

5 years: GDPR's crisis point

ICCL report on EEA data protection authorities



Foreword

Five years after the GDPR, Europe remains unable to police how Big Tech uses our data.

Ireland continues to be the bottleneck of enforcement: it delivers few draft decisions on major cross-border cases. When it does eventually do so, other European enforcers then routinely vote by majority to force it to take tougher enforcement action.

Lack of funding does not appear to be the primary cause of this problem. Data protection authorities across the EU now have a combined budget of 1/3 billion Euro. The Irish budget now ranks among the top five EU countries.

The Irish Government resists calls for an independent review of the DPC that could determine how to strengthen and reform it. The European Commission is acquiescent.

The GDPR provides strong investigation and enforcement powers to protect people from the misuse of data that enables much of the digital world's problems. It should be our shield against the digital era's problems: discrimination, manipulation, media distortion, and invasive AI. But that shield has yet to be taken up.

Europe's failure to enforce the GDPR exposes everyone to acute hazard in the digital age. It

also threatens Europe's place in the world: **the EU can not be a regulatory superpower unless it enforces its own laws.**

The European Commission has the tools and legal responsibility to tackle this enforcement crisis. The Commission's forthcoming proposal to improve how DPAs cooperate may help, but much, much more is required to fix GDPR enforcement. **The ultimate responsibility for this crisis rests with the European Commissioner for Justice, Didier Reynders.** We urge him to take serious action.

Dr Johnny Ryan FRHistS

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Key insights

Almost five years after Europe's landmark GDPR law became applicable, enforcement against Big Tech remains largely paralysed.

- There has been **little substantial enforcement in EU-level cases**. The EDPB register of final decisions reveals that **most** (64%) of the 159 enforcement measures by late 2022 were **merely reprimands**.
- **75%** of the **Irish Data Protection Commission's** GDPR investigation decisions in EU cases were **overruled** by majority vote of its European peers at the European Data Protection Board, who demand **tougher enforcement action**. Only one other country, in one single case, has ever been overruled in this manner.
- EEA **data protection authorities' budgets are rising**. Despite this **10 national DPAs still have budgets under €2 million**.

