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*Annual Report 2018 LIBE Hearing*

*Brussels*

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Mr Chairman, honourable members, thank you for inviting me to present the EDPS's 2018 Annual Report.

2018 was the most important year for EU data protection in a generation.

The members of this Committee should be proud of this achievement.

Most people will reflect on the moment the GDPR became fully applicable.

But with the adoption of Regulation N° 1725/2018 you have also made sure that the general data regulation rules now fully apply to EU institutions and bodies.

This was an exercise in integrity, in practicing what you preach.

Anticipating its adoption, the EDPS along with the administration of each of at least 66 EU institutions, bodies, offices and agencies, began preparations well in advance.

Because, unlike the GDPR, there was no question of a 'grace period' between formal adoption and full application.

We began in 2016 with a series of letters, training sessions and visits at the highest level.

The objective has been to explain and inculcate the notion of accountability for data processing.

Under this notion, controllers are trusted to put in place procedures for ensuring compliance.

And these procedures can be demonstrated to the regulator and to citizen whenever required.

An equivalent exercise was conducted for Europol and Eurojust, although their legal regimes were still being reformed in parallel to the finalisation of Regulation N° 1725/2018.

So today, thanks to your determination and dedication, the EU stands as a world leader in setting the parameters for responsible digital growth.

This EU approach has informed and inspired 132 countries across the globe who now have data protection laws in place - a community which is growing all the time.

It is also an approach that has helped shape the modernisation last year of the standard which originally guided the EU towards developing its own directive in the 1990s.

Convention 108 has now been ratified by 53 countries including several outside Europe. However, the EU should continue taking the lead internationally.

The acceptance of these de facto global standards gave the EU major leverage in completing an adequacy decision with Japan alongside trade negotiations.

The EDPS recommended some improvements, and I am confident that they can now contribute to the adequacy decision's implementation.

The adequacy finding stands to create the biggest ever zone for rules-based flow of personal information, with enforceable rights and standards.

It vindicated the position of the EU that the GDPR cannot be subjected to any derogation in trade negotiations.

The EDPS is, as you know, uniquely placed.

We are at once a member of the EDPB, your principal advisor on data protection matters and responsible for ensuring the EDPB is properly equipped to be operational.

The EDPB was ready from day one, 25 May 2018.

All equipment, accommodation, ICT, rules and procedures were in place. The Board's support staff were at near-full complement.

The Chair, Andrea Jelinek, has expertly steered the group through the transition and into the new era, showing remarkable calmness and clarity of purpose.

That is why, to my knowledge, all members of the Board were satisfied with the preparations made.

As a member of the EDPB, my role is to make sure the general EU interest and vision are fully present in all deliberations.

We have been careful to ensure the operational independence of the EDPB secretariat. These are necessary provisions.

But the arrangements have been successful thanks to the genuine trust and respect on all sides.

After my esteemed colleague Reijo Aarnio, the Finnish data protection ombudsman, I can speak as the most senior member of the group of EU DPAs.

And I would like to encourage you, because under the efforts of Chairwoman Andrea Jelinek, the Board is re-establishing its collective vigour and solidarity.

We now have additional impetus of several newly appointed Commissioners, including those of France and Germany. Our initial exchanges have been excellent and very promising for the years to come.

My aim as Supervisor has been to faithfully execute the mandate you gave me in 2014 when you called for a global advocate for EU data protection.

Supported by an excellent Assistant Supervisor, my objective is to be reliable and deliver efficiently.

I believe that my mandate has been vindicated by the greater attention our work receives.

I refer notably, but not only, to our hosting in this building of the 40th International Conference of Data Protection and Privacy Commissioners.

The EU should be proud that people refer to this event as one of the most inspiring ever privacy conferences.

We had 1446 participants from over 80 countries.

Contributors including Heads of State, CEOs of major tech companies as well as front-line journalists and NGOs.

Almost exactly four years ago I launched a five-year strategy which we are close to delivering.

We were the first to highlight the need for a global consensus on the ethics of digital transformation, to agree what is acceptable and not acceptable, beyond demonstrable compliance with the letter of the law.

As a result, the EDPS has been able to lead these discussions on digital ethics – indeed on Thursday this week we will relaunch a series of publicly available teleconferences on ethics and the law.

Following several years of change, the EDPS is in good order.

I am grateful to the Parliament for the “clean bill of budgetary health” which I have just received from the Committee on budgetary control, after ten consecutive years of wholly positive checks by both the Court of Auditors and our internal audit service.

We have consolidated our institution around clear objectives with an outstanding team of diverse expertise. I am grateful to the talented staff who make up my institution.

The new EUIs regulation is in my view fit for purpose.

The challenge now is to fully apply the newly established principles to the data protection regimes of all the various former ‘third pillar’ databases and instruments.

We have continued to make selective policy interventions.

