

Europe's governments are failing the GDPR

Brave's 2020 report on the enforcement capacity of data protection authorities



Foreword

The GDPR has the potential to change digital life for the better. But two years after its introduction, the GDPR is at risk of failing.

Every day, people are confronted with misleading consent requests, uncontrolled tracking and surveillance in online advertising, and large tech firms' uncanny knowledge of their intimate lives. The GDPR has had little impact.

This report reveals why: the EU Member States have not given data protection authorities (DPAs) the tools they need to enforce the GDPR.

Brave has investigated the number of tech specialists working in DPAs on tech investigations. These are people that have training or roles that are principally technical. Our data reveal just how few tech specialists Europe's DPAs have to investigate private sector GDPR infringements.

Even when wrongdoing is clear, DPAs hesitate to use their powers against major tech firms because they can not afford the cost of legally defending their decisions against 'Big Tech' legal firepower.

DPAs must be able to properly investigate, and act without fear of vexatious appeals. Robust, adversarial enforcement is essential.

Fault lies with national governments, rather than DPAs. Article 52(4) of the GDPR requires that national governments give DPAs the human and financial resources necessary to perform their tasks. Almost no governments have done so.

Therefore, it is essential that the European Commission intervene. The EU Treaties give the European Commission the power to launch an infringement procedure against EU Member States that fail to implement EU law. The Commission should do so now.

The cost will be high if the GDPR loses credibility: the EU's regulatory influence will diminish, and data misuse will harm citizens and society.

Member State governments can save the GDPR, but they must act urgently. We recommend three steps:

1. Expand DPA tech specialist teams;
2. Fund DPAs to fight big tech in court whenever necessary to defend their enforcement decisions; and
3. Develop an EU unit to assist national DPAs in tech investigations.

We hope that this report spurs governments to act, and ask the European Commission to ensure that they do.

Johnny Ryan

Chief Policy & Industry Relations Officer, Brave
April 2020



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Two years after the GDPR was first applied, the principles of data protection remain almost entirely unenforced online. This report reveals why. European Governments are not providing technical staff and budgets for major legal contests to their national data protection authorities. As a result, DPAs can not hold Big Tech to account. At the most extreme, GDPR enforcement authorities have no specialist tech investigation staff, and tiny budgets.

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Key insights

European Member State governments have failed to develop tech enforcement capacity to deliver on the GDPR.

- Only 6 national DPAs have more than 10 specialist tech investigation staff.
- 7 data protection authorities have 2 tech specialists or less.
- Half of all national DPAs receive small (€5 million or less) annual budgets from their governments.
- The Irish Data Protection Commission is Google and Facebook's 'lead authority' GDPR regulator in Europe. But while the number of complaints it deals with is accelerating, increases to its budget and headcount are decelerating.
- The UK's Information Commissioner's Office (ICO) is by far the biggest and most expensive national DPA to operate. But only 3% of its staff are tech specialists.
- Increases to DPA budgets peaked for the application of the GDPR. Governments have now slowed this increase.
- Almost a third (29%) of all of the EU's tech specialists work for one of Germany's Länder (regional) or federal DPAs. All other EU countries are far behind Germany.

305

Number of tech specialists in Europe's DPAs

14

DPAs receive budgets under €5 million from government.

3%

Of the 680 staff at the UK ICO focus on tech

21

Number of tech enforcement roles at the Irish DPC

Europe's thin red line protecting people online

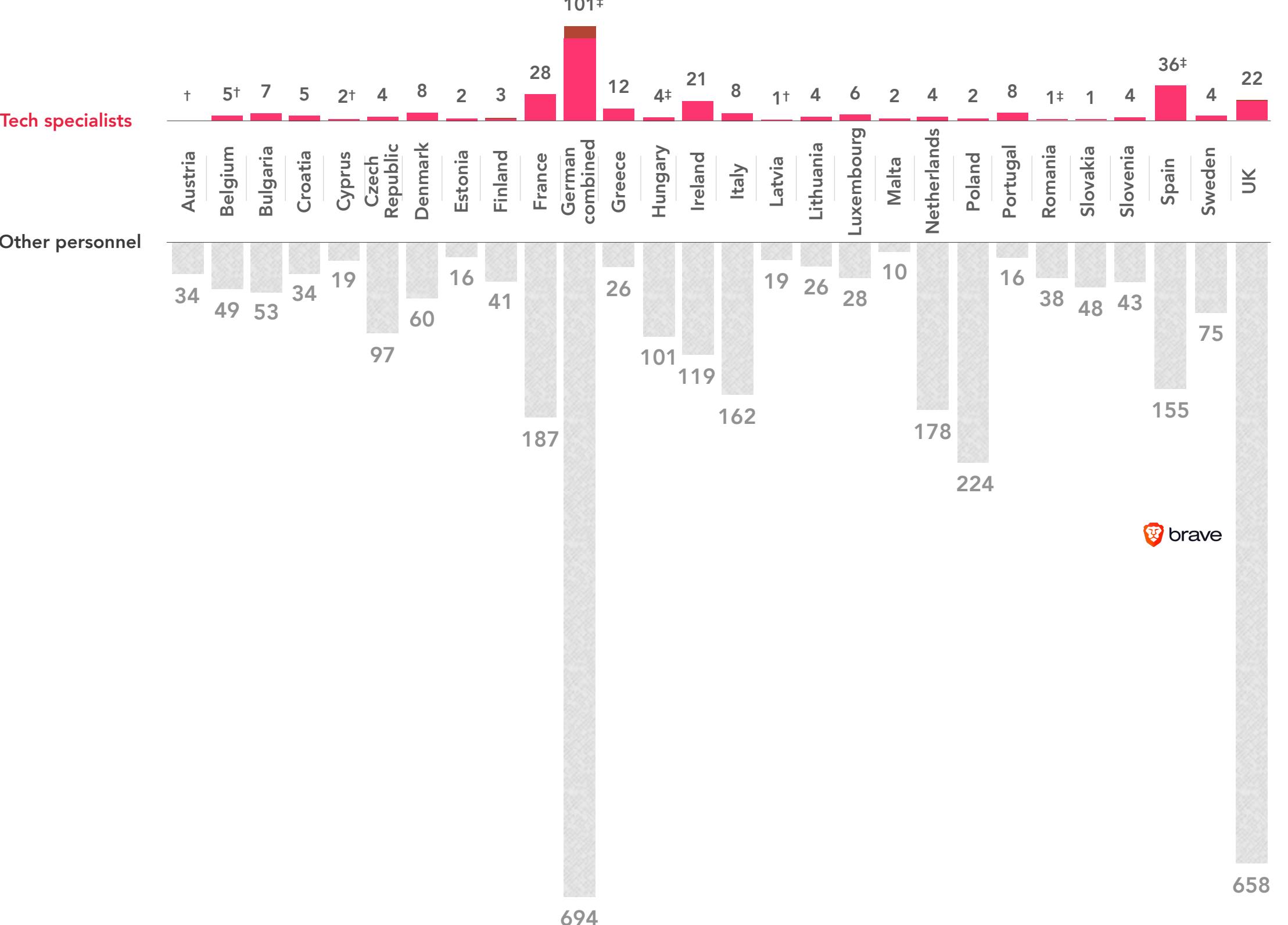
Data Protection Authorities have far too few specialist tech investigators.

