

DPA powers toward effective and transparent GDPR enforcement: the case of Croatia

Associate professor **Nina GUMZEJ**¹

Abstract

The paper identifies and explores the solutions to certain underdeveloped and lacking legislative solutions and issues in the practice of the national data protection authority (CPDPA), which affect the aims of effective GDPR enforcement and transparency. On a broader level it contributes to the EDPB initiatives toward the harmonization of certain procedural provisions and overcoming the differences in the conduct of cross-border proceedings. Most of the research considerations are supported by a study of the case that received much public attention and involves the first administrative fine in Croatia. Arguments are provided toward prescribing time limits for the resolution of data protection administrative disputes and toward appropriate addressal of the closely related issues of publishing CPDPA rulings, with the concerns of their accessibility worked out through a comprehensive policy. This includes also the particular considerations on the corrective measures issued to public authorities, which cannot be fined, and on the underdeveloped fine-limitation rule for certain other public sector bodies. Public interest concerns should be closely examined in the assessment of communicating information on relevant data protection cases and CPDPA decisions, as well as the interrelation with the freedom of information requests. The publishing of non-anonymous final rulings should be recognized as a form of additional sanction and power of the data protection authority and as such further explored also at the EU level. In terms of more efficient CPDPA functioning it is argued that the prescribed time limits for issuing expert opinions are extended. At the same time resources should be utilized toward better inclusivity and accessibility of relevant information, primarily rulings, on its website.

Keywords: *GDPR; GDPR national implementation; data protection authority; DPA; AZOP; EDPB; finality; publication; non-anonymized decision; time limit; expert opinions; administrative fine; transparency; public sector; cross-border.*

JEL Classification: K24

DOI: 10.24818/TBJ/2023/13/2.03

1. Introduction

The Croatian Personal Data Protection Agency (*Agencija za zaštitu osobnih podataka - AZOP*; hereinafter: the CPDPA) is responsible for enforcement of relevant legislation in the Republic of Croatia, which in the general data protection area consists of the General Data Protection Regulation (hereinafter: the GDPR)² and the

¹ Nina Gumzej - Faculty of Law, University of Zagreb, Republic of Croatia, ngumzej@pravo.hr.

² "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)," OJ L 119, May 4, 2016, 1-88; "Corrigendum," OJ L 127, May 23, 2018, 2.

national Act on the Implementation of the General Data Protection Regulation (hereinafter: 'the GDPR Implementation Act' or 'the Act')³. The Act stipulates certain specific rules in connection with the CPDPA's work activities, which affect its otherwise very extensive tasks and competencies under the GDPR.⁴ One of them relates to the specific duty of the CPDPA to issue expert opinions at written requests of natural or legal persons under a tight deadline (30 days, to be extended by another 30 days in limited circumstances).⁵ The other two rules concern the authority of the CPDPA to publish on its website certain rulings as well as opinions, which is declared as a power additional to those provided by the GDPR.⁶

Transparency of the CPDPA's enforcement activities which is in focus of this research is put into effect with the publishing of relevant information on its website and in the annual activity reports.⁷ Activity reports are generally useful sources of information on the CPDPA's activities.⁸ Thus from the most recently published report (hereinafter: 2021 Activity Report) it is observed that the CPDPA provided expert opinions in response to 1550 requests from natural persons and 681 requests from legal entities and other bodies. Additionally, it resolved a total of 3500 queries received over an advisory call-line (helpdesk).⁹ The CPDPA also provides expert opinions to public authorities, which activity is consolidated with the duty of the central state administration bodies and other public authorities to submit to it the drafts of the proposals of laws and other regulations governing personal data

³ "Zakon o provedbi Opće uredbe o zaštiti podataka," Official Gazette of the Republic of Croatia no. 42/18.

⁴ As Raab and Szekely noted already in 2017: "DPAs are multi-taskers. Describing them as 'supervisory authorities', as is done in the European Union's (EU) General Data Protection Regulation (GDPR) (2016), or as 'regulatory authorities', only hints vaguely at one element of the range of activities that they are legally required to do and – less formally – that they are expected to do in the eyes of politicians, the public, and the mass media." Charles Raab and Ivan Szekely, "Data protection authorities and information technology," *Computer Law & Security Review* 33, no. 4 (August 2017): 421.

⁵ Article 42 of the GDPR Implementation Act.

⁶ Article 6, paragraph 1, indent 3, Article 18 and Article 48 of the GDPR Implementation Act, in connection with Article 58, paragraph 6 of the GDPR.

⁷ A detailed overview of all of the communication, i.e., awareness-raising activities of the CPDPA is available in the most recently published 2021 Activity Report: „Godišnje izvješće o radu Agencije za zaštitu osobnih podataka za razdoblje od 1. siječnja do 31. prosinca 2021. godine“ [„Annual report on the work of the Personal Data Protection Agency for the period from January 1 to December 31, 2021,“] (hereinafter: 2021 Activity Report), class: 021-03/22-09/15, filing no.: 65-22-02, Zagreb, March 30, 2022.

⁸ Mandatory components of annual reports are prescribed in Article 17 of the GDPR Implementation Act. In connection with this, see Article 59 of the GDPR.

⁹ The largest number of inquiries related to the financial sector, i.e., to the processing of personal data by banks, debt collection agencies and insurance companies. 2021 Activity Report, 8, 10.

processing issues.¹⁰ In 2021, the CPDPA provided 20 such expert opinions.¹¹ Where investigative and corrective powers and duties of the CPDPA are concerned, it carried out 2207 inspections, which is an increased amount compared to 2020 (1900).¹² It received 108 new data breach notifications and the processing of 37 reported data breaches was carried onto 2022.¹³ As for the number of received complaints (i.e., requests for determination of the violation of rights), the CPDPA also here reported an increase in the number of new requests received (259, in comparison to 102 requests received in 2020¹⁴), and an increase in the number of resolved requests (214, in comparison to 152 requests resolved in 2020).¹⁵ Out of the 118 issued rulings, the CPDPA mainly issued orders with the aim that the controllers: a) align their processing procedures with the GDPR; b) enable the exercise of data subjects' rights; c) discontinue further processing of personal data without a legal basis; d) delete personal data published without a legal basis; e) take appropriate technical and organizational protection measures that are suitable/adequate for certain processing procedures. The more severe infringements called for reprimands (9).¹⁶

The CPDPA has also been imposing administrative fines for the most serious violations. While slow-starting (4 fines were imposed in 2021¹⁷), its fining activity increased significantly later on and, as announced in March 2023, it has so far imposed 29 administrative fines in the total amount of EUR 810,656.57.¹⁸

The scope of the CPDPA's work activities due to the GDPR increased significantly in relation to the pre-GDPR period. At the same time, the CPDPA reported a decrease in its otherwise limited staffing (HR) resources¹⁹. To be precise,

¹⁰ Article 14 of the GDPR Implementation Act. Such duty was enacted for the purpose of ensuring „a full and proper application of all the principles and provisions of the GDPR in the course of adoption of the legislation“. European Commission, „Croatia notification GDPR articles 51(4), 84(2)“ accessed March 6, 2023, https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu/eu-member-states-notifications-european-commission-under-gdpr_en.

¹¹ 2021 Activity Report, 53-54.

¹² 2021 Activity Report, 8. Specific provisions on the investigative powers of the CPDPA in connection with inspections are stipulated in Articles 36-40 of the Act.

¹³ Notifications were made predominantly by banks (47) and domestic companies (32), while state administration bodies filed 5 notifications, and only 1 was filed by a public institution. 2021 Activity Report, 28-30.

¹⁴ 2021 Activity Report, 24.

¹⁵ 2021 Activity Report, 8.

¹⁶ 2021 Activity Report, 46.

¹⁷ 2021 Activity Report, 46.

¹⁸ CPDPA, "Izrečena upravna novčana kazna zbog nezakonite obrade osobnih podataka," [„An administrative fine was imposed for illegal processing of personal data,“] March 2, 2023, accessed March 6, 2023, <https://azop.hr/category/banner/>.

¹⁹ While extremely relevant, the issue of (in)adequacy of financial resources for CPDPA's activities falls outside the scope of this paper. The 2021 EDPB Report shows that the majority of data protection authorities in the EU claim inadequate resources, both in terms of financial and human resources. European Data Protection Board (EDPB), "Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities," August 5, 2021, 4-6, accessed March 6, 2023, https://edpb.europa.eu/system/files/2021-08/edpb_report_2021_overviewsaresourcesandenforcement_v3_en_0.pdf.

while in 2018 it had 40 employees, a total of 34 employees was reported in 2021. As a result, taking into account also the complexity of cases to be resolved on a day-to-day basis, the CPDPA reported that it is unable to process all of its tasks in the prescribed deadlines.²⁰

Main research questions explored in this paper are how and to what extent are the goals of effective and transparent GDPR enforcement in Croatia affected by the specific solutions of the Act and other applicable legislation in Croatia, as well as available CPDPA practices. Issues examined relate to the time limits for the issuing of rulings and opinions as well as the conditions for finality of rulings, and the interrelated concerns of transparency, which are also explored by analysis of the CPDPA's website and, where applicable, its most recent 2021 Activity Report. Possible improvements to identified shortcomings are proposed and, where applicable, supported by *de lege ferenda* proposals. Where applicable, initiatives toward EU-wide harmonization of relevant procedures are also noted.

The structure of this paper is, as follows. Following Introduction, Part 2 of the paper examines the issues of finality of CPDPA's rulings and related court judgments under the Act and other applicable legislation in Croatia. Part 3 of the paper discusses the prescribed solutions on the exclusion and the limitation of fines for certain actors in the public sector, and examines also more broadly their impact and that of the same or similar solutions EU-wide as well as concerns of discrimination on the overall efficiency and transparency of GDPR enforcement. Part 4 primarily explores the rules and practices of the CPDPA concerning the issuing of expert opinions at written requests of natural or legal persons, and the effect thereof on its overall efficiency. Part 5, which is divided into several subsections, examines the quality of the CPDPA's online presence and communication of GDPR enforcement activities, focusing primarily on transparency as regards issued opinions and rulings within the context of relevant legal provisions and analysis of the CPDPA's website. The sixth and final section prior to the Conclusion (Part 7) puts the finishing touches to the discussion on most of the research considerations in the paper through a study of a case that received much public attention in Croatia, and with respect to which the CPDPA issued its first administrative fine on the basis of the GDPR.

2. From administrative procedure to dispute (finality of CPDPA's rulings)

Whoever considers that any of his or her rights guaranteed by the GDPR and the GDPR Implementation Act have been violated may file a complaint to the CPDPA (*request for determination of a violation of a right*). The CPDPA decides on that request with a ruling, which is an administrative act.²¹ The legislator did not prescribe in the Act a particular time limit for the issuing of CPDPA's rulings, nor is

²⁰ 2021 Activity Report, 79-80.

