



The state of privacy 2017: mid-mandate report

Presentation of the 2016 EDPS Annual Report to the LIBE Committee

4 May 2017

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Mr Chairman, Honourable Members,

Thank you for the invitation to present the 2016 EDPS Annual Report.

Last year we witnessed a series of political earthquakes in the EU and around the world.

We shall see whether this disruptive trend will continue in 2017.

But in 2016 you built something strong enough to survive the winds of political change.

With the **General Data Protection Regulation** and the data protection directive for police and criminal justice authorities, the EU has lead the way in safeguarding fundamental rights in the digital age.

This great achievement is a tribute to the resilience and expertise demonstrated by this committee during the four years of difficult negotiation and intense external pressure.

As a regulator, we **handled more complaints in 2016** than in any other year since EDPS was established.

This is not necessarily to be interpreted as criticism of how EU bodies are handling personal data.

Rather it is to be seen as part of a generalised trend in which individuals are becoming more and more aware, and concerned, about how their 'digital selves' are respected.

Data protection is mistakenly portrayed as a technical and legal issue. But it is fundamentally about real people.

My staff deal every day individuals who are worried or angry about what may have been done with information about them.

Data protection has been established in the EU as a fundamental right to serve the interests of the individual in the face of powerful corporations and governments.

But it can also be misinterpreted in ways which do not serve the interests of these individual - for example when data protection is falsely opposed to the public interest for transparency.

Let me give you a practical example from last year of how EU bodies are thinking through these questions, with our guidance as a regulator.

The Council's Equal Opportunities Office does some great work in raising awareness of what is it like to have a disability in the workplace.

Their promotional videos and other materials include information about actual individuals and their conditions.

Such information should only appear if the individuals concerned have given their free and informed consent.

So we have worked with the Council to find practical ways for the people in question to understand and freely choose whether their information should be used in awareness-raising.

We launched in 2016 a project that aims to bring about a culture change in EU institutions based on the **principle of accountability**.

It began with an internal exercise among our own staff led by the DPO in EDPS before we began to roll it out to other bodies. I met personally the heads of ECB, FRA, Council Secretariat as well as the Secretary General of this Parliament.

I see it as my role to equip you with what you need to be able to scrutinise legislation more efficiently and hold the Commission to account.

For example, the **toolkit** on the notion of necessity published last month following consultation last year was a direct response to the needs expressed by this committee in the last couple of years.

Later this year we will publish guidelines on proportionality, as we attempt to make it easier to apply legal principles which are not always self-evident.

We have also had to deliver difficult messages to the co-legislator, such as on the proposed **Digital Content Directive**.

In this case we recognised the good intentions behind the proposal. But we were obliged to highlight the major unintended consequences of, in effect, legalising the sale of one's personal information in exchange for services.

Our role is expanding, as a result of the decisions taken in this house last year.

This week we became the supervisor of how **Europol** processes personal information.

We are accelerating our knowledge of the complex decision points facing people on the front line of law enforcement and border management.

We just published an opinion on the proposed revision to the legal basis for the **SIS II database**.

And we are about to issue a statement on the Commission's proposal on **interoperability** of information systems.

Last year we also worked to promote the longer term **strategic priorities for data protection**. I would like to offer three examples:

- First - We are introducing an **ethical approach to the questions posed by artificial intelligence and other data-driven technologies**. Last year we appointed an ethics advisory group of eminent experts from a diversity of disciplines, and next week we will host a workshop to learn from ethical traditions from across the scientific community.
- Second, we have continued to facilitate privacy engineering through the **IPEN** network which gets bigger every week. And this year we will rely on the input from this group as we develop an opinion on the notion of privacy by design.
- Third, we have launched the **digital clearinghouse** - drawing inspiration from the report on Fundamental Rights and Big Data prepared by Ms Gomes on behalf of this committee earlier this year. Consumer, privacy and antitrust authorities will meet for the first time this month to discuss how to promote the interests of individuals in the face of unfair practices online.

The EU has much to be proud of in this area.

But what is missing from the state of data protection last year?

Data protection and privacy laws are proliferating around the world.

121 countries now have such rules in place or on the negotiation table.

Most of these have been inspired by or replicate the principles developed in Europe by the EU and the Council of Europe.

But there are also contradictory trends: trends towards the use of big data in order to coerce society and individuals into certain forms of behaviour.

What we lack is a common consensus for bringing together this community of data protection jurisdictions.

The **Privacy Shield** is perhaps the most high profile attempt to codify such a consensus between two major trading partners.

I was in Washington DC two weeks ago and it is true that the EU still awaits a signal of willingness to build this strategic partnership. My message was to focus on compliance with all the safeguards contained in the GDPR, not just on rules for transfer of data outside Europe.

We will contribute through the WP29 to the joint review of the privacy shield later this year.

Another thing that is missing, not for much longer I hope, is modern rules to apply to us, to EU bodies which process personal information.

Regulation 45/2001 reform – as I said to the rapporteur and shadow rapporteurs yesterday - is crucial because it is a statement that EU intends to apply to itself the rules which the legislator has devised for others in the GDPR and the law enforcement directive.

No special treatment for us.

And the strongest way to send this signal is to adopt these updated rules in time for them to be fully applicable on the same day as the GDPR, 25 May 2018.

We have worked hard to ensure that institutions are anticipating these rules and will need therefore very little time to prepare.

Then there is **ePrivacy**.

The current negotiations on ePrivacy are perhaps more important than the GDPR in the longer term, because the distinction between personal and non-personal data becomes less and less stable and meaningful, with self-learning machines able to identify individuals using almost any information including anonymised data.

What will be left is communications between people, increasing mediated by machines on their behalf and sometimes without their knowledge.

We must therefore secure the confidentiality of communications so that the next generations can have confidence that they have an intimate, inviolable space for talking to one another – and that this space may be interfered with only with their informed and free consent.

You have done your job.

Now the baton passes to the regulator.

The DNA of data protection authorities involves multiple functions, from fielding complaints, advocacy, providing guidance, sanctions and giving advice to lawmakers.

If we pursue the genetic analogy a bit further, we might say that accountability is the bonding, the backbone, which ties these different functions together.

DPAs in the EU like the EDPS must be proactive and solution-oriented.

We need to make compliance easy, but also enforce the law with the full rigour permitted by the law.

I would like to thank the President of this Parliament and the Secretary General for their support and vision in agreeing to allow us to host the **international conference** of data protection and privacy commission in *this* building from 24-26 October 2018.

This will enable the EU to showcase its commitment and professionalism before the worldwide data protection and privacy community.

This will take place during the Parliament's session in Strasbourg to minimise disruption but I would welcome your participation to the fullest extent possible.

Mr Chairman, Honourable members,

Two and a half years ago you gave Wojciech Wiewiórowski and me the mandate to develop and communicate a global and practical vision and to build and maintain, at the highest levels, effective relationships with diverse stakeholders in the EU institutions and around the world.

As we enter the second half of this mandate, we intend to complete the reshaping our institution so that it is fully fit for purpose.

We will be investing energies in ensuring we have the right people and skills -

- for our new governance responsibilities and advisory role towards you and there other institutions,
- for monitoring technologies more closely,
- and of course for providing a world class secretariat to the new European Data Protection Board.

So, to conclude, thank you for your support and engagement over the past year.

And thank you for your attention.

I look forward to our brief discussion.