

Data Protection Commission

Resource Allocation Audit

January 2022



KOSI
Corporation

CONTENTS

Acronyms	3
1. Introduction and Background	4
2. Audit Methodology	6
3. Current Situation	6
3.1 Financial Data	7
3.2 Staffing	8
3.3 Reported Activity	8
3.4 Statutory Inquiries	12
3.5 Performance Management Information	13
4 Organisation Structure	15
5 Comparative analysis – Regulatory Bodies in Ireland	17
5.1 Office of the Comptroller & Auditor General (OCAG)	17
5.2 The Commission for Communications Regulation (Comreg)	17
5.3 The Competition and Consumer Protection Commission	18
5.4 The Garda Síochána Ombudsman Commission (GSOC)	19
5.5 National Comparative Table	21
6 Analysis of comparative regulatory bodies in Europe	23
7 Conclusions	27
8 Recommendations	31
9 Acknowledgement	33
Appendix 1 – Statement of Responsibility	34

Acronyms

DPC – Data Protection Commission.

EDPB – European Data Protection Board

IIA – Institute of Internal Auditors

SLA – Service Level Agreement.

DPER – Department of Public Expenditure and Reform.

CNIL – Commission nationale de l'informatique et des libertés

Comreg –The Commission for Communications Regulation

GSOC – The Garda Síochána Ombudsman Commission (GSOC)

CCPC – The Competition and Consumer Protection Commission

OCAG – The Office of the Comptroller and Auditor General

1. Introduction and Background

KOSI has been assigned to carry out an audit of resource allocation for DPC taking account of the risks arising from a changing demand and legal context impacting on the DPC. The audit has reflected on structure, numbers of staff and the efficacy of the current organisational model in the light of those risks while also considering the structures of peer and analogous bodies.

DPC has evolved from less than 30 staff and a financial allocation of €1.7m in 2014 to an organisation with a financial allocation of €19.1m in 2021 and a staffing complement of 195 in place by the end of 2021 with an approved complement of 225.

The organisation has indicated it faces a number of risks including increasing reputational risk associated with the time required to complete the investigation of inquiries assigned and because of the complexities and variance in the time it takes to complete cases under the GDPR and Data Protection Act 2018. As a result, from the DPC's perspective it is confronted with the following challenges;

- a) not meeting its customer service objectives
- b) increasing strain on internal resources and a growing and larger number of open cases
- c) reputational damage
- d) increasing cases being subject to judicial review and or other legal action

There is a strong sentiment within the organisation that the organisational model that has evolved has resulted in overload of senior posts that risk non delivery and that capacity for strategic management has been diminished. There is a feeling that the current model may no longer be fit for purpose.

The uncertainty arising from the possible division of the role of the Commissioner has also been identified by DPC as a further risk.

From the organisation's perspective, the risk of business failure or unacceptable business performance is exacerbated by the legal and business context. This includes transformation of demand volumes post GDPR, DPC's role as lead supervisory authority of multi-national companies in Ireland and the developing legal framework including responsibilities and regulations related to the e-Privacy Directive. Separately, DPC now also has appropriate authority status.

The following are the highest risks on the DPC Risk Register:

- Reputational risk associated with the time required to complete the investigation stage of those inquiries assigned.
- Failure to secure and retain adequate funding for regulatory and operational work, and to obtain sanction for key items of expenditure, will impact on the organisation's ability to achieve strategic objectives and meet obligations under governing legislation.

The need for an audit which considered resource risk was examined and supported by the ARC.

The organisation has noted that while a need for additional staff numbers and financial allocation has previously been identified as a mechanism to alleviate risk, given the resource expertise required by DPC there is a lead time in securing the level and expertise of resource that is needed.

The objective of this audit is to review the current resource allocation model and to assess if there are value for money (VFM) improvements that could be made to this model. VFM is measured and assessed in terms of the economy, efficiency and effectiveness with which a body discharges its remit and meets its corporate objectives.

The scope of the audit has included consideration of demands on DPC in terms of volumes and caseload, the current organisation structural model, resource allocation, gap and any perceived deterioration in the risk model. While the scope does not include for an audit of skills it has included consideration of organisational pathway and actions required to optimise VFM in the delivery of DPC's remit and the minimisation of risk.

2. Audit Methodology

The audit approach was review and test based, based on Internal Audit Standards (IAS's) issued by the Institute of Internal Auditors (IIA).

A number of webex meetings were held, a number of management documents were provided by DPC and comparative research and information was derived in relation to comparative bodies.

Scope Limitation

Due to the COVID 19 pandemic, there was no physical visit to DPC offices, no physical records were reviewed or assessed on-site. The audit was completed remotely using electronic / digital communications. It has been noted in the report where this has impacted on our review.

3. Current Situation

Prior to 25 May 2018 the DPC existed as the office of the Data Protection Commissioner.

Part 4 of the Data Protection Act 2018 transferred all property, rights and liabilities of the former office of the Data Protection Commissioner to an independent budget holding body, the DPC.

The DPC is the national independent authority in Ireland with responsibility for upholding individuals' rights to data protection and regulating the many organisations based in Ireland that process personal data in the course of their business. Data regulation is a key corporate consideration and factor in business location decision making.

The DPC's functions and responsibilities have been expanded into a data protection authority with an EU-wide remit. The DPC has become responsible for regulating the many global technology multinationals with European headquarters in Ireland and for upholding the data protection rights of Irish and EU users of services provided by these firms.

As a result of the DPC's enhanced remit, its budget and staffing numbers have grown significantly and the DPC's workload continues to grow, arising from GDPR regulations, the Data Protection Act 2018, the Law Enforcement Directive and EU ePrivacy legislation. DPC has also had to respond to additional consultations under Article 36, for example, to address issues relating to COVID-19 and in a wider context increased workload has arisen following

Brexit including responsibilities as Lead Reviewer in relation to cases involving Binding Corporate Rules.

DPC has noted the transformative impact on it when, ‘the 25 May 2018 brought immeasurable change to the remit of the Irish Data Protection Commission bringing, as it did, the numerous large-scale multinational companies who are headquartered in Ireland within the regulatory scope of the DPC.’ They noted that, ‘subsequent to the implementation of the GDPR, the DPC now acts as Lead Supervisory Authority for such entities as Facebook, WhatsApp, Twitter, MTCH, LinkedIn and Google; in accordance with the One Stop Shop mechanism of the Regulation.’

DPC has identified its primary corporate risk as the risk of failure to secure and retain adequate funding for regulatory and operational work, and to obtain sanction for key items of expenditure which would impact on the organisation's ability to achieve strategic objectives and meet obligations under governing legislation.

The strategic goals of the DPC’s Regulatory Strategy 2022 – 2027 are noted; 1. regulate consistently and effectively 2. safeguard Individuals and promote data protection awareness 3. prioritise the protection of children and other vulnerable groups 4. bring clarity to stakeholders 5. support organisations and drive compliance.

3.1 Financial Data

The following is a note of comparative DPC spend in the last 3 years compared to organisation initiation in 2014 (€1.7m).

Year	2019	2020	2021
Annual spend €M	10.4	12.2	*14.757

*Outturn Split: Pay expenditure €9.326M (Budget €12.764M) and non-pay expenditure €5.431M (Budget €6.364M). Overall year to date underspend was €4.37M.

The agreed budget for DPC for 2022 is €22.23M.