²¹ Article 34, paragraphs 1-3 of the GDPR Implementation Act; Article 96 of the General Administrative Procedure Act.

it as such defined by the GDPR. Therefore, the generally applicable time limit for the issuing of administrative acts applies. Accordingly, pursuant to the *General Administrative Procedure Act*²² a decision on the properly submitted request must be made no later than in 30 days in cases of immediate resolution at the request of the party (counting from the day of submitting the proper request) or no later than in 60 days in cases where an examination procedure was conducted.²³

A 2021 comparative overview of the applicable time limits for handling complaints in other Member States (mainly by law, rarely by internal procedure, in some Member States not prescribed at all) shows that the one applicable in Croatia is among the shortest prescribed in the EU.²⁴ As for the GDPR, while as noted earlier it does not exactly prescribe the time limit, it does link the exercise of the right to an effective judicial remedy to a deadline of 3 months as of submittal of the complaint.²⁵ More broadly, the concerns over the varying time limits to issue decisions²⁶ are noted as one of the reasons why the European Data Protection Board (EDPB) seeks coordinated, EU-wide harmonization of certain procedural provisions, with the specific aim to overcome the differences in the conduct of cross-border proceedings by the data protection authorities and to increase their efficiency.²⁷

In cases where the parties are not satisfied with the CPDPA's ruling, as that of an administrative body whose acts are subject to judicial review, they cannot appeal that decision, but may institute an administrative dispute before the competent administrative court.²⁸ This also applies to the CPDPA's rulings on administrative

²² [“Zakon o općem upravnom postupku,”] Official Gazette of the Republic of Croatia nos. 47/09 and 110/21. In its work activities the CPDPA applies also the rules of this act (as *lex generalis*), however a detailed analysis of those rules falls outside the scope of this paper.

²³ See Article 101 in connection with Articles 50-51 of the General Administrative Procedure Act.

²⁴ EDPB, “Overview on resources,” 22.

²⁵ The right to an effective judicial remedy is activated where the data protection authority has not handled the complaint or failed to inform the data subject within 3 months on the progress or outcome of the complaint. Article 78, paragraph 2 of the GDPR.

²⁶ For an interesting overview and analysis of early standpoints on the common approach to complaint handling, provided by various data protection authorities (2016 - prior to GDPR adoption), see: David Barnard-Wills, Paul De Hert and Cristina Pauner Chulvi, „Data protection authority perspectives on the impact of data protection reform on cooperation in the EU,” *Computer Law & Security Review: The International Journal of Technology Law and Practice* (2016): 8-9 (point 4.5), doi: 10.1016/j.clsr.2016.05.006.

²⁷ EDPB, „Statement on enforcement cooperation,” April 28, 2022, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf. See also: EDPB, „EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level,” October 10, 2022, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-10/edpb_letter_out2022-0069_to_the_eu_commission_on_procedural_aspects_en_0.pdf.

²⁸ Article 34, paragraph 4 of the GDPR Implementation Act. According to Kotschy, data protection authorities do not satisfy the requirements for being ‘tribunals’, for which reason the court must fully review their decisions. Waltraut Kotschy, “Article 78. Right to an effective judicial remedy against a supervisory authority”, in *The EU General Data Protection Regulation (GDPR): A Commentary*, eds. Christopher Kuner, Lee A Bygrave, Christopher Docksey and Laura Drechsler (New York: Oxford University Press, 2020), 1127.

finis.²⁹ The lawsuit (which may seek annulment of the CPDPA's ruling or a declaration that it is null and void³⁰) must be filed within 30 days as of the day of service of the ruling, i.e., administrative act.³¹

The lawsuit in an administrative dispute does not have a suspensory effect (delay the execution of) for CPDPA's rulings, except when it is prescribed by the law.³² Generally, the GDPR Implementation Act does not prescribe such suspensory effect, except in particular cases where the CPDPA ordered the erasure or other irreversible removal of personal data. To be specific, the dissatisfied party may request the competent administrative court to delay such an order, but only if that party is able to prove that it would involve a disproportionate effort to re-collect the personal data. Where the court accepts such a request, the party who was ordered erasure or other irreversible removal of personal data must block any processing of the disputable personal data (except their keeping), up until the final court judgement is rendered.³³

The CPDPA's rulings, as administrative acts against which appeals are not possible, become final upon expiration of the time limit to file a lawsuit or with the court's final decision.³⁴ Awaiting finality may in practice last for a long time, since the judgment of the court of first instance (e.g., confirming the CPDPA's decision) may be contested before the court of second instance (the High Administrative Court

²⁹ Article 45, paragraph 4 of the GDPR Implementation Act. The details on the issuing of administrative fines are prescribed in Chapter 6 (Articles 44-49) of the Act and in the CPDPA's act: „Kriteriji za obročnu otplatu i uvjeti za raskid obročne otplate upravne novčane kazne,“ [“Criteria for instalment repayment and conditions for termination of instalment repayment of administrative fine,“] Official Gazette of the Republic of Croatia 5/20. To be noted here is that by interpretation of relevant provisions of the Croatian Act on Administrative Disputes, the administrative courts could not here resolve the matter in such a way that they impose another amount of the fine. They may, however, find that the amount of the fine is not in accordance with the purpose of the punishment, annul the CPDPA decision and return the case to the CPDPA for renewed proceedings. Alen Rajko, “Novo uređenje zaštite osobnih podataka: uloga upravnog sudstva,” [“The New Personal Data Protection Regulation: The Role of Administrative Judiciary,”] *Hrvatska pravna revija* 19, no. 2 (February 2019): 32.

³⁰ Article 22, paragraph 2, point 1 of the “Act on Administrative Disputes,” [“Zakon o upravnim sporovima,”] Official Gazette of the Republic of Croatia nos. 20/10, 143/12, 152/14, 94/16, 29/17 and 110/21.

³¹ Article 24, paragraph 1 of the Act on Administrative Disputes. Note: this paper does not examine and discuss the claims that are brought in cases where the CPDPA failed to issue a decision in the prescribed time limit.

³² Article 26, paragraph 1 of the Act on Administrative Disputes.

³³ Article 35 of the GDPR Implementation Act. In connection with this it is noted that the Act on Administrative Disputes contains a general procedural rule (enabling it to cover various type of ordered measures), which is, however, subject to several conditions. Specifically, the court may decide that the lawsuit has a suspensory effect if the execution of a decision (i.e., the CPDPA's ruling) would cause damage to the plaintiff that would be difficult to repair, if the law does not stipulate that the appeal does not delay the execution of the individual decision (no appeal is possible against the CPDPA's decision), and if the delay is *not contrary to the public interest*. Article 26, paragraph 2 of the Act on Administrative Disputes.

³⁴ A final decision is one against which an appeal is not possible or against which an administrative dispute cannot be initiated. Article 13 of the “General Administrative Procedure Act,” [“Zakon o općem upravnom postupku,”] Official Gazette of the Republic of Croatia nos. 47/09 and 110/21.

of the Republic of Croatia – *Visoki upravni sud Republike Hrvatske*).³⁵ This is so particularly in cases where the CPDPA's ruling on the administrative fine is disputed, but the fine is imposed together with other GDPR corrective measure(s)³⁶, since the CPDPA only issues a decision on the fine *after finality of its ruling imposing the other GDPR measure(s)*.³⁷ In practice this results also in such situations, in which the CPDPA's ruling ordering the provision of copies of personal data, issued on May 2019, becomes final two years and two months later, while the decision on the fine imposed in connection with that decision would still not be final, i.e., up until March 2023 (to the best of my knowledge).³⁸ A proper response in the interest of increasing the overall efficiency of GDPR enforcement could therefore be the prescribing of time limits for the issuing of court decision(s) in relevant data protection administrative disputes.³⁹ This is further supported with the reasons of transparency due to the link that the publication of (at least) certain CPDPA's rulings has with the moment of their finality, as I will discuss in more detail in Part 5 of the paper.

³⁵ It goes without saying that a number of factors impact the onset and duration of court proceedings, and therefore the timely and effective protection of data subjects' rights. As Wolters notes: „The GDPR primarily concerns material data protection law. It harmonizes the rights of the data subjects and the obligations of the controllers and processors. Furthermore, it provides harmonized enforcement rights. The actual exercise of these rights, however, still depends on national law, national courts, and national supervisory authorities. For example, the effectiveness of the right to lodge a complaint with a supervisory authority and the right to an effective judicial remedy against a supervisory authority depends on the capacities of the authorities [...]. Similarly, a court that lacks expertise, charges high fees, and is faced with a large backlog of cases cannot effectively protect the data subjects [...]. Furthermore, national law is still necessary to provide the content of the right to a judicial remedy.“ Pieter T. J. Wolters, “The Enforcement by the Data Subject under the GDPR,” *Journal of Internet Law* 22, no. 8 (February 2019): 28-29.

³⁶ E.g., an order to the controller or the processor to comply with the data subject's requests to exercise his or her rights; an order to rectify or erase personal data; an order on the suspension of data flows to a recipient in a third country, etc. See Article 58, paragraph 2, points a-h and j of the GDPR.

³⁷ Article 45, paragraph 3 of the GDPR Implementation Act.

³⁸ The case at hand is discussed in more detail in Part 6 of the paper.

³⁹ Đapić argues that a model of appeals against the CPDPA's decision could be introduced or, alternatively, a model similar to the one prescribed in the Act on the Right of Access to Information (a lawsuit against the decision of the Information Commissioner is filed directly before the High Administrative Court, which must be resolved in 90 days). Marija Đapić, “Zaštita osobnih podataka i sudska kontrola upravnih akata Agencije za zaštitu osobnih podataka (AZOP),” [“Protection of personal data and judicial control of administrative acts of the Personal Data Protection Agency (AZOP),”] (Master's Thesis, University of Zagreb Faculty of Law, 2022) 33-34, accessed March 6, 2023, <https://urn.nsk.hr/urn:nbn:hr:199:164095>. In connection with this, see Article 26, paragraph 1 of the “Act on the Right to Access to Information,” [“Zakon o pravu na pristup informacijama,”] Official Gazette of the Republic of Croatia, nos. 25/13, 85/15 and 69/22. It should here also be noted that such judgment of the High Administrative Court is then final, since this act does envisage the right of appeal against decisions of public authorities (appeal before the Information Commissioner). See Article 25 of the Act on the Right to Access to Information.

3. The issue of exclusion or limitation of administrative fines for the public sector

Public authorities (state administration bodies and other public authorities, and local and regional self-administration units⁴⁰) cannot be fined in the cases of infringements of the GDPR and the Act⁴¹, which is within the discretion provided to the Member States.⁴² Though heavily criticized by the public, the response from the Government was that the collection of administrative fines from the public authorities would only result in transfers of the resources from one budgetary item to another.⁴³ While accepting such reasoning, but also taking into account that the general public normally expects high regard for legal norms and fundamental rights and freedoms from the public authorities themselves, it is argued that the alternative corrective measures issued to public authorities should be made transparent. Such publication should preferably be in non-anonymous form in the cases of the more serious infringements, such as with regard to the scope, types of data and processing involved, and in consideration of the prevailing public interest. In that sense the compliance motivator is not the avoidance of the fines, but effective deterrence from non-compliant behaviour as a crucial element for subsistence of the GDPR.⁴⁴

The Act also envisages a specific rule in the cases of fines imposed on *legal persons with public authority and legal persons performing a public service*, which are not included in the above noted definition of public authorities. Where they are to be fined, the imposed fine *must not jeopardize the exercise of such public authority or public service*.⁴⁵ It is observed that this solution is underdeveloped and elusive in implementation⁴⁶, particularly since the legislator decided not to prescribe the minimum and/or maximum fine. As such, it encourages the perception that the subject legal persons are in practice treated by the CPDPA in the same way as public authorities are (i.e., not fined). Consequently, a proper implementation of the rule as currently prescribed calls for a transparent process toward the determination of the

⁴⁰ Article 3, paragraph 2 of the GDPR Implementation Act.

⁴¹ Article 47 of the GDPR Implementation Act. In connection with this, see Article 83, paragraph 7 of the GDPR.

⁴² Article 83, paragraph 7 of the GDPR.

