



**SCOPE**  
EUROPE

# **Call for Evidence by the European Commission on GDPR**

SCOPE Europe's Response

February 2024

1	About SCOPE Europe .....	2
2	Introduction.....	2
3	SCOPE Europe’s Response .....	3
3.1	Question 1: General Comments .....	3
	<i>a. What is your overall assessment (benefits/challenges, increase in trust and awareness, etc.) of the application of the GDPR since May 2018? Are there priority issues to be addressed?</i>	3
3.2	Question 3: Application of the GDPR to SMEs.....	4
	<i>c. What additional tools would be helpful to assist SMEs in their application of the GDPR? .4</i>	
3.3	Question 12: Codes of Conduct.....	5
	<i>a. Do you consider that adequate use is made of codes of conduct? .....</i>	5
	<i>b. Have you encountered challenges in the development of codes of conduct, or in their approval process? .....</i>	6
	<i>c. What supports would assist you in developing codes of conduct? .....</i>	7

## 1 About SCOPE Europe

SCOPE Europe is a Brussels-based organization specialized in the development and implementation of industry-driven standards, such as codes of conduct, with a focus on the data economy. SCOPE Europe was founded in 2017 as a subsidiary of the German non-profit-organization SRIW e.V. (Selbstregulierung Informationswirtschaft). In May 2021, SCOPE Europe became the first [accredited](#) Monitoring Body under the European General Data Protection Regulation (GDPR), pursuant Art. 41, for a transnational code of conduct and, in 2023, received its second [accreditation](#), this time to monitor a national code of conduct in the Netherlands.

With a long track record of addressing regulatory challenges posed by the digital economy – notably for data processing technologies –, **SCOPE Europe has largely contributed to the shaping of co-regulatory mechanisms and the setting of effective privacy standards across the European Union (EU)**. In this regard, SCOPE Europe was also one of the leading stakeholders responsible for the development of the first EU-wide operational data protection standard under the GDPR, namely, the [EU Cloud Code of Conduct](#).

## 2 Introduction

With years of experience in the field of designing and monitoring GDPR compliance tools, SCOPE Europe has developed a unique expertise when it comes to identifying and assessing core issues in this sphere. In this context, SCOPE Europe highly appreciates the opportunity to contribute to this call for feedback of the European Commission (the Commission).

As SCOPE Europe, we strongly believe in the importance of establishing such communication channels to enable **meaningful inputs by stakeholders dealing with the materialization of GDPR requirements on a daily basis**. Therefore, we are eager to contribute to the evaluation and subsequent efforts for an appropriate application of the GDPR throughout the EU.

**Considering our field of activity, SCOPE Europe will solely provide responses to the questions that fall under our area of expertise.** Finally, with this feedback, SCOPE Europe aims to continuously foster GDPR compliance and, ultimately, an effective and fair European digital transition.

### 3 SCOPE Europe’s Response

#### 3.1 Question 1: General Comments

*a. What is your overall assessment (benefits/challenges, increase in trust and awareness, etc.) of the application of the GDPR since May 2018? Are there priority issues to be addressed?*

Since becoming applicable, **GDPR has significantly transformed the way personal data is handled within and beyond the EU**. Such impact is evident once observing subsequent global regulatory developments in the field as well as the dissemination and acute specialization of privacy-related functions across our job markets. The substantial shift of GDPR in terms of enforcement – once compared to its predecessor –, has promptly propelled businesses to either establish or sophisticate their practices and often seek to build a privacy-friendly culture.

Without undermining how previous regulatory efforts have paved the way for the establishment of solid data protection practices, **it is safe to say that GDPR’s strong incentives had a crucial role in promoting a more consistent and substantial step towards the recognition and adequate protection of data subjects’ rights**. Moreover, this important upswing in the data protection trajectory is particularly relevant if we consider how this is still a relatively new topic which is constantly affected by complex and fast-paced technical developments.