€326,730,549

combined budget of EEA
DPAs in 2022

28

finances confirmed by the EDPB
in EU-level cases in 4.5 years

75%

of the Irish DPC's EU-level
decisions are overruled

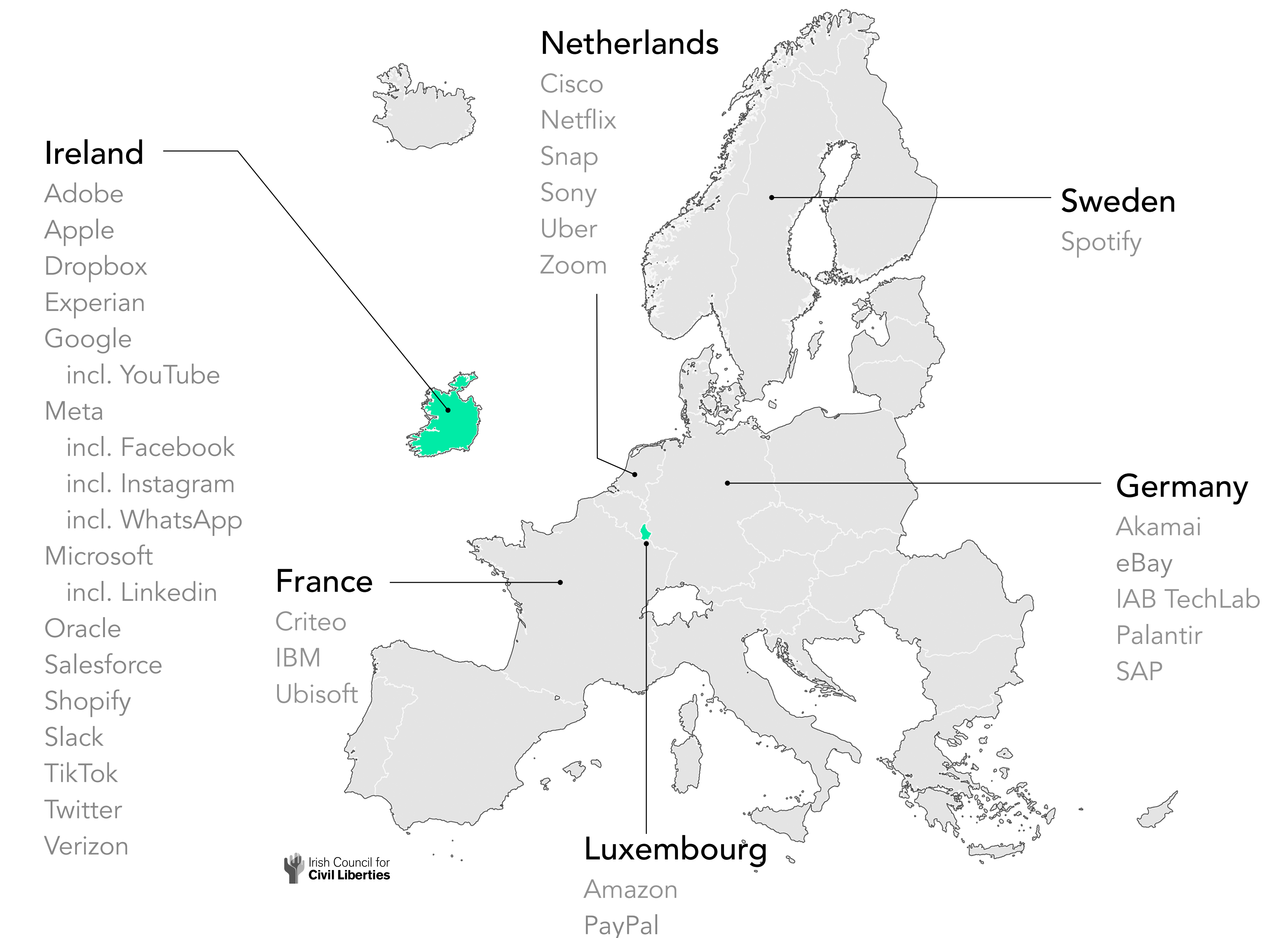
Whose job is it to police Big Tech?

European supervision of very big technology firms' data processing relies on Ireland.

Key points:

- The **Irish Data Protection Commission (DPC)** is the “lead” authority for **Google** (including YouTube), **Meta** (including Facebook, Instagram, WhatsApp), **Apple**, **TikTok**, and **Microsoft** (including LinkedIn, Xbox, etc.) across the EU, because these firms are headquartered in Ireland.
- The world's top three technology firms by market cap are based in Ireland. Number four, **Amazon**, is based in **Luxembourg**.
- **No other GDPR enforcer can intervene** if a “lead” authority asserts its lead role in cases against firms that have their European headquarters in its country. They can only intervene when the lead authority delivers a draft decision for them to comment on at the European Data Protection Board (EDPB).

