



Presentation of EDPS Tasks and Activities

Meeting of Committee on Civil Liberties, Justice and Home Affairs

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Mr Chairman, honourable members, thank you for inviting the EDPS this meeting of the committee.

It is an honour to appear before you, so soon after the Parliamentary Elections and the reconstitution of the committee.

At the same time, I wish I was not here addressing you, because I am replacing my dear friend, Supervisor Giovanni Buttarelli, who was so cruelly taken from us only two weeks ago.

Giovanni had enormous respect for this Committee and its members.

And I believe the feeling was mutual, given the many times he was invited to appear in this chamber.

All who were close to him were greatly touched by your silent tribute to him yesterday morning.

So it is my duty, but also privilege, to take up the reins in Giovanni's premature absence.

Indeed our greatest tribute to his legacy is to continue the work of our data protection authority as he framed it in the last ten years, first as Assistant Supervisor, then as Supervisor.

While there are plenty of familiar faces in the room, there are also a number of new members.

I would like therefore to offer a **brief overview of the role of the EDPS**.

The EDPS is appointed by the European Parliament and the Council as the independent supervisor of how personal data are processed by Union institutions, bodies, offices and agencies.

As such an independent supervisory authority, we are dedicated to protecting personal data and privacy and promoting good practice in these institutions and bodies.

The EDPS's specific duties are laid down in Regulation 2018/1725 and others, and fall into three broad categories:

- first, supervisory tasks, now including agencies like Europol and Eurojust;
- second, consultative tasks, that is, advising the EU legislator on proposals for new legislation as well as on implementing measures. We are also required to monitor the development of technological advances, notably in the IT sector, with an impact on data protection;
- third, cooperative tasks: involving work in close collaboration with national data protection authorities - typically through the European Data Protection Board, for which we also provide the secretariat.

In the EU, the existence of an independent data protection supervisor is an essential part of the right to the protection of personal data under Article 8 of the Charter of Fundamental Rights, which is on the level of the EU Treaties, as well as Article 16 Treaty on the Functioning of the European Union.

What does a data protection authority do?

The GDPR goes into considerable detail.

But it is consistent with the role of such bodies since they began to be established two decades ago,

We are expected to combine the functions of ombudsman, auditor, consultant, policy adviser, educator, negotiator and enforcer.

This model is reflected in the authorities which are now proliferating around the world.

The events and revelations of the last couple of years – from Edward Snowden in 2013 to Cambridge Analytica in 2018 - have catapulted data protection to the centre of public policy debates.

People are not just concerned about ‘creepy’ targeted adverts – often for things which you have only just bought.

Twenty years of digitisation have resulted in an enormous and complex ecosystem of the data collected on you and me from devices, sensors and all sorts of other sources.

This ecosystem is now a goldmine for actors - some malevolent – with *political* agendas seeking to manipulate people into voting in a certain way, or not voting at all.

We were concerned that the European elections this year could be undermined in this way.

But it seems that the safeguards put in place by Member States and the European Commission were broadly effective.

We have also scrutinised how the Parliament as an institution uses social media and personal data to communicate with the public in campaigns.

Following the GDPR, this Parliament adopted a law in October last year governing personal data processing by Union institutions, bodies, offices and agencies, and establishes the EDPS.

We aim to build a culture of data protection.

As a supervisor, we conducted 13 data protection inspections or visits of EU bodies in the past year.

Already this year we have delivered more training events than in any whole year previously.

One major evolution in our role, in recent years, has been our responsibility to supervise bodies in the law enforcement and judicial cooperation sectors.

For that we have built up a strong core of specialist expertise in this area.

I refer to Europol, since 2017, to Eurojust from later this year, and in the near future the European Public Prosecutor’s Office.

We have already carried out four inspections of Europol, including one specifically on the terrorist finance tracking programme. My specialist team has bimonthly meetings with Europol management and data protection officer.

We have also started to perform remote inspections of websites and IT systems of EU institutions and bodies.

This Regulation 2018/1725 strengthens our advisory role. The Commission is required to consult us on legislative measures and agreements with third countries.

We are the first port of call for such queries.

The EDPB may also be consulted – as well as consulting the EDPS - when an act is of ‘particular importance’.

We will then coordinate our response.

But should the Parliament, Council or Commission seek a swift response on an area of law, you should not hesitate to contact the EDPS in the first instance.

We are at your disposal.

The monitoring of relevant new developments in the area of information and communication technologies is a core EDPS task, going beyond the purely supervisory and advisory role to the EU institutions and bodies.

I invite you to subscribe to our “*EDPS TechDispatch*” reports which describe technological innovation and assess their data protection implications, as we understand them now.

The recent one describes privacy issues connected with the use of Smart Speakers and virtual assistants (such as Alexa, Google Home Assistant, Genie AI, DuerOS, Xiao AI or Siri).