⁴³ Vlada Republike Hrvatske [Government of the Republic of Croatia], "Prijedlog Zakona o provedbi Opće uredbe o zaštiti podataka," ["Draft Act on Implementation of the General Data Protection Regulation"] class: 022-03/17-01/171; filing no.: 50301-25/06-18-8 (April 12, 2018) 3; Vlada Republike Hrvatske [Government of the Republic of Croatia], "Evidencija komentara na Zakon o provedbi Opće uredbe o zaštiti podataka e-Savjetovanje, 30 dana (21. veljače - 22. ožujka 2018.)" ["Records of Comments to the Act on Implementation of the General Data Protection Regulation, E-consultations, 30 days," in *Prijedlog Zakona o provedbi Opće uredbe o zaštiti podataka [Draft Act on Implementation of the General Data Protection Regulation]*, class: 022-03/17-01/171; filing no.: 50301-25/06-18-8 (April 12, 2018) 3 *et seq.*

⁴⁴ Nina Gumzej and Dražen Dragičević, "Video Surveillance in the Workplace under the Croatian Act on Implementation of the General Data Protection Regulation," *Zbornik Pravnog fakulteta u Zagrebu* 69, no. 3 (2019): 340-341.

⁴⁵ Article 44, paragraph 2 of the GDPR Implementation Act.

⁴⁶ Juraj Sajfert, "Croatia: Minimum Service for the Implementation, Big Service to the Public Sector," *European Data Protection Law Review (EDPL)* 6, no. 2 (2020): 283.

amount that would “not jeopardize” the exercise of a public authority or a service, according to the specifics of each such authority and service. However, the CPDPA has not (up until March 2023) to the best of my knowledge developed and disclosed any such analysis and/or guidelines, which would resolve the current lack of legal clarity and certainty in this area. A minimum and a maximum fine could be considered for enactment via future amendments of the Act.

The non-sanctioning or limited sanctioning of the public sector has proven to be more of a rule than an exception in the GDPR implementing legislation of the EU Member States⁴⁷, but also wider where strictly enforcement practices are concerned⁴⁸, which sparks broader concerns on the possible discrimination towards the private sector. Such concerns were contested up to the level of the Constitutional Court in Belgium. In 2021 the Court decided that the relevant national solution was in line with the degree of discretion afforded to the Member States (Article 83, paragraph 7 of the GDPR), which is based on an objective criterion and is not devoid of reasonable justification, as it does not affect the power of supervisory authorities to take corrective action in accordance with the GDPR. The contested national rules are intended to ensure the continuity of the public service and not to jeopardize the exercise of a mission of general interest. Therefore, it is possible to avoid the negative financial consequences of fines on the citizens and on the quality of public service, while at the same time alternative and dissuasive measures are in place in cases of non-compliance with the GDPR. In its judgment the Court also rejected the request to refer these issues to the CJEU.⁴⁹

If described reasoning of the Court is accepted as prevailing also in other Member States with the same or similar national solutions⁵⁰, the questions remaining are on possible mechanisms to ensure higher compliance and accountability by the

⁴⁷ CMS.law, “GDPR Enforcement Tracker Report,” May 31, 2022, accessed March 6, 2023, <https://cms.law/en/deu/publication/gdpr-enforcement-tracker-report>; Information Commissioner's Office (hereinafter: UK ICO), “The Effectiveness of Regulatory Penalties in the Public Sector,” June 2022, accessed March 6, 2023, <https://ico.org.uk/media/about-the-ico/disclosure-log/4024372/ic-212626-m7r2-evidence-note-june-2022.pdf>.

⁴⁸ This is in reference to the new regulatory practice of the UK ICO, which is set to focus more on issuing corrective measures for the public sector than on imposing fines and, most importantly, on heightened transparency of such measures (issued reprimands in particular): UK ICO, “How the ICO enforces: a new strategic approach to regulatory action, John Edwards’ keynote speech at the National Association of Data Protection Officers (NADPO) annual conference, delivered on 22 November 2022,” accessed March 6, 2023, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/11/how-the-ico-enforces-a-new-strategic-approach-to-regulatory-action/>; UK ICO, “Open letter from UK Information Commissioner John Edwards to public authorities Share (Opens Share panel),” June 30, 2022, accessed March 6, 2023, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/06/open-letter-from-uk-information-commissioner-john-edwards-to-public-authorities/>.

⁴⁹ La Cour constitutionnelle [Belgian Constitutional Court], judgment 3/2021, January 14, 2021, accessed March 6, 2023, <https://www.const-court.be/public/f/2021/2021-003f.pdf>, parts B32 and B36.

⁵⁰ For an excellent overview of the relevant law and practice in twelve EU Member States and the UK, see: CMS.law, “GDPR Enforcement Tracker Report,”.

public sector⁵¹ and increased citizens' confidence in its data protection practices, as well as the effective protection of their rights (and therefore effective GDPR enforcement) by independent data protection authorities. In Hungary, for example, which adopted the solution that the fines imposed on budgetary organs are possible but limited (minimum-maximum fine prescribed), the data protection authority is authorized to order the non-anonymized publishing of decisions adopted in connection with the activities of organs performing public duties.⁵² In the same vein this paper argues for the recognition of the important role that the heightened transparency has on the otherwise potentially both the non-sanctionable (in Croatia) and invisible violations of data subjects' rights. Specific considerations on the publication of decisions directed toward the public sector should also be considered more broadly, i.e., in the context of the earlier noted EDPB initiatives toward coordinated action on EU-wide harmonisation of certain procedural rules, which include the rules on publication of decisions by the data protection authorities.⁵³ Locally, as regards Croatia, a more lenient than in the described case of Hungary, but still good “*starting rule*” is already envisaged in the Act, according to which the CPDPA is authorized to publish certain non-anonymized final rulings on its website. The rule and its functions, implications and further improvements are all examined in part 5.1 of this paper.

4. Opinions and recommendations

As noted in the Introduction, the CPDPA has a prescribed duty to provide expert opinions at written requests of natural or legal persons.⁵⁴ Also prescribed is the narrow time limit to issue opinions, which amounts to 30 days as from the day of the submission of the request, depending on its complexity, and which may be extended for another 30 days if it is necessary to involve other bodies in order to obtain essential information. In practice the public seeks CPDPA's expert opinions on the more general but also very specific issues of interpreting and applying the legal

⁵¹ To this it might be added, as Jóri noted already in 2015 that “a properly functioning DPA does not avoid cases or decisions that might have a political effect.” András Jóri, “Shaping vs applying data protection law: two core functions of data protection authorities,” *International Data Privacy Law* 5, no. 2 (May 2015): 133-143 at p. 137.

⁵² “2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról” [“Act CXII of 2011 on Informational Self-Determination and Freedom of Information”,] section 61(2). Translated text into English, as in force on January 1, 2022 and last accessed March 6, 2023, <https://njt.hu/jogszabaly/en/2011-112-00-00>.

⁵³ EDPB, “Letter,” 13. See also EDPB, „Statement,”. For an overview of the relevant law and practice in twelve EU Member States and the UK, see: CMS.law, “GDPR Enforcement Tracker Report,”.

⁵⁴ Article 42 of the GDPR Implementation Act. While the CPDPA performs its tasks without compensation with respect to data subjects, data protection officers, journalists and public authorities, it may charge the compensation for providing opinions to business entities (law firms, consultants, etc.) requested for the purpose of carrying out their regular activities or provision of services. It may also collect a reasonable compensation based on administrative expenses. The criteria for determining the amount of mentioned compensation must be published in the Official Gazette and on the CPDPA's website. Article 43 of the GDPR Implementation Act.

requirements (to a certain processing operation, to processing operations in a certain sector, to certain specific circumstances, etc.).

In addition to opinions the CPDPA also issues and publishes on its website recommendations in the context of its awareness-raising activities under the GDPR. The issuing of recommendations is often prompted by multiple queries (e.g., on data protection issues or GDPR compliance within a specific sector or on the potentially irregular processing practices, which affect a larger number of citizens) or even media queries on issues of concern discussed in the press. Published recommendations are also directed towards the public sector. By way of recommendations the CPDPA is able to provide the more specific guidelines towards reaching GDPR compliance on a given topic and in doing so also possibly divert future requests for opinions on the same matters (or even possible formal requests for determination of violations of rights).

Issued opinions and recommendations are legally not binding and even though they may significantly help by preventing, or even stopping the ongoing but formally unreported GDPR infringement(s), they are not as such a formal part of the procedure toward resolving complaints.⁵⁵ In practice some of the requests for the more specific opinions correspond to petitions⁵⁶, upon which the CPDPA may decide to initiate the relevant administrative procedure toward the establishment of infringement of rights. In that sense the CPDPA provides opinions, for example, in cases where the submitted petition does not (yet) constitute a request for determination of a violation of the right of the data subject⁵⁷, where upon a petition of parties other than the data subject(s) it is satisfied with the response on the actions taken toward correcting the irregularities⁵⁸ and where upon petition it finds no grounds for initiating administrative proceedings *ex officio*.⁵⁹ In some cases it is not visible from the

⁵⁵ See in that context recital 143 of the GDPR, according to which 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.

⁵⁶ Everyone has the right to send petitions and complaints, make proposals to the state and other public bodies and receive a response to them. Article 46 of the Constitution of the Republic of Croatia. "Ustav Republike Hrvatske," ["Constitution of the Republic of Croatia,"] Official Gazette of the Republic of Croatia no. 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 76/10, 85/10 – consolidated text, 5/14.

⁵⁷ E.g., where the data subject yet needs to exercise the right to access his or her personal data before the correct controller. CPDPA, "Pravo na pristup osobnim podacima (članak 15. Opće uredbe o zaštiti podataka)," ["The right to access personal data (Article 15 of the General Data Protection Regulation),"] December 12, 2022, accessed March 6, 2023, <https://azop.hr/pravo-na-pristup-osobnim-podacima-clanak-15-opce-uredbe-o-zastiti-podataka/>. Note: the date of publication is published, and not the date of opinion itself.

⁵⁸ E.g., CPDPA, "Objava osobnih podataka sudaca porotnika u medijima," ["Publication of personal data of lay judges in the media,"] December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-osobnih-podataka-sudaca-porotnika-u-medijima/>. Note: the date of publication is published, and not the date of opinion itself.

⁵⁹ E.g., CPDPA, "Objava fotografije policijskog službenika," ["Publication of a photo of a police officer,"] December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-fotografije-policijskog-službenika/>. According to the General Administrative Procedure Act, the administrative procedure before the CPDPA is initiated *ex officio* when it is prescribed by law or is necessary to protect the

published opinion⁶⁰ but also recommendation⁶¹ why the CPDPA did not take a certain petition, by which the data subject claimed infringement of his or her rights, into formal administrative proceedings as a request for determination of a violation of the rights. This is an important issue to be further examined, but which as such falls outside the scope of the present paper.⁶²

Requests for opinions often represent a venue for the controllers and processors to test their position on the validity of (possible) claims concerning potential GDPR infringement (e.g., where the data subjects exercise their GDPR rights toward the controller and have not yet turned to the CPDPA with a request for determination of a violation of the right).⁶³ For such and similar reasons the early proposals to even prescribe the shorter time limit for issuing opinions⁶⁴ is not surprising (taking into account the time limits in which the controllers are obliged to respond to data subjects' requests, for example).⁶⁵ In consideration of the noted extent of such activities in 2021, it is understandable that the CPDA is unable to process all of its tasks in the prescribed deadlines with its current resources. This is without taking into consideration all of the other, highly desirable supporting activities, such as the technology foresight activities⁶⁶, which would also require the sufficiency of relevant resources. Consequently, it is proposed that the GDPR Implementation Act is

public interest. When evaluating the existence of grounds for initiating proceedings *ex officio*, the CPDPA will take into account petitions, or other notifications that point to the need to protect the public interest. Article 42, paragraphs 1-2 of the General Administrative Procedure Act.