Lead GDPR authorities of major tech firms



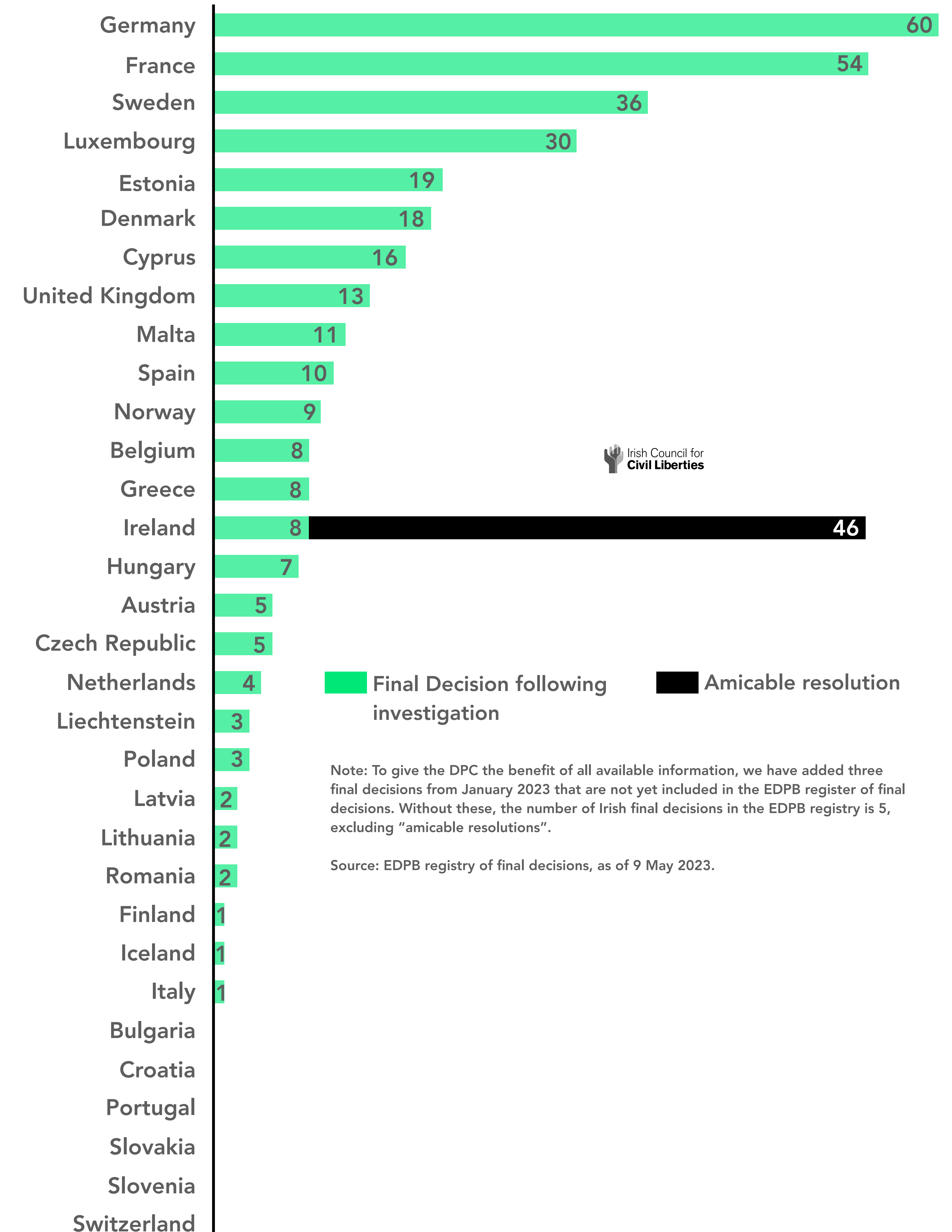
Many stones left unturned

As we near the GDPR's fifth anniversary, Ireland has completed few EU cross-border investigation decisions.

Key points:

- **Nearly all (87%) cross-border GDPR complaints to Ireland** involve the same eight Big Tech companies: Meta (including WhatsApp), Google, Airbnb, Yahoo!, Twitter, Microsoft (including LinkedIn), Apple, and Tinder.ⁱ
- **Instead of fully investigating**, the Irish DPC uses its discretionⁱⁱ under Irish Law to choose **"amicable resolution"** to conclude **83% of the cross-border complaints** it receives, according to its own statistics.ⁱⁱⁱ
- Using amicable resolution for repeat offenders, or for matters likely to impact many people, **contravenes European Data Protection Board guidelines**.^{iv}

Final decisions on cross-border cases, 2018-2022



Europe overrules 75% of Ireland's GDPR decisions

(excluding "amicable resolutions")

75%

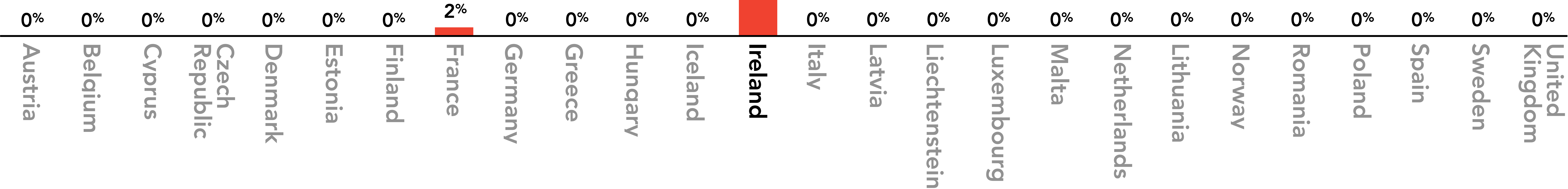


Chart: what % of each country's lead authority decisions on GDPR cross-border investigation cases were overruled by the European Data Protection Board?
Source: European Data Protection Board (EDPB) registry of final Article 60 decisions, and EDPB list of Article 65 binding decisions, as of 9 May 2023. Excludes countries that have no lead authority final decisions. To give the DPC the benefit of all available information, we have added three final decisions from January 2023 that are not yet included in the EDPB register of final decisions. Without these, the percent of overruled Irish decisions rises to 88%.

