

Appropriation Account 2020

Vote 44

Data Protection Commission

Introduction

As Accounting Officer for Vote 44, I am required each year to prepare the appropriation account for the Vote, and to submit the account to the Comptroller and Auditor General for audit.

In accordance with this requirement, I have prepared the attached account of the amount expended in the year ended 31 December 2020 for the salaries and expenses of the Data Protection Commission.

The expenditure outturn is compared with the sums:

- (a) granted by Dáil Éireann under the Appropriation Act 2020, including the amount that could be used as appropriations-in-aid of expenditure for the year, and
- (b) provided for capital supply services in 2020 out of unspent 2019 appropriations, under the deferred surrender arrangements established by section 91 of the Finance Act 2004.

A surplus of €4.623 million is liable for surrender to the Exchequer.

The Statement of Accounting Policies and Principles and notes 1 to 6 form part of the account.

Establishment of Vote 44

A new data protection legal framework came into operation across the EU with the application of the General Data Protection Regulation (GDPR) on 25 May 2018. On that date, the Data Protection Act 2018 established a new Data Protection Commission and transferred all the functions of the Data Protection Commissioner to the new Data Protection Commission. In addition, from 25 May 2018, the GDPR conferred on the Commission a significantly expanded role as a data protection authority and the Commission is now a supervisory authority with an EU-wide remit.

The Commission is independent in the performance of its functions. The Data Protection Act 2018 made provision for the Data Protection Commission to be assigned its own Vote. In 2019, the budget of the Commission formed part of the Department of Justice Vote and the Commission accounted for its budget through the Accounting Officer of the Department of Justice. 2020 is the first year the Data Protection Commission has been a separate Vote (Vote 44) and prior year comparative figures are not included.

Statement of Accounting Policies and Principles

The standard accounting policies and principles for the production of appropriation accounts, as set out by the Department of Public Expenditure and Reform in Circular 22 of 2020, have been applied in the preparation of the account.

Statement on Internal Financial Control

Responsibility for system of internal financial control

As Accounting Officer, I acknowledge my responsibility for ensuring that an effective system of internal financial control is maintained and operated by the Data Protection Commission.

This responsibility is exercised in the context of the resources available to me and my other obligations as Head of Office. Also, any system of internal financial control can provide only reasonable and not absolute assurance that assets are safeguarded, transactions authorised and properly recorded, and that material errors or irregularities are either prevented or would be detected in a timely manner. Maintaining the system of internal financial controls is a continuous process and the system and its effectiveness are kept under ongoing review.

Shared services

Financial services are provided to the Data Protection Commission under a service level agreement by Financial Shared Services in the Department of Justice.

The National Shared Services Office provides human resource and payroll shared services to the Department of Justice in respect of staff working in the Data Protection Commission. The National Shared Services Office provides an annual assurance in respect of the services provided to the Department of Justice and is audited under the ISAE 3402 certification processes in respect of that assurance.

I rely on a letter of assurance from the Accounting Officers of the National Shared Services Office and the Department of Justice in respect of the appropriate controls exercised in the provision of shared services to the Data Protection Commission.

I have fulfilled my responsibilities in relation to the requirements of these agreements.

Financial control environment

I confirm that a control environment containing the following elements is in place.

- Financial responsibilities have been assigned at management level with corresponding accountability.
- Reporting arrangements have been established at all levels where responsibility for financial management has been assigned.
- Formal procedures have been established for reporting significant control failures and ensuring appropriate corrective action.
- There is an Audit and Risk Committee to advise me in discharging my responsibilities for the internal control system.
- Procedures for all key business processes have been documented.
- There are systems in place to safeguard the assets.
- The Commission uses the Performance Management and Development System (PMDS), inter alia, for identifying staff training needs, including financial management and accounting skills. The required training is then organised or sources as appropriate.

Administrative controls and management reporting

In respect of the Data Protection Commission, I confirm that a control environment containing the following elements is in place.

- There is an appropriate budgeting system in place, with an annual budget which is kept under review by senior management.
- There are regular reviews by the senior management of periodic and annual financial reports which indicates financial performance against forecast
- A risk management system is in operation.
- There are systems aimed at ensuring the security of the information and communication technology. During 2020, the ICT division of the Department of Justice (DoJ) provided the Data Protection Commission with certain ICT services. DoJ ICT division under a service level agreement provided an assurance statement outlining the control processes in place in 2020.