⁶⁰ CPDPA, „Objava fotografije osobnog vozila na medijskom portalu i društvenoj mreži,“ [„Publication of a photo of a personal vehicle on a media portal and social network,“] December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-fotografije-osobnog-vozila-na-medijskom-portal-u-i-drustvenoj-mrezi/>. Note: the date of publication is published, and not the date of opinion itself.

⁶¹ CPDPA, „Objava osobnih podataka kandidata u natjecajnom postupku,“ [“Publication of personal data of candidates in the competitive procedure,“] June 6, 2019, accessed March 6, 2023, <https://azop.hr/objava-osobnih-podataka-kandidata-u-natjecajnom-postupku/>. Note: it is unclear whether that is the date of issuing or of publishing the recommendation. Here, for example, the CPDPA established that the rights of the data subject were infringed, but initiated no formal administrative procedure upon several data subjects' complaints. The controller published their names online at its website - in a call for interview (hiring/selection process). The outcome was only an issued recommendation for the controller to improve its practices.

⁶² In that context, see e.g., EDPB, „Internal EDPB Document 6/2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints,“ December 15, 2020, 4-7, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-07/internal_edpb_document_062020_on_admissibility_and_preliminary_vetting_of_complaints_en.pdf.

⁶³ E.g., CPDPA, „Neosnovan zahtjev za brisanjem osobnih podataka (osobni podaci su nužni za izvršavanje ugovora),“ [„Unfounded request to delete personal data (personal data are necessary for the execution of the contract),“] January 13, 2022, accessed March 6, 2023, <https://azop.hr/neosnovan-zahtjev-za-brisanjem-osobnih-podataka-osobni-podaci-su-nuzni-za-izvršavanje-ugovora/>. Note: the date of publication is published, and not the date of opinion itself.

⁶⁴ During public consultations on the draft Act some of the contributors proposed that this time limit would be even more restricted, i.e., to 15 days or to 10 working days. Vlada Republike Hrvatske, „Evidencija komentara,“ 85.

⁶⁵ See Article 12, paragraphs 3-4 of the GDPR.

⁶⁶ David Barnard-Wills, “The technology foresight activities of European Union data protection authorities,” *Technological Forecasting & Social Change* (2016): 1-9, accessed March 6, 2023, <http://dx.doi.org/10.1016/j.techfore.2016.08.032>.

amended, so that the deadline currently prescribed for the issuing of opinions is appropriately *extended*. At the very least, interpretations of the CPDPA's relevant obligations should be adopted to that effect.

Further analysis is needed towards the establishment of the clear criteria for the different functions and outcomes of the various opinions issued in response to the submitted requests for opinions and the submitted petitions by anyone on alleged infringements (as opposed to data subjects' formal requests for determination of a violation of the right), particularly with regard to the possibly resulting formal administrative procedures in relation to alleged infringements, including those that the CPDPA initiates *ex officio*. Also, as observed, unlike in the cases of issued opinions (and recommendations), where the CPDPA orders such corrective measures in administrative proceedings the controllers and processors are normally obliged to correct irregularities and deliver evidence on it within a certain time limit. Outcome of such further analysis should in any case provide more legal clarity and certainty in this area and a rule of thumb for the CPDPA in the taking up of the more pressing cases.

The proposal above does not imply that by now the already long-lasting, "open and friendly" approach by the CPDPA⁶⁷, is in any way flawed. It is just that in consideration of the very large amount of the already issued post-GDPR opinions, any such new tasks should no longer be taken up (or at least not by default) at the significant expense of the CPDPA's timely and efficient exercise of its investigative and corrective functions, and of all other advisory and awareness-raising functions and transparency obligations.⁶⁸ The proposal, however, needs to be assessed jointly with the initiatives toward the intensification of the CPDPA's transparency efforts, which are described in the next section.

5. Toward better transparency

5.1 The publishing of rulings and opinions

Generally, better transparency of the practices by the data protection authorities is recognized as a pressing need throughout the EU.⁶⁹ As previously noted,

⁶⁷ Francis Aldhouse, "A reflection on the priorities of a data protection authority," *Computer Law & Security Review: The International Journal of Technology Law and Practice* (2018): 2-3, 8, accessed March 6, 2023, <https://doi.org/10.1016/j.clsr.2018.05.002>.

⁶⁸ More generally, taking into account the significantly expanded duties and powers of data protection authorities under the GDPR, it was noted in literature that: „For businesses, this is a silver lining – the tasks burden authorities with functions and necessarily will reduce enforcement efforts.” Furthermore: „While Data Protection Authorities have more enforcement powers under the GDPR, they also have many duties that will consume resources and prevent all but the most focused authorities from becoming aggressive enforcers.“ Chris Jay Hoofnagle, Bart van der Sloot and Frederik Zuiderveen Borgesius, „The European Union general data protection regulation: what it is and what it means,” *Information & Communications Technology Law* 28, no. 1 (2019): 92, 94.

⁶⁹ As the Data Protection Law Scholars Network (DPSN) concluded in its 2022 study: „[...] the study of DPAs practices – and the many ways in which these practices intersect with EU fundamental rights – is nowadays hindered by the limited availability of information about them. The annual

the EDPB is currently seeking coordinated action on the harmonisation of certain procedural rules, which also concern the issue of publication of decisions by the data protection authorities. This includes the rules on the time frames exactly due to the fact that there are considerable differences between the Member States on the moments when the rulings of the data protection authorities can be published (e.g., after finality or earlier already upon adoption).⁷⁰ In Croatia, the legislator enacted two specific provisions in the GDPR Implementation Act that regulate the CPDPA's authority to publish certain of its rulings (and opinions) on its website. As noted in the Introduction, the Act declared such authority as a power, which is additional to those provided by the GDPR to the data protection authorities.⁷¹

5.1.1 The publishing of certain anonymized or pseudonymized rulings and opinions

The first relevant provision in the Act is positioned under title III of the Act, which contains specific provisions on the CPDPA. According to the rule, the CPDPA shall publish on its website the anonymized⁷² or pseudonymized rulings and opinions, which *relate to the types of processing that may involve a high risk for the rights and freedoms of individuals, taking into account the nature, scope, context and purposes of processing*.⁷³

It may be observed that the enacted criteria for establishing “significance” of the rulings and opinions does give the CPDPA some discretion in choosing which decisions and opinions are to be published. A contribution during public consultations on the draft Act offered a somewhat alternative solution: the rulings and opinions that are significant for data protection practices shall be published anonymously, and in particular those with which the current practice changes or according to which the

reports that DPAs are obliged to produce [...] are generally very useful, but other extremely valuable sources have proven much more difficult to access. This concerns, for instance, the questionnaires answered by EU DPAs in 2020 for the consultancy Milieu, despite the fact that such data collection was financed by public funds. Some important documents related to the work of EU DPAs are currently available for the research community only thanks to the efforts of civil society organisations and their use of public access requests.“ Gloria Gonzalez Fuster et al., “The right to lodge a data protection complaint: ok, but then what? An empirical study of current practices under the GDPR,” Access Now, June 2022, accessed March 6, 2023, 65, <https://www.accessnow.org/cms/assets/uploads/2022/07/GDPR-Complaint-study.pdf>.

⁷⁰ Needless to say, this is a particularly important issue in terms of cross-border enforcement and cooperation between the data protection authorities. In connection with this see two excellent analyses on the lacking transparency practices also of the EDPB, specifically as regards the OSS register and the lacking and/or incomplete availability of (updated) information by the national data protection authorities: Mona Naomi Lintvedt, „Putting a price on data protection infringement,” *International Data Privacy Law* 12, no. 1 (February 2022): 10-11, accessed March 6, 2023, <https://doi.org/10.1093/idpl/ipab024>; Fuster et al., “The right to lodge a data protection complaint,” 52 *et seq.*

⁷¹ Article 6, paragraph 1, indent 3, Article 18 and Article 48 of the GDPR Implementation Act, in connection with Article 58, paragraph 6 of the GDPR.

⁷² Where minors are involved, such publication must be anonymized.

⁷³ Article 18 of the of the GDPR Implementation Act.

CPDPA decides on a legal issue for the first time. However, that suggestion was rejected with the explanation that it does not bring an essential and significant change by which the quality of the provision would be improved significantly.⁷⁴

A focused exercise of the publishing authority, in the sense of a timely and regular publishing on its website of as many of the more important rulings and opinions, should be acknowledged as a general duty of the data protection authorities toward the harmonization of enforcement practices in general. Benefits as regards the public (including the data subjects, controllers, processors, data protection officers and all other engaged professionals in the field) are obvious, which may also be observed from the above noted contribution. I am going to explore further in the paper the hypothesis that the continued - and the more vigilant uptake of this CPDPA authority, coupled with improved technical functionalities, also has a positive impact on the efficiency of the CPDPA's work activities in general.

5.1.2 The publishing of certain non-anonymized final rulings

The second relevant provision is positioned in Chapter VI of the Act, which stipulates certain provisions in relation to the CPDPA's authority to impose administrative fines. As such it represents a form of a sanction, which is manifested through the CPDPA's power to publish certain *final rulings without anonymizing the perpetrator's data*.⁷⁵

More precisely, the final CPDPA rulings establishing violations of the GDPR/Act are to be published non-anonymously, were such rulings concern: a) *the processing of minor's personal data*; b) *the processing of special categories of personal data*; c) *automated individual decision-making* or d) *profiling*. To be published also are the non-anonymized final rulings where the breach was committed by a controller or a processor who *already breached the provisions of the GDPR/Act*. Lastly, such final rulings are to be published non-anonymized, *which relate to the CPDPA's decision imposing an administrative fine of at least HRK 100,000.00 (approx. EUR 13,272.00) - provided that such latter decision on the fine is also final*. Thus, according to this solution, a final decision imposing the fine is not itself to be published but only a ruling "in connection" with which (another, underlying) CPDPA decision on the fine was issued (e.g., a decision ordering the erasing of the unlawfully collected data, etc.), which must also be final.⁷⁶

While the rule is declared as a form of sanction, the Government defended its intention a bit differently during public consultations on the draft Act. To be precise, in its response to a related negative comment from the Croatian Chamber of Economy, it briefly rejected the claim that the proposed publishing is a new form of punishment,

⁷⁴ Vlada Republike Hrvatske, "Evidencija komentara," 44.

⁷⁵ Vlada Republike Hrvatske, "Prijedlog Zakona," 29.

⁷⁶ E.g., a decision imposing other corrective measures such as to provide access to the data, erase the unlawfully collected data, etc. Article 48 of the GDPR Implementation Act.

which is not envisaged in the GDPR.⁷⁷ It explained that the public non-anonymous announcement of such rulings constitutes a *notice to all data subjects about the bad practices carried out by the data controller/ data processor*. The aim is that the data subjects are able to pay special attention to the protection of their personal data in their dealing with the subject controller/processor.⁷⁸

Regardless of the rejected claim by the Government that the publication is a new form of punishment, this form of publishing, i.e., non-anonymous publishing, indeed represents a *form of sanction* for relevant controllers and processors⁷⁹, which is as such not uncommon in the legislation and practice also of other EU Member States.⁸⁰ Moreover, the relevant provision appears enacted also pursuant to Chapter VI of the GDPR, which concerns the data protection authorities. Finally, as declared in the Act, the authority to publish (also) such decisions constitutes an additional power of the data protection authority, which the Member States are allowed to prescribe in their national legislation.⁸¹

It is argued that on the basis of all these considerations the relevant provisions should be notified to the Commission pursuant to the GDPR.⁸² Some, though not all Member States made such notifications, and in any case, where they were, the notifications were not always consistent, i.e., reflecting the sanctioning character of publishing non-anonymized decisions and the authority of a data protection authority to order such publishing.⁸³ Croatia did not communicate the provision at all, i.e., in either category.