How much EU-level GDPR enforcement?

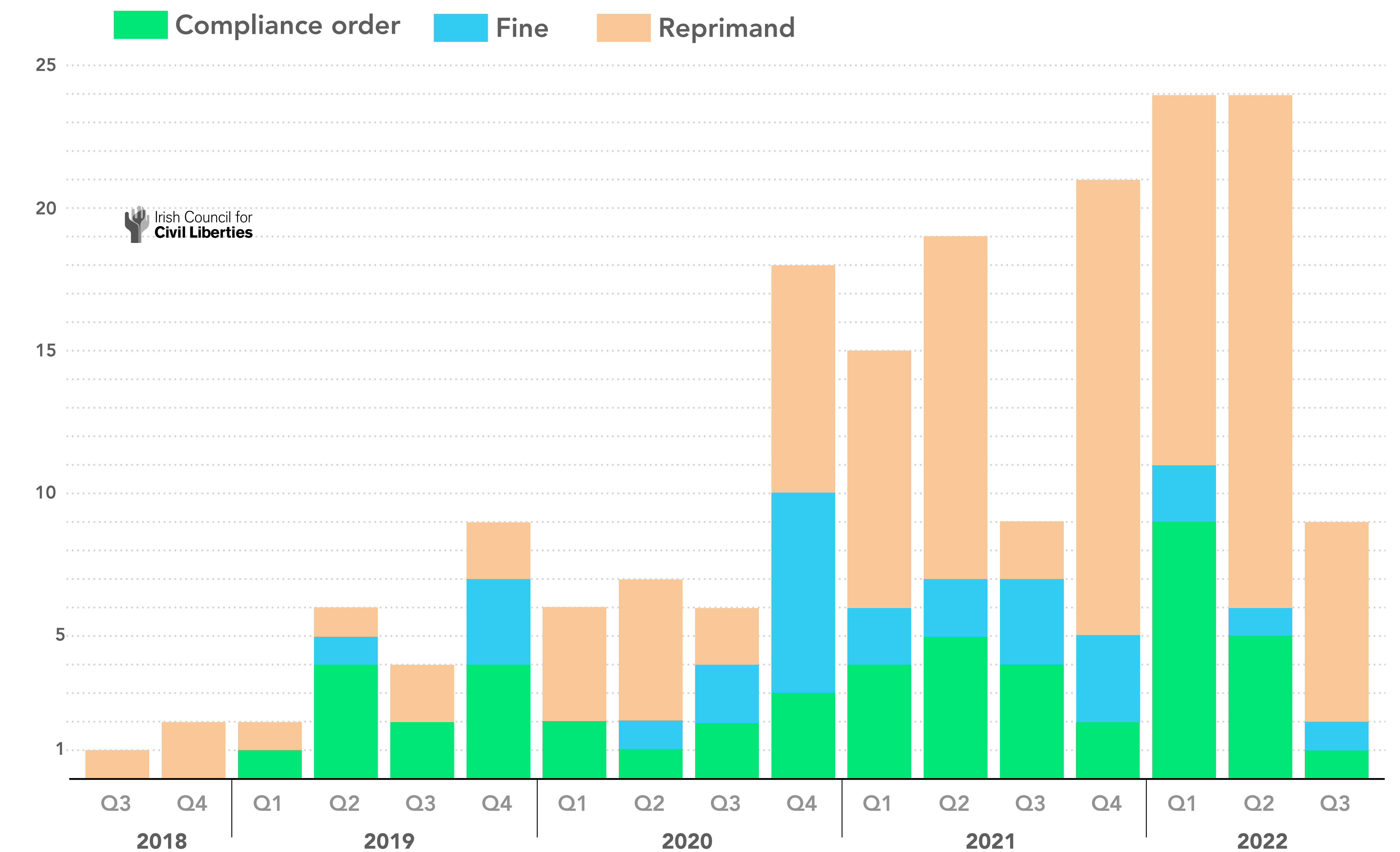
Few EU-level “one-stop-shop” GDPR cases have resulted in serious enforcement measures.