The findings:

- EU DPAs have a **combined total of 305 tech specialists** (including unfilled roles) dealing with private sector data processing. They work in 45 separate agencies. This excludes three DPAs that deal with the public sector (Germany's Bayern public sector DPA, and Spain's Basque and Catalan DPAs).
- **Half** of Europe's national DPAs have only **five tech specialists or less**.
- Germany alone accounts for **29%** of Europe's DPA tech specialists.

Specialist tech investigators versus other staff in Europe's DPAs

Full-time equivalents, rounded. Vacancies included in count, and shown darker colour.



†Austria, Belgium, Cyprus, and Latvia rely on external consultants.

‡Estimate based on DPA response or data.

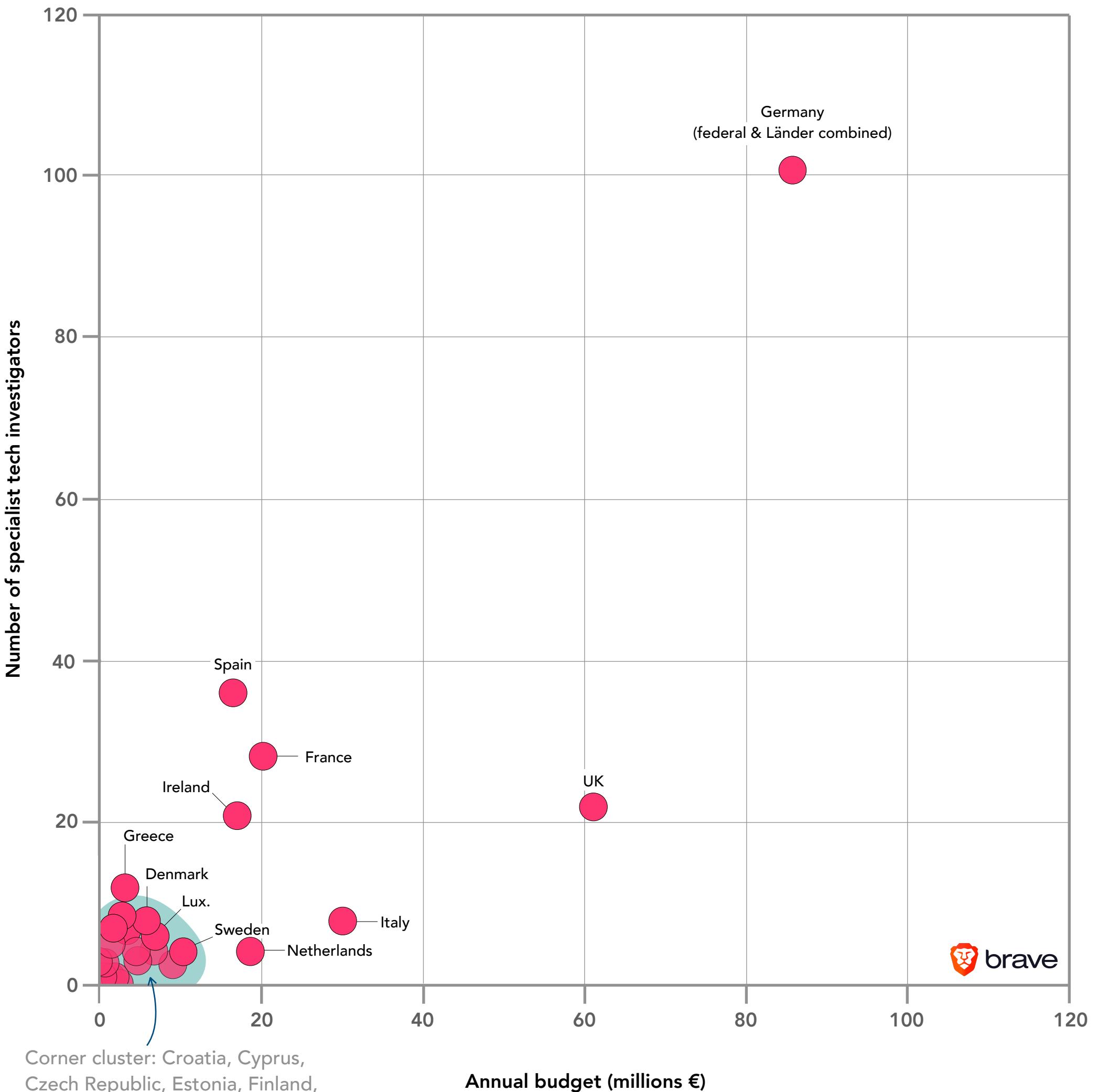
Governments have not equipped their DPAs for tech sector enforcement

National governments have not properly funded their data protection authorities, and DPAs lack the tech expertise to do their jobs.

The findings:

- Half of all European governments provide annual budgets of **only €5 million or less** to their data protection authorities.
- The UK's comparatively large budget is not reflected in a bigger tech specialist team. Though the UK ICO's budget is three times that of France's CNIL, the **CNIL has more tech specialists than the ICO**.
- **Germany's position is unique.**

DPA annual budgets, and number of tech specialists



Corner cluster: Croatia, Cyprus, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia.

Note that Austria and Belgium rely on contractors.