⁷⁷ It did not specify this issue further and did not refer to the GDPR itself (e.g., to Article 58, paragraph 6 of the GDPR).

⁷⁸ Vlada Republike Hrvatske, "Evidencija komentara," 107.

⁷⁹ Article 84, paragraph 1 of the GDPR.

⁸⁰ Here selected are Hungary and Italy. 1) The Hungarian National Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*) may order the publication of its decision so as to include the identification data of the controller or processor, if: a) the decision concerns a wide range of persons, b) the decision was adopted in connection with the activities of an organ performing public duties, or c) the gravity of the infringement justifies publication. „Act CXII of 2011,” section 61(2). 2) The Italian *Garante per la protezione dei dati personali* is authorized to publish decisions on its website as an ancillary sanction. “Codice in materia di protezione dei dati personali,” [“Personal Data Protection Code,”] Article 166, paragraph 7. English text released on December 22, 2021, accessed on March 6, 2023, <https://www.gpdp.it/documents/10160/0/PERSONAL+DATA+PROTECTION+CODE.pdf/96672778-1138-7333-03b3-c72cbe5a2021?version=1.0>.

⁸¹ Article 58, paragraph 6 of the GDPR.

⁸² Pursuant to Article 84, paragraph 2 of the GDPR, notifications must be made (by May 25, 2018) on all provisions adopted on other penalties applicable to GDPR infringements, in particular for infringements which are not subject to administrative fines under Article 83 of the GDPR, as well as the subsequent amendments affecting them – without delay. Furthermore, the provisions adopted pursuant to the Chapter VI of the GDPR (independent supervisory authorities) and any subsequent amendments affecting them, without delay, must also be notified (Article 51, paragraph 4 of the GDPR).

⁸³ European Commission, „EU Member States notifications to the European Commission under the GDPR,” accessed March 6, 2023, https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu/eu-member-states-notifications-european-commission-under-gdpr_en.

In any event, as currently prescribed and without any rules or other procedures worked out on the basis of such a solution, the relevant provision of the Act appears rigid, since it provides no additional criteria and considerations to be taken into account when deciding whether a final decision is to be published. In other words, all of the mentioned final decisions are to be published without anonymizing the offender's identity details. On the other hand, the CPDPA has yet not ordered and published any such ruling on its website, to the best of my knowledge, which also indicates that, while clearly important for its functions and aims, the solution as currently prescribed is in the overall not sustainable.

5.1.3 Publish or perish: towards the policy on communicating enforcement activities

It may be argued that the examined provision on the publication of certain final rulings without anonymization implies that all of the CPDPA's final rulings may be published anonymously.⁸⁴ Moreover, the provision on publishing anonymized (or pseudonymized) rulings on possibly high-risked processing does not envisage a finality criterion for the publishing. Therefore, the interpretation that then all of the "more significant" CPDPA rulings may be published anonymously regardless of their (finality) status is also possible - strictly in consideration of speedy transparency toward the public and the lengthy court proceedings where lawsuits are filed. However, since such rulings may be contested (and the more significant ones usually are) it is vital to include in any such publication also the clearly visible information on the status of the ruling/dispute. Clear criteria for the publication of rulings should in any case be developed.

Therefore, in all cases, including those where infringements are established by the public sector, it is proposed that the CPDPA develops and publishes a comprehensive policy on communicating its enforcement activities, which would provide a clear (predictable) overview of its decision-making process and all factors included in the consideration of publishing or making available its rulings.⁸⁵ A case study analysis in Part 6 of this paper will further elaborate on some of the challenges that need to be resolved throughout this process. More broadly, specific considerations on the publication of CPDPA's rulings (including those directed toward the public sector where it is excluded from fines or where limitations of fines are envisaged) should be considered in the context of the earlier noted EDPB initiatives toward coordinated action on EU-wide harmonisation of certain procedural rules, which include the rules on publication of decisions by the data protection authorities.⁸⁶

⁸⁴ Nina Kovač, "Rješavanje u postupcima povrede prava na zaštitu osobnih podataka," ["Settlement of disputes concerning the violation of the right to the protection of personal data,"] *Hrvatska pravna revija* 19, no. 2 (September 2019): 10.

⁸⁵ The process may draw inspiration from the policies of other data protection authorities in Europe (not necessarily within the EU, see e.g.: UK ICO, "Communicating our Regulatory and Enforcement Activity Policy," 2019, accessed March 6, 2023, https://ico.org.uk/media/1890/ico_enforcement_communications_policy.pdf).

⁸⁶ EDPB, "Letter," 13. See also EDPB, "Statement,".

5.2 The website

While the CPDPA also has a LinkedIn and Twitter account pages and maintains its YouTube channel, the information concerning its work activities is primarily and most comprehensively published on its website (www.azop.hr).⁸⁷ The CPDPA redesigned its website in 2021, which is now adapted to all devices, so that the user can access the content and required information as easily as possible.⁸⁸

The website contains several templates for the exercise of the data subject's rights before the data controller, including complaints. A request for determination of a violation of the right, which is submitted to the CPDPA, can be filed personally, in writing, by fax, by e-mail or directly online by way of a form.⁸⁹ The information that need to be provided in the request (form) include the name and surname, personal identification number, address, detailed description of the (alleged) infringement, information on the time of infringement, copies of acts or documents supporting the request (e.g., photographs, contracts, police reports, correspondence, land registry extracts) and the information, as applicable, on the other regulatory or other bodies, or on the controller, which the data subject contacted concerning the issue. Though not available in other languages, the Croatian form of the request envisages the possibility for foreign citizens to provide their national/document ID number.

Even though the CPDPA made significant improvements in the presentation of relevant information on its enforcement activities, further improvements are still necessary, particularly where issued rulings are concerned. Specifically, the number of decisions published is still very low in comparison to the reported number (in annual reports) as of the start of application of the GDPR. On the positive side, it appears that the CPDPA does not exclusively publish (anonymized) opinions and decisions relating to the earlier examined high-risked data processing activities. However, the CPDPA does not publish information on the status (finality) of published rulings nor does it publish relevant judgments. As noted earlier, it is unknown (not visible) whether any non-anonymized final ruling has yet been issued.

From the viewpoint of an average user, it is confusing to decipher when a ruling was issued, as opposed to when the information on it was published. As regards opinions, only the dates of publishing are visible. The dates of opinions and rulings are not visible on the main page listing all of their relevant categories, but only after a specific opinion or ruling is opened.⁹⁰ In terms of improved accessibility of relevant information it would be very useful to implement a search tool designed specifically for opinions and rulings, which would also be supported with quality search filters (e.g., by month/year, subject-matter, keyword).⁹¹

⁸⁷ Overview of the website ended on March 21, 2023.

⁸⁸ 2021 Activity Report, 75.

⁸⁹ CPDPA, accessed March 6, 2023, <https://azop.hr/zahtjev-za-utvrdivanje-povrede-prava/>.

⁹⁰ This seems to have improved at least as regards opinions during March 2023 (although only for one decision). CPDPA, "Mišljenja," [Opinions], accessed March 21, 2023, <https://azop.hr/misljenja/>.

⁹¹ See e.g., the search engine options at the webpage of the Slovenian DPA: Informacijski pooblaščenec, accessed March 6, 2023, <https://www.ip-rs.si/mnenja-zvop-2/>.

It is argued, in particular taking into account the cross-border procedures and EDPB activities, that the effectiveness and transparency of GDPR enforcement activities also entails a fully functioning version of the site in the predominantly spoken foreign language. As regards Croatia, the CPDPA's website is maintained also in the English language. However, the English version of the site currently contains very limited information. The forms for data subject's requests are not yet available in English. Decisions, opinions and annual activity reports (even their summaries) are also not available. Furthermore, the information presented is largely outdated.⁹²

The digitization and timely inclusion of more opinions and rulings in the public database (the website), as supported by user-friendly categorizations and the systematic application of appropriate technical measures (including search tools for optimal accessibility) should have a beneficial impact not only on the data subjects, controllers, processors, data protection officers and all other engaged professionals, but also on the CPDPA. Specifically, such efforts would alleviate the present burdens posed by the extent of its, in particular, advisory activities (issuing opinions). However, in order to assist those efforts of the CPDPA while taking into account its limited resources, it is also necessary to reconsider the prescribed time limit for issuing expert opinions on request of legal and natural persons, as argued in Part 4 of the paper.

5.3 Freedom of information requests

Access to the data on the CPDPA's activities may be attempted in the exercise of the freedom of information requests pursuant to the Act on the Right to Access to Information. While a detailed analysis of all of the relevant provisions and procedures falls outside the scope of this paper, in view of the here examined transparency concerns and the importance thereof, on one hand, and the CPDPA's scope of activities, on the other, it seems important to also present an interesting case of a request gone overboard.

The case concerns a request made to the CPDPA for the reuse of certain information. Specifically, during 2019 a consultancy company made a request, by which it sought: a) all final acts (such as decisions, decrees, minutes) with which the CPDPA or the state inspector completed the inspection procedures of taxpayers in the public and private sector or with natural persons; b) all final decisions on misdemeanours (such as decisions, misdemeanour orders, or other acts establishing misdemeanours); c) all opinions written after May 25, 2018. Information under points a) and b) were sought in the area of data protection for the period of three years back (2016-2019), and information under point c) for the period after 25.5.2018, i.e., as of start of GDPR application.

⁹² For example, the section on the applicable legal framework still refers to the pre-GDPR EU and national legislation. Nonetheless, it is good that a translated GDPR Implementation Act is available at: CPDPA, „National legislation,“ accessed March 6, 2023, <https://azop.hr/naslovna-english/>.

The request was expectedly denied on account of the *abuse of the right to access information*, in particular due to a large amount of data sought, which would have led to a burdening of the work and regular functioning of the CPDPA.⁹³ However, while following appeal the Information Commissioner confirmed the CPDPA's decision⁹⁴, the arguments provided on the inability of certain documentation to be reused should be highlighted as a matter of concern. It was held, namely, that since the requested information contained protected personal data and was also in physical (paper) form, the information in question was not suitable for reuse. It would have been suitable for reuse if it was digitized, i.e., scanned and converted into electronic form - especially into one of the machine-readable formats suitable for reuse, and where the protected data were appropriately secured in the process.

Without prejudice to the admittedly excessive scope of the request(s) at hand and all types of information sought, where strictly data protection rulings and opinions are concerned it is my opinion that their copies should be systematically prepared for subsequent potential publication and use also in potential freedom of information requests. Specifically, a policy supported by appropriate technical measures should be in operation that assumes electronic publication and future (re)use of such documents, which enables their further processing (redaction) according to particular requirements (e.g., "masking" personal data, etc.). In other words, where rulings and opinions are concerned, the fact that they have not as of production been digitized and/or masked, in the today's digital age and five years into the GDPR should not in itself be a valid reason for denying (public) access to them, but rather be considered a fault of their producer.

The issue of accessing relevant information on the CPDPA's cases and rulings on the basis of the Act on the Right to Access to Information is closely related to the earlier examined solution on the publishing of certain final rulings in a non-anonymous form. A case study in the next section will present the specific reason of the prevailing public interest, on the grounds of which access to (and the publishing of) relevant information concerning the case and rulings was denied in practice.