**With that being said, given the multiple asymmetries across and within different Member States – as well as across and within sectors of our economy –, the impact of GDPR has been far from homogenous**. Therefore, once analysing our path since May 2018, we believe that in order to optimize GDPR implementation in the coming years, **the following priorities should be pursued**:

Harmonization of legal interpretation and implementation	Increase Transparency and Public Awareness
Enable Foreseeability and Legal Certainty	Enhance Consistency in the Application of the Risk-Based Approach

Considering the challenges to concretize these priorities and the mechanisms we have at our disposal to enhance GDPR’s proper implementation and enforcement, **we would like to emphasize the role of codes of conduct (pursuant Article 40 GDPR)**. When it comes to these tools, SCOPE Europe can

provide **first-hand insights on their day-to-day impact** and, consequently, on their potential to support the achievement of the abovementioned goals.

As products of what we believe to be a **suitable and coherent legal framework established by GDPR**, codes of conduct – especially those at the transnational level – have the power to:

**Harmonize legal interpretation and application** not solely across a given industry, but also among different Member States and data protection authorities. This is particularly true for codes that are required to go through the European Data Protection Board (EDPB).

**Translate complex actions and provisions into clear statements of compliance**, which fosters transparency, accountability, and reduces information asymmetries.

Support the **materialization of accurate risk-based approaches** - e.g. by the drafting of appropriate provisions and the establishment of a monitoring scheme that suits particular processing contexts.

**Promote mutual understanding between data protection authorities and the industry.** This is specially helpful when dealing with highly complex technologies that entail significant risks and require remarkably well-designed and specific technical and organizational measures.

Provide a **suitable framework** and the necessary legal certainty to **enable SMEs to safely operate** while fully leveraging the advantages of our data economy.

Considering the capacity to enable harmonization, accountability, transparency and trust, SCOPE Europe believes that, up until now, these tools are still underutilized. Against this background, we are pleased to contribute to this consultation by sharing our practical experience with the development and implementation of codes of conduct and hope that, with this feedback, we can meaningfully support their dissemination and proper application.

### 3.2 Question 3: Application of the GDPR to SMEs

#### *c. What additional tools would be helpful to assist SMEs in their application of the GDPR?*

If GDPR's one-size fits all approach is, on the one hand, effective and highly welcome, on the other, it does impose an enormous challenge to SMEs. Against this background, **these companies can highly benefit from mechanisms that provide detailed guidance for proper implementation** and, ultimately, **increase legal certainty**.

In this context, codes of conduct can play an instrumental role. **GDPR already sets an excellent foundation** by requiring that these tools are accessible to SMEs. Next to that, the fact that codes of conduct are a **legal proof of compliance** is, of course, a key incentive for companies to seek adherence.

Nonetheless, compliance efforts are still substantial – although they vary significantly depending on the scope, monitoring scheme, and industry covered by a code. In addition, **smaller companies often also lack the resources and exposure to even be aware of the existence and benefits of codes of conduct.**

This is why, **active and potentially coordinated efforts from public stakeholders** – notably from Member States, data protection authorities, the EDPB and the European Commission – in raising awareness on codes of conduct and their benefits is simply key. **Making easy-to-grasp information available** online (including more precise procedural steps on the approval and accreditation processes), **discussing the topic in designated forums**, and **creating dedicated platforms of exchange to encourage and facilitate the development of codes of conduct** are some of the actions that can have a significant impact on their successful uptake. Such actions shall, of course, enable the broad **involvement of SMEs** and, by that, help ensuring that these companies become familiar, understand the added value, and can finally engage in these initiatives.

### **3.3 Question 12: Codes of Conduct**

#### *a. Do you consider that adequate use is made of codes of conduct?*

As an accredited body of two operational codes of conduct in the cloud sector – one at the national and another at the transnational level – we have been witnessing first-hand the positive impact codes of conduct can produce. Based on this quite unique experience, **we strongly believe in the suitability of the framework established by GDPR and are eager to use our know-how to raise awareness and boost its adoption.**

Codes of conduct, when properly drafted to effectively balance interests and harmonize technical and organizational measures across a significant portion of the market, are powerful instruments. These tools are able to equip all-size companies with the **necessary operational understanding to comply** with the regulation while providing an additional pillar of enforcement, which is the monitoring body.

Considering those tools provide notable added value when it comes to supporting GDPR enforcement, we would like to emphasize that **the operationalization of such tools is still facing procedural obstacles.** These obstacles can severely hamper the development, impact, and dissemination of

codes of conduct, particularly at the transnational level. Against this backdrop, further streamlining of approval and accreditation procedures under Article 40 and 41 GDPR is highly welcomed.