3.2 Staffing

Below, we have provided details of staff numbers in the last 4 years compared to organisation initiation in 2014 (<30 employees).

Year	2018	2019	2020	2021
Staff Numbers	90	138	151*	195*

*The above figures include temporary staff.

3.3 Reported Activity

The 2020 DPC Annual Report included the following performance statistics:

Year	2019	2020
Cases	9,337	10,151
Individual Complaints Received	6,904	4,660
Breach Notifications	6,255*	6,628

*Statistics provide by DPC Operational Performance Unit.

2019

The 2019 DPC Annual Report included the following performance statistics:

Total Complaints received was 7,215, with the largest single category being “Access Rights”, counting for 29% of total complaints received.

6,904 complaints were dealt with under GDPR and 311 complaints under the Data Protection Acts 1988 and 2003.

Of the 6,904 GDPR-related complaints received, 1,252 complaints were actively being assessed on 31 December 2019, 1,098 complaints had proceeded to complaint-handling and 4,554 had been concluded.

5,496 complaints in total were concluded in 2019 and the DPC had 2,582 complaints on hand at year-end. 620 complaints were also concluded under the Data Protection Acts 1988 and 2003.

2020

The following information was reported in the DPC Annual Report 2020.

The DPC handled a total of 10,151 cases in 2020, up 9% on 2019 figures (9,337).

The DPC received 4,660 complaints from individuals under the GDPR. Overall, the DPC concluded 4,476 complaints, including 1,660 complaints received prior to 2020;

The DPC continued to reduce conclusion times for cases (average days taken to conclude a case reduced by 53% since the GDPR came into application);

Total valid breach notifications received in 2020 was 6,628.

Breach notifications were up 10% on 2019 figures.

Of the total recorded breach cases, 90% were concluded in 2020 (5,932 cases).

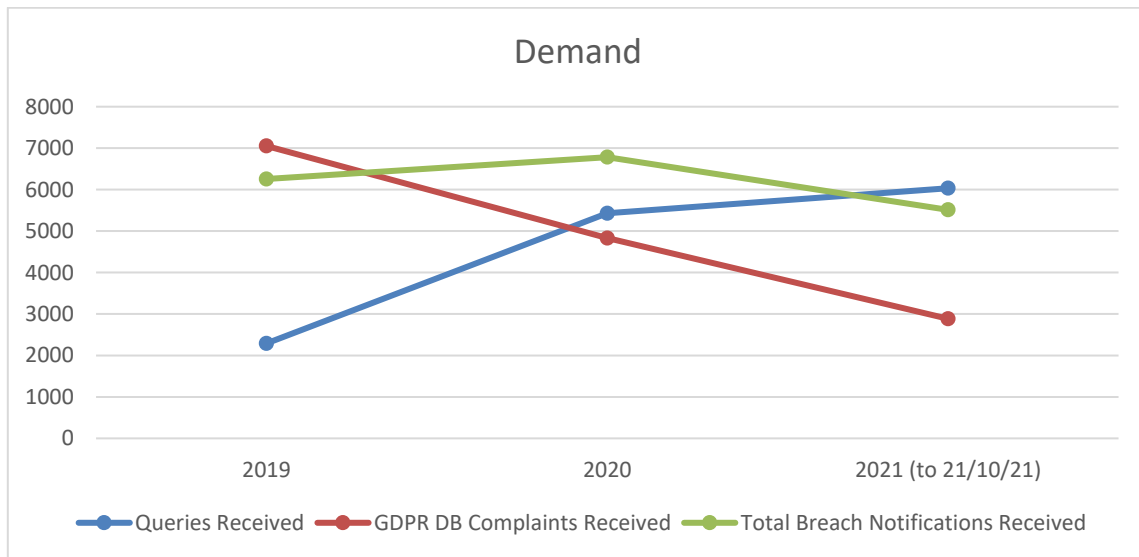
At the end of 2020 DPC had 83 statutory inquiries open compared with 70 in 2019. Of this total, 27 were cross-border related.

2021

DPC's Operational Performance Unit has provided the following comparative data based on information relating to 2019, 2020 and 2021 (up to 21 October). Based on this information there is an indication that demand in respect of key operational output areas is plateauing.

The following table and related diagram are noted:

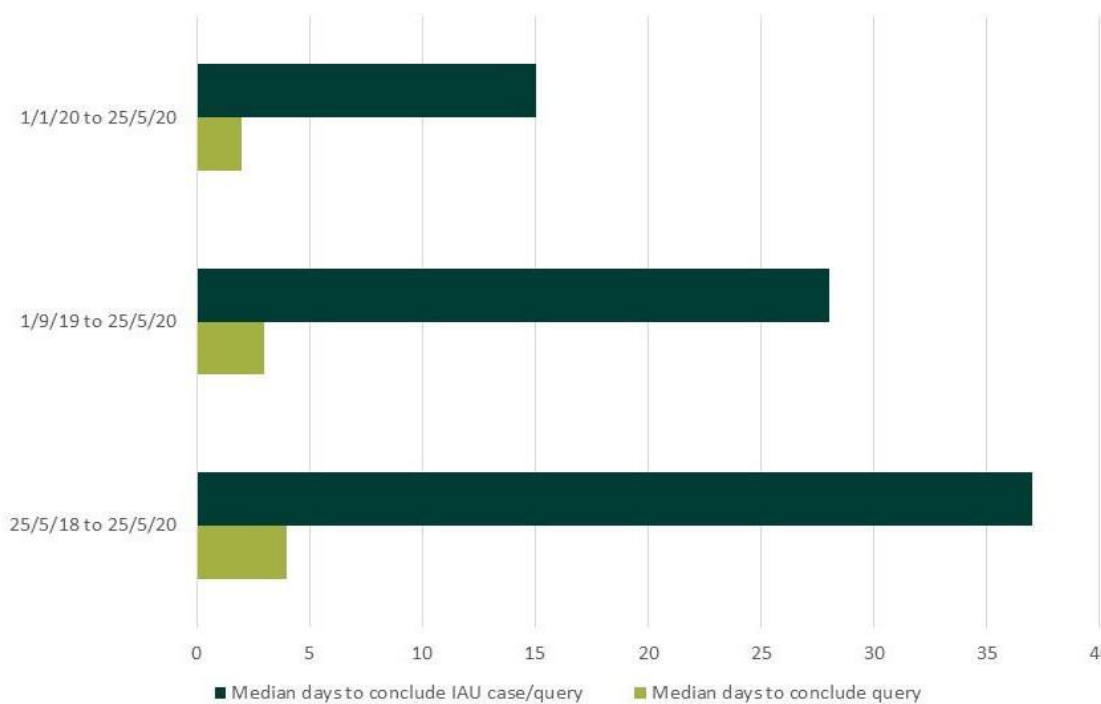
Demand	2019	2020	2021 (to 21/10/21)
Queries Received	2291	5430	6033
GDPR DB Complaints Received	7052	4831	2885
Total Breach Notifications Received	6255	6782	5512



DPC Ireland report 2018 -2020 on ‘Regulatory Activity Under GDPR’

In the DPC Ireland report 2018 -2020 on ‘Regulatory Activity Under GDPR’ the following is noted:

Response Times



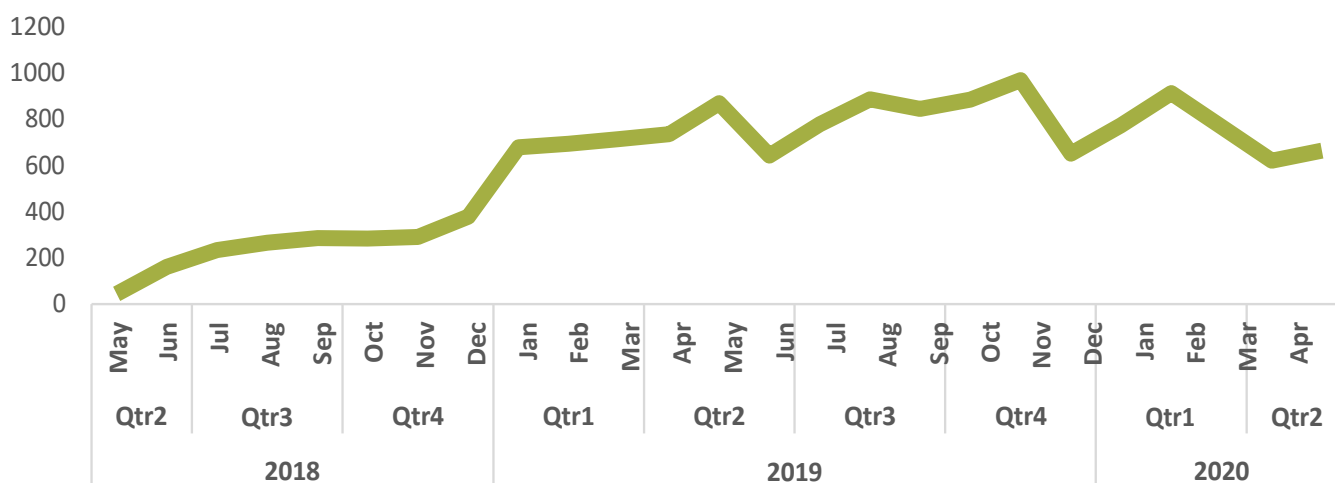
The DPC has pointed out that response times vary on a case-by-case basis. The table above demonstrates a positive reduction in the time taken for cases resolution/conclusion. The DPC was able to demonstrate a downward trend in conclusion times for cases with the average days taken to conclude a case or query down 53% over the first 24 months of GDPR. This reduction in response times correlates with the increase in resource allocation to DPC.

Statistic	25/5/2018 to 25/5/2020	1/9/2019 to 25/5/2020	1/1/2020 to 25/5/2020
Average days to conclude DPC	49	35	26
Median days to conclude DPC case/query	37	28	15
Average days to conclude	17.6	13.6	10.3
Median days to conclude query	4	3	2

Additionally the DPC Ireland report 2018 -2020 on ‘Regulatory Activity Under GDPR’ tracked the number of cases by received date between 2018 and the end of quarter 2 2020.

The table below demonstrates a plateauing in the volume of cases received.

Cases (including queries) by Received Date



DPC invests significant resources in enhanced preventative and educational programmes. These programmes will have an impact on case volume impact on DPC.

The impact of significant events such as ransomware attacks and other cyber security breaches is difficult to predict but these and other challenges must be planned for in establishing the resource model for DPC in order that DPC can respond to surges in demand.

3.4 Statutory Inquiries

Separately the DPC invests significant resources in statutory inquiries.

While caseload volume is a key driver and indicator of resource requirement, in determining the resource needs of the DPC, it is also important, separately to factor in the resource impact of Statutory Inquiries including such Inquiries that are of a cross border nature.

As there is a growing history and experience of the extent of inputs required to resource Inquiries, subject to the DPC having the systems in place to track these inputs, the organisation should be able to better plan and budget for resource needs in this specialist area going forward. The interpretation from our discussions is that given the complexity of issues arising in the area of Inquiries they demand the deployment of more senior, experienced and expert personnel.

In addition, our understanding is that given the increase in volume and complexity of legal cases in which the DPC is involved there is an increasing reliance on external legal resources to support the DPC in Statutory Inquiries.

Number of Statutory Inquiries

Year	2018	2019	2020	2021
Number of Active Statutory Inquiries	15	70	83	84 (Currently live)

The DPC has commenced 100 Inquiries since 25 May 2018 (35 Cross-border Inquiries and 65 National Inquiries).

Of these 100 inquiries 16 have been concluded; 14 Inquiry Decisions have been issued (2 Cross-border inquiry decisions and 12 National inquiry decisions) and 2 Cross-border inquiries have been cancelled/withdrawn.

Of the 84 Inquiries that have not yet been concluded, 31 are Cross-border inquiries and 53 are National inquiries.

3.5 Performance Management Information

The DPC's Operational Team is developing performance management information. The current performance management information is limited.

Efficiency

While average days and median days to close queries and complaints is tracked, the methodology used does not incorporate resource inputs consumed in transitioning queries and complaints from 'open' to 'concluded'.

For example, for GDPR complaints the logic used to calculate days to close is a formula which counts the calendar days between Date Received and Date of Status where Status is equal to '*concluded*'. The median and average are then calculated on these figures. As there is no relationship between inputs and outputs tracked in this formula, the average or median elapsed time from receipt to closure can only provide an indication of efficiency particularly given increase in resources and capacity of the DPC.

While case complexity differs from case to case, given the volume of cases it is considered reasonable to assume a smoothing of average cases to allow performance comparisons to take place year on year. Going forward, to measure efficiency, it is necessary to track inputs as well as outputs in terms of average and median time to conclusion and average and median resources consumed per case. In order to do this, the tracking of input time per case becomes necessary.

The importance of median as a measure is highlighted by DPC's Operational Performance Division. As auditors we agree with this perspective as long running quasi dormant cases can distort performance measures.

Performance information maintained by Operational Performance has been reviewed. Information included therein points to continuing high open cases at period ends in both the

Information Unit and Assessment Unit and a requirement for additional resources in these areas to address backlog. The following is noted:

Month Ending	Jan 21	Feb 21	March 21	April 21	May 21	June 21	July 21	Aug 21	Sept 21	Oct 21	Nov 21
Information Unit – open cases	1054	1416	1691	1733	1645	1689	1447	1469	1161	876	1063
Assessment Unit – open cases	823	759	739	825	806	857	918	929	951	950	942

In addition to comparing metrics year on year, an important aspect of the resource management framework is to establish target inputs and to compare with actual inputs. These targets may initially be target average and/or target median inputs and target turnaround times. The development of and measurement against targets is an important aspect of providing assurance in terms of efficiency (inputs/outputs) and related turnaround times.

A further analysis of efficiency can be derived by analysing all costs, both direct and indirect associated with DPC case outputs. An activity-based costing analysis model could provide this information. Such an analysis will involve devising a methodology for attributing overhead costs including HR, Finance administration et al against the outputs of the DPC. Such an exercise can be carried out each year with cost efficiency comparisons possible by looking at the whole cost model.

