



Brussels, 15 February 2017

**EUROPEAN DATA PROTECTION SUPERVISOR**

**Priorities for providing advice in 2017**

**The implementation of our advisory role to the EU legislator**

## 1. CONTEXT

Part of the statutory mission of the EDPS is to advise the EU legislator, with a view to advancing fundamental rights, in particular the right to privacy and data protection. Such advice must take account of the pace of technological developments where data protection becomes increasingly important<sup>1</sup>.

This consultative role relates to proposals for new legislation, as well as soft law instruments, communications and other policy initiatives that affect personal data protection in the EU, international agreements and positions of the EU and its institutions and bodies in international fora. The objective underlying the interventions by the EDPS is to ensure that both the Commission, as the most frequent initiator, and the European Parliament and the Council, as the co-legislators are aware of data protection requirements and integrate data protection in new legislation.

Providing substantive guidance to policy-makers becomes even more pressing in view of the complexity of many legislative files, as well as the impact of information technology on modern society. Today, there are hardly any legislative or policy proposals which do not imply some form of automated data processing, ranging from e-government applications, to security and anti-terrorism measures, to large-scale IT systems.

This document presents the EDPS' approach in the area of consultation for 2017, in line with the priorities identified in the EDPS Strategy 2015-2019<sup>2</sup>. We aim to act selectively and focus our attention and efforts on those initiatives and areas that present the highest risk of non-compliance or where the impact on privacy and data protection are greatest<sup>3</sup>.

While this document and the list in annex are intended to provide guidance, the EDPS will adjust his priorities throughout the year so as to be able to respond to developments as they arise. Without prejudice to the Commission's privilege of initiative, we will ensure that we are consulted where relevant by Commission services in a timely manner. As in the past, we will engage constructively with the European Parliament, the Council and the Commission and remain available to provide targeted and timely advice at any stage of the EU decision-making process.

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<sup>1</sup> "The EDPS as an advisor to EU institutions on policy and legislation: building on ten years of experience", Policy paper available at:

[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/PolicyP/14-06-04\\_PP\\_EDPSadvisor\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/PolicyP/14-06-04_PP_EDPSadvisor_EN.pdf).

<sup>2</sup> "Leading by example, the EDPS Strategy 2015-2019", available at:

<https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/Strategy2015>.

<sup>3</sup> The EDPS consultation priorities documents for the past ten years can be found at: <https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/Priorities>

## 2. POLICY FRAMEWORK 2017

Following the adoption of the data protection reform package (comprising the General Data Protection Regulation<sup>4</sup> and the Directive for data protection in the police and justice sectors<sup>5</sup>), the EDPS will continue to support EU institutions in the next steps towards completing a coherent legal framework for data protection in Europe<sup>6</sup>. In the light of the growing importance of the protection of fundamental rights within the EU legal order, it is crucial that new policy and legislative initiatives include appropriate safeguards to ensure compliance with the Charter of Fundamental Rights of the EU and the data protection principles.

Building on the Data Protection Directive 95/46/EC, the GDPR recognises and strengthens the powers of data protection supervisory authorities to advise national parliaments, governments and other institutions and bodies on legislative and administrative measures relating to the protection of personal data. Analogous powers are granted to the EDPS by Regulation (EC) No 45/2001<sup>7</sup>. In setting our priorities, we strive for consistency with the Article 29 Working Party in view of ensuring a single and strong EU voice on data protection matters. This consists in particular of the dedication of additional resources to ensuring synergy with the WP29 action plan and of support for the work on key elements of the GDPR, including guidance for data controllers, data subjects and the interpretation of essential principles.

On the basis of the Commission Work Programme 2017<sup>8</sup>, we have identified the following initiatives as EDPS priorities for this year:

- **Towards a new legal framework for the EDPS**

The Commission has recently issued its legislative proposal<sup>9</sup> for a revision of Regulation (EC) No 45/2001, the EDPS constitutive instrument defining our duties and tasks. Given its importance, we will devote considerable resources to the revision process, notably in order to ensure that the rules for data processing applicable to EU institutions, bodies, offices and agencies are aligned as much as possible with the principles of the GDPR.

- **Ensuring protection of confidentiality and privacy in electronic communications**

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<sup>4</sup> 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, 4.5.2016, p. 1.

<sup>5</sup> Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data,

<sup>6</sup> See also priority 3, action 7 of the [EDPS Strategy 2015-2019](#).

<sup>7</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. OJ L 8, 12.1.2001, p. 1–22.

<sup>8</sup> COM(2016) 710 final.

<sup>9</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, Brussels, 10.1.2017, COM(2017) 8 final.

We will contribute to the ongoing review of the ePrivacy Directive 2002/58/EC<sup>10</sup>, focusing, among other issues, on the need to adequately translate into secondary EU law the principle of confidentiality of electronic communications enshrined in Article 7 of the Charter and Article 8 of the European Convention on Human Rights<sup>11</sup>.

