



Terms of Reference for the Ethics Advisory Group set up by the EDPS on the ethical dimensions of data protection

1. Terms of Reference and the Advisory Group

These are the Terms of Reference for the Ethics Advisory Group ("Advisory Group") set up by the European Data Protection Supervisor (EDPS) on the ethical dimensions of data protection. These Terms of Reference complement and further elaborate the content of the EDPS-Decision of 3 December 2015 establishing an external advisory group on the ethical dimensions of data protection ('the Decision').

The overall objective of the Advisory Group is to explore the relationships between human rights, technology, markets and business models in the 21st century from an ethical perspective, with particular attention to the implications for the rights to privacy and data protection in the digital environment.

The Advisory Group will provide advice to the EDPS on these matters upon request.

2. What is the background for setting up the Advisory Group?

The EDPS Strategy 2015-2019 stipulates that Europe has to lead the conversation on the legal and ethical consequences of the new technologies.

The EDPS Strategy considers that "One solution is to assess the ethical dimension beyond the application of the data protection rules. Organisations, companies and public authorities that handle personal information are responsible for how that information is collected, exchanged and stored, irrespective of whether these decisions are taken by humans or algorithms. An ethical approach to data processing recognises that feasible, useful or profitable does not equal sustainable. It stresses accountability over mechanical compliance with the letter of the law. We want to encourage a better informed conversation on what big data and the internet of things will mean for our digital rights. These are not merely European issues but global concerns."

In this respect, objective 2 "Forging Global Partnerships" of the EDPS Strategy sets out a specific action to "establish an external advisory group on the ethical dimension of data

protection to explore the relationships between human rights, technology, markets and business models in the 21st century".¹

This objective was described in the Opinion of the EDPS of 11 September 2015 - Towards a new digital ethics: Data, Dignity and Technology. The Opinion announces the setting up of an Ethics Advisory Group *"composed of a select group of distinguished persons from the fields of ethics and philosophy, sociology, psychology, technology and economics, supported as required by additional experts with knowledge and expertise in areas like health, transport and energy, social interaction and media, economy and finance, governance and democracy and security and policing. They will be invited to consider the wider ethical implications of how personal data is conceived and used, with maximum transparency given to their deliberations."*

The Opinion also describes the main trends, opportunities and challenges in a data driven information society, as well as a big data protection ecosystem. It specifies that an ethical framework needs to underpin the building blocks of the digital ecosystem. Human dignity should be at the heart of a new digital ethics.

3. What the Advisory Group should do

The main task of the Advisory Group is to "help define a new digital ethics, allowing to realise better the benefits of technology for society and the economy in ways which reinforce the rights and freedoms of individuals."² The Advisory Group has been established to advise the EDPS on these matters upon request, as part of the ambition of the EDPS to stimulate an open and informed discussion in and outside the EU.

The work of the Advisory Group should contribute to and advance the societal debate aiming at developing a new framework of digital ethics which can protect the freedom of individuals from the risks of the unlimited processing of personal data, with human dignity at the heart. In the 21st century, the protection of human rights, in particular the fundamental rights to privacy and data protection, as well as other societal and economic objectives such as technological innovation, economic growth, and safeguarding the security of the individual, have become increasingly interrelated.

From this perspective, the contribution of the Advisory Group should be based on a thorough, broad and multidisciplinary analysis of the impact of new technological challenges such as the Internet of Things, cloud computing and Big Data, leading to better understanding of the phenomena observed, their causes, driving factors and the mechanisms and principles in different domains.

When conducting its independent reflections, the Advisory Group is invited to take the following issues into consideration³:

- a. The value expressed in Article 1 of the EU Charter of Fundamental Rights, namely that human dignity is inviolable. Human dignity must be respected and protected.

¹ Action 4, first indent, of the Strategy.

² Opinion of the EDPS of 11 September 2015 - Towards a new digital ethics.

³ See further: Opinion of the EDPS of 11 September 2015 - Towards a new digital ethics.

- b. The fundamental rights to privacy and to the protection of personal data have become more important for the protection of human dignity than ever before.
- c. Technology should not dictate values and rights, but neither should their relationship be reduced to a false dichotomy.
- d. These issues have engineering, philosophical, legal and moral implications which should be addressed in an integrated manner.

4. What results may be expected

The deliverables of the Advisory Group include in any event:

- a. An interim report, to be presented at or around 28 January 2017 (Data Protection Day).
- b. A discussion report for the public session of the International Conference of Privacy and Data Protection Commissioners of 2017, in case this conference will be hosted by the EDPS. In case this conference is not hosted by the EDPS, the discussion report will be discussed at another public conference, to be organised with the support of the EDPS (autumn 2017).
- c. A final report, to be presented at or around 28 January 2018 (Data Protection Day).

