell us about how they have adapted these methods, if at all, over time. Quite a few DPAs suggested that there was no one method but that rather a multi-method approach should be used to raise awareness about the GDPR among SMEs. One DPA suggested that this was important because the needs of SMEs differ.

In terms of specific methods which were highlighted by DPAs, the most frequently mentioned method was participation by the DPA in events, such as conferences, workshops and seminars. One DPA told of how it had organised a large conference with 500 attendees from both the SME and public sectors prior to the GDPR coming into force. The conference was organised like a practical workshop with a panel of compliance experts from multi-national companies offering examples regarding their own GDPR compliance strategies.

Feedback provided to the DPA suggested that attendees found it helpful to know that they could borrow strategies from other organisations. Coupled with the finding in Section 6.3.3 that larger organisations and SMEs have largely similar content-focused needs around the GDPR (differing primarily in their operational capacity to meet those needs), it is of note that an awareness of examples of compliance strategies from larger organisations could be helpful educational and awareness-raising tool for SMEs.

Other methods, such as the DPA advisory services, engagement with SME associations and the DPA website were also mentioned to broadly the same degree as each other (i.e. two-three specific references each). It may be worth highlighting here that some SME associations identified their own role in awareness-raising among SMEs, sometimes seeing it as much their role as that of the DPAs (see Deliverable D2.2).

Broader insights were made in terms of the importance of face to face contact for DPAs to both understanding SME needs and raising awareness among SMEs about the GDPR. This could presumably happen in the form of the events frequently mentioned, but it was also linked by interviewees/respondents to the more intimate and personal contexts of the DPA advisory services, whether that be the on-site consultation or the hotline/helpdesk service.

A couple of DPAs suggested that the more traditional methods such as TV and newspaper advertisement campaigns remained the most effective ways of raising awareness among SMEs. One offered the insight that these methods engage with SMEs who are not interested in the subject of data protection. An important distinction might therefore be made in awareness-raising strategies between SMEs exposed to the data protection framework at some general level e.g. through membership of an SME association or a DPO network, and those who are known to be operating mainly in isolation from membership bodies. This comment was also made by two DPAs from a similar geographic part of the EU such that it might also be worth considering whether the culture of some countries makes more traditional awareness raising techniques preferable to others in certain member states only.

As demonstrated in the section above, both the print media and social media are used by many DPAs as part of the multi-method awareness raising strategies. It was noted however that in response to the specific question on SMEs, no DPA mentioned these two categories as the most effective way to raise awareness. The emphasis in the specific content of SMEs was rather on face to face contact, whether that be by way of an event or the more personal context of advisory services.

When asked about how their methods had evolved over time, a couple of DPAs did identify the digital space as an awareness raising environment that they would like to pay more attention to – a potential growth area. Beyond the digital environment, there was no consistent message emanating from the interviewees/respondents on the evolution of awareness raising techniques. A few DPAs did however convey the following change in strategy:

- A shift from providing information to the data subject towards providing information to the data controller;
- A shift towards targeting “influencers” who are public figures with access to wide business networks. The focus is on getting these figures involved in dissemination of information in whatever platforms/fora they engage;
- A shift towards more surveys (presumably to establish baseline awareness, perhaps including on individual issues);
- A shift towards active participation at seminars and workshops.

8.4. Content of awareness-raising activities

Regarding the content of awareness-raising strategies, a couple of DPAs mentioned that their focus was on more specific content, including examples, rather than generic content. Indeed, it appears that the content included in awareness-raising strategies (and not just the method deployed) will have an impact on the attention received by SMEs. For example, SME associations reported that SMEs were much more likely to take note of DPA activity around cases and fines, a feature which the DPAs do appear to understand given that fines were identified as having already raised GDPR awareness.

DPAs may face a difficult balance therefore between communicating the potential consequences of a failure to comply with the GDPR and ensuring a friendly enough approach that SMEs are not discouraged from engaging in personal interaction with the DPAs.