Nearly every European government underfunds its DPA

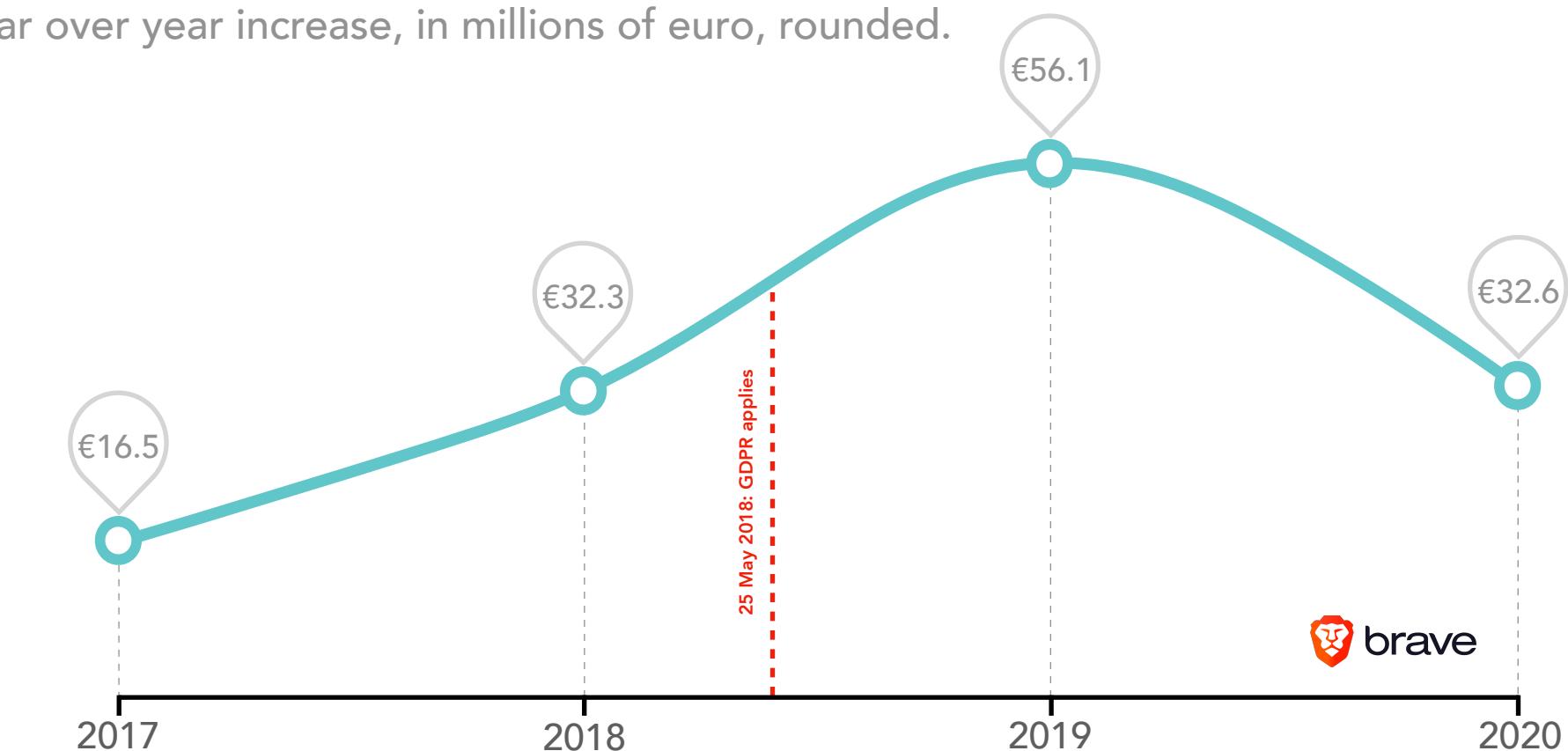
Despite some investments, Europe's governments slowed the growth of their DPAs in 2020.

The findings:

- **Annual increases** to DPA budgets peaked at 24% in 2019 for the application of the GDPR, but **have now slowed** to 15%.
- **Estonia's government** allocated the **third-smallest annual budget** (€750,331) in 2019, and made no increase to this in 2020.
- **Portugal reduced** the budget of its DPA (by €203,000) between 2018 and 2020.
- **The combined budget of all 45 EU DPAs** that deal with private sector data **is a third of a billion Euro** (€325,896,343).