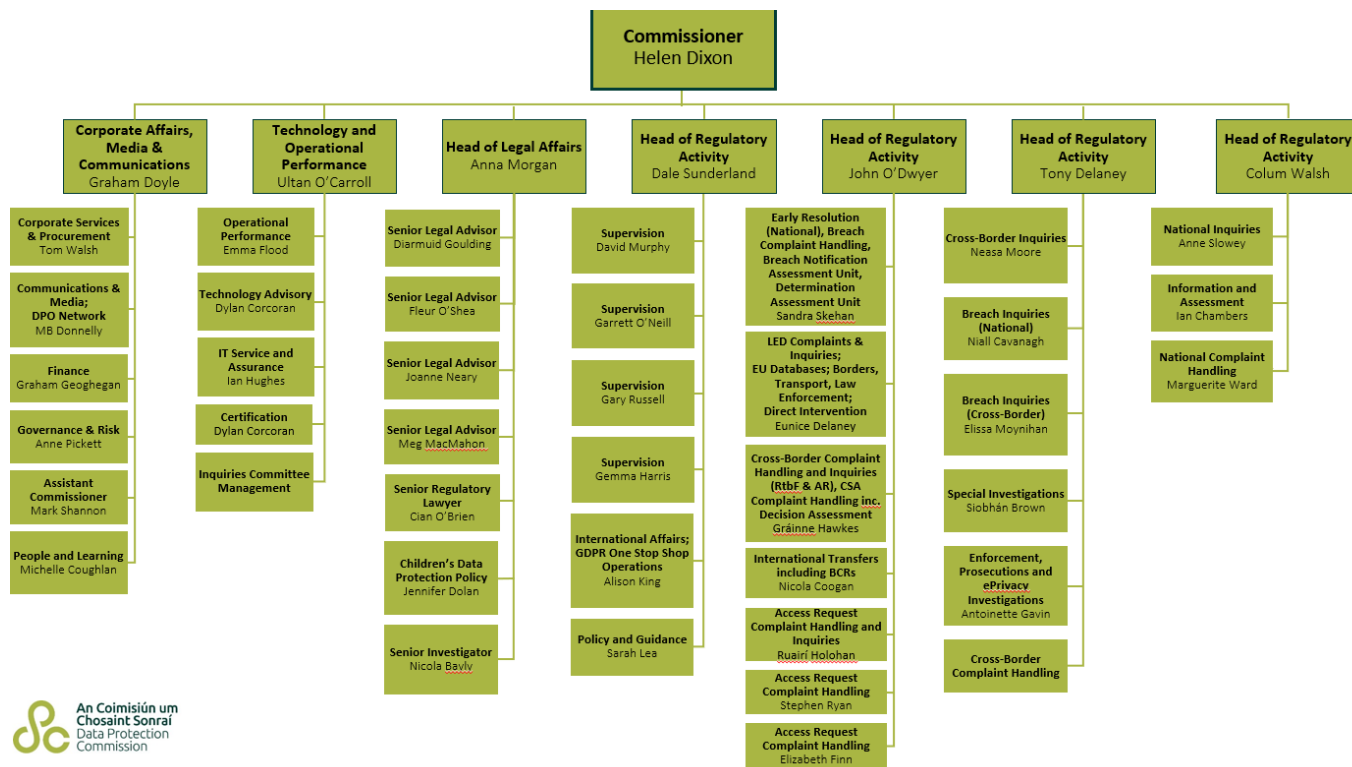
DPC's finance function has an important role to play in supporting developments in the above areas.

Effectiveness

Measures of effectiveness include the outcome from inquiries. Ironically, a reduction in case numbers could be an indication of effectiveness if it is supported by the results of relevant surveys relating to DPC messaging.

4 Organisation Structure

The current organisation structure of the DPC is as follows:



The following is noted;

- The Post of the Commissioner is currently graded at Assistant Secretary (AS) grade
- Deputy Commissioner posts (7) are currently graded at Principal Officer (PO) grade
- There is budget coverage for an additional Deputy Commissioner post (PO)
- Assistant Commissioner Posts (40) are currently graded at Assistant Principal (AP) grade
- There is approval for 2 (new) Director posts

A complement of 145 staff plus 6 temporary employees were in place in DPC by year ending December 2020.

A combination of 190 full time staff plus 5 temporary employees are in place in DPC in December 2021 as per the table below:

Roles/ Responsibilities	Commissioner	PO	AP	HEO	AO	EO	CO	TOTAL
Number of Staff	1	7	38	57	5	53	29	190

A complement of 291 staff was proposed as part of DPC's budget submission for 2022.

Roles/ Responsibilities	Commissioner	PO	AP	HEO	AO	EO	CO	Seconded National Expert	TOTAL
Number of Staff	1	11	51	103	13	77	34	1	291

Following receipt of its budget allocation for 2022, the DPC has re-profiled its staff numbers and anticipates that staff numbers will be 258 by the end of 2022.

Roles/ Responsibilities	Commissioner	Director	PO	AP	HEO	AO	EO	CO	Seconded National Expert	TOTAL
Number of Staff	1	2	14	49	81	7	71	32	1	258

5 Comparative analysis – Regulatory Bodies in Ireland

Comparative analysis has been carried out of comparator regulatory organisations in Ireland and between the DPC and those organisations. The following organisations were looked at:

- The Commission for Communications Regulation (Comreg)
- The Garda Síochána Ombudsman Commission (GSOC)
- The Competition and Consumer Protection Commission
- The Office of the Comptroller and Auditor General

The following items were compared:

- Expenditure
- Staffing Level
- Top Structure
- Grading of organisation's tier 1
- Grading of organisation's tier 2

5.1 Office of the Comptroller & Auditor General (OCAG)

The following is noted regarding OCAG:

- ▶ It is the Office of the Comptroller and Auditor General
- ▶ The Auditor General post is enshrined in legislation and salary is historically equated with that of a Secretary General
- ▶ €14.3M Operational Spend (AFS 2020)
- ▶ 180 employees (AFS 2020)
- ▶ The Auditor General is supported by three Directors of Audit – grades equivalent to Assistant Secretary

5.2 The Commission for Communications Regulation (Comreg)

The following is noted in relation to Comreg:

- ▶ It is a Regulatory Body
- ▶ There is a Commissioner Chair as per the legislation and two Commissioners
- ▶ There is a Leadership Group of six Directors supporting the Commissioner Group
- ▶ There is a salary structure up to €230k -240k with 34 employees > €100k
- ▶ Commissioner salaries are equivalent to Secretary General and Under Secretary General (€180k, €163k, €163k) based on 2020 AFS
- ▶ 136 employees (2020 AFS)

- ▶ 2020 operational spend: €26.7M (2020 AFS)
- ▶ The Commission receives income from a number of sources including levies, licencing fees and spectrum income

5.3 The Competition and Consumer Protection Commission

The following is noted regarding CCPC:

- ▶ It is a Regulatory Body
- ▶ It was set up in 2014 following amalgamation of Irish Competition Authority and National Consumer Agency
- ▶ There is a Leadership Group – Chair and three members (one temporary). The legislation provides for a CEO
- ▶ 119 employees (2020 AFS)
- ▶ 2020 spend: €15.2M (2020AFS)

In the main, Civil Service grades and pay-scales apply to CCPC staff save for the Case Officer grade which is an amalgamation of the Admin Officer and Assistant Principal Officer scale. See below:

Grade	Number at grade	Relevant circular
Chairperson	1	Salary for this position is determined by DPER and position-specific
Member	3	Salary for these positions determined by DPER and position-specific
Principal Officer	9	Principal Officer – see Circular 09-2021
Assistant Principal (Higher)	4	Assistant Principal (Higher) – see Circular 09-2021
Assistant Principal Officer	13	Assistant Principal Officer – see Circular 09-2021
Case Officer	14	Case Officer – (see Revised Case Officer Scales)
Higher Executive Officer	21	Higher Executive Officer – see Circular 12-2020