8.5. Advice to STAR II from DPAs on awareness raising campaign

Finally, DPAs were asked to provide advice to/share tips with the STAR II project to inform NAIH’s awareness raising campaign. The strongest message concerned the **accessibility of the solution provided**. The content used to increase awareness should use **non-legalistic**

language and be straightforward in its application with **concrete practical examples**. Beyond this, the following individual tips were shared:

- Be realistic in your expectations because SMEs have many competing priorities of which GDPR is only one and SMEs can also over-react;
- Know your target audience, whatever the medium of dissemination used;
- Disseminate your information when SMEs are most likely to access it, e.g. no radio spots between SMEs primary business hours;
- Ensure that your data protection specialists/advisors are highly trained;
- Ensure that SMEs are advised to avoid purchasing generic policy documents;
- Ensure that you have first assessed the needs of SMEs. Sector specific SME associations will help with this;
- Include a strategy to also measure impact of the awareness raising campaign and follow-up activities.
- Communicate to SMEs from a top-down basis. This means start by ensuring they understand principles, then break those principles down. In the opinion of this DPA, a bottom-up approach doesn't work ("It's not all about cookies").

8.5.1. Promote the strategic and financial benefits of the GDPR for business

Separate comments were made by a couple of interviewees/respondents about the necessity of selling the wider strategic and long-term financial benefits for GDPR to SMEs. In section 6.3.1, the report notes that in the event of additional resources being available, SMEs may be more likely to prioritise spending these resources on activities such as marketing over activities aimed at GDPR compliance. This was because activities such as marketing were perceived as of more benefit to the SMEs growth, aimed predominantly at increasing profit. Considering this context, the suggestions of these DPAs to identify the benefits through the lens of the customer-business relationship appear very relevant to gaining momentum with SMEs around the GDPR and might be appropriately considered part of an effective awareness raising strategy. These include highlighting the following issues:

- 1. Consumer Trust.** By making SMEs aware of the consequences of a loss of consumer trust if they are found to be in breach of the GDPR. Parallels can be drawn with the fall-out for large businesses from data protection failings, such as Cambridge Analytica and Facebook.
- 2. Efficiency.** By making SMEs aware that they can save time and money through the introduction of data storage and security tools. The data is readily accessible and will

take less person hours to locate and use for a variety of GDPR compliant purposes. It will also increase the SMEs business knowledge of the needs of its client base.

- 3. Sustainability.** Ensuring that the SMEs digital ecosystems are GDPR compliant will secure the place of the SME in the market moving forward. It is therefore an important strategic undertaking to ensure the sustainability of the SME.
- 4. Security.** SMEs are increasingly targeted by fraudulent activities, such as phishing from fake email accounts. By ensuring that data security policies are GDPR compliant, the SME can avoid possible losses from fraudulent activity.

8.5.2. Promote the simplicity of the GDPR?

A couple of DPAs expressed the desire to make SMEs aware that the GDPR does not have to be complicated but that it can be simple. That said, one of these DPAs did express that it had received the opposite feedback from SMEs and that complying with the GDPR is complicated. This latter message was also received more commonly from SME associations with some also pointing to a high financial burden of the GDPR (see Deliverable D2.2.). Changing the narrative from one of difficulty to one of simplicity may be a challenge for DPAs. It was suggested to the STAR II project for example that the key GDPR concepts are not difficult, e.g. ‘transparency’ and ‘accountability’. Based on the findings in the ‘identified needs’ section above (section 6.3.), it may indeed be the case that at a conceptual level the GDPR is not difficult but that SMEs need their confidence built at the application level because of the scope the GDPR allows for unique application tailored to the individual business. It appears therefore that assistance to SMEs for undertaking the necessary evaluative processes/risk assessment and the choice of subsequent technical and operational measures may provide benefit in moving forward the ‘simple’ narrative.

8.6. Key take-aways from Section 8

Concerning awareness-raising activities, we found that:

- A very small number of DPAs questioned the appropriateness of their role in awareness-raising among SMEs; the vast majority assumed this role as part of their responsibilities.
- Communicate that the GDPR does not prevent the processing of personal data, only lays down guidelines for how to do so.
- When trying to capture levels of SME awareness about the GDPR, there is a need to distinguish between a basic awareness as to the existence of the GDPR and awareness and understanding of various provisions within the GDPR.