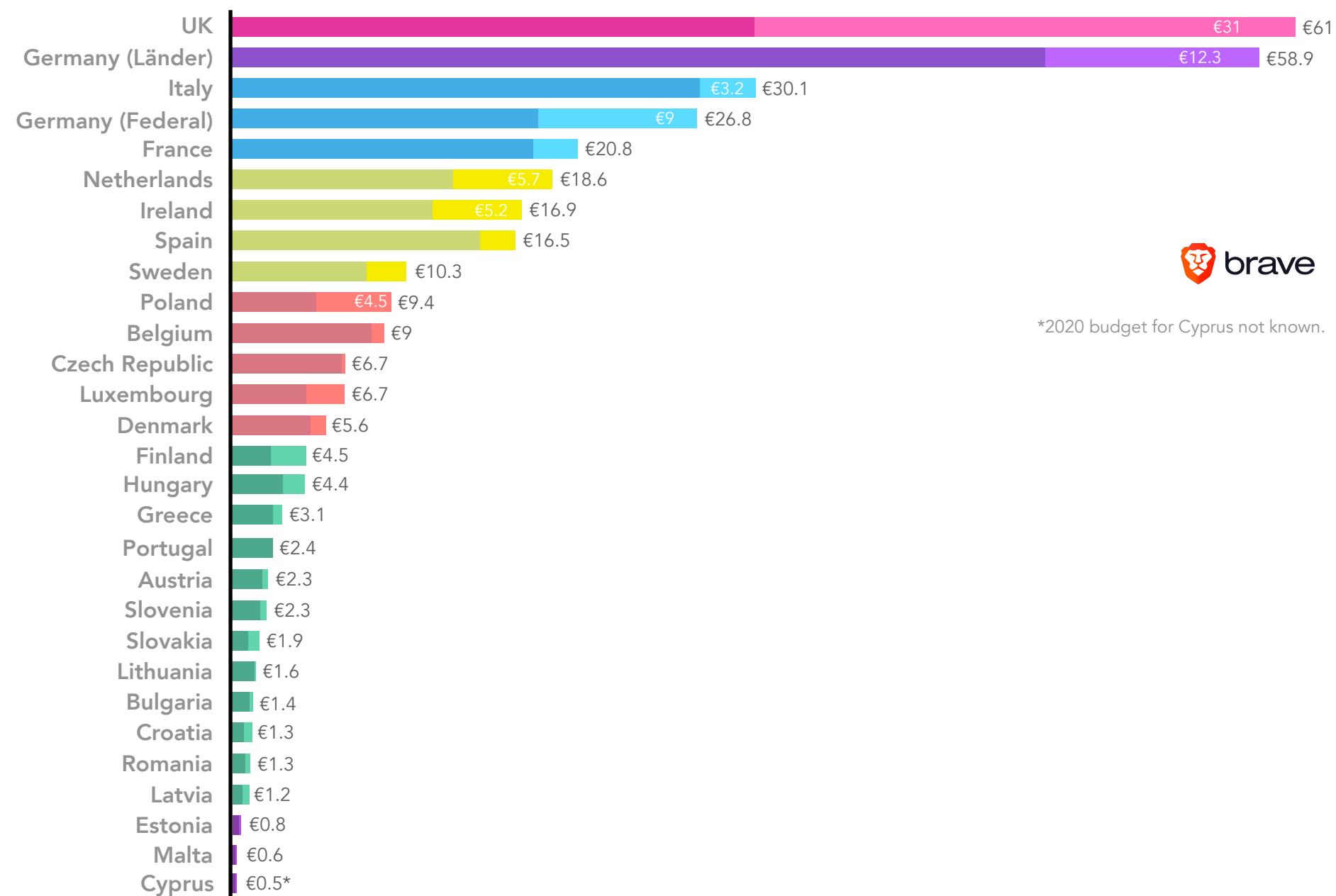
Combined increase in EU DPA budgets

Year over year increase, in millions of euro, rounded.



DPA budgets, increase from 2018-2020

in millions of euro, rounded. Increase in lighter hue.



*2020 budget for Cyprus not known.

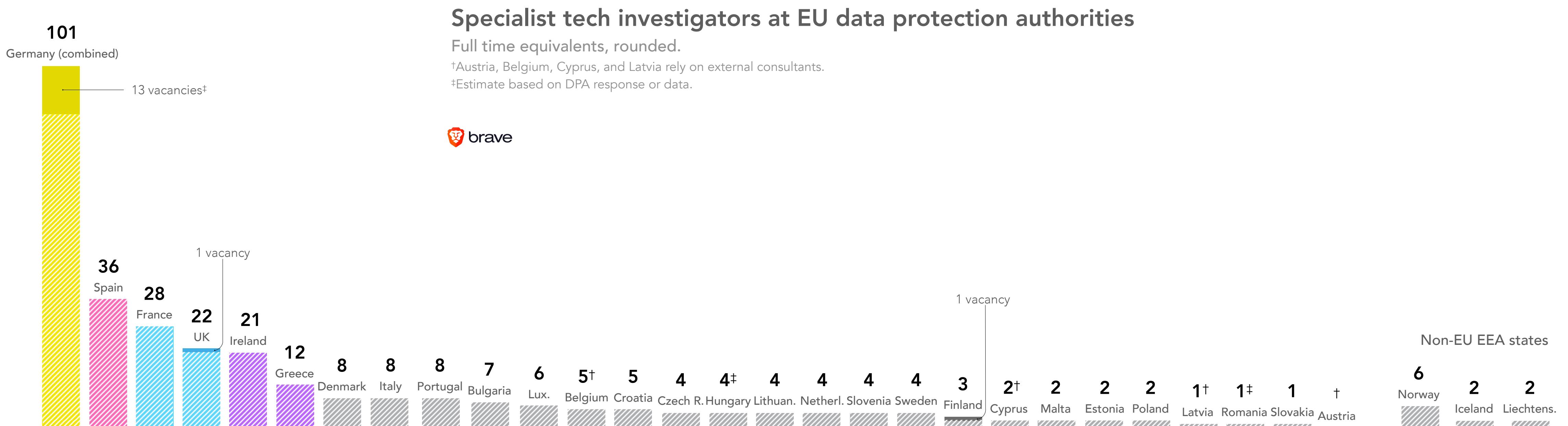
GDPR enforcers need many more tech specialists

The findings

- **7 European Member States' national data protection authorities have only 2 or fewer tech specialists.**
- **Only 6 national DPAs out of 28 have 10+ tech specialists.**

The bottom line

Much of life is lived online. Tech investigation and enforcement should be a high priority for DPAs. But this chart shows that they lack the capacity to examine how people's personal data is used by tech companies.



Germany leads Europe

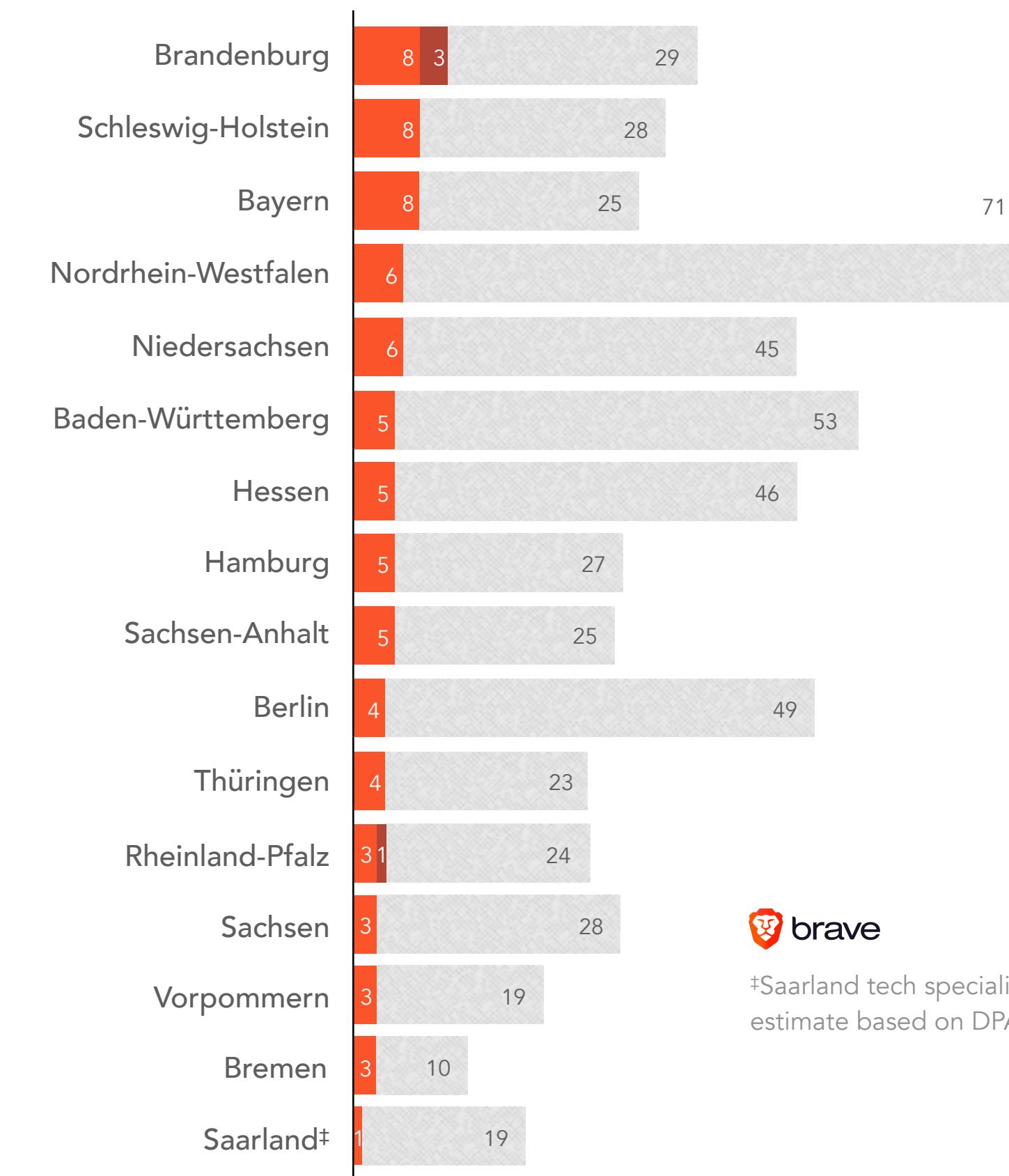
German Länder (regional states) invest more than most national governments.