6. Corrective measures, justice and (lack of) transparency in action: a case study

As of October 2018, the CPDPA was receiving individual requests for determination of a violation of a right by data subjects to whom the data controller (hereinafter: the Bank) denied the right to obtain a copy of their personal data. Specifically, the data sought was the credit documentation related to concluded loan agreements in Swiss francs (CHF) with the Bank (copies of credit documentation, e.g., bookkeeping card, repayment plan, annex to the loan agreement, overview of interest rate changes), which contains data subjects' personal data. That

⁹³ See Article 23, paragraph 6, point 5 of the Act on the Right to Access to Information.

⁹⁴ Information Commissioner [Povjerenik za informiranje], decision UP/II-008-07/19-01/161, March 9, 2020.

documentation was necessary for data subjects to meet the deadline for claiming overpaid interest on the basis of a rather significant judgment, which was rendered upon consumer collective action against several banks in Croatia (including the Bank).⁹⁵ The Bank persistently refused to provide copies, claiming that the information requested was in fact not personal data, but specific credit documentation subject to special legislation. In addition to individually received complaints, over the period of approximately 1 year (from May 25, 2018 to April 30, 2019) the Bank received a significantly larger number (2500) of such requests from the data subjects, to whom it also denied the right to obtain copies of personal data.

In early March 2020 the CPDPA announced⁹⁶ that it imposed an administrative fine, however, without specifying the amount of the fine and name of the Bank. The fine was imposed as the strictest corrective measure, since the Bank failed to comply with its *34 previously issued individual orders* to provide copies to the data.

According to the CPDPA's communication, when determining the amount of the fine it was guided by the GDPR criteria, as follows. Described action of the Bank resulted in a *more serious violation* of data subjects' rights. Next, the violation affected a *very large number (2577) of Croatian citizens*. Moreover, the violation was taking place *for a very long period of time*, i.e., for a period of almost one year during which the data subjects were prevented from achieving their rights. According to the CPDPA, it clearly followed from such actions of the Bank that it had been aware of the fact that in the described manner access to data subjects' personal data was being denied. Consequently, it determined that the Bank acted *knowingly and with intent*, especially for the reason that this is not an isolated case but an occurrence for 2577 data subjects over a long period of time, and taking into account that access to the data was not enabled even after the adoption of CPDPA's individual orders. All that indicated the seriousness of the committed violation. With such behaviour the Bank as a data controller did not in any way actively make an effort to mitigate any possible consequences and risks for the rights and freedoms of

⁹⁵ However, as confirmed by the courts in their final judgments, the reason for seeking documentation is legally irrelevant. The Bank as data controller should not get involved (nor is it authorized to) into the motives and reasons for which the data subjects request copies of personal data, since the data subjects are not obliged to state the purpose of requesting their personal data in order to exercise their rights to access the data. Also irrelevant is the fact whether the data subjects already possessed the required personal data/documentation within the scope of their contractual relationship with the Bank and whether they had the possibility to request the disputed credit documentation in the civil proceedings. See e.g.: Visoki upravni sud Republike Hrvatske [High Administrative Court of the Republic of Croatia], judgment, Usž-271/21-3, July 22, 2021.

⁹⁶ CPDPA, "Rješenje kojim se izriče upravno novčana kazna zbog odbijanja dostave osobnih podataka ispitanicima," ["Decision imposing an administrative fine for refusing to provide personal data to data subjects,"] March 13, 2020, accessed March 6, 2023, <https://azop.hr/rjesenje-kojim-se-izrice-upravno-novcana-kazna-zbog-odbijanja-dostave-osobnih-podataka-ispitanicima/>. The decision was delivered to the Bank on March 5, 2020. Imamopravoznati, "Objava odluke o upravnoj novčanoj kazni izdanoj banci," ["Publication of the decision on the administrative fine issued to the bank,"] accessed March 6, 2023, https://imamopravoznati.org/request/objava_odluke_o_upravnoj_novcano#incoming-9809.

the data subjects affected by the violation. In addition to the above the CPDPA also took into account that it learned about the said violation from the data subjects themselves, and the Bank also confirmed the exact number of data subjects. Therefore, it could be considered that by not acting on the requests of the data subjects, the Bank directly avoided certain financial costs, which may be considered as the acquisition of financial benefit to the detriment of data subjects. Interestingly, the CPDPA quoted as alleviating circumstances the facts that the Bank *was not previously found to have violated the GDPR* and its *adequate degree of cooperation* with the CPDPA during the procedure (which the CPDPA considered to be in line with the controller's obligations under the GDPR and the Act).

Official requests filed to the CPDPA to disclose name of the Bank and amount of the fine on the basis of the Act on the Right to Access to Information have so far been unsuccessful. One privacy watchdog organization submitted such requests at least on two occasions. In its requests⁹⁷ the organization invited the CPDPA to take into account, in its assessment of proportionality test and public interest test⁹⁸, the fact that the Croatian citizens are not aware of the identity of the bank(s) that denied thousands of its customers the rights guaranteed by the GDPR. It claimed that clients of that bank, as well as future potential clients, have the right to information about massive violations of data subjects' rights.

The CPDPA denied the request, explaining as follows. Under the GDPR Implementation Act only final decisions can be published in a non-anonymized form (as examined earlier) and the Bank initiated the administrative dispute in the prescribed time limit. The assessment of proportionality test and public interest test showed that enabling access to the full decision could possibly cause a negative media frenzy on the bank and negative effect on the ethics of their business, as it would be based on a decision (solution) that might still be amended or revoked. That could create additional pressure on the court's impartiality, and *it is in the public interest to conduct efficient, independent and impartial judicial, administrative or other legally regulated procedure*. The CPDPA also assessed that the interest of the public would "for now" be sufficiently satisfied via redacted content of the decision published on its website (no identity disclosed, no amount of fine).⁹⁹ As follows, according to the CPDPA it was in the *prevailing public interest* to conduct efficient, independent and impartial judicial, administrative or other legally regulated

⁹⁷ Imamopravoznati, "Prva upravna novčana kazna za povredu Opće uredbe o zaštiti podataka," ["The first administrative fine for violation of the General Data Protection Regulation,"] and the related CPDPA decision: class: UP/I-008-06/20-01/06; filing no.: 567-01/05-20-01, April 9, 2020, accessed March 6, 2023,

https://imamopravoznati.org/request/prva_upravna_novcana_kazna_za_po.Imamopravoznati;
"Objava odluke," and the related CPDPA decision class: UP/I-008-01/21-01/01, filing no. 567-01/05-21-01, August 10, 2021, accessed March 6, 2023, [https://imamo pravoznati.org/request/objava_odluke_o_upravnoj_novcano#incoming-9809](https://imamo_pravoznati.org/request/objava_odluke_o_upravnoj_novcano#incoming-9809).

⁹⁸ See Article 16 of the Act on the Right to Access to Information.

⁹⁹ CPDPA, "Rješenje kojim se izriče upravno novčana kazna." Note: information on date of announcement (March 13, 2020) is only visible in a list of search results displayed following a general search on the CPDPA's webpage, and not in the document itself.

procedure, which is why it ultimately denied the request on the basis of the Act on the Right to Access to Information.¹⁰⁰

The CPDPA reported that during 2021 a total of 29 judgments¹⁰¹ confirmed its rulings on the Bank's infringements of data subjects' rights. However, at the time of finalizing this paper (March 2023) the details of the CPDPA's ruling on the administrative fine are still unknown, presumably due to the fact that it is being contested before the courts and is therefore not final. On the other hand, already in May 2019 the association for consumer protection of users of financial services¹⁰² published for public interest reasons the identity of the Bank and one of the CPDPA's decisions ordering it to deliver copies of the data.¹⁰³

The leaked CPDPA's ruling, highly welcomed by the public, is useful to also show the length of related court proceedings, though only in the case of one of the data subjects. Specifically, the overall procedure from the date of the CPDPA's ruling until finality (i.e., issued judgment of the court of second instance) lasted 26 months.¹⁰⁴ Consequently, especially in light of continued GDPR infringements in this case, it is necessary to consider the earlier proposed prescription of time limits to issue relevant judgments in data protection cases.¹⁰⁵

¹⁰⁰ Article 23, paragraph 6, point 2 in connection with Article 15, paragraph 3, point 1 of the Act on the Right to Access to Information.

¹⁰¹ 2021 Activity Report, 51.

¹⁰² This association is as of 2022 authorized to file collective suits for breach of consumer protection legislation. Vlada Republike Hrvatske [Government of the Republic of Croatia], "Odluka o određivanju tijela i osoba ovlaštenih za pokretanje postupka za zaštitu kolektivnih interesa i prava potrošača," ["Decision on determination of bodies and persons authorized to initiate procedure for the protection of collective interests and consumer rights,"] Official Gazette of the Republic of Croatia no. 107/2022.

¹⁰³ Udruga Franak [Association Franak], "Banke koje nisu htjele dostavljati dokumentaciju, krše hrvatsko i EU pravo!," ["Banks that did not want to submit documentation are violating Croatian and EU law!,"] May 31, 2019, accessed March 6, 2023, <https://udrugafanak.hr/banke-koje-nisu-htjele-dostavljati-dokumentaciju-krse-hrvatsko-i-eu-pravo/>.

¹⁰⁴ A more detailed overview: 12.11.2018 – data subject submits request to the Bank; 20.2.2019. – CPDPA requests information from the Bank; 22.5.2019 - CPDPA ruling ordering the delivery of copies of personal data (class: UP/I-041-02/19-10/19, filing no. 567-02/10-19-01, May 22, 2019); 9.9.2020 - judgment of the court of first instance - Upravni sud u Zagrebu [Administrative Court in Zagreb], judgment, UsI-2035/19-14, September 9, 2020; 22.7.2021 - judgment of the court of second instance: Visoki upravni sud Republike Hrvatske [High Administrative Court of the Republic of Croatia], judgment, Usž-271/21-3, July 22, 2021. The controversial issue during the court proceedings was whether the information sought amounted to personal data or not. The court of first instance found it was not (i.e., that it is exclusively credit documentation) and annulled the CPDPA's decision, while upon appeal the High Administrative Court annulled that judgment and rejected the Bank's claim for annulment of the CPDPA's decision. Analysis of final judgments published so far on this matter shows the prevailing standpoint of the courts that the relevant credit documentation does amount to personal data and that the CPDPA did not order the Bank any new personal data processing (but rather to provide the copies to the already existing credit documentation). A detailed analysis of these concerns, specifically, falls outside the scope of this paper.

¹⁰⁵ According to the relevant chart in the 2021 EDPB Report, the „average time to formally decide on the case“ (without further details, i.e., specifying the question), in strictly Croatian cases, was reported to be 18 months. EDPB, "Overview on resources," 21.

Particularly troubling in light of the high public interest in this matter is that the CPDPA has not, to the best of my knowledge, published up until March 2023 any of its final rulings ordering access to the data. In the meantime, related court judgments are available in publicly available court registries and online databases (anonymized¹⁰⁶).

As noted earlier in the paper, nothing in the Act prevents the CPDPA from assuming the position (interpretation) that all final rulings are to be published anonymized, except for those that are to be published non-anonymized due to their particular importance and the related punitive and transparency function of their publication. Should a more liberal starting position be considered (the publication of anonymized non-final rulings, e.g., for the sake of speedy transparency toward the public, in consideration of lengthy court proceedings where lawsuits are filed, etc.), it is vital to also publish the updated information on the status of the rulings, as argued previously in this paper.