- DPAs were however confident in expressing that awareness about the GDPR had increased vis-à-vis the previous data protection regime due to media attention, the existence of fines and the heightened activity of private consultants.
- DPAs identified the print media, social media and events as the most common general awareness-raising methods when asked.
- A multi-method approach was identified by quite a few DPAs as the best approach for raising awareness among SMEs. This may be because of the varied nature and needs of SMEs.
- Although the multi-method approach came out strongest, of the specific methods identified, DPAs referred to events as the most effective awareness-raising strategy for SMEs. This appears to sit comfortably with the fact that DPAs feel they understand SME needs best through personal interaction, for example, on-site consultation and helpline/helpdesk advisory services were identified as the next most effective methods for SMEs after events.
- Dissemination of examples of compliance strategies from larger organisations could be a helpful educational and awareness-raising tool for SMEs.
- There may be a need for DPAs to establish separate strategies around the format of an educational resources available for SMEs and the dissemination and awareness activities about those resources.
- There may be a need to distinguish between awareness-raising activities for SMEs who are not likely to be engaged with the data protection framework in any capacity (e.g. not members of SME associations or DPO network) and awareness-raising activities for SMEs who are part of organised business networks. More traditional methods of awareness-raising such as through TV and radio networks may be best suited to the former group.
- Both the size of the country and the cultural landscape may have an impact on the most appropriate awareness-raising activities for SMEs.
- Many DPAs are evolving in terms of how they conduct awareness-raising activities. However, there was no consistent message in terms of what ways. Some DPAs identified innovative awareness-raising techniques such as engaging with social media influencers on compliance.
- Where the content of awareness-raising activities was raised, DPAs suggested that SMEs require specific content with examples and not generic advice. This tallied with the advice received by the STAR II campaign that the focus on content should be on its accessibility for DPAs through simplified and relevant forms of communication.
- Awareness-raising content that identifies the potential consequences of a failure to comply, e.g. cases and fines, does have an impact on the attention of SMEs. DPAs

may therefore need to consider the balance to be achieved between communication of potential liabilities for failure to comply and a friendlier approach which encourages proactivity and engagement with the DPA on GDPR issues.

- It would benefit SMEs to convey the strategic and financial benefits of the GDPR through business language to which they can relate. This can be done by advertising the advantages of maintaining consumer trust, operational efficiency, sustainability and data security.
- If the GDPR is promoted as simple, it may be best if SMEs are educated on the distinction between the concepts and the application of these concepts. Application through self-evaluation/risk assessment and the implementation of technical and operational measures do not at present appear simple for SMEs.

9. Moving Forward with STAR II: Towards developing guidance on good practice in DPA awareness raising with SMEs and a handbook for SMEs

9.1. Core Messages for the Handbook

At the end of the STAR II questionnaires/interviews, respondents were asked about the core questions that should be addressed with the STAR II handbook for SMEs. Many DPAs pointed to the array of issues already raised in the earlier sections (see section 6.3.2.) and which are broadly covered in the SME specific guidance documents which a few DPAs have already developed. If STAR II wants to maximise the benefit of the handbook, it is useful to explore how best to meet these needs and complement existing resources. This section attempts to draw out ideas identified by the SMEs and SME associations, or that logically follow on from the information they provided.

In moving forward with the handbook for SMEs, STAR II should consider the following suggestions:

1. **A generic SME handbook focused predominantly on a compilation of examples and templates.** It was clear from the totality of information provided to the STAR II project that SMEs benefit from concrete examples. Such a strategy could be used to bolster the handbooks already in existence and be translated by DPAs into relevant languages. Borrowing on the strategies/tools employed by larger organisations could help here. (These examples may first need to be endorsed by a range of DPAs.)
2. **A sector specific handbook.** One DPA suggested that it would be of benefit for the handbook to be sector specific. For example, it could apply to online shops, photography businesses, hairdressers, owners of small hotels and hostels, nutrition advisers, human resources professionals, or CCTV businesses. The project would have to identify the appropriate level of granularity for appropriate sectors.
3. **A risk-focused handbook.** A core message coming through from the STAR II data is that SMEs face a methodological challenge with the GDPR in the sense that they may understand it conceptually but less so how it applies to their specific context. A handbook focused on how SMEs should conduct risk assessments and the technical and operational measures resulting from these assessments may be of special benefit.
4. **'Selling' the GDPR handbook.** This handbook might be ideologically driven, emphasising the key messages behind the GDPR which a compliant SME could market to their clients. This could include the messages of consumer trust, efficiency, sustainability and data security. It could also include strategies to demonstrate