The findings:

- A single **Länder DPA**, the Unabhängiges Landeszentrum für Datenschutz (ULD), of Schleswig-Holstein, has **more tech specialists than all but 7 national DPAs**.
- Two German DPAs are not included on this chart:
The Federal Commissioner for Data Protection and Freedom of Information (BfDI) has **185 staff, 22 of these roles (including 10 vacancies) are tech specialists**. BfDI is responsible for postal and telecommunications services, government departments and federal institutions.
Bayern has a separate DPA that deals with the public sector. Its **44 staff include 5 tech specialists**.
- Though Germany's tech specialist teams are comparatively large many German DPAs **complain about inadequate resources**. Germany's tech investigations are split between **18 different organisations** (16 Länder and one federal DPA).

Länder DPAs: Specialist tech investigators versus other staff

Full-time equivalents, rounded. Vacancies shown in darker red.



Irish Government slows the DPC's surge

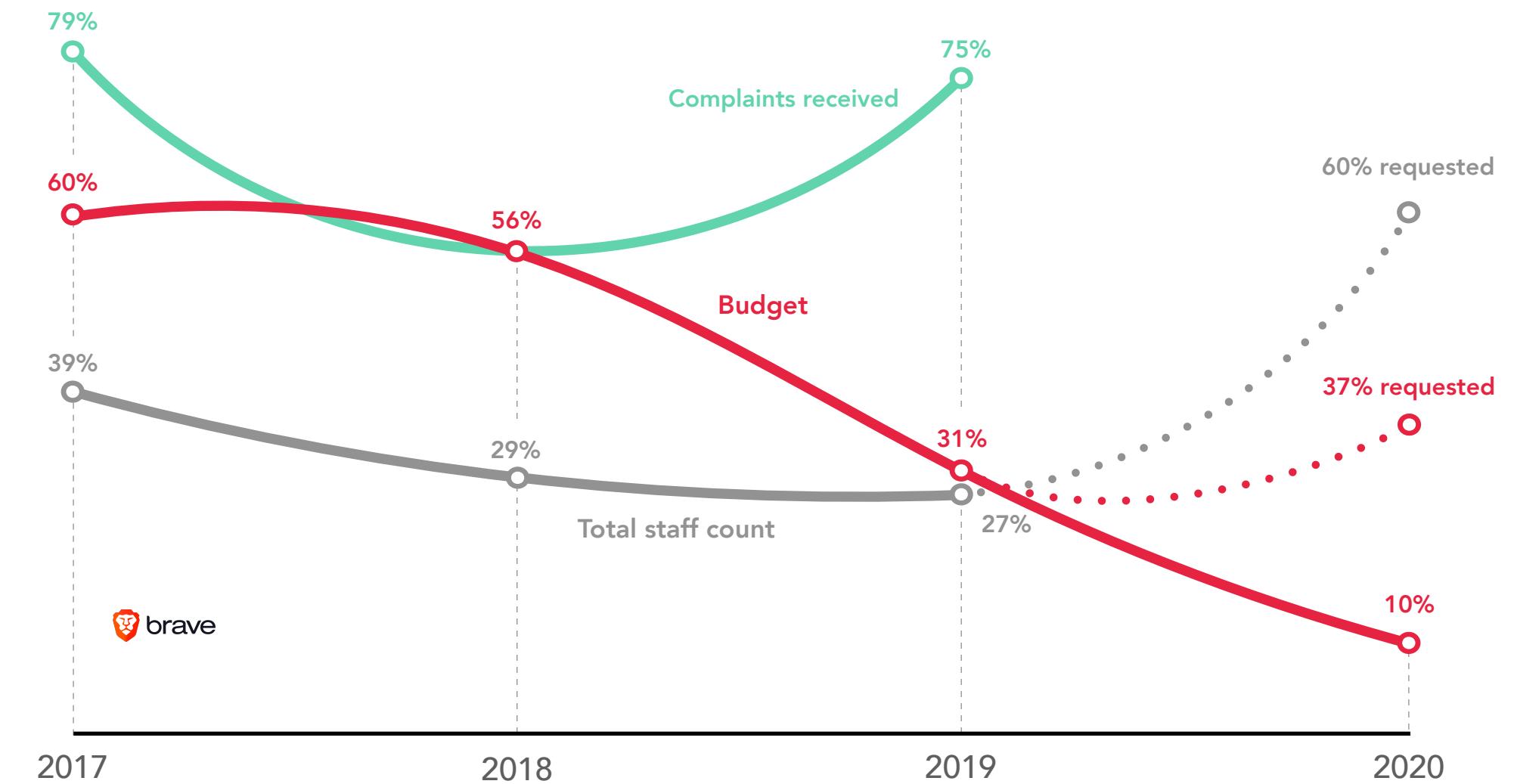
Irish Government investment in its data protection authority has slowed.