Internal audit and Audit and Risk Committee

I confirm that the Data Protection Commission has an internal audit function, which is outsourced, with appropriately trained personnel, which operates in accordance with a written charter which I have approved. Its work is informed by analysis of the financial risks to which the Data Protection Commission is exposed and its annual internal audit plans, approved by me, are based on this analysis. These plans aim to cover the key controls on a rolling basis over a reasonable period. The internal audit function is reviewed periodically by me and by the Audit and Risk Committee. I have put procedures in place to ensure that the reports of the internal audit function are followed up.

The Audit and Risk Committee for the Data Protection Commission was established on 1 January 2020 and held seven meetings during the period 1 January to 31 December 2020.

Procurement compliance

The Commission ensures that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with all relevant guidelines. There were no non-competitive and non-compliant contracts in excess of €25,000 ex VAT in 2020.

Risk and control framework

The Data Protection Commission implemented a risk management system which identifies and reports key risks and the management actions being taken to address and, to the extent possible, to mitigate those risks.

A risk register is in place which identifies the key risks facing the Data Protection Commission and these have been identified, evaluated and graded according to their significance. The register is reviewed and updated by the Senior Management Committee on a quarterly basis. Risk management is a standing agenda item for the Senior Management Committee. The outcome of these assessments is used to plan and allocate resources to ensure risks are managed to an acceptable level.

The risk register details the controls and actions needed to mitigate risks and responsibility for operation of controls assigned to specific staff.

Ongoing monitoring and review

During the period covered by account, formal procedures were implemented for monitoring control processes. Control deficiencies were communicated to those responsible for taking corrective action and to management and the Senior Management Committee, where relevant, in a timely way.

I confirm that key risks and related controls have been identified and processes have been put in place to monitor the operation of those key controls and report any identified deficiencies.

Review of effectiveness

I confirm that the Data Protection Commission has procedures to monitor the effectiveness of its risk management and control procedures. The Data Protection Commission's monitoring and review of the effectiveness of the system of internal financial control is informed by the work of the internal and external auditors and the senior management team within the Data Protection Commission responsible for the development and maintenance of the internal control framework.

Covid-19 pandemic

Assessments of the impact of Covid-19 were carried out taking into consideration the Office of the Comptroller and Auditor General Audit Insights document *The impact of Covid-19 on your control environment* and the results are that the internal controls were not negatively impacted as a result of the pandemic. I confirm that on-going monitoring of internal controls was maintained in 2020 by myself and the senior management team.

Internal financial control issues

No weaknesses in internal financial control were identified in relation to 2020 that resulted in a material loss.

Helen Dixon

Accounting Officer
Commissioner for Data Protection

30 March 2021

Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas

Vote 44 Data Protection Commission

Opinion on the appropriation account

I have audited the appropriation account for Vote 44 Data Protection Commission for the year ended 31 December 2020 under section 3 of the Comptroller and Auditor General (Amendment) Act 1993.

In my opinion, the appropriation account

- properly presents the receipts and expenditure of Vote 44 Data Protection Commission for the year ended 31 December 2020, and
- has been prepared in the form prescribed by the Minister for Public Expenditure and Reform.

Basis of opinion

I conducted my audit of the appropriation account in accordance with the International Standards on Auditing (ISAs) as promulgated by the International Organisation of Supreme Audit Institutions. My responsibilities under those standards are described in the *Preface to the Appropriation Accounts*. I am independent of the Data Protection Commission and have fulfilled my other ethical responsibilities in accordance with the standards.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Report on the statement on internal financial control, and on other matters

The Accounting Officer has presented a statement on internal financial control together with the appropriation account. My responsibilities to report in relation to the information in the statement, and on certain other matters upon which I report by exception, are described in the *Preface to the Appropriation Accounts*.

I have nothing to report in that regard.

Seamus McCarthy
Comptroller and Auditor General

18 June 2021

Vote 44 Data Protection Commission

Appropriation Account 2020

	2020	
	Estimate provision €000	Outturn €000
Programme expenditure		
A Provision of Data Protection Regulation	16,916	12,218
Gross expenditure	16,916	12,218
<i>Deduct</i>		
B Appropriations-in-aid	230	155
	16,686	12,063

Surplus

The surplus of the amount provided over the net amount applied is liable for surrender to the Exchequer.