The EDPS will, in addition to the conference mentioned under b above, present the results of the Advisory Group to a broad audience in the context of workshops or conferences. This includes in any event a public workshop, to be organised in the autumn of 2016.

5. Who will be the members of the Advisory Group

According to the Decision, the Advisory Group will consist of a maximum of six eminent and independent personalities with a proven track record in the analysis and research in areas relevant to the ethical dimensions of data protection. These experts should have a vision on the medium to long-term implications of technological change and on regulatory responses. Moreover, the members of the Advisory Group should fulfil strict criteria of independence, impartiality, personal integrity and objectivity.

The members of the Advisory Group will represent a variety of different disciplines such as philosophy, sociology, psychology, technology and economics. Members of the Advisory Group are expected to demonstrate an interest in the mission of the EDPS, but they are not required to have a specific expertise or experience within the domain of privacy and data protection.

The members of the Advisory Group will be chosen on the above-mentioned criteria but the EDPS will also take into consideration, as far as possible, geographical and gender balance. Members will be appointed for the duration of the exercise. If a member no longer wishes to participate in the Advisory Group, the EDPS may decide that he or she will be replaced.

Members will be appointed in a personal capacity and should act independently and free from any interference or actual or potential conflict of interest.

6. How the EDPS will choose the members of the Advisory Group

The EDPS will - alongside the Decision and these Terms of Reference - give wide publicity to a call for expressions of interest with a view to having as broad a range of interests and disciplines as possible represented in the Advisory Group.

The EDPS recommends those who are interested in participating in the Advisory Group to send their expression of interest by 18 December 2015 at the latest by email to the following address: EDPS-ETHICS@edps.europa.eu.

The EDPS encourages those who are interested to document their professional experience and expertise by means of a curriculum vitae and a letter in support of their application. The following information is of particular interest to the EDPS:

- a. Any authority or organisation for which the applicant has been working and the length of time he/she has worked there.
- b. Other authorities/organisations, for which he/she has worked in the past.
- c. His/her specific competences.
- d. The specific projects and or tasks he/she has been involved in with relevance for digital ethics.
- e. Any works that he/she has published with a connection to digital ethics
- f. Any experience he/she has acquired at EU and international level.
- g. Any other activity or interests that he/she has, which may be relevant from the perspective of a potential conflict of interest or likely to be understood as capable of undermining his or her independence.

The expressions of interest will be assessed by a preselection committee appointed by the Director of the EDPS, which shall include at least one external member.

The committee may ask applicants to submit the information referred to above as well as relevant additional information, and may, as part of the procedure, organise interviews with suitable applicants, in person or by the use of electronic means.

The committee will submit its assessment in the form of an advice to the European Data Protection Supervisor on the composition of the Advisory Group. The Supervisor will adopt a decision, having considered this advice and after consulting the other members of the Management Board of the EDPS. A public report of the appointment procedure will be published on the website.

The committee will carry out its assessment between 4 and 22 January 2016, with a view to decision making before the end of January 2016. These dates are strictly indicative.

The Advisory Group is asked to work in an open manner, involving other experts on a permanent or an ad hoc basis. This means that those persons who expressed their interest but who are not chosen to become a member of the Advisory Group will not be excluded from its activities. To the contrary, the EDPS encourages the Advisory Group to involve others, in appropriate cases.

7. How the Advisory Group will operate

In addition to the provisions of the Decision and without prejudice to the future content of the Rules of Procedure to be adopted in due course, the Advisory Group will operate as follows.

- 1) The working language will be English and no interpretation facilities will be provided. Subject to budget availability, a limited number of translations will be available.
- 2) The Advisory Group will meet at least three times a year. A maximum of two out of these three meetings may be organised as a videoconference. The European Data Protection Supervisor and/or the Deputy Supervisor may be invited to address these meetings. In any event, the Chair will meet the Supervisor and/or the Deputy Supervisor at least once a year to report on the activities of the Advisory Group.
- 3) In agreement with the Advisory Group, the EDPS may invite experts from outside the group with specific competences to participate in its work on a permanent or an ad-hoc basis. In the same way, the EDPS may also invite observers on an ad hoc basis.
- 4) The Advisory Group shall ensure the necessary transparency of activities. A report of each of its meetings shall be made public by the Secretary of the Advisory Group.
- 5) The EDPS shall make available all relevant information on the activities of the Advisory Group in a dedicated section on its website.