The findings:

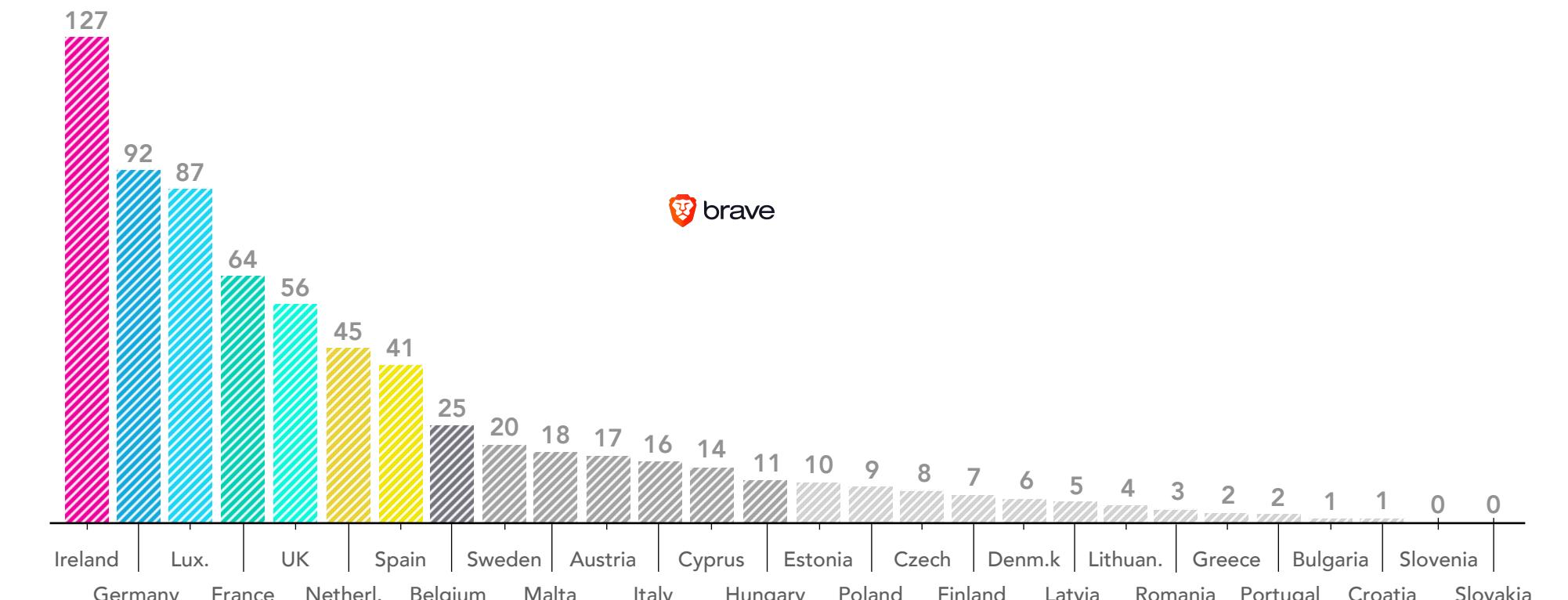
- The Irish Data Protection Commission (DPC) is the '**lead authority**' in Europe responsible for supervising **Google**, **Facebook**, and several other large tech firms.
- The DPC is responsible for investigating **more cases as lead authority** than any other DPA.
- **15%** of DPC staff, 21 people, are **specialist tech investigators**.
- While the number of complaints it deals with is accelerating, the Irish Government's **build up of the DPC's budget and staff is decelerating**.

Growth in Irish Data Protection Commission budget, staff, and complaints

% increases, year over year



Lead authority case load per country



Note that a caveat applies to these data: see note 6 on page 13.

Only 3% of the UK ICO's staff is focussed on tech

The UK ICO costs the most to operate, but this has not resulted in a tech capacity that is fit for purpose.

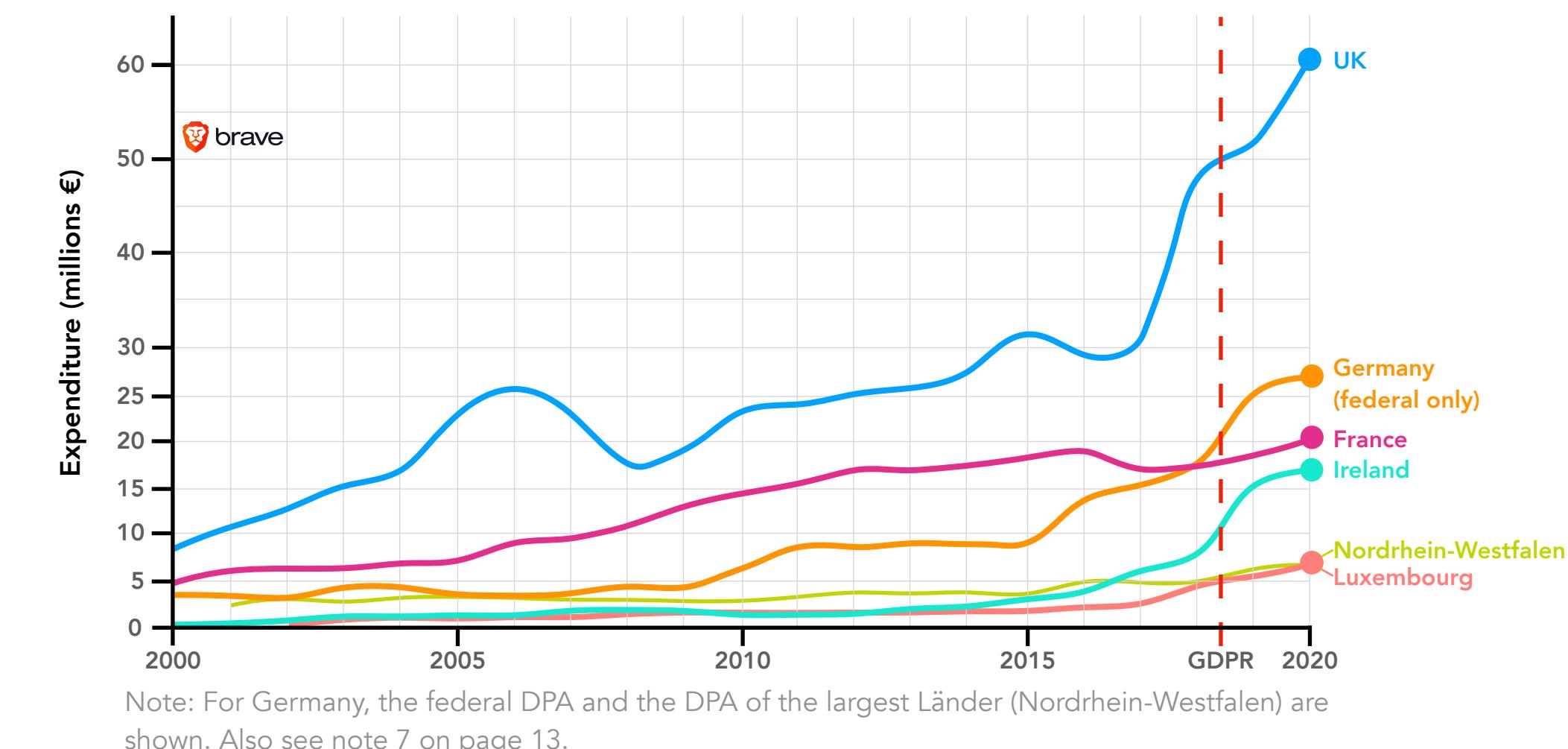
The findings:

- The UK Information Commissioner's Office (ICO) **spends significantly more money than any other DPA**, but this **has not translated in to a large tech capacity**.
- Spain's AEPD and France's CNIL have larger tech specialist teams, but **cost a third** of what the ICO costs to operate.
- Only **1 person in 30** at the ICO is focussed on tech issues.