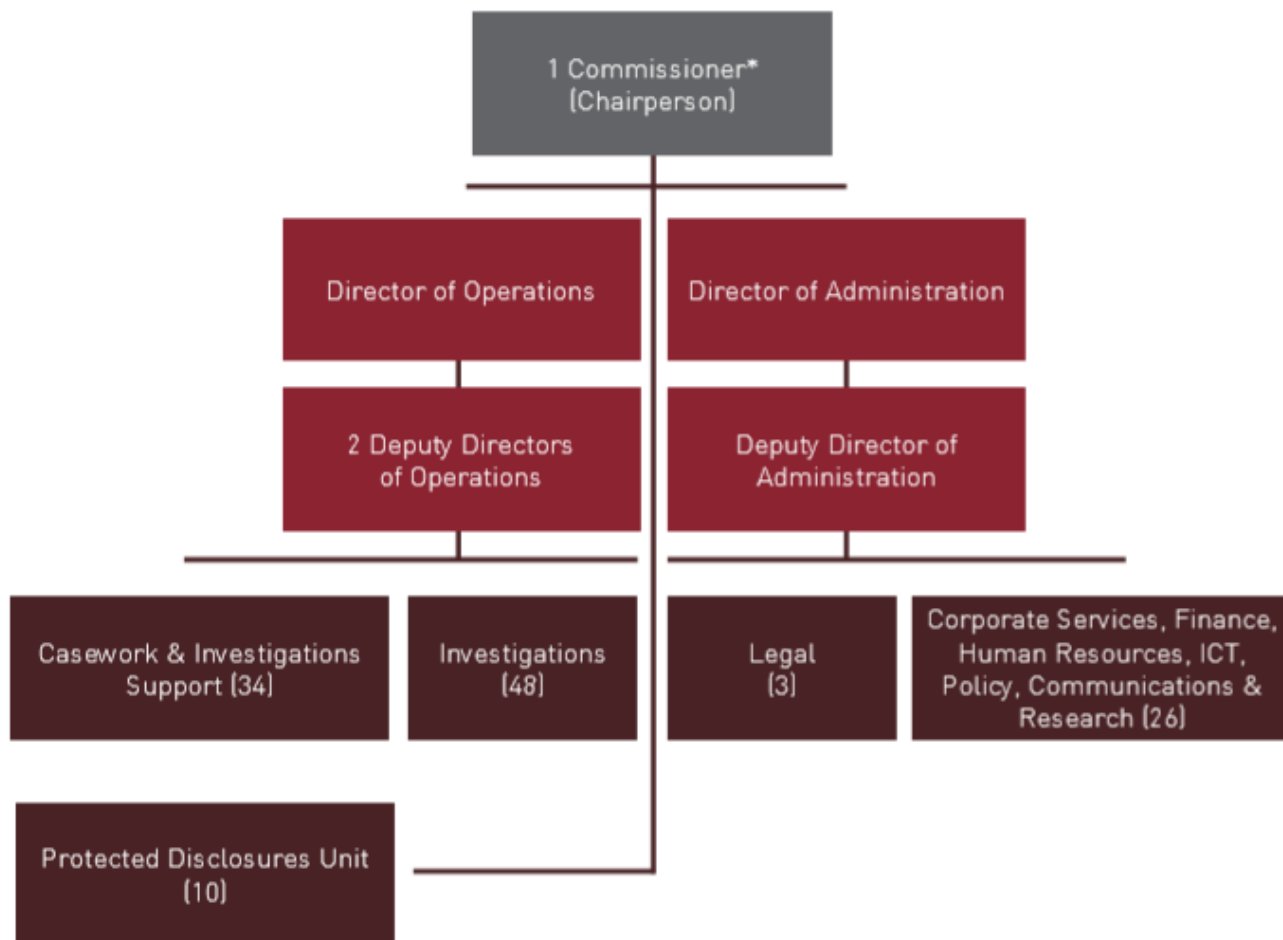
Grade	Number at grade	Relevant circular
Administrative Officer	1	Administrative Officer – see Circular 12-2020
Executive Officer	20	Executive Officer – see Circular 12-2020
Clerical Officer	2	Clerical Officer – see Circular 12-2020
Service Officer	1	Service Officer – see Circular 12-2020

5.4 The Garda Síochána Ombudsman Commission (GSOC)

The following is noted in relation to GSOC:

- ▶ It is a Regulatory Body
- ▶ There are three Commissioners, one of whom is Chair. (It is understood that instead of a three-person commission, change is being considered that will result in a single ombudsman, giving GSOC a more publicly identifiable leader).
- ▶ There is a Leadership Group of Director of Operations, Head of Legal, Director of Administration.
- ▶ 127 employees (2020 Annual Report)
- ▶ 2020 spend: €11.1M (2020 AFS)

GSOC has presented its organisation structure in December 2020¹ as follows:



¹ There was only one Commissioner at the end of year as the Term of Appointment for two Commissioners concluded on 11 December 2020 and the appointment process for new Commissioners was underway.

5.5 National Comparative Table

A summary table of 2020 comparative data is noted below:

	Comreg	GSOC	CCPC	OCAG	DPC
Expenditure	€26.7M	€11.1M	€15.2M	€14.3M	€12.2M
Staffing level	136	127	119	180	151 Including contingency (195 in 2021)
Top structure	Commission Chair plus 2 Commissioners plus leadership Group of Six	Commission Chair plus 2 Commissioners	Chair plus 3 additional members	AG plus 3 Directors of Audit	Commissioner plus 7 Deputy Commissioners
Grading Equivalents of Tier 1	Remuneration above Sec Gen	Sec Gen	Deputy Sec Gen ²	Sec Gen	Ass Sec
Grading Equivalents of Tier 2	Remuneration above Deputy Sec Gen	Ass Sec	Ass Sec	Ass Sec	Principal Officer

The following comparative comments are made.

- The tier 1 grading in DPC is the lowest of comparative tier 1 grades.
- The tier 2 grading in DPC is the lowest of comparative tier 2 grades.
- Comparative staffing numbers are highest in DPC using 2021 staffing numbers and projected to be even higher comparatively in 2022.
- All comparative bodies, year on year have a single leader role (notwithstanding that in some bodies that leadership role rotates).

² Our understanding is the salary of the Chairperson is equivalent to Deputy Secretary General

KOSI would make the following additional comments:

- The number of Deputy Commissioners (7) reporting to the Commissioner is too many to optimise chain of command effectiveness. We have been advised a further Deputy Commissioner post is to be filled in 2022
- In some cases the number of Assistant Commissioners reporting to Deputy Commissioners is too many to optimise chain of command effectiveness

The grading structure of the DPC has been in place since data protection legislation was first introduced to Ireland in 1988. The changed remit of the DPC from a small domestic regulator to its current leading European role under the GDPR has not been reflected in the organisational structure of the DPC.

The original budget of €1.7M represents 7.3% of DPC's 2022 budget allocation.

DPC enters 2022 as its own appropriate authority with a current workforce of 195 and target complement of 258. It has concluded 16 statutory inquiries with 84 remaining open, one inquiry of which resulted in a proposed fine to WhatsApp of €225m.

Examples were noted by the auditors of senior staff carrying out duties which are more appropriately carried out at a delegated level and when time available and responsibility are incompatible with the breadth of designated brief.