	2020 €
Surplus to be surrendered	4,622,680

Helen Dixon
Accounting Officer
Commissioner for Data Protection

30 March 2021

Notes to the Appropriation Account

Note 1 Operating Cost Statement 2020

	2020
	€000
	<u>€000</u>
Pay	7,844
Non pay	4,374
Gross expenditure	12,218
<i>Deduct</i>	
Appropriations-in-aid	(155)
Net expenditure	12,063
Changes in capital assets	
Purchases cash	(150)
Depreciation	35
Loss on disposal	—
	<u>(115)</u>
Changes in net current assets	
Increase in closing accruals	73
Increase in closing prepayments	(187)
Increase in closing stocks	(7)
	<u>(121)</u>
Direct expenditure	11,827
Expenditure borne elsewhere	
Net allied services expenditure (note 1.1)	125
Notional rents	—
Net programme cost	11,952

1.1 Net allied services expenditure

The net allied services expenditure amount is made up of the following amounts in relation to Vote 44 borne elsewhere.

	2020
	€000
Vote 13 Office of Public Works	76
Vote 24 Justice	49
	<u>125</u>

Note 2 Statement of Financial Position as at 31 December 2020

	Note	2020 €000
Capital assets	2.1	773
Current assets		
Bank and cash	2.2	222
Stocks		7
Prepayments		187
Net Exchequer funding	2.4	33
Total current assets		449
Less current liabilities		
Accrued expenses		73
Other credit balances	2.3	255
Total current liabilities		328
Net current assets		121
Net assets		894
Represented by:		
State funding account	2.5	894

2.1 Capital assets

	Furniture and fittings €000	IT and office equipment €000	Capital assets under development €000	Total €000
Gross assets				
Cost or valuation at 1 January 2020	—	—	—	—
Transferred from Justice vote	2	187	518	707
Additions	—	—	150	150
Cost or valuation at 31 December 2020	2	187	668	857
Accumulated depreciation				
Opening balance at 1 January 2020	—	—	—	—
Depreciation of the assets transferred	2	47	—	49
Depreciation for the year	—	35	—	35
Cumulative depreciation at 31 December 2020	2	82	—	84
Net assets at 31 December 2020	—	105	668	773

2.2 Bank and cash

at 31 December	2020
	€000
PMG balances and cash	222
Other bank account balances	—
	222

In addition to the PMG account, the Commission holds five other commercial bank accounts all of which had a nil balance at 31 December 2020.

2.3 Other credit balances

at 31 December	2020
	€000
Amounts due to the State	
Value added tax on foreign invoices	2
Professional services withholding tax	162
	164
Other credit suspense items	91
	255

2.4 Net Exchequer funding

at 31 December	2020
	€000
Surplus to be surrendered	4,623
Exchequer grant undrawn	(4,656)
Net Exchequer funding	(33)
Represented by:	
Bank and cash	222
	222
Creditors	
Due to the State	(164)
Credit balances: suspense	(91)
	(255)
	(33)

2.5 State funding account

	Note	2020
		€000
Disbursements from the Vote		
Estimate provision		16,686
Surplus to be surrendered		(4,623)
Net vote		12,063
Expenditure (cash) borne elsewhere	1.1	125
Transfer in of assets		658
Net programme cost	1	(11,952)
		894

2.6 Commitments

Global commitments	2020
at 31 December	€000
Procurement of goods and services	593
Capital project	199
Total of legally enforceable commitments	792

2.7 Contingent liabilities

The Data Protection Commission is involved in a number of pending legal proceedings which may generate liabilities, depending on the outcome of the litigation. The actual amount or timing of potential liabilities is uncertain.

Note 3 Vote Expenditure

Analysis of administration expenditure

All of the allocation for Vote 44 Data protection Commission is classified as administrative expenditure applied towards a single programme: provision of data protection regulation.

		2020	
		Estimate provision	Outturn
		€000	€000
i	Salaries, wages and allowances	10,552	7,844
ii	Travel and subsistence	110	19
iii	Training and development and incidental expenses	2,782	2,582
iv	Postal and telecommunications services	45	29
v	Office equipment and external IT services	1,612	858
vi	Office premises expenses	1,140	844
vii	Consultancy services and value for money and policy reviews	625	42
viii	Research	50	—
		16,916	12,218

Significant variations

The following outlines an analysis of the administration expenditure of the Vote and outlines the reasons for significant variations (+/- 25% and €100,000).

i Salaries, wages and allowances

Estimate provision €10.552 million; outturn €7.844 million

The shortfall in expenditure of €2.7 million relative to the estimate provision was driven by slower than anticipated recruitment due to the requirement to move recruitment completely online during 2020. This required the creation of processes for online tests and examinations and the procurement and development of this delayed recruitment campaigns by several months. It is also due to the requirement to profile staff salaries on an annualised and mid-point of the scale basis, and staff attrition.

