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Brussels, 26 February 2020
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Subject: APPF's powers and data protection obligations

Dear [...],

The Authority for European Political Parties and European Political Foundations (APPF) has consulted the EDPS on the relationship between its powers and data protection rules.

We have received similar questions from other EUIs, the reply to which we made public on our website¹. Please find below a summary of our findings there, applied to the APPF as relevant.

1 APPF's tasks and powers

The APPF conducts administrative investigations for the purpose of registering, monitoring and, where appropriate, imposing sanctions on European political parties and foundations in accordance with Regulation (EU, Euratom) No 1141/2014 (APPF Regulation).

Pursuant to Article 24(4) of the APPF Regulation, the APPF is entitled, among other things, to request that European political parties and foundations submit any documents or information necessary for carrying out the verification and checks for which it is responsible under that Regulation. This may take the form of documents' requests, but could conceivably also be done in on-site visits.

¹ https://edps.europa.eu/data-protection/our-work/publications/consultations/investigative-activities-eu-institutions-and_en

This includes, among others:

- documents for verifying compliance with registration conditions and requirements (see Article 10 APPF Regulation);
- lists of donors, including natural persons, to be submitted by European political parties and foundations (see Articles 20(2) to (4), 23(1)(c), 24(4), second subparagraph APPF Regulation);

In some cases, the APPF may also name individuals in its decisions (Article 27a APPF Regulation).

Therefore, during its administrative investigations, the APPF inevitably processes personal data submitted by European political parties and foundations (e.g., related to employees, managers, donors, members). The processing of personal data is necessary to discharge the duties assigned to the APPF as a public authority tasked with the implementation of the APPF Regulation.

Article 33 of the APPF Regulation reaffirms the applicability of the data protection rules for EU institutions to the APPF's activities.

2 No substantial change in data protection rules

Since the applicability of the General Data Protection Regulation (EU) 2016/679² (GDPR), the attention given to data protection rules has increased. However, sometimes there are misconceptions about GDPR supposedly stopping organisation from providing EUIs, such as the APPF, with personal data they lawfully require for their tasks.

GDPR is an evolution of the earlier Directive 95/46/EC³, further developing rights and obligations created under that Directive; it does, however, not radically change the approach taken there. The conclusions of the analysis under GDPR to follow below would not have been different under Directive 95/46/EC.

In addition, the EU institutions have to observe a high standard of data protection on the basis of a specific Regulation applicable to them, which is of Regulation (EU) No 2018/1725⁴ (the Regulation), which is the successor of Regulation (EC) No 45/2001⁵ (the old Regulation) referred to in Article 2(3) GDPR.

You may want to continue explaining this situation to interlocutors who have reservations about making personal data available to non-GDPR controllers such as the EU institutions.

As a first preliminary remark, please note that the EDPS has no supervisory powers over entities, such as national political parties, established in the EU Member States. Their data protection compliance is supervised by our colleagues in the national data protection authorities. The analysis below is based on the equivalent provisions in the Regulation for data protection in the EU institutions. We will therefore also bring this matter to the attention of the European Data Protection Board (EDPB).

² OJ L 119, 4.5.2016, p. 1–88

³ OJ L 281, 23.11.1995, p. 31–50

⁴ OJ L 295, 21.11.2018, p. 39–98

⁵ OJ L 8, 12.1.2001 p. 1–22

As a second remark, some of the points below will also apply *mutatis mutandis* to your cooperation with competent authorities in the Member States.

3 Lawful grounds for processing

The APPF can base the lawfulness of its processing activities on Articles 5(1)(a) of the Regulation, under which processing that is necessary for the performance of tasks in the public interest assigned to it by law is lawful. In many cases, the activities of the APPF will involve personal data revealing political opinions (e.g. for lists of donors), so Article 10(2)(g) of the Regulation comes into play as well (necessity for reasons of substantial public interest based on Union law).

4 GDPR is not an obstacle to disclosing personal data

Some entities believe that GDPR stops them from disclosing personal data to EU institutions with investigation powers and within their sphere of competences.

This is to be seen under two different angles: the conditions under which EU institutions are entitled to collect and further process personal data and the conditions under which third parties are allowed, or even obliged, to disclose personal data to you.

From your perspective, collecting and further processing personal data that are necessary and proportionate for the exercise of your powers (see above) means -provided you also comply with the rest of the Regulation- that the processing will be lawful under Article 5(1)(a) of the Regulation (necessity for performance of a task in the public interest assigned by law – equivalent to Article 6(1)(e) GDPR).