Regarding this case it might have (also) been argued that the *individual orders* referred to by the CPDPA in its announcement, establishing one and the same infringement of the GDPR and ordering the same Bank to provide one and the same type of personal data copies, are considered repeated violations of the GDPR, which should have (also) prompted its authority to publish such final rulings without anonymization, pursuant to Article 48 of the Act. More precisely, by this interpretation, a final CPDPA decision as regards the same controller might have been published, non-anonymized, already from the moment of finality of the second CPDPA's ruling. The prevailing objective for such a rule prescribed in the Act could be the transparency reasons on account of the high public interest in accessing information on the controller who, according to the CPDPA's findings repeatedly violates the GDPR, in the same way and toward many data subjects. This is so particularly where the CPDPA is aware of continuing infringements - of which it was in the present case. More broadly, this example and all of the grave circumstances of the case show a pressing need for extensive research into the objectives for prescribing the conditions of publishing CPDPA's rulings under the current Act and the relationship that such publication has with the freedom of information requests pursuant to the Act on the Right of Access to Information (specifically, the grounds for restricting access to relevant case information). At any rate, as noted throughout this paper, the CPDPA should develop (and publish) a comprehensive policy on communicating its enforcement activities, which would provide a clear (predictable) overview of its decision-making process and all factors included in the consideration of publishing or making available its rulings.¹⁰⁷

¹⁰⁶ An overview of final judgments in the registries indicates that more banks in Croatia were found to have infringed the GDPR by not providing relevant data/documentation.

¹⁰⁷ Relevant provisions of the Italian data protection authority are an example of comprehensive publication considerations (also as regards the time-limit of online publication, indexation of decisions by search engines and updated information on court proceedings). Specifically, decisions containing personal data remain accessible through the website up to 2 years after adoption, but taking into account the available technologies measures are taken to prevent search engines from indexing and performing searches against them. Appropriate measures are taken to safeguard: a)

7. Conclusion

Analysis in this paper identified and addressed the concerns of certain underdeveloped and lacking national legislative solutions and issues in CPDPA's practices, which were found to affect the overall aim of effective GDPR enforcement and transparency. As shown in the analysed case, finality of judgments in administrative data protection disputes may take a long time should the CPDPA's ruling be contested. The particular rule on the issuing of administrative fines after finality of the underlying decision issuing other corrective measures significantly prolongs the resolution of the relevant data protection dispute and the publication of details on the fine and the infringing party. Therefore, without prejudice to the seemingly ever-present problem of judicial case overload, the long duration toward final resolution of data protection administrative disputes needs to be highlighted as an area of concern, and appropriately addressed. It is proposed that such administrative disputes are optimized by prescribing time limits for the issuing of relevant court decisions.

Furthermore, following analysis of implemented solutions in the Act regarding the publishing of certain CPDPA's rulings, interpretation should be adopted that all of the final CPDPA's decisions are to be published as a matter of principle, but subject to exceptions and under the clear criteria to be developed by way of a policy, which should also be made transparent. Public interest concerns should be closely examined in the assessment of communicating information on data protection cases and decisions, such as the one examined in the paper, as well as the interrelation of such communication with the freedom of information requests pursuant to the Act on the Right of Access to Information (specifically, with the grounds for restricting access to requested information). If necessary, current provisions of the Act could be amended to reflect this procedure, in reference to the devised policy. Internally, procedures should be in place according to which the CPDPA systematically digitizes its rulings and opinions, and makes them ready for redaction according to particular requirements (e.g., "masking" personal data, etc.).

A comprehensive policy on communicating enforcement activities should also explore the modalities to effectively ensure deterrence from non-compliance, such as on the basis of heightened transparency of CPDPA's corrective measures

security, national defence and international relations; b) monetary and currency policy; c) public order and the prevention and repression of crimes; d) the protection of personal data - in any case, the names of the applicants and of the natural persons representing them are not subject to publication; e) intellectual property, copyright and trade secrets. In the margin of the published decision, the information regarding the presentation of a judicial appeal by the interested party is annotated, with an indication of its outcome. Note: unofficial translation by author. Article 37, paragraphs 2-4 of the "Regolamento n. 1/2019 concernente le procedure interne aventi rilevanza esterna, finalizzate allo svolgimento dei compiti e all'esercizio dei poteri demandati al Garante per la protezione dei dati personali", ["Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Italian Data Protection Agency,"] [9107633], doc. web n. 9107633, accessed March 6, 2023, <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9107633>.

issued on the public authorities, which are exonerated from administrative fines. Particularly in the case of more serious infringements relevant measures should be communicated timely and preferably non-anonymously. Moreover, the undeveloped solution of the Act on the limitation of fines for legal persons with public authority and legal persons performing a public service, as currently prescribed in the Act, requires efforts towards the establishment and publication of an appropriate sanctioning policy. Such a policy should lay out in detail the relevant criteria for assessing and calculating the fines for mentioned legal persons, and therefore provide for more legal clarity as well as certainty in that area. A minimum and a maximum fine could be considered for enactment via future amendments of the Act.

The authority to publish non-anonymous final rulings should be considered EU-wide as a form of additional sanction and power of the data protection authority, which the Member States are free to prescribe in their local legislation and practice. However, recognized as such it also needs to be clearly communicated to the European Commission. Taking into account the analysis in this paper it can be concluded that the Croatian legislator prescribed the very specific criteria for the publishing of certain final rulings non-anonymously for the correct transparency, but also “sanctioning” reasons. The criteria, should, however, in my opinion be revised and adequate interpretations to that effect developed. Firstly, the criterion on the amount of data subjects affected should be taken into account regardless of data sensitivity and the type of processing operations involved. Secondly, decisions on fines should always be published, regardless of the amount, since the CPDPA in practice only imposes fines as a last resort in gravest cases (circumstances). Thirdly, the same needs to apply in the cases of fines that are imposed on legal persons with public authority and legal persons performing a public service (which solution itself requires improvements, as argued in the paper). Lastly, reprimands issued as strictest alternative corrective measures, due to the circumstances of the case/infringement(s), should be published both for such legal persons and for public authorities.

More broadly, the questions to be further explored at an EU-level relate to the different national solutions concerning the non-anonymized publication of certain decisions of the data protection authorities and specifically, their recognition as a form of additional sanction. This being so regardless of the fact that such publication is indeed enacted as a sanction (and can thus be specifically ordered as such) or merely listed as a power/task of the data protection authority, or even if it is only being exercised in the practice of a data protection authority. Initial hypothesis is that such publication should be acknowledged as a form of sanction, where the offending parties (controllers/processors) whose identity is disclosed are concerned. Consequently, a comprehensive analysis of such solutions, manner of exercising, and the adopted (if any) criteria for publication is needed at EU level toward the understanding of its role, sanctioning effect and the overall effect on the quality and efficacy of GDPR enforcement. Of course, it may be assumed that with such publication the transparency and the related public interest reasons are being fully satisfied. That being so, appropriate publication considerations should in any case be developed.

This paper argued the vital importance of a strong online presence of data protection authorities, since the modality over which the necessary information on their work may efficiently be communicated to the public is in the first place their website. Analysis of the CPDPA's redesigned website (up to March 2023) showed improvements in relation to the previous versions, but there still remain shortcomings, which should be appropriately addressed. Primarily, more post-GDPR rulings should be timely and systematically published, subject to the noted communication policy and efforts towards the assessment of the current relevant provisions of the Act. They should be communicated with a clear date of issuing, properly categorized and supported by effective search tools so as to improve accessibility for the average user. Status of the rulings should also be communicated, and updated as appropriate. A proper version of the website in English (as the predominantly spoken foreign language in Croatia) should be recognized in support of transparency, and particularly taken into account due to the cross-border procedures and EDPB activities. As such, it needs to improve in terms of content and functionalities.

All of the noted new and/or improved (and continuing) efforts of the CPDPA toward better transparency should be supported by the extension of the currently prescribed narrow deadline to issue expert opinions, thereby enabling also a higher efficiency of the CPDPA. Further research is necessary toward establishing the criteria for the different functions and outcomes of opinions issued in relation to the submitted requests for opinions and the submitted petitions by anyone on alleged infringements of the GDPR and the Act (as opposed to formal requests of data subjects for determination of a violation of the right). This is so particularly with regard to the possibly resulting formal administrative procedures (investigation, ruling) in relation to alleged infringements, including those initiated *ex officio*.

Analysis and proposed solutions in this paper should be considered jointly with the EDPB initiatives towards the harmonization of certain procedural rules at the EU-level, including the administrative procedural rules that are relevant for the decision-making process before the data protection authorities, and for the publication of their decisions. Consequently, this paper invites further and broader research into the same and related issues and concerns, both nationally and EU-wide.

Bibliography

I. Journal articles and book chapters

1. Aldhouse, Francis. "A reflection on the priorities of a data protection authority." *Computer Law & Security Review: The International Journal of Technology Law and Practice* (2018): 1-8. Accessed March 6, 2023, <https://doi.org/10.1016/j.clsr.2018.05.002>.
2. Barnard-Wills, David. "The technology foresight activities of European Union data protection authorities." *Technological Forecasting & Social Change* (2016): 1-9. Accessed March 6, 2023, <http://dx.doi.org/10.1016/j.techfore.2016.08.032>.

3. Barnard-Wills, David, De Hert, Paul and Pauner Chulvi, Cristina. „Data protection authority perspectives on the impact of data protection reform on cooperation in the EU.“ *Computer Law & Security Review: The International Journal of Technology Law and Practice* (2016): 1-12, doi: 10.1016/j.clsr.2016.05.006.
4. Đapić, Marija. „Zaštita osobnih podataka i sudska kontrola upravnih akata Agencije za zaštitu osobnih podataka (AZOP).“ [“Protection of personal data and judicial control of administrative acts of the Personal Data Protection Agency (AZOP).”] Master’s Thesis, University of Zagreb Faculty of Law, 2022. Accessed March 6, 2023, <https://urn.nsk.hr/urn:nbn:hr:199:164095>.
5. Gumzej, Nina and Dragičević, Dražen. „Video Surveillance in the Workplace under the Croatian Act on Implementation of the General Data Protection Regulation.“ *Zbornik Pravnog fakulteta u Zagrebu* 69, no. 3 (2019): 327-346.
6. Hoofnagle, Chris Jay, Van der Sloot, Bart and Borgesius, Frederik Zuiderveen. „The European Union general data protection regulation: what it is and what it means.“ *Information & Communications Technology Law* 28, no. 1 (2019): 65-98.
7. Jóri, András. “Shaping vs applying data protection law: two core functions of data protection authorities.” *International Data Privacy Law* 5, no. 2 (May 2015): 133-143.
8. Kotschy, Waltraut. “Article 78. Right to an effective judicial remedy against a supervisory authority”. In *The EU General Data Protection Regulation (GDPR): A Commentary*, eds. Kuner, Christopher, Bygrave, Lee A., Docksey, Christopher and Drechsler, Laura 1125–1132. New York: Oxford University Press, 2020.
9. Kovač, Nina. “Rješavanje u postupcima povrede prava na zaštitu osobnih podataka.” [“Settlement of disputes concerning the violation of the right to the protection of personal data.”] *Hrvatska pravna revija* 19, no. 2. (September 2019): 5-12.
10. Lintvedt, Mona Naomi. „Putting a price on data protection infringement.“ *International Data Privacy Law* 12, no. 1 (February 2022): 1-15. Accessed March 6, 2023, <https://doi.org/10.1093/idpl/ipab024>.
11. Raab, Charles and Szekely, Ivan. “Data protection authorities and information technology.” *Computer Law & Security Review* 33, no. 4 (August 2017): 421-433.
12. Rajko, Alen. “Novo uređenje zaštite osobnih podataka: uloga upravnog sudstva.” [“The New Personal Data Protection Regulation: The Role of Administrative Judiciary.”] *Hrvatska pravna revija* 19, no. 2 (February 2019): 28-33.
13. Sajfert, Juraj. “Croatia: Minimum Service for the Implementation, Big Service to the Public Sector.” *European Data Protection Law Review (EDPL)* 6, no. 2 (2020): 281-288.
14. Wolters, Pieter T. J. “The Enforcement by the Data Subject under the GDPR.”, *Journal of Internet Law* 22, no. 8 (February 2019): 22-31.