compliance to the public (and not just the DPA), for example, the identification of a DPO, signing up to a sector Code of Conduct, or appointing a Personal Data Protection Champion. It could also include guidance on how to “sell” GDPR-driven changes and requirements to the staff of the SME.

5. **Myth-busting handbook.** This possibility emerged more concretely from Deliverable D2.2 but it could include the points identified by some DPAs that the GDPR need not always be difficult or burdensome.

9.2. Core Messages for the DPA Best Practices Guidance

In developing the DPA best practice guidance, STAR II may wish to take forward some of the suggestions below which have been derived from the report findings. These have been presented to mirror the focus of sections 6 – 8 of this report.

Concerning the identification of SME needs, STAR II should consider whether the following are best practices:

- **Formally recording issues raised with DPAs by SMEs.** This would be especially important in the forum through which DPAs interface with SMEs the most - the hotline/helpdesk. It would also serve as necessary data for the monitoring and evaluation of SME awareness-raising strategies and the success of any knowledge-based resources.
- **Maintaining strong (informal and accessible) relationships with SME associations.** SME associations have an active audience with SMEs in a way that is difficult for other bodies to achieve. Some SME associations described knowing DPA staff by name and able to call them at any time with queries.
- **Asking and assisting SME associations in taking the lead on needs identification research activities.** The research recognises that while capacity in many DPAs has grown since the advent of the GDPR, resources remain under demand. SME associations might be better placed to undertake research on baseline SME needs which can be used as a platform for DPAs to focus on knowledge-orientated guidance, such as the development of examples.
- **Undertaking commissioned research at specific intervals to assess awareness of specific issues.** It is important to ensure that the same research questions are asked more than once to be able to assess the effectiveness of any awareness-raising measures taken or general shift in SME needs. As mentioned above, this could be done in coordination with SME associations to avoid duplication of effort and maximise resources. The emphasis here is again on follow-up and mapping change.

Concerning the provision of resources to SMEs, STAR II should consider whether the following are best practices:

- **Operating as conduits or facilitators between the compliance departments of large organisations and SMEs to aid the borrowing of compliance strategies.** The data suggests that there is little difference in the substantive needs of larger organisations and SMEs but that the larger organisations can address these needs largely in-house. DPAs occupy an important intermediary space with potential that they could maximise for SMEs.
- **Focusing on the compilation of examples and templates.** It might benefit the DPA to work with DPAs across the EU to agree and share examples where possible.
- **Developing guidance with an emphasis on the notion of *time* to reflect the ongoing and proactive nature of the GDPR obligations, even if this ongoing resource is small.**
- **Reviewing the guidance produced against an accessibility criterion developed for SMEs.** This could include the accessibility of the language, i.e. business words, the practicality of the content, i.e. examples, templates, follow-on contact points, as well as inclusion factors, such as hearing or eyesight disabilities.
- SMEs find it challenging to assess proportionality and data protection risks of their operations and would rather have clear steps to take to comply with requirements stemming from the GDPR. However, they consider that many of their practices are fairly standard. Could such **standard assessments be made by DPAs**, perhaps with assistance of sectoral organisations, with guidance on how these might differ?
- Offering **multiple channels for SMEs** to contact DPAs, and being able to respond on those channels.
- Understanding the extent to which SMEs need to be aware of their guidance before they can access it, and the amount of their communications activity that is devoted to “pushing out” guidance to potential recipients.
- Production of **specific resources for employers**, as this (alongside marketing) could cover a significant proportion of personal data processing done by SMEs.