From the perspective of the third party, **if it is under a clear obligation to provide information to the APPF, which may include personal data** (e.g. under Article 23(1)(c) of the APPF Regulation), **this is a legal obligation on them as initial controller** (to the extent that the disclosure is necessary to comply with that obligation, see Article 6(1)(c) GDPR).

The provision of the personal data of an individual cannot be denied on the basis of a lack of consent of the data subject because consent does not provide the legal basis for processing activities related to investigations⁶. In that aspect there are no changes introduced by the GDPR⁷.

5 GDPR allegedly always requiring individual notification to the data subject

Some third parties claim that Article 14 GDPR *always* requires individual notification of people concerned by the investigation (data subjects), including about the fact that their personal data have been made available to your services for the purpose of an investigation. Your services fear that such information may ‘tip off’ suspects or may delay and thus impact the investigation.

Article 14(1)(e) GDPR indeed obliges controllers (*in casu* the third parties disclosing personal data to you) to inform data subjects about the ‘recipients or categories of recipients’ of their personal data.

⁶ The reference to donor consent for minor donations in Article 32(1)(e) of the APPF Regulation refers only to subsequent publication of donations, not to the reporting of donations to the APPF.

⁷ Pre-GDPR: national legislation transposing Article 7(1)(e) of Directive 95/46/EC; from the perspective of the EU institutions for their own processing: Article 5(a) of the old Regulation.

However, Article 14 GDPR has to be read together with the definition of the term ‘recipient’ in Article 4(9) GDPR, which reads (emphasis added):

‘recipient’ means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;’

Recital 31 GDPR further explains this carve-out (emphasis added):

‘Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data-protection rules according to the purposes of the processing.’

This carve-out already existed in Article 2(g) of Directive 95/46/EC⁸ and also exists in Article 3(13) of the Regulation.

When exercising their powers under Union law (see above), your services may qualify as ‘independent administrative authorities’ which may ‘receive personal data in the framework of a particular inquiry in accordance with Union law’ here. **In our view in those cases, these disclosures do not fall under the information to be provided about recipients of data under Article 14(1)(e) GDPR. Thus, third parties subject to a particular inquiry or voluntarily cooperating with the APPF with a view to carrying out a particular inquiry do not have a legal obligation to inform people about the disclosure of their personal data to the APPF.**

However, please note that **this carve-out only applies when data is processed for the purpose of starting/carrying out a ‘particular inquiry’**. The EDPS has interpreted the carve-out in Article 3(13) of the Regulation as not applying to general processes such as auditing or periodic reporting obligations⁹.

Applying this distinction to the situations your services mentioned means that **EU institutions can only rely on this carve-out for ‘particular inquiries’**, such as case-related inquiries in reply to specific allegations. **Standard periodic verifications and checks** (e.g. receiving donor lists under Article 23(1)(c) of the APPF Regulation), on the other hand, **do not qualify as ‘particular inquiries’**.

⁸ Article 11 of Directive 95/46/EC already contained a conditional obligation to inform about recipients.

⁹ See letter in case 2006-0298, available here: https://edps.europa.eu/sites/edp/files/publication/06-10-31_letter_ias_en.pdf as well as Article 57 of Regulation (EU, Euratom) 2018/1048.

However, also in those cases, it may not be necessary for the APPF to individually contact each and every data subject. There are **exemptions for excessive effort and disclosures expressly laid down by Union law** (see Article 16(5)(b) and (c) of the Regulation)¹⁰.

Summarising, compared to the earlier rules, **Article 14 GDPR and Article 16 of the Regulation introduced no fundamental changes in controllers' information obligations.**

6 Conclusion

To summarise, in our view the GDPR is not an obstacle to obtaining the personal data you need for your tasks. As set out in more detail above:

- The GDPR does not prevent the submission of information containing personal data to the APPF in response to a legal obligation to do so;
- the APPF may in some cases benefit from exemptions from information obligations.

For easier reference, we will publish this letter on the EDPS website.

Yours sincerely,

[signed]

Wojciech Rafał WIEWIÓROWSKI

CC: [...], DPO, APPF

¹⁰ For the scope of the exemption for 'disclosures expressly laid by Union law', see the judgment in C-201/14, interpreting the equivalent provisions of Directive 95/46/EC.