The examples are too many to list fully, but I can mention the initiatives on free flow of data, the consumer protection package and interoperability.

You will be shortly interrogating the GDPR as it approaches its first birthday.

Back in 2013, in our Opinion on Commission's original proposal, the EDPS questioned the several carve-outs envisaged for national circumstances.

We are not guardian of the Treaties but we observe the application of the GDPR as a supervisory authority from the perspective of the EU interest.

We now have in Europe a new legal framework for the protection of personal data including for the police and judiciary which aims to be aligned and consistent.

The media will focus on enforcement actions, but that is not my message today.

We do want however to stimulate greater attention towards what national parliaments are doing.

There is still divergence, like on the use of data for political purposes, on jurisdiction and competence and on freedom of information, which merits careful reflection.

It may be a strong candidate for the agenda of an inter-parliamentary meeting in the near future.

2019 will be a litmus test for the robustness of the EU legal regime.

Last year placed data protection at the heart of the debate about online manipulation.

Without the widespread abuse of personal information, democracy would not be threatened by the move of public discourse into the digital space.

So with the upcoming European elections, European DPAs are sending a signal.

It is a signal that all players, European political parties, the big platforms, others with political agendas, are bound by the general data protection rules.

It is of obvious concern where there is insufficient funding for DPAs, in particular where a Member State has yet to enact an updated data protection law.

The staff of DPAs will always be outnumbered by the phalanxes of lawyers and lobbyists available to the biggest companies.

The challenge is to ensure a culture of real accountability for data protection, and to avoid controllers feeling the need for prescriptive guidance from the regulator.

Controllers shouldn't wait for DPA guidance before taking a calculated risk.

Uncertainty still hovers over Brexit, with only a month to go.

But responsible data controllers will continue to exercise due diligence in planning for every possible eventuality.

There remains some unfinished business for the current EU cycle.

On ePrivacy, this Committee and Parliament has done its work.

We have carefully followed the concerns of some national capitals about the impact of on industry and particularly investment in Artificial Intelligence.

These concerns deserve attention.

But fears are unwarranted.

I am confident that we can achieve a technologically neutral set of provisions.

What controllers need more than anything is legal certainty.

And, I am afraid, it is not sustainable to require on the one hand, compliance with directly applicable data protection rules in the GDPR, and on the other hand national confidentiality of electronic communications rules with the ePrivacy directive.

We must also simplify data protection regimes for the ex-third pillar.

And the European Public Prosecutor's Office needs to be able to start off on the right foot, with existing legal acts reviewed by May 2019 and aligned.

The now almost daily scandals around personal data tell us that data protection not just about rights to an individual personality.

There are externalities and consequences for society and basic values of the continuing uneven allocation of the 'digital dividend'.

Let me call to mind the judgment of the famous "census" judgement of the German Constitutional Court.

The Court considers what happens to an individual if they do not know what is happening to information about them. And it remains incredibly prescient, considering our situation today.

"The freedom of individuals to make plans or decisions in reliance on their personal powers of self-determination may be significantly inhibited if they cannot with sufficient certainty determine what information on them is known in certain areas of their social sphere and in some measure appraise the extent of knowledge in the possession of possible interlocutors. A social order in which individuals can no longer ascertain who knows what about them and when and a legal order that makes this possible would not be compatible with the right to informational self-determination.

"A person who is uncertain", to quote from the ruling,

"[A]s to whether unusual behaviour is being taken note of at all times and the information permanently stored, used or transferred to others will attempt to avoid standing out through such behaviour. (...) This would not only restrict the possibilities for personal development of those individuals but also be detrimental to the public good since self-determination is an elementary prerequisite for the functioning of a free democratic society predicated on the freedom of action and participation of its members."

That judgment is 36 years old, and it has aged like fine wine.

As we say in Italian – *gallina vecchia fa buon brodo*.

Digitisation means that almost all policies are data protection policies.

All point to the need for the EU to open up space for competitive markets where alternative business models can succeed.

Alternative business models which do not rely on constant surveillance, profiling and targeting, but which rather offer technological solutions for better transparency and control for the persons whose data is processed.

The EDPB recognised this in September last year, with its statement on the data protection relevance of mergers between companies in the digital economy.

We cannot now afford to try to regulate the digital economy in the old silos of data protection, consumer protection and competition law.

Longer term, we may indeed be heading towards a more consolidated regulation of digital society.

In this year of transition, I intend to offer a personal though also institutional contribution to the reflections on the priorities for the EU in the coming years.

I will publish some ideas alongside a short high-level debate on the future of data protection and privacy at international level before the summer.

I will be very pleased to hear your comments on what I believe will be a visionary and ambitious Manifesto for the years to come.

There are many other topics like Privacy Shield, border management and terrorist content which you may like to touch on in our discussions.

I do not trouble you with numbers, but the full story of what we have been doing in 2018 is available for you to consult in our report.

Thank you for your attention.