- **Contributing to a Security Union and stronger borders based on respect for fundamental rights**

The initiatives which, in our view, are likely to have serious implications for the protection of privacy and personal data include in particular the implementation of the Security Union agenda and the Action Plan of terrorist financing, as well as several initiatives planned in the context of EU borders and security such as ETIAS, the revision of SISII and ECRIS, including the issue of interoperability between these systems.

For other initiatives listed in the Commission Work Programme 2017 that have been identified as warranting attention of the EDPS, please see the **Annex**.

### **3. OTHER PLANNED INITIATIVES**

On 10 January 2017, the Council decided to consult the EDPS on a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content<sup>12</sup>. In response to this request, we will issue an opinion no later than by 15 March 2017.

Following informal contacts with the co-legislators, we will be closely involved in the discussions around the proposed review of the 4th Anti-Money Laundering Directive<sup>13</sup> on which we have issued an Opinion<sup>14</sup>, and in particular on the data protection aspects of the publication of beneficial ownership information.

We will closely monitor the proposed new framework for adequacy decisions on exchange of personal data with third countries<sup>15</sup>.

The EDPS is closely monitoring ongoing initiatives including negotiations and possible new trade agreements (e.g. with Japan, Canada, Australia, Chile and New Zealand) and possible agreements in the law enforcement sector, as regards their potential impact on privacy and data protection.

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<sup>10</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 10.1.2017, COM(2017) 10 final.

<sup>11</sup> See current Article 5 of Directive 2002/58/EC.

<sup>12</sup> See Commission proposal of 10 December 2015, COM(2015) 634 final, 2015/0287 (COD).

<sup>13</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, COM(2016) 0450 final.

<sup>14</sup> EDPS [Opinion 1/2017](#) on a Commission Proposal amending Directive (EU) 2015/849 and Directive 2009/101/EC: Access to beneficial ownership information and data protection implications.

<sup>15</sup> Communication from the Commission to the European Parliament and the Council “Exchanging and Protecting Personal Data in a Globalised World”, Brussels, 10.1.2017, COM(2017) 7 final.

In January 2017, the Commission issued a Communication on "Building a European Data Economy"<sup>16</sup> which, among other issues, explores the rules and regulations impeding the free flow of data and present options to remove unjustified or disproportionate data location restrictions, and launches a public consultation and dialogue with stakeholders to gather further evidence. The EDPS will provide input to this consultation.

Building on the preparatory work performed since 2015, we will publish a "**toolkit**" to assist policy makers and the co-legislator in assessing the **necessity of interference with the fundamental right to data protection**<sup>17</sup>. We will follow up with a background document **on the principle of proportionality** in EU data protection law. In this connection, the organisation of workshops devoted to specific policy areas (e.g. justice and home affairs, external relations) to train Commission staff and raise their awareness of data protection issues will be continued, in cooperation with the relevant Commission services.

#### **4. PRIORITIES 2017: BACKGROUND**

In order to be able to continue providing effective advice in spite of limited resources, we adopt a selective approach. These Priorities 2017 set out the direction for the work in the ongoing year and identify issues where the EDPS feels that he can provide most "added value" within the framework of legislative and non-legislative procedures. These priorities must be read in conjunction with the EDPS Strategy 2015-2019, which defines the EDPS strategic objectives for the five-year period.

The Priorities 2017 consist of two documents:

- the present note, setting out the EDPS strategic priorities for legislative consultation in 2017;
- an Annex listing the relevant Commission proposals that are programmed and that require the attention of the EDPS.

The **Annex** includes a non-exhaustive list of key issues on which the EDPS will concentrate his resources on consultation in the course of 2016. It has been prepared on the basis of the annual Commission Work Programme, as well as bilateral contacts that we maintain with Commission services. In addition, the work programme of the Article 29 Working Party is an important point of reference.

The proposals listed in the Annex are colour-coded according to their priority:

- **red** = EDPS will provide advice;
- **yellow** = EDPS may intervene, depending on the evolution of the file;

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<sup>16</sup> COM(2017) 9 final; see also: <https://ec.europa.eu/digital-single-market/en/building-european-data-economy>.

<sup>17</sup>

[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Papers/16-06-16\\_Necessity\\_paper\\_for\\_consultation\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Papers/16-06-16_Necessity_paper_for_consultation_EN.pdf)

- **green** = EDPS normally will not intervene, but will follow relevant developments and take a decision whether to intervene accordingly.

The Annex is, as a general rule, updated twice a year. The updates are published on the EDPS website.

All EDPS opinions are published on his website in English, French and German and an executive summary in all Community languages is published in the Official Journal. More information can be found in the 2014 policy paper "The EDPS as an advisor to EU institutions on policy and legislation: building on ten years of experience"<sup>18</sup>.

The EDPS would also like to encourage all stakeholders to monitor these Priorities, as updated, so as to ensure that the EDPS is consulted in the appropriate manner and at the appropriate stage on all initiatives included therein.

In order to be fully accountable, the EDPS has identified the impact of his advisory work on the quality of legislation adopted as a Key Performance Indicator, and will report on this, together with the other KPIs, in the EDPS Annual Report.

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<sup>18</sup> See above, footnote 1.