



Statutory Inquiries by the DPC



An Coimisiún um
Chosaint Sonraí
Data Protection
Commission



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As mentioned above, under the Data Protection Act 2018 (the 2018 Act), the DPC may conduct two different types of statutory inquiry under Section 110 in order to establish whether an infringement of the GDPR or the 2018 Act has occurred. These are a complaint-based inquiry or an inquiry of the DPC's "own volition". A statutory inquiry essentially consists of two distinct processes — the investigatory process, which is carried out by an investigator of the DPC, and the decision-making process. The decision making process is carried out by a separate senior decision-maker in the DPC who has had no role in the investigatory process, usually the Commissioner for Data Protection.

The objective of any inquiry is to:

- establish the facts as they apply to the matters under investigation in the inquiry;
- apply the facts as found to the provisions of the GDPR and/or 2018 Act as applicable in order to analyse whether an infringement of the GDPR and/or 2018 Act has been identified;
- make a formal decision of the DPC in relation to whether or not there is an infringement; and
- where an infringement has been identified, make a formal decision on whether or not to exercise a corrective power, and if so, which corrective power¹.

During the investigatory process of an inquiry, authorised officers may be appointed by the DPC and they may exercise a range of investigatory powers under the 2018 Act in the context of an inquiry. In addition to the general power to issue an information notice compelling the provision of specified information to the DPC, an authorised officer has a broad range of investigatory powers at his/her disposal enabling them to gather relevant information, documents and materials². These include powers of entry, search and inspection of premises, equipment, documents and information, the removal and retention of documents and records, and requiring information and assistance to be provided to them in relation to access to documents and records and equipment. There is also a power to apply to the District Court for a warrant to enter a premises in order to exercise the authorised officer powers.

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- 1 Corrective powers include imposing an administrative fine (not applicable for infringements of the LED), issuing a warning, a reprimand, a temporary or definitive ban on processing or a suspension of international data transfers or a direction to bring processing into compliance, amongst others.
 - 2 In the context of an existing inquiry, the DPC may also launch a statutory "investigation" under Section 137. A Section 137 investigation carries specific additional investigatory powers, such as the power of the authorised officer conducting it to hold an oral hearing. To date the DPC has not commenced any Section 137 investigations.

General description of the phases of a statutory inquiry

Set out below in high level terms is a description of each phase of a statutory inquiry by the DPC where the DPC is acting as lead supervisory authority in relation to a cross-border processing issue, and a complaint has been lodged with the DPC directly, or the DPC has commenced an inquiry of its own volition.

This description is not binding on the DPC but is for general illustrative purposes only, showing the provisional sequencing of phases in an inquiry. It is not determinative of the precise steps which will be followed in each inquiry, which will depend on the nature, circumstances, scope and subject matter of the inquiry. The first wave of DPC inquiries under the GDPR and 2018 Act are currently ongoing but will be completed during 2019. As such, the provisional sequencing set out below, may be subject to changes arising from the crystallisation of the inquiry process, at both national and EU level, in those cases.

In part, this description is intended to demonstrate that it is not possible for the DPC to summarily apply fines or any other corrective powers. The conduct of an inquiry by the DPC must be in accordance with due process and fair procedures.