In this context and after nearly 6 years of enforcement, **the quite low number of codes of conduct that came to life is definitely a good indicator of these challenges**, specially if we look at the incentives provided by GDPR itself, which are highly attractive.

Additionally, our experience has shown that, although several industries have demonstrated interest or even started to develop codes of conduct, very often, unclear procedures as well as complex, ambiguous, and/or lengthy approval and accreditation processes, have outplayed their perceived benefits and blocked the progress of rising initiatives.

*b. Have you encountered challenges in the development of codes of conduct, or in their approval process?*

Considering our experience with approval and accreditation processes both at the national and the transnational level, the following challenges are considered the most pressing:

- Lack of clarification on **how the competent data protection authority shall be determined for the approval of such codes**. Notably, this topic is particularly – but not solely – relevant to transnational codes of conduct.
- **Different interpretations** of GDPR by various competent bodies and consequent incoherence across documents and statements issued.
- Lack of guidance on how to tackle **potentially conflicting legal obligations** (e.g. competition and antitrust concerns that might be raised given the exchanges required for the development and approval of a code of conduct).
- Divergences between different data protection authorities regarding their **competences in the approval and maintenance of a code of conduct** (e.g. the limits between what is required by GDPR and, therefore, a clear competence of the authority, and other aspects related to the code's maintenance such as its daily operations and internal governance).
- Lack of a more precise interpretation regarding the **role of the EDPB on potential updates to an approved transnational code of conduct**. This clarification is needed in order to avoid that disproportional procedures are imposed to non-material and necessary updates (e.g. linguistic or editorial aspects).

- Overly-lengthy processes due to the **non-fulfilment of periods established by GDPR**.
- **Disparities on accreditation criteria**. Although it is acknowledged that different Member States may impose specific requirements to reflect their national – e.g., administrative – law, besides such formalities, differences in material requirements should be minimized.
- **Potentially prohibitive administrative fees for the processing of approvals and accreditations** by national data protection authorities. Beyond procedural requirements, it is crucial that financial incentives are aligned and that high administrative fees are prevented.
- Lack of clarity on **monitoring bodies' liabilities** concerning third-party claims addressing mandatorily public information. As in other fields – e.g., for auditors –, the law provides a privileged liability cap, it is strongly recommended that a similar approach is considered.
- Regarding **third country transfers**, insufficient guidelines for codes of conduct that sufficiently tackle the **processor's perspective**.
- Also regarding **third country transfers**: Uncertainty regarding the procedural aspects relating to the **general validity mechanism** for codes of conduct acting as a transfer safeguard under Chapter V GDPR. In this regard, guidance by the Commission will be highly appreciated.

*c. What supports would assist you in developing codes of conduct?*

On an objective level, progressively addressing the obstacles described in the previous question of this consultation (b. – Question 12) is crucial to assist the development of codes of conduct. Tackling those elements – which in summary touch upon **procedural clarity, harmonization and drafting of additional guidelines** – will enable more codes of conduct to make it to the finish line and allow them to fulfil their core purpose: Enhance compliance while promoting the necessary flexibility and speed.

Alongside the abovementioned steps and in line with what has been discussed in the context of Question 3 of this consultation, **enhancing the actions of relevant public stakeholders to increase public awareness around codes of conduct and their benefits can have a major impact in the uptake of these tools**. Against this background, SCOPE Europe highly welcomes further initiatives from the Member States, supervisory authorities, the Commission, the EDPB and other relevant entities in the direction of encouraging the drawing up of codes of conduct – as defined in Article 40 GDPR.

On a final note, once the work on the report is concluded and the Commission is able to assess the state of play of codes of conduct across the EU, **adjusting the existing incentives to the current scenario will be instrumental to boost further developments in the field**.





**SCOPE**  
EUROPE

### **About SCOPE Europe**

SCOPE Europe sprl / bvba (SCOPE Europe) is a subsidiary of SRIW. Located in Brussels, it continues and complement the portfolio of SRIW in Europe and is an accredited monitoring body under the European General Data Protection Regulation since May 2021, pursuant to Article 41 GDPR. SCOPE Europe gathered expertise in levelling industry and data subject needs and interests to credible but also rigorous provisions and controls. SCOPE Europe also acts as monitoring body for the EU Data Protection Code of Conduct for Cloud Service Providers and is engaged in other GDPR code of conduct initiatives.