The findings:

- Compliance orders are the most powerful GDPR enforcement tool: they compel a company or body to change what it does with data. But the EDPB register of EU-level decisions shows **only 49 compliance orders** over 4.5 years.
- By late 2022, **most** (64%) of the 159 EU-level enforcement measures were **merely reprimands**.
- There have been **only 28 one-stop-shop GDPR fines** registered.

EU-wide “one stop shop” final decisions

EDPB Article 60 decisions that resulted in sanctions



Investments in enforcement

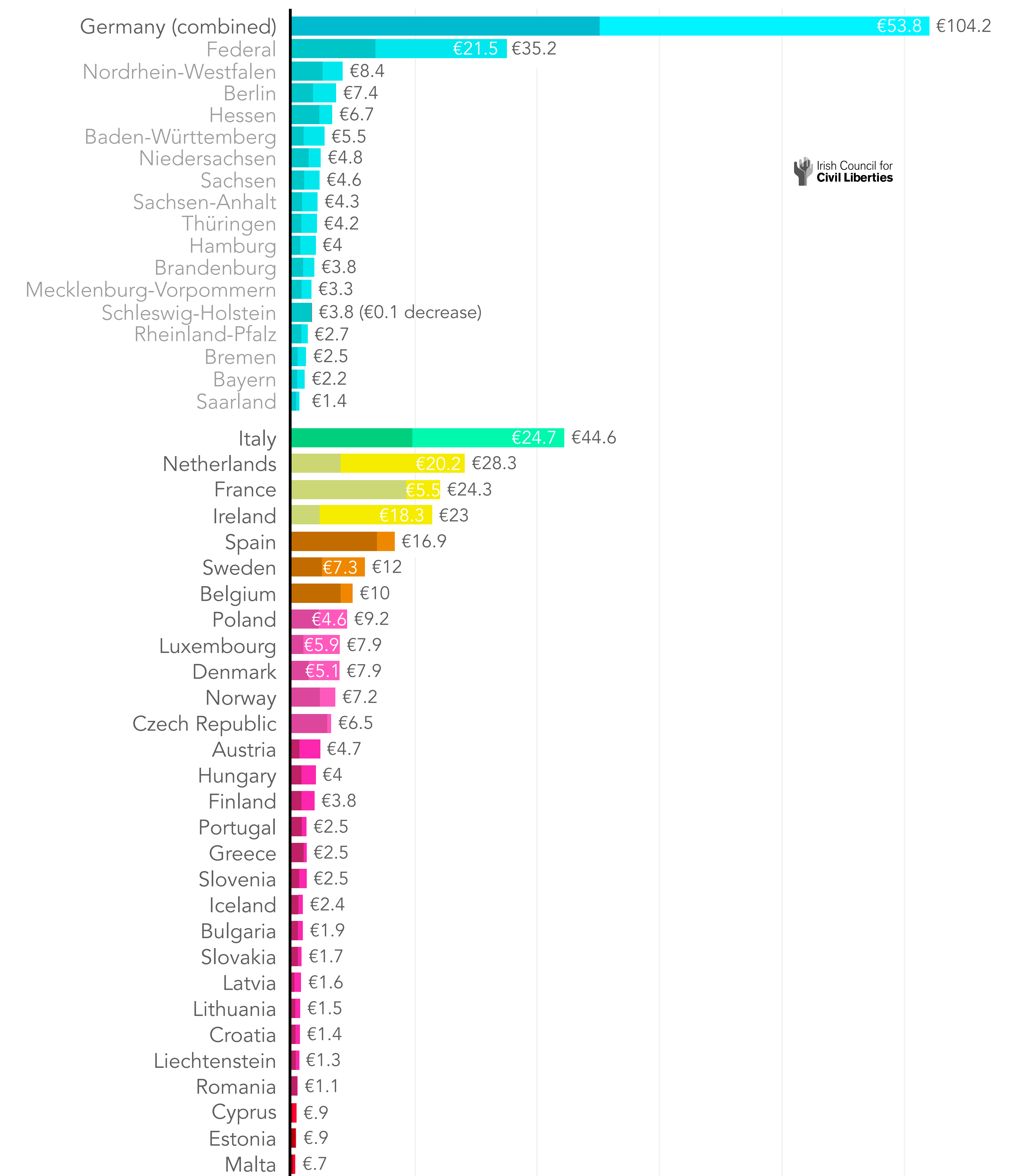
Europe's data protection authorities now have a combined budget of a third of a billion Euro.