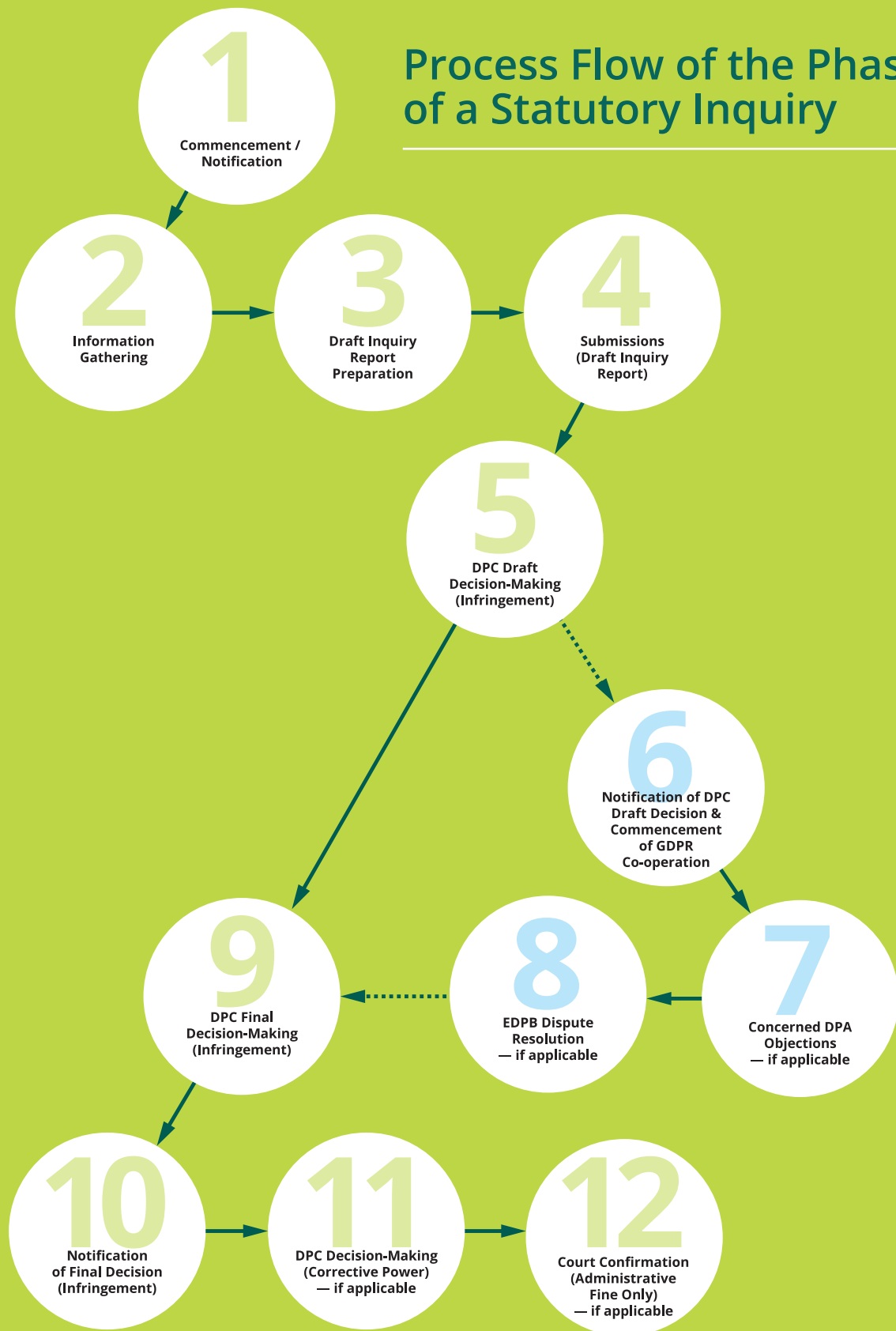
Inquiry phases for illustration purposes:

1. Commencement/ notification phase
 - Scope determination
 - Notification to controller/processor of inquiry commencement
 - Issuing of preliminary questions
2. Information gathering phase
 - DPC investigator gathers all relevant information/ documents/ materials from the parties — may be iterative.
3. Draft inquiry report preparation phase
 - DPC investigator completes consideration of information/ documents/ materials and factual and legal analysis and drafts inquiry report
 - Draft inquiry report sets out (a) findings of fact (b) application of the law under the GDPR and/or the 2018 Act to the findings of fact, and (c) draft findings, giving reasons for them, as to whether or not there has been one or more infringements of the law by the controller/ processor. The draft inquiry report will not comment on the application of corrective powers.

4. Submissions phase (draft inquiry report)
 - DPC investigator issues draft inquiry report to the parties
 - Parties make submissions on draft inquiry report
 - Investigator considers submissions and prepares finalised inquiry report for DPC decision-maker
5. DPC draft decision-making phase (infringement)
 - DPC decision-maker considers inquiry report
 - If deficiencies in investigation procedure or outstanding issues identified, DPC decision-maker remedies these
 - DPC decision-maker makes a “draft decision” (the DPC draft decision) in relation to whether there has been one or more infringements of the GDPR and/or 2018 Act.
6. Notification of DPC draft decision & commencement of GDPR co-operation phase
 - DPC decision-maker notifies DPC draft decision to other concerned EU data protection authorities (DPAs) via the IMI platform
7. Concerned DPA objections phase — if applicable
 - DPAs may raise any “relevant and reasoned objection” to the DPC draft decision
 - DPC decision-maker considers any such objections and may revise the DPC draft decision
8. EDPB Dispute Resolution phase — if applicable
 - EDPB dispute resolution triggered if DPC decision-maker considers it cannot implement a concerned DPA objection
- EDPB votes by majority on subject matter of any “relevant and reasoned objection”
- EDPB decision adopted by DPC decision-maker and DPC Draft Decision is revised, as required, under phase 9 below
9. DPC final decision making (infringement) phase
 - DPC decision is finalised
10. Notification of final decision (infringement) phase
 - Final DPC decision notified to parties, including any decision of the EDPB dispute resolution phase
 - Right of appeal by either party against the final decision
11. Decision-making phase (corrective power) — if applicable³
 - DPC decision-maker decides what corrective powers including administrative fines apply
 - May invite, if relevant, submissions of parties
 - Decision on corrective power notified to the parties
 - Right of appeal by controller/ processor against decision on corrective power
12. Court confirmation phase — if applicable (administrative fine only)
 - If administrative fine not appealed by controller/ processor within 28 days, DPC applies to the Irish Court to confirm fine

3. Phase 10 and 11 may occur as one combined phase.

Process Flow of the Phases of a Statutory Inquiry



Note: Solid line indicates sequence of national level steps and dotted line indicates pathway to and from EU/EDPB level, where applicable.

Notes

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