II. Legislation and preparatory acts

1. 2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról. [Act CXII of 2011 on Informational Self-Determination and Freedom of Information]. Translated text into English, as in force on January 1, 2022. Accessed March 6, 2023, <https://njt.hu/jogszabaly/en/2011-112-00-00>.
2. Agencija za zaštitu osobnih podataka – AZOP. [Croatian Personal Data Protection Agency - CPDPA]. Kriteriji za obročnu otplatu i uvjeti za raskid obročne otplate upravne novčane kazne. [Criteria for instalment repayment and conditions for termination of instalment repayment of administrative fine.] Official Gazette of the Republic of Croatia 5/20.

3. Codice in materia di protezione dei dati personali. [Personal Data Protection Code]. English text released on December 22, 2021. Accessed on March 6, 2023, <https://www.gdpd.it/documents/10160/0/PERSONAL+DATA+PROTECTION+COD E.pdf/96672778-1138-7333-03b3-c72cbe5a2021?version=1.0>.
4. Regolamento n. 1/2019 concernente le procedure interne aventi rilevanza esterna, finalizzate allo svolgimento dei compiti e all'esercizio dei poteri demandati al Garante per la protezione dei dati personali. [Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Italian Data Protection Agency]. [9107633], doc. web n. 9107633. Accessed March 6, 2023, <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9107633>.
5. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). OJ L 119, May 4, 2016, 1–88.; Corrigendum. OJ L 127, May 23, 2018, 2.
6. Ustav Republike Hrvatske. [Constitution of the Republic of Croatia]. Official Gazette of the Republic of Croatia nos. 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 76/10, 85/10 – consolidated text, 5/14.
7. Vlada Republike Hrvatske. [Government of the Republic of Croatia]. Odluka o određivanju tijela i osoba ovlaštenih za pokretanje postupka za zaštitu kolektivnih interesa i prava potrošača. [Decision on determination of bodies and persons authorized to initiate procedure for the protection of collective interests and consumer rights.] Official Gazette of the Republic of Croatia no. 107/2022.
8. Vlada Republike Hrvatske. [Government of the Republic of Croatia]. Prijedlog Zakona o provedbi Opće uredbe o zaštiti podataka. [Draft Act on Implementation of the General Data Protection Regulation.] Class: 022-03/17-01/171; filing no.: 50301-25/06-18-8, April 12, 2018.
9. Zakon o općem upravnom postupku. [General Administrative Procedure Act]. Official Gazette of the Republic of Croatia nos. 47/09 and 110/21.
10. Zakon o pravu na pristup informacijama. [Act on the Right to Access to Information]. Official Gazette of the Republic of Croatia, nos. 25/13, 85/15 and 69/22.
11. Zakon o provedbi Opće uredbe o zaštiti podataka. [Act on the Implementation of the General Data Protection Regulation]. Official Gazette of the Republic of Croatia no. 42/18.
12. Zakon o upravnim sporovima. [Act on Administrative Disputes]. Official Gazette of the Republic of Croatia nos. 20/10, 143/12, 152/14, 94/16, 29/17 and 110/21.

III. Decisions and judgments

1. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. Ruling, class: UP/I-008-01/21-01/01, filing no.: 567-01/05-21-01, August 10, 2021. Accessed March 6, 2023, https://imamopravoznati.org/request/objava_odluke_o_upravnoj_novcano#incoming-9809.
2. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. Ruling, class: UP/I-008-06/20-01/06; filing no.: 567-01/05-20-01, April 9, 2020. Accessed March 6, 2023, https://imamopravoznati.org/request/prva_upravna_novcana_kazna_za_po.

3. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. Ruling, class: UP/I-041-02/19-10/19, filing no. 567-02/10-19-01, May 22, 2019. Accessed March 6, 2023, <https://udrugafuranak.hr/wp-content/uploads/2019/05/pdf-azop.pdf>.
4. La Cour constitutionnelle. [Belgian Constitutional Court]. Judgment no. 3/2021, January 14, 2021. Accessed March 6, 2023, <https://www.const-court.be/public/f/2021/2021-003f.pdf>.
5. Povjerenik za informiranje. [Information Commissioner]. Decision no. UP/II-008-07/19-01/161, March 9, 2020.
6. Upravni sud u Zagrebu. [Administrative Court in Zagreb]. Judgment, UsI-2035/19-14, September 9, 2020.
7. Visoki upravni sud Republike Hrvatske. [High Administrative Court of the Republic of Croatia]. Judgment, Usž-271/21-3, July 22, 2021.

IV. Other documents

1. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. „Godišnje izvješće o radu Agencije za zaštitu osobnih podataka za razdoblje od 1. siječnja do 31. prosinca 2021. godine.“ [„Annual report on the work of the Personal Data Protection Agency for the period from January 1 to December 31, 2021.“] Class: 021-03/22-09/15, filing no.: 65-22-02, Zagreb, March 30, 2022.
2. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. „Izrečena upravna novčana kazna zbog nezakonite obrade osobnih podataka.“ [„An administrative fine was imposed for illegal processing of personal data.“] March 2, 2023, accessed March 6, 2023, <https://azop.hr/category/banner/>.
3. Agencija za zaštitu osobnih podataka - AZOP. „Neosnovan zahtjev za brisanjem osobnih podataka (osobni podaci su nužni za izvršavanje ugovora)“ [„Unfounded request to delete personal data (personal data are necessary for the execution of the contract).“] January 13, 2022, accessed March 6, 2023, <https://azop.hr/neosnovan-zahtjev-za-brisanjem-osobnih-podataka-osobni-podaci-su-nuzni-za-izvršavanje-ugovora/>.
4. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. „Objava fotografije osobnog vozila na medijskom portalu i društvenoj mreži.“ [„Publication of a photo of a personal vehicle on a media portal and social network“]. Opinion. December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-fotografije-osobnog-vozila-na-medijskom-portal-u-i-drustvenoj-mrezi/>.
5. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. „Objava fotografije policijskog službenika“ [“Publication of a photo of a police officer”]. Opinion. December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-fotografije-policijskog-sluzbenika/>.
6. Agencija za zaštitu osobnih podataka - AZOP. „Objava osobnih podataka kandidata u natječajnom postupku“ [“Publication of personal data of candidates in the competitive procedure”]. Recommendation. June 6, 2019, accessed March 6, 2023, <https://azop.hr/objava-osobnih-podataka-kandidata-u-natjecajnom-postupku/>.
7. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. „Objava osobnih podataka sudaca porotnika u medijima“ [“Publication of personal data of lay judges in the media”]. Opinion. December 9, 2022, accessed March 6, 2023, <https://azop.hr/objava-osobnih-podataka-sudaca-porotnika-u-medijima/>.

8. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. "Pravo na pristup osobnim podacima (članak 15. Opće uredbe o zaštiti podataka)." ["The right to access personal data (Article 15 of the General Data Protection Regulation)"]. Opinion. December 12, 2022, accessed March 6, 2023, <https://azop.hr/pravo-na-pristup-osobnim-podacima-clanak-15-opce-uredbe-o-zastiti-podataka/>.
9. Agencija za zaštitu osobnih podataka - AZOP. [Croatian Personal Data Protection Agency-CPDPA]. "Rješenje kojim se izriče upravno novčana kazna zbog odbijanja dostave osobnih podataka ispitanicima." ["Decision imposing an administrative fine for refusing to provide personal data to data subjects."] March 13, 2020, accessed March 6, 2023, <https://azop.hr/rjesenje-kojim-se-izrice-upravno-novcana-kazna-zbog-odbijanja-dostave-osobnih-podataka-ispitanicima/>.
10. CMS.law. "GDPR Enforcement Tracker Report." May 31, 2022, accessed March 6, 2023, <https://cms.law/en/deu/publication/gdpr-enforcement-tracker-report>.
11. European Commission. "EU Member States notifications to the European Commission under the GDPR." Accessed March 6, 2023, https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu/eu-member-states-notifications-european-commission-under-gdpr_en.
12. European Data Protection Board - EDPB. "EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level." October 10, 2022, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-10/edpb_letter_out20220069_to_the_eu_commission_on_procedural_aspects_en_0.pdf.
13. European Data Protection Board - EDPB. "Internal EDPB Document 6/2020 on preliminary steps to handle a complaint: admissibility and vetting of complaints." December 15, 2020, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-07/internal_edpb_document_062020_on_admissibility_and_preliminary_vetting_of_complaints_en.pdf.
14. European Data Protection Board - EDPB. "Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities." August 5, 2021, accessed March 6, 2023, https://edpb.europa.eu/system/files/2021-08/edpb_report_2021_overviewsaressourcesandenforcement_v3_en_0.pdf.
15. European Data Protection Board - EDPB. "Statement on enforcement cooperation." April 28, 2022, accessed March 6, 2023, https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf.
16. Fuster, Gloria Gonzalez et al. "The right to lodge a data protection complaint: ok, but then what? An empirical study of current practices under the GDPR." Access Now (June 2022). Accessed March 6, 2023, <https://www.accessnow.org/cms/assets/uploads/2022/07/GDPR-Complaint-study.pdf>.
17. Imamopravoznati. "Objava odluke o upravnoj novčanoj kazni izdanoj banci." ["Publication of the decision on the administrative fine issued to the bank."] Accessed March 6, 2023, https://imamopravoznati.org/request/objava_odluke_o_upravnoj_novcano#incoming-9809.
18. Imamopravoznati. "Prva upravna novčana kazna za povredu Opće uredbe o zaštiti podataka." ["The first administrative fine for violation of the General Data Protection Regulation."] Accessed March 6, 2023, https://imamopravoznati.org/request/prva_upravna_novcana_kazna_za_po.

19. Information Commissioner's Office (UK ICO), "Communicating our Regulatory and Enforcement Activity Policy." 2019, accessed March 6, 2023, https://ico.org.uk/media/1890/ico_enforcement_communications_policy.pdf.
20. Information Commissioner's Office (UK ICO). "How the ICO enforces: a new strategic approach to regulatory action, John Edwards' keynote speech at the National Association of Data Protection Officers (NADPO) annual conference, delivered on 22 November 2022." Accessed March 6, 2023, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/11/how-the-ico-enforces-a-new-strategic-approach-to-regulatory-action/>.
21. Information Commissioner's Office (UK ICO). "Open letter from UK Information Commissioner John Edwards to public authorities Share (Opens Share panel)." June 30, 2022, accessed March 6, 2023, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/06/open-letter-from-uk-information-commissioner-john-edwards-to-public-authorities/>.
22. Information Commissioner's Office (UK ICO). "The Effectiveness of Regulatory Penalties in the Public Sector." June 2022, accessed March 6, 2023, <https://ico.org.uk/media/about-the-ico/disclosure-log/4024372/ic-212626-m7r2-evidence-note-june-2022.pdf>.
23. Udruga Franak. [Association Franak] "Banke koje nisu htjele dostavljati dokumentaciju, krše hrvatsko i EU pravo!" ["Banks that did not want to submit documentation are violating Croatian and EU law!."] May 31, 2019, accessed March 6, 2023, <https://udrugafanak.hr/banke-koje-nisu-htjele-dostavljati-dokumentaciju-krse-hrvatsko-i-eu-pravo/>.