Concerning awareness-raising activities, STAR II should consider whether the following are best practices:

- **Ensuring that all SME communications include a focus on the strategic and financial benefits of the GDPR for business.** It appears that there may be a missed opportunity to ‘sell’ the GDPR, both to SMEs and by SMEs. Whether the GDPR can be genuinely called simple for SMEs is unclear. By emphasising the benefits for SMEs in terms of their customer base, it may be possible to garner greater ongoing interest.

- **Developing separate strategies for awareness-raising among isolated SMEs and engaged SMEs (e.g. sector engagement, rural/urban, technology literate etc).** The STAR II project is aware that many SMEs have not engaged with their national DPA and that some will also operate largely apart from SME associations. Such SMEs need to be distinguished from ‘connected’ SMEs and SMEs that operate with a high level of technological capacity.
- **Prioritising opportunities for personal interaction with SME representatives and SME associations.**

Appendix – Template for interviewing DPAs

Template for interviewing Data Protection Authorities

Part I - SMEs

STAR II is focused upon support to small and medium sized enterprises in understanding and meeting their GDPR obligations.

1. Does your authority collect any data on levels of GDPR awareness in i) the general public, or ii) SMEs?
 - Is this published? Can we access it?
 - What is the desired/target level of awareness?
2. Has the level of awareness changed from the previous legal regime / has the GDPR (has the increased press/media attention) had an impact?
 - What are the levels of awareness of novel elements of the GDPR?
3. How well do you think your authority understands the needs of small and medium enterprises and the issues they face?
 - What are those needs / issues?
 - In what ways are these needs different from large businesses?
4. Do you categorise requests/queries/investigations by size of organisation?
5. Are there particular areas of confusion or uncertainty for SME's in relation to the GDPR?
 - Are there particular areas where SME's are failing to reach a good level of awareness and/or compliance?
 - What is your perception of the incidence of SMEs in the number of investigations and fines issued to them?
 - i. What is the GDPR provision they tend to be investigated or fined on?
 - Are there particular questions that SME's tend to have/ask repeatedly?
 - Do the requests/questions from SMEs differ from those of large organisations? [It may concern quality (e.g., obscure or well-prepared, providing additional context,

hypothetical), scope (concern over one operation/provision/notion, such as ‘adverse effect’ or the overall compliance) and frequency]

6. Does your authority provide any particular/specialised support to SMEs? If so, what type of support?

- Have you developed specific guidance for SMEs?

- i. If yes, can we access it?

- Have you cooperated with, or drawn upon guidance for SMEs produced by other EU DPAs?

- What is your perception of the value of the EC existing guidance to SMEs?

7. What are the key facts and messages that you would wish SME's to know about the GDPR?

8. Are you aware of any other sources of support for SMEs on GDPR?

Part II - Awareness campaigns

Intro: STAR II will be supporting the Hungarian DPA in developing a public awareness campaign

1. What would you consider to be the most effective ways of increasing SME awareness of GDPR?

2. How have you adapted or changed your awareness raising strategies/methods over time?

3. Which of the following modalities has your authority used for awareness raising?

- TV
- Radio
- Print Media
- Social media
- Video
- Other (please describe)

4. STAR II will be supporting the Hungarian DPA, is there anything we should take into account when running an awareness raising campaign for SMEs?

Part III – Hotlines and helpdesks

1. Does your authority operate any sort of helpline, helpdesk or contact for the public? If so can you describe this?

- a. Does your authority operate any sort of specific helpline for SMEs?
- b. How does it work?
- c. What is your standard response time?
- d. How many employees are working on the service?
- e. How many languages are serviced?
- f. How widely used is this service?
- d. Did you consult formally/informally other DPAs before setting up a helpline?
- e. Would you change anything of your helpline if funding and staffing were not issues?

2. Do you have internal guidance documents for these helplines?

- a. If yes, would we be able to see them for best-practices-identification purposes?

3. What is your authority's stance on liability for the answers it gives?

- a. i.e. do you have any formal disclaimer?
- b. Is your staff trained to underline that you are not giving legal advice?

PART IV – handbook

1. STAR II intends to produce a handbook for SMEs on the GDPR – would your authority be willing to comment on it/distribute / make use of this?

2. What are the core questions concerning the GDPR compliance should this handbook address?