v. Office equipment and external IT services

Estimate provision €1.612 million; outturn €858,000

The shortfall in expenditure of €754,000 relative to the estimate provision was primarily driven by slower than initially planned ICT project implementation as a result of further analysis being required on infrastructure and services following decision making on data migration, workflows and security options. The shortfall in expenditure is also driven by less than anticipated ICT charges due to lower than forecast staff headcount.

vi. Office premises expenses

Estimate provision €1.14 million; outturn €844,000

The shortfall in expenditure of €296,000 relative to the estimate provision was primarily driven by lower than anticipated operational costs due to remote working and delay in procuring new additional office space.

vii. Consultancy services and value for money and policy review

Estimate provision €625,000; outturn €42,000

The shortfall in expenditure of €583,000 relative to the estimate provision was primarily driven by less than anticipated requirement for consultancy services.

Note 4 Receipts

4.1 Appropriations-in-aid

		2020	
		Estimated	Realised
		€000	€000
1	Miscellaneous	10	—
2	Receipts from additional superannuation contributions on public service remuneration	220	155
Total		230	155

4.2 Extra receipts payable to the Exchequer

		2020
		€000
Balance at 1 January		—
Administrative fines receipts		75
Transferred to the Exchequer		(75)
Balance at 31 December		—

4.3 Fines

The DPC's statutory remit allows for the imposition of administrative fines. No fine imposed by the DPC is collectible until confirmed by Court order (whether on appeal or by confirmation application).

There were seven fines imposed by the DPC in 2020 with a total value of €785,000.

Of the seven fines imposed in 2020, one was collected in full with a value of €75,000. This was remitted to the Exchequer in full (see note 4.2).

Note 5 Staffing and Remuneration

5.1 Employee numbers

Full time equivalents	2020
Number of staff at year end	<u>145</u>

5.2 Pay

	2020
	€000
Pay	7,120
Higher, special or additional duties allowances	15
Other allowances	—
Overtime	—
Employer's PRSI	709
Total pay	<u>7,844</u>

5.3 Allowances and overtime payments, 2020

	Number of recipients	Recipients of €10,000 or more	Highest individual payment
			2020
			€
Higher, special or additional duties allowances	3	—	6,186
Overtime	1	—	217
Other allowances	—	—	—
Extra remuneration in more than one category	—	—	—

5.4 Payroll overpayments

	Number of recipients	2020
		€
Overpayments with recovery plans in place	4	32,733
Overpayments with no recovery plans in place	3	3,738
	<u>5^a</u>	<u>36,471</u>

Note ^a Two Data Protection Commission staff appear on both lists.

Note 6 Miscellaneous

6.1 Compensation and legal costs

	Number of cases	Legal costs paid by the DPC (on its own behalf) €000	Payments made in respect of legal costs awarded against DPC €000	Compensation awarded €000	Total 2020 €000
Cases taken by members of the public	34	626	85	—	711
Cases taken by employees	—	—	—	—	—
		626	85	—	711

In 2020, the DPC made a payment in respect of the legal costs of another party in connection with one set of proceedings. This was a judicial review action against the DPC which had been discontinued in 2018.

6.2 Legal fees

The DPC incurred total costs of €618,000 in 2020 in respect of a total of 6 sets of proceedings initiated by the DPC. These comprised a plenary action, two applications made by the DPC to the Circuit Court to confirm the imposition of administrative fines and three marketing prosecutions taken by the DPC in the District Court.

The plenary action was the case of Data Protection Commissioner v Facebook Ireland and Schrems (High Court record no. 2016/4809P). This was a High Court plenary action initiated in 2016 by the DPC seeking a reference to the Court of Justice of the European Union (CJEU) concerning the validity of an EU legal instrument relied on for conducting EU to US data transfers. The course of these complex proceedings included: a six-week trial before the High Court; a 154 page judgment delivered by the High Court resulting in the making of a reference by the High Court to the CJEU; an appeal to the Supreme Court taken by one of the other parties to that case against the making of that reference by the High Court; and a hearing before the CJEU in 2019, with the CJEU's landmark judgment delivered in July 2020. A costs hearing before the High Court then followed in October 2020 with legal costs being awarded against the DPC in respect of one other party. The final amount of that costs order is still to be determined but the DPC made an interim payment of €450,000 to the other party concerned in 2020 in respect of that costs order.

6.3 EU funding

The Data Protection Commission partnered with the Croatian Data Protection Authority and Vrije University (Brussels) on a new project co-funded by the European Union under the Rights, Equality and Citizenship Programme. EU funding of €91,000 was received in 2020 in relation to this project.