6 Analysis of comparative regulatory bodies in Europe

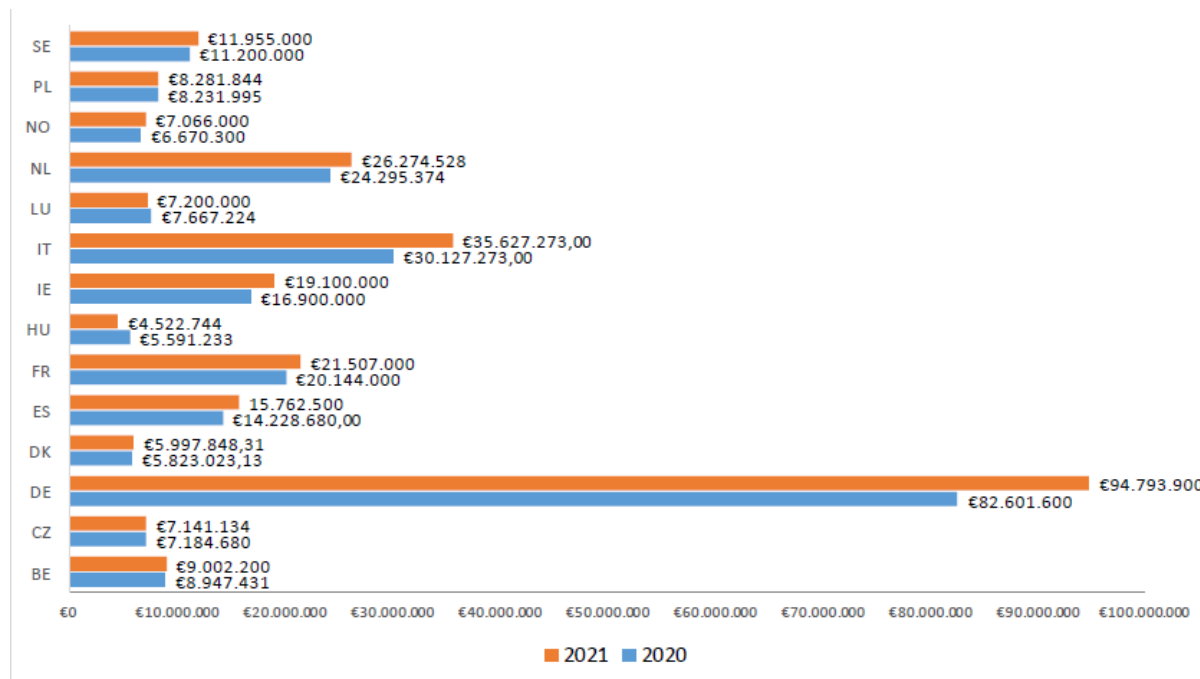
In the EDPB’s annual report 2020 the following was noted:

“In the context of the evaluation of the GDPR, the EDPB conducted a survey among the SAs about their budget and staff. Based on information provided by SAs from 30 EEA countries before February 2020, an increase in the budget for 2020 was envisaged in 26 cases. In respect of the remaining four SAs, three forecasted no change and for one no data was available. According to the same survey, a majority of SAs (23) anticipated an increase in staff numbers in 2020. Five SAs forecast that the number of their employees would not increase from 2019 to 2020, while two SAs predicted a decrease in staff numbers. Differences in personnel requirements across SAs are to be expected, given the varied remits of the SAs.”

The table overleaf is drawn from an EDPB report, “Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities.”

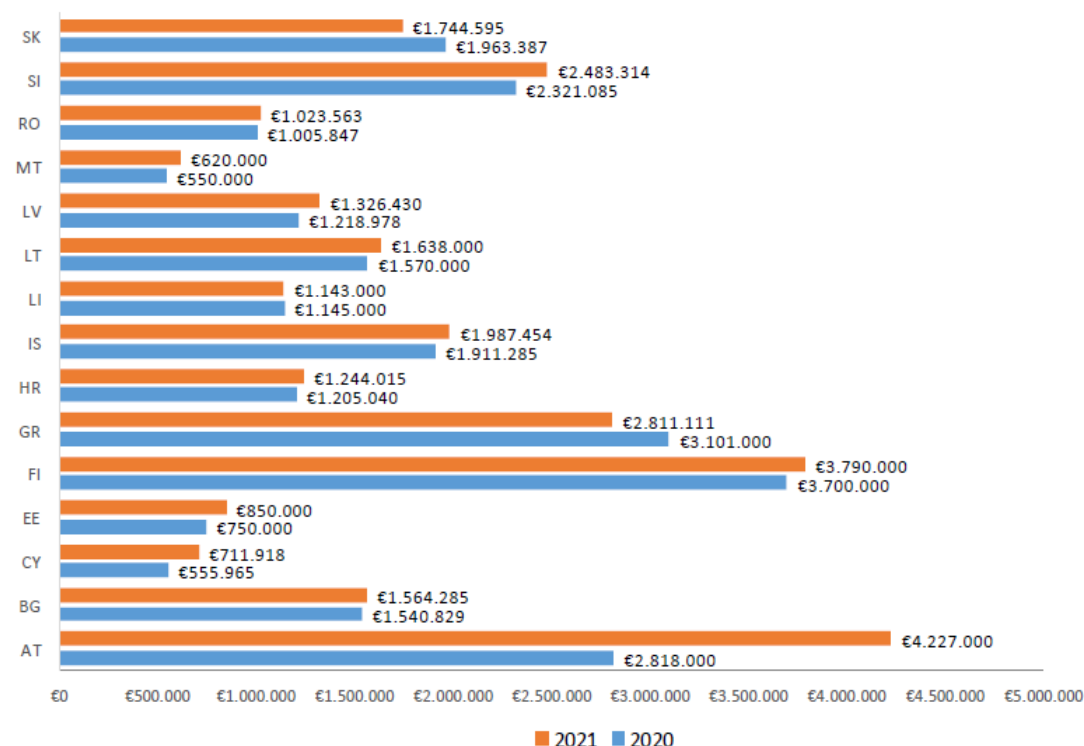
Country	Population M	Organisation	2020 Staff No.	2021 Staff No.	2020 Budget €M	2021 Budget €M	2021 Budget per capita€
France	67.39	CNIL	225	245	20.1	21.5	0.22
Holland	17.19	Autoriteit persoonsgegevens	180	175	24.3	26.3	1.53
Ireland	5.01	Data Protection Commission	145	175	16.9	19.1	3.81
Denmark	5.82	Data Protection Agency	60	60	5.8	6	1.03
Belgium	11.66	Data Protection Authority	67	67	8.9	9	0.77
Sweden	10.19	Authority for Privacy Protection	91	95	11.2	12	1.18
Italy	60.33	Data Protection Authority	134	133	30.1	35.6	0.59
Luxembourg	0.64	National Data Protection Commission	53	54	7.2	7.7	12.03
Austria	8.93	Data Protection Authority	40	45	2.8	4.2	0.47

Detailed analysis carried out by the EDPB is identified below:

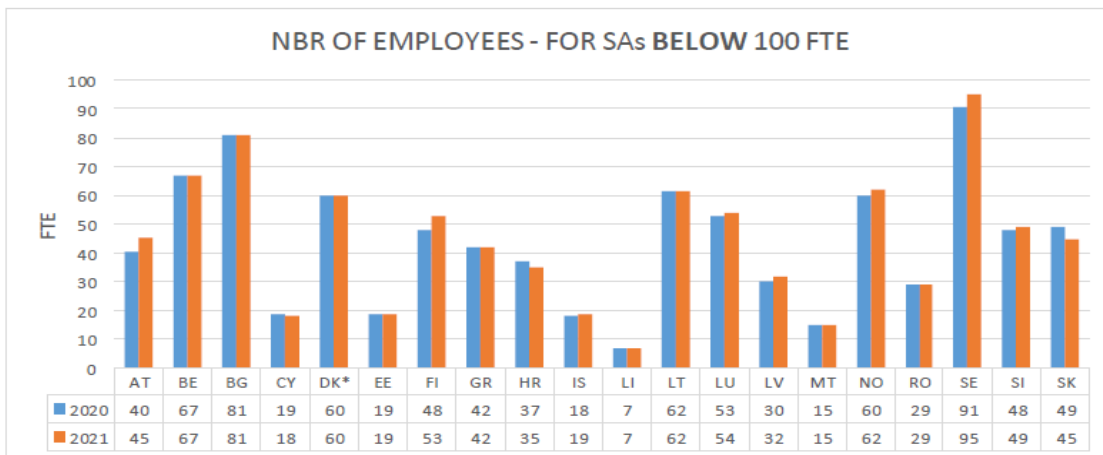
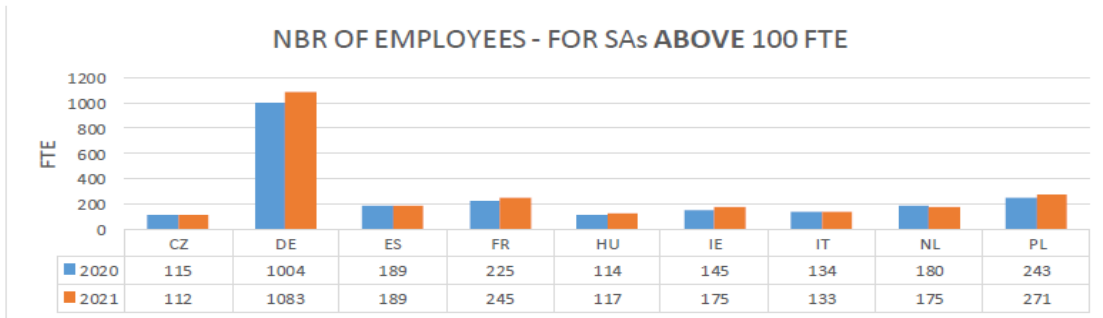


NL: It should be noted that the expected budget for 2022 constitutes 19.075.000 million (situation as of mid-July 2021).

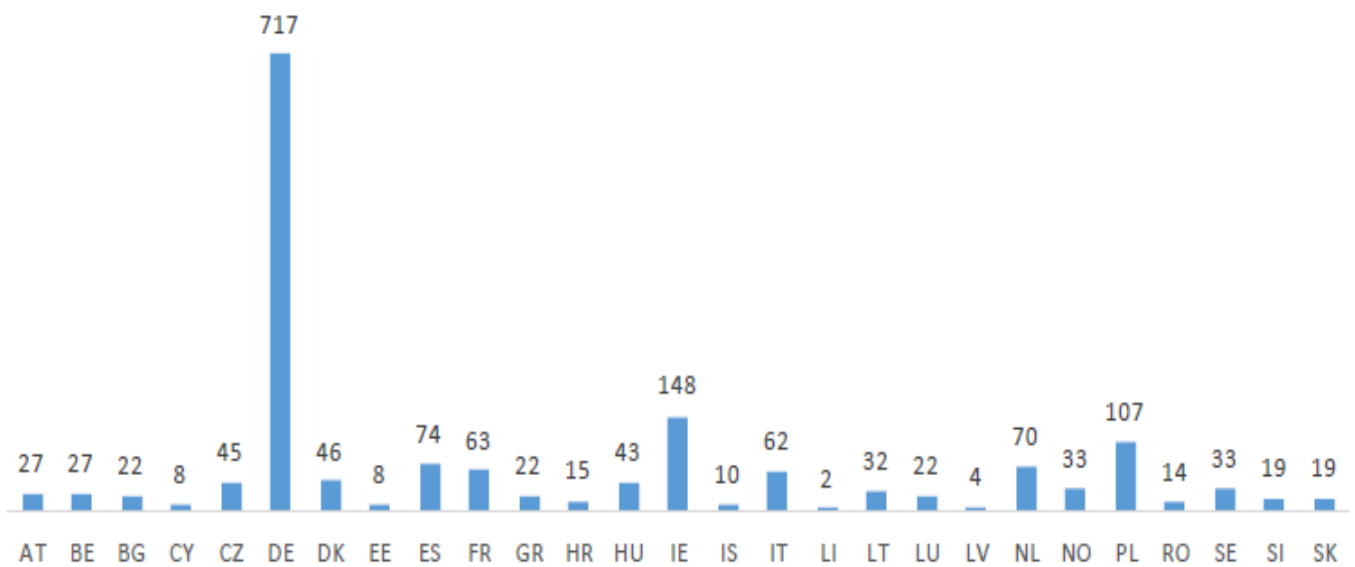
DE: Budget for all of the 18 supervisory authorities in Germany.



LT: There are 2 GDPR supervisory authorities in Lithuania, one of which is authorised to supervise the application of GDPR only insofar as it concerns the processing of personal data for journalistic purposes and academic, artistic or literary expression (The Office of the Inspectorate of Journalist Ethics).



Number of staff working on complaints, Enforcement and Sanctions (FTE)
State of play on 01/01/2021



Significant variations in budget per capita, overall budgets and staffing are visible across the national data protection organisations.

It is understood that the demands of each national data regulator have to be assessed individually.

Notwithstanding the above, the comparative data provides context.

Operational experience of involvement in cases as an LSA and as a CSA provides increasing information and knowledge on the effort and resources required to support work programmes including case administration and management and statutory inquiries.

7 Conclusions

Key responsibilities which drive resource requirement include:

- supporting improved compliance with data protection legislation by controllers and processors
- handling complaints from individuals in relation to potential infringements of data protection rights
- conducting inquiries and investigations into potential infringements of data protection legislation
- supervisory and enforcement functions in relation to the processing of personal data in the context of electronic communications under the e-Privacy Regulations
- regulation under the Data Protection Acts 1988 and 2003 and other legislation
- promoting awareness among organisations and the public of the risks, rules, safeguards and rights incumbent in the processing of personal data
- co-operating with data protection authorities in other EU member states on issues, involving cross-border processing

The DPC has grown significantly in response to regulatory requirements and public demand resulting from the GDPR regulations, the Data Protection Act 2018, the Law Enforcement Directive and EU ePrivacy legislation.

There are value for money (VFM) improvements that could be made to the DPC's current resource allocation model.

Given the growth and size of budgetary allocation which is €22.23M in 2022, there is a need for the DPC's finance function to be at the appropriate senior level in the DPC and for systems to be in place to ensure, control and safeguard of finances and to validate that the DPC operates on a value for money basis. The appropriate level is considered no lower than Principal Officer level.

The DPC combines roles as an information provider, complaint arbitrator and as an enforcement organisation.

The DPC's remit as a national regulator within the EU regulatory environment is further impacted given the presence of a number of global technology companies that are based in and have their headquarters in Ireland.