We can expect in the first year of the new Commission mandate a series of interesting measures, notably on artificial intelligence, which will have data protection implications.

It is my firm belief that the use of AI technologies needs effective legal and ethical safeguards.

When AI is used in Europe, it must be done in line with the existing values and fundamental rights.

At this important moment of time, Europe has the opportunity to lead the development of privacy-friendly, human-centred and ethical artificial intelligence.

Data protection is a geopolitical issue now.

So discussions on the ‘adequacy’ of third countries safeguards will take place in parallel to bilateral trade negotiations.

Existing adequacy decisions will be renewed in the coming years.

Meanwhile the Privacy Shield agreement between the EU and the United States will be subject to its third annual review next week - and EDPS representatives will again be among the delegation of data protection authorities taking part in the review.

We stand ready to advise you as well as the Commission on these dossiers.

As mentioned I am also a member of the European Data Protection Board along with the 28 national data protection authorities.

We provide a secretariat of around 20 EDPS staff, but these staff can only take instructions from the chair of the board, Andrea Jelinek, who is Austria's data protection commissioner.

I have one vote on the Board like each of the other authorities.

But I consider **EDPS's contribution to be unique.**

Because my aim is always to reflect the overall interest of the EU and people whose data are being processed.

The EDPB is just over one year old.

There are 1000s of cross border cases which authorities are cooperating on.

But while there have been already a number of decisions on national cases, there has not yet been a significant decision on a cross border case.

This is now the time we will start to see the decisions like that.

My colleague Helen Dixon of the Irish commission has said that the first big case - involving Facebook - is to be expected very soon.

Large fines will play a role.

They can be a deterrent to future malpractice.

But even massive fines may not address the underlying problem.

Unfortunately, as we have seen (looking at settlements some big players made with Federal Trade Commission in the US), the biggest companies can simply factor fines into their risk management plans.

So more important is going to be our ability to suspend or prohibit certain data practices, influence standard contractual terms and - at least partly - change the business model in use.

That is why we started an inquiry on the contractual terms of EU institutions' contracts with big players – *de facto* monopolists – in the software market.

Recently the EDPS – together with Dutch government – performed studies on legal and technical aspects of such contracts with Microsoft and convinced more than 70 representatives of public sector bodies from the EU, national governments but also international organisations, to form “The Hague Forum” on fair contract terms for software in public administration.

We have the tools and powers to make a difference. Most authorities, though not all, have the resources necessary.

On the question of resources, the initial proposal of the EDPS budget for 2020 issued by Commission would have been adequate in enabling us to carry out our duties and tasks, notably those regarding the EDPB secretariat and the supervision of Europol and Eurojust.

Unfortunately, however, I must stress that the cuts proposed by the Council could jeopardise our ability to discharge fully our duties towards the EDPB secretariat and as supervisor of Eurojust and EPPO.

EDPS has been a pioneer in highlighting the strategic importance of data protection in a number of areas.

We started, back in 2014, the conversation about how data protection and competition enforcement needed to go hand in hand, in order to discipline the most powerful digital companies.

We were the first, back in 2015, to call for an ethical approach to the development and deployment of digital technology - including AI, facial recognition and biometrics.

We were the first, in early 2018, to argue that threat to democracy was not so called ‘fake news’, but rather the abuse of personal data in order to manipulate people and create social divisions.

In the years to come, we will need to grapple with the environmental impact of excessive data processing, with the security threats of dependence on third countries for emerging tech like 5G, and with the danger of dehumanising the most vulnerable in society through unnecessary surveillance.

The key question in the coming years will be how to encourage, as the EU always has, accountable data processing, and data processing which empowers and respect people.

By way of conclusion, aside from the ambitious agenda of the incoming Commission, there are still several items of unfinished business on the privacy agenda in the Union.

The most obvious is the reform of the ePrivacy rules.

This remains urgent in my opinion, because we currently have safeguards against interfering with traditional telecommunications, but not against snooping on people's modern online communications.

And we have an unsustainable discrepancy between the directly applicable GDPR for general data processing, but nationally transposed rules under the ePrivacy Directive for the confidentiality of electronic communications.

This creates legal uncertainties and practical headaches both for businesses and citizens alike.

It will fall to this committee to scrutinise the position which the Council will eventually adopt.

My sole message is this: safeguarding privacy is a social good. It is not an obstacle to innovation, but it is an obstacle to unsustainable innovation.

I look forward to our continued collaboration.

Finally, I would like to extend to each of you a warm invitation to a memorial event we are organising to pay tribute to the life and work of Giovanni Buttarelli. This will take place on 10 September in Concert Noble, 10 minutes' walk from here. For further details please send us an email.

Thank you for listening.