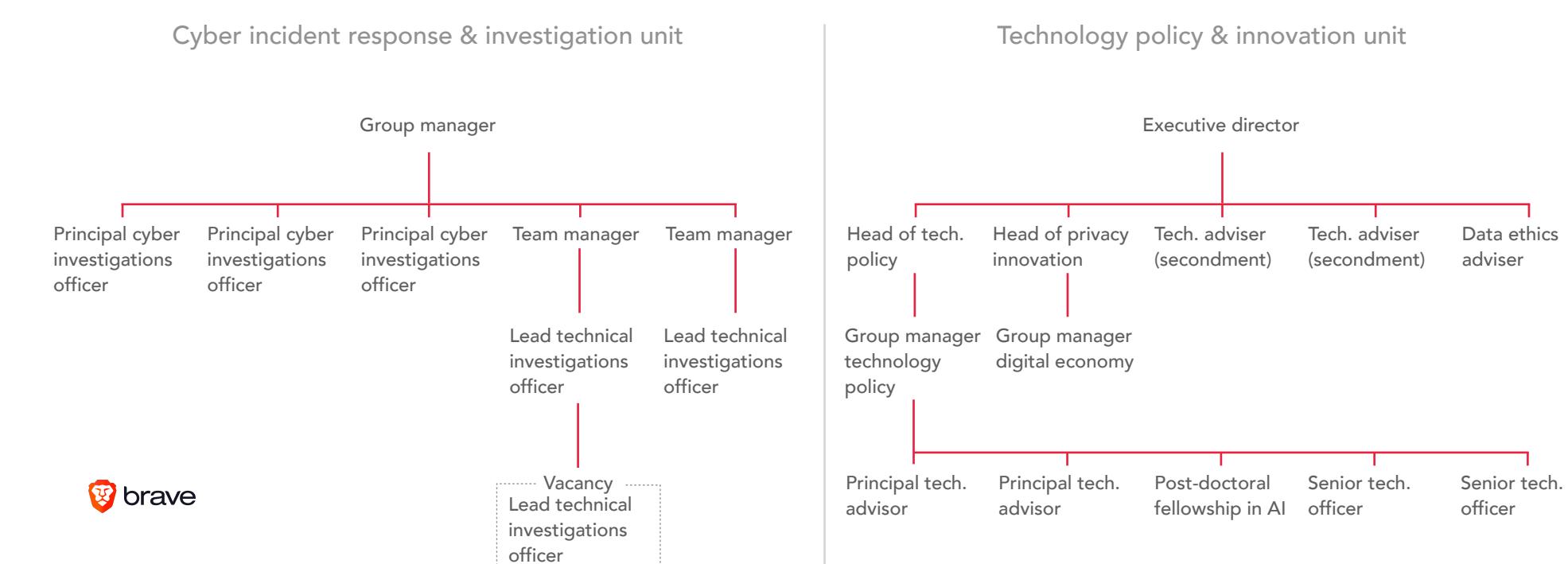
Analysis:

The ICO budget doubled between 2018 and 2020 from €30 to €61 million. A modest investment in tech specialists in proportion to the ICO's budget could make a large impact on the ICO's capacity to properly engage with tech issues.

Expenditure from 2000 to 2020 of the DPAs with the most 'lead authority' cases.



Organigram of ICO tech roles



22 full time equivalents (including 1 vacancy)

How to save the GDPR

Governments have failed to implement Article 52 (4) of the GDPR. But it is not too late.

National recommendations

- Governments should invest in far more specialist tech investigators, and pay competitive salaries to attract top talent.
- Governments should provide the finance to allow DPAs to pursue adversarial enforcement, and to defend their decisions against expensive legal appeals by Big Tech. This is particularly necessary for 'lead authority' DPAs in major cases, and where the respo DPA decisions might give rise to civil litigation against .

EU-level recommendations

- The secretariat of the European Data Protection Board (provided by the European Data Protection Supervisor) should establish a tech investigative unit to support national DPAs. This unit requires a substantial permanent staff, and a small rotating temporary staff from national DPAs.
- The European Commission should launch an infringement procedure against EU countries that fail to implement Article 52(4) of the GDPR. It should refer countries to the European Court of Justice if necessary.

Article 52(4) of the GDPR

Article 52

Independence

1. Each supervisory authority shall act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation.

2. The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody.

3. Member or members of each supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4. Each Member State shall ensure that each supervisory authority is provided with the **human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks** and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.

5. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.

6. Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

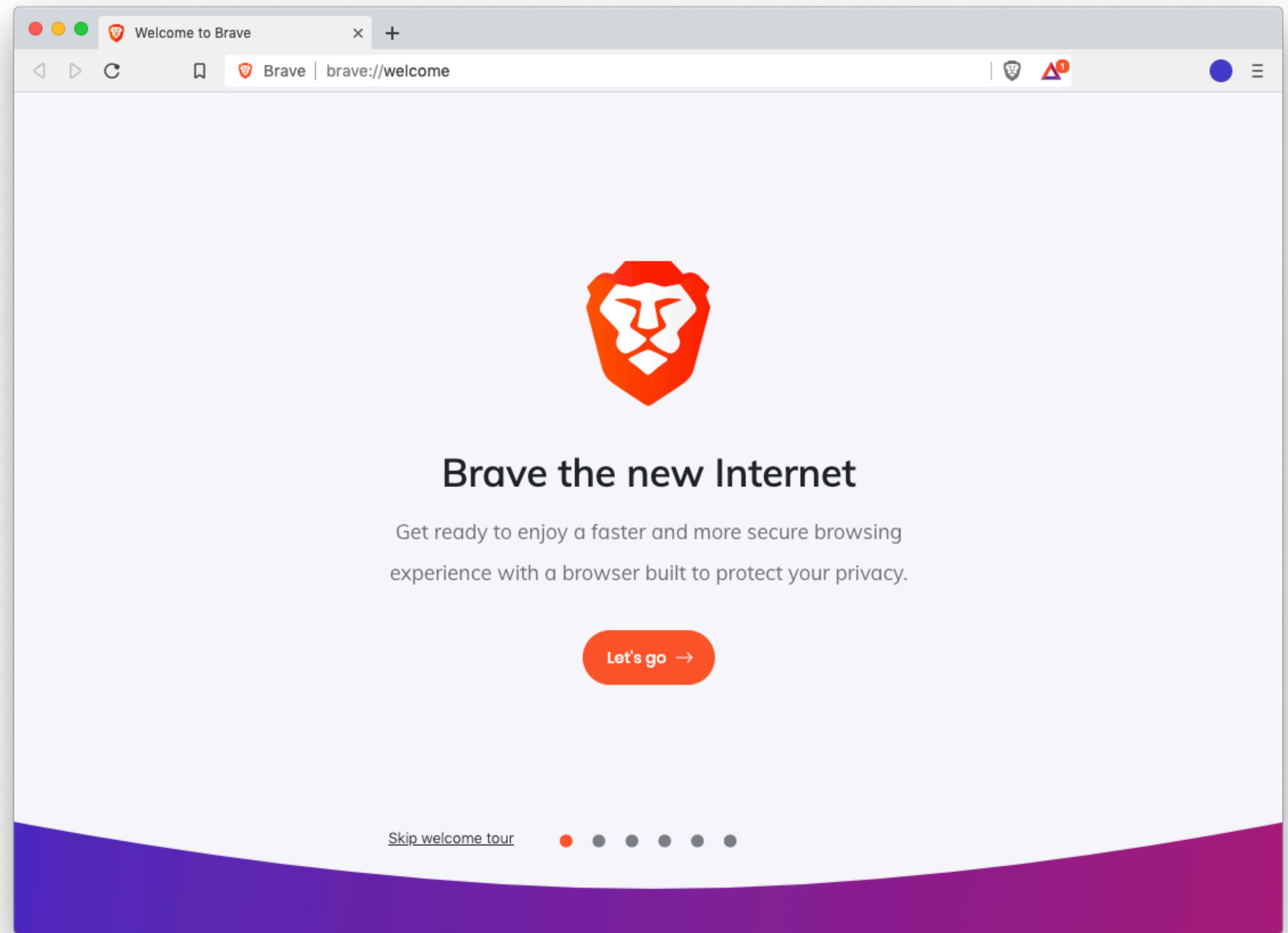
Protect your privacy

Brave is a new, private web browser. It brings unmatched speed and battery life. And it also blocks data-grabbing ads and trackers.

Millions of people use Brave to make the web quicker and safer. You can download it for your phone or computer at Brave.com and browse the web with confidence.

“Brave, the upstart browser that makes privacy a priority, ranked the highest”, said [Wired](#) in a review of how well browsers protect their user’s privacy.

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Methodology, caveats, and references

Methodology:

1. Brave contacted 28 EU Member State national DPAs, 17 Länder German DPAs (Bayern has 2), and 3 EEA national DPAs. Brave asked:

"How many employees (full-time equivalents) with a technical (IT) background are involved in either investigation or enforcement work at the [name of DPA]? This would include staff whose training or role is principally technical, but exclude those employed for internal IT purposes."
2. Total staff figures were taken from published materials of each DPA. Where necessary, these were checked and updated in direct correspondence with DPAs.
3. Data for the chart "Growth in Irish Data Protection Commission budget, staff, and complaints" are from that organization's accounts, annual reports, and its 2020 pre-budgetary submission to the Irish Government.
4. Budget charts on pages 4 to 6 use figures from the European Data Protection Board "Contribution to the evaluation of the GDPR", February 2020, pp. 28-9.
5. Data for the chart "Lead authority case load per country" on page 9 are from EU Internal Market Information System (IMI). Note that the IMI does not register complaints that a lead authority DPA receives directly from a complainant in a different country. The IMI also may group several different data protection matters and entities in a single item. These numbers therefore are undercounts.
6. The chart "Expenditure from 2000 to 2020 of the DPAs with the most 'lead authority' cases" shows the annual expenses of each DPA, rather than the budgets allocated by governments. Figures for the UK, Luxembourg, Ireland, Germany (federal), and Nordrhein-Westfalen are taken from their annual accounts for each year. Figures for France's CNIL are taken from the French Government open data platform. UK budgets were taken from annual reports. The ICO first started to publish an annual report in 2004. Where UK budget is tracked from 2003-2020 and presented in Euro, the exchange rate from British Sterling to Euro in late December of each budget year has been applied. Where expenditure for 2019 and 2020 is not available, EDPB figures (note 4) are used.
7. The ICO organigram on page 9 reproduces the ICO's own organigrams, which Brave obtained in response to a freedom of information request to the ICO.
8. Charts and figures do not include four DPAs that deal only with public sector data processing: the Agència Catalana de Protecció de Dades (Catalan public sector), the Agencia Vasca de Protección de Datos (Basque public sector), Der Bayerische Landesbeauftragte für den Datenschutz (Bavarian public sector), and the European Data Protection Supervisor (EU institutions). Nor is the Žurnalistų etikos inspektorius tarnyba, which monitors data protection issues in the Lithuanian press, included in this report.
9. The tech specialist figure for Greece includes 5 new tech specialists who would have started already but for the Covid-19 outbreak.

Acknowledgements:

At Brave, Dr Johnny Ryan and Alan Toner produced this report.

Our enforcement colleagues who responded with information (28 national DPAs, 17 Länder German DPAs, and 3 EEA member national DPAs).

Daragh O'Brien, of Castlebridge, first highlighted the inadequacy of the Irish Government's allocation to its DPA for 2020, and brought it to the European Commission's attention. Dr Rob van Eijk, of the Future of Privacy Forum, contributed valuable insights regarding methodology. Gemma Galdon Cavell of Ethicas Foundation gave useful information about Spain.

The cover photograph was taken by Andrea Piacquadio.

Caveats:

This report uses the term "tech specialist" or "specialist tech investigator" to denote any person who has a role in technology investigation and enforcement. This is broadly framed to give DPAs the benefit of the doubt. It includes policy, research, and certification roles focused on tech. It excludes internal "IT" staff that maintain software and hardware at the DPA.

Many national DPAs have duties beyond data protection supervision, such as transparency, use of public sector data, security, etc. that draw on their tech capacity.