The findings:

- The combined budget of EEA DPAs (UK excluded) has **doubled since 2016**, from €167.1 million to **€337.6 million** in 2022.
- **EEA DPA budget increases peaked in 2018**, when all their combined budgets grew by 20%. This fell to a low of 2% in 2021. Budget increases have now risen to 12% in 2022.
- Germany's DPAs have a combined budget of €104.2 million. **Germany accounts for 32% of all EEA DPA budgets.**
- **Ireland's budget is now in the top 5.** Its has risen dramatically, almost reaching France's.

Budget increases from 2016-2022

in millions of euro. Increase since 2016 in shown in lighter colour



Methodology, end notes, acknowledgements

Methodology:

1. All final Article 60 cross-border decisions from 25 May 2018 to the end of November 2022 were extracted from the EDPB [public registry](#) of final decisions on 9 May 2023.
2. Decisions were categorised by outcome: corrective action (including compliance orders, administrative fines, and reprimands) and no corrective action (dismissal or no infringement). This was charted in “EU-wide “one stop shop” final decisions”. Separately, all decisions categorised as having the outcome “other” was manually examined to identify “amicable resolutions”. Decisions, with amicable resolutions highlighted, were charted in “Final decisions on cross-border cases, 2018-2022” on page 4.
3. All Article 65 binding decisions were examined from the EDPB list, as of 9 May 2023. The percentage of lead authority decisions that was subject to a binding decision was calculated. This was charted on page 5. The chart excludes countries that have no lead authority final decisions. **To give the Irish DPC the benefit of all available information, we included three final decisions from January 2023 that are known, but not yet included in the EDPB register of final decisions. Had we not done so, the percent of overruled Irish decisions would be higher (88%).**
5. Outcomes with corrective actions were charted by quarter year and type of corrective action in “EU-wide “one stop shop” final decisions”. This was charted in “EU-wide “one stop shop” final decisions” on page 6.

6. Budgets for each national and länder DPA from 2016 to 2022 were collected from national and state budgets, DPA annual report, or directly from the DPA. This was charted on page 7. Note that income from fines that is returned to the national treasurer was not counted. We also excluded DPAs that supervise public sector data processing: the Agència Catalana de Protecció de Dades, the Agencia Vasca de Protección de Datos, Der Bayerische Landesbeauftragte für den Datenschutz, Žurnalistų etikos inspektorius tarnyba, and the European Data Protection Supervisor. Increases since 2016 and current budget were charted in “Budget increases from 2016-2022”.
7. Annual changes in the combined total EEA budgets of all DPAs were calculated as a percentage to determine when increases peaked.

Endnotes:

- i. See “One-stop-shop cross-border complaint statistics 25 May 2018-19 Sept 2022”, Irish Data Protection Commission, p. 15.
- ii. Section 109 of the Irish Data Protection Act gives the DPC broad discretion in whether to pursue amicable resolution.
- iii. Irish Data Protection Commission, op. cit., p. 4.
- iv. “Guidelines 06/2022 on the practical implementation of amicable settlements”, European Data Protection board, 12 May 2022.

Irish Council for Civil Liberties:

ICCL has been at the forefront of every major rights advance in Irish society for over 40 years. We helped legalise homosexuality, divorce, contraception, and marriage equality. We drove police reform, defending suspects' rights during dark times. ICCL is a membership organisation and is independent of government. More at [ICCL.ie](#).

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The EEA map on page 4 uses boundary data that is copyright of EuroGeographics.

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This report was written and designed by Dr Johnny Ryan.