Following significant growth in caseload, there has been a plateauing of caseload being dealt with by the DPC.

There is evidence of difficulty in growing and maintaining resource complement including because of competition for skilled resources in the jobs market.

The DPC organisational model has evolved with key elements based on the structure of the organisation at its inception in 2014. The 2014 budget represents just over 7% of the DPC 2022 allocation.

The tier 1 grading in DPC is the lowest of comparative tier 1 grades for regulatory organisation in Ireland.

The tier 2 grading in DPC is the lowest of comparative tier 2 grades for regulatory organisations in Ireland.

The number of Deputy Commissioners (7, with a further appointee imminent) reporting to the Commissioner is too many to optimise chain of command effectiveness. It is noted two new Director post have been sanctioned by DPER.

In some cases the number of Assistant Commissioners reporting to Deputy Commissioners is too many to optimise chain of command effectiveness.

There are examples of senior staff carrying out duties which are more appropriately carried out at a delegated level.

The organisation would benefit from restructuring to ensure more appropriate grading and reporting arrangements. Comparative evidence from other regulatory bodies in Ireland, the growth of the Commissioner role in DPC, the growth of DPC as an organisation and competency assessment indicates that the post of Commissioner should be at a level equivalent to at least Deputy Secretary General.

There is incongruence in the number of reporting relationships between Deputy Commissioner and Assistant Commissioner and Commissioner and Deputy Commissioner. Given the scale, range and complexity of regulatory, legal and management responsibilities flowing from Commissioner level an additional tier above Principal Officer Level comprising three (3) new posts is considered necessary to strengthen strategic management capacity. It is noted two new Director post have been sanctioned by DPER.

All regulatory comparative bodies, year on year have a single leader role (notwithstanding that in some bodies that leadership role rotates). The existing single leader structure, where there is a single public accountable officer is considered the most appropriate model for DPC.

Reviewing and enhancing delegated mechanisms should form part of restructuring of DPC.

Given Covid, it has not been possible to do a side by side process walk through of case management and administration in the Information and Assessment Units. Notwithstanding this, the scale and continuing nature of backlog in open cases in the Information Unit and in the Assessment Unit points to a need for additional resources in these areas.

There is a cost and investment in respect of regulation. Notwithstanding that there are difficulties in making comparisons between data regulators because of variations in remit and individual circumstances, budget per capita in Ireland and overall budget is at least comparable to other EU data protection organisations.

DPC is developing its management information framework. There is a need to build on the work that is being carried out in this area. In particular:

- there is a gap in the tracking of staff inputs by activity
- there is a gap in the tracking of staff inputs by case
- there is a gap in the tracking of internal and external inputs by Inquiry
- there is a gap in target setting in relation to case management
- there is a gap in target setting in relation to unit costs
- it is not possible to identify a median cost per case
- it is not possible to identify the cost of inquiry

In budget construction there is opportunity to build linkages between outputs, inputs and the cost of those inputs.

Notwithstanding that the organisation has had to deal with the impact of the pandemic and the challenges faced regarding recruitment during this time, DPC has reported underspend against budget in 2020 and 2021. It is noted from DPC's 5 year regulatory strategy (2022-2027) that 'DPC will also retain concurrent focus on building the organisation'.

There is opportunity for DPC to employ alternative resourcing strategies such as outsourcing to drive reductions in open cases and to reduce median case times. This would mean a transfer from pay to non-pay budget. Decisions in this regard in terms of the balance between outsourcing/service level agreements and recruitment require to be made early in the

calendar/financial year to derive an impact from investment as early as possible. DPC's finance function has also an important role to play in supporting analysis in this area.

The procurement processes in DPC have been subject to audit and can ensure best value in terms of cost and economy. Consideration should be given to the possibility of outsourcing in the widest sense where there is opportunity for improved efficiency and wider value for money including in relation to case handling and administration.

8 Recommendations

1. It is recommended that the DPC initiates a transition programme to comprise a number of different components and that this programme is led at a senior level (no lower than Principal Officer) reporting to a Project Steering Committee and managed in accordance with good practice project management principles, e.g. PRINCE.
2. It is recommended that the transition programme includes for the following component:
 - a. Review of grading
 - i. to include the post of Commissioner (Tier 1) with a view to regrading and seeking approval for this post at Deputy Secretary General Level
 - ii. securing approval and implementing three (3) new posts at a level above Principal Officer in line with the Civil Service competency framework. It is recommended that the proposed posts would be for ‘Senior Deputy Commissioners’ reporting to the Commissioner and individually supporting, (a) ‘Corporate, Technology and Legal’ (b) ‘National Regulatory Activity’ and (c) ‘International, Cross Border Regulatory Activity’

The sanction for two additional senior management posts at Principal Officer Higher, plus a Director allowance, in respect of the Legal/General Counsel post and Head of Regulatory Affairs Post are noted.
 - iii. securing approval and implementing a post at Principal Officer level for a Chief Financial Officer which may also cover additional responsibilities related to Finance
 - iv. developing role profiles and job descriptions for posts at (ii) and (iii)
 - v. managing competitions and filling posts at (ii) and (iii)
 - vi. having these new structures in place by end of quarter 2, 2022

3. It is recommended that the transition programme includes for the following component:
 - a. Review and reengineering of business processes
This will involve manager review of processes within individual sphere of responsibility.
 - b. Setting of performance targets.
It is recommended that performance targets are identified including in relation to case management and administration. These performance target should address
 - i. staff inputs by activity
 - ii. staff inputs by case
 - iii. internal and external inputs by Inquiry
 - iv. target setting in relation to case management
 - v. target setting in relation to unit costs
 - vi. the identification of a target median cost per case
4. It is recommended that the transition programme includes for the following component:
 - a. Management Information Project
 - i. The Management Information Project should include for:
 - ii. Identification and recording of staff and external time/inputs by activity and by case
 - iii. Identification of inputs and costs for each statutory inquiry
 - iv. Retrieving actual inputs for comparison and analysis with target inputs
 - v. Integrating inputs (time) into the assessment of efficiency and elapsed time between opening and concluding cases
 - vi. Preparation of a DPC Activity Based Costing Model for review and comparison each year and against target

The above will require enhanced information systems.

5. It is recommended that performance targets are integrated into the budgetary and DPER bid process for 2023 and onward

6. It is recommended that the results from recommendation 3 above are used to inform the balance going forward between recruitment, training and development of DPC staff and outsourcing. Recommendation 3 should be advanced on a priority impact basis with outsourcing strategy and procurement informed and actioned as soon as possible from the results of that exercise.

It is proposed that all recommendations are taken forward on a project basis to ensure implementation during 2022/2023.

It is considered that this suite of recommendations will better equip and enable the organisation going forward to deliver on its corporate objectives, will de-risk the possibility of business failure and will also allow DPC to better demonstrate and validate the VFM of its delivery systems in communications with DPER and wider government.

9 Acknowledgement

KOSI would like to acknowledge the assistance and co-operation received during the course of the audit from the DPC.

Appendix 1 – Statement of Responsibility

KOSI takes responsibility for this report, which is prepared on the basis of the limitations set out below.

The matters raised in this report are those which came to our attention during the course of the audit work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by Management for their full usefulness, impact and cost of implementation before they are implemented.



.....

On behalf of KOSI Corporation Limited

January 2022