

Annual Report

2013

Executive Summary



EUROPEAN DATA
PROTECTION SUPERVISOR



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INTRODUCTION

This report covers 2013 as the tenth year of activity of the European Data Protection Supervisor (EDPS) as an independent supervisory authority, tasked with ensuring the fundamental rights and freedoms of natural persons, and in particular their privacy with regard to the processing of personal data, are respected by EU institutions and bodies¹. It also covers the final year of the shared mandate of Peter Hustinx, EDPS and Giovanni Buttarelli, Assistant Supervisor as members of this authority.

The legal framework, Regulation (EC) No 45/2001², within which the EDPS acts, provides for a number of tasks and powers which distinguish our three main roles of supervision, consultation and cooperation. These roles continue to serve as strategic platforms for our activities and are reflected in our mission statement:

- we **monitor** and **ensure** that EU institutions and bodies comply with existing legal safeguards whenever they process personal information;
- we **advise** EU institutions and bodies on all relevant matters, especially on proposals for legislation that have an impact on the protection of personal information;
- we **cooperate** with national supervisory authorities and other relevant supervisory bodies, with a view to improving consistency in the protection of personal information;
- we **monitor** new technology that may affect the protection of personal information;

- we **intervene** before the **EU Court of Justice** to provide expert advice on interpreting data protection law.

Our **Strategy 2013-2014**, together with our **Rules of Procedure** and Annual Management Plan, have been sources of valuable guidance, articulating the vision and the methodology required to improve our capacity to work effectively in a climate of austerity. Our institution has now reached full maturity, with clear objectives and performance indicators.

In the supervision of EU institutions and bodies, when processing personal data, we interacted with more data protection officers in more institutions and bodies than ever before. In addition, we have completed a number of surveys showing that most EU institutions and bodies, including many agencies, have made good progress in complying with the Data Protection Regulation, although there are still some which should increase their efforts.

In the consultation area, advising on new legislative measures, the review of the EU legal framework for data protection continued to be at the top of our agenda. The Digital Agenda and the privacy risks of new technologies were also significant features of 2013. However, the implementation of the Stockholm programme in the area of freedom, security and justice and issues in the internal market, such as financial sector reform, and in public health and consumer affairs, also had an impact on data protection. We also increased our cooperation with other supervisory authorities, particularly with regard to large-scale IT systems.

1 The terms 'institutions' and 'bodies' of Regulation (EC) No 45/2001 are used throughout the report. This also includes EU agencies. For a full list, visit the following link: http://europa.eu/about-eu/institutions-bodies/index_en.htm

2 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

2013 HIGHLIGHTS

Ten years after its foundation, the EDPS is a mature organisation, able to address the many challenges of a data protection authority in a highly dynamic environment. Our main operational challenge in 2013 was that our activities continued to grow both in scale and scope while the budget restraints due to the financial crisis were still in place.

- **Prior checks**

We saw an increase in the number of prior check notifications received in the context of our Supervision and Enforcement work. This increase is due primarily to the June 2013 deadline for *ex-post* prior check notifications for processing operations already in place. The increase in the number of Opinions we issued during the year is also a result of the high number of notifications received. We continued to follow up recommendations made in EDPS prior check Opinions already issued and were able to close a considerable number of cases.

- **Data protection culture**

To ensure that EU institutions and bodies are aware of their obligations and are accountable for complying with data protection requirements, we continued to provide guidance and training to **controllers**, data protection officers (**DPOs**) and data protection coordinators (**DPCs**). In 2013, this was done primarily in the form of **Guidelines** on Public Procurement, Grants and External Experts; basic training for new DPOs on the prior checking procedure; and special training for the DPOs of five EU Joint Undertakings. Our awareness raising initiatives within EU institutions and bodies included the organising of workshops for controllers at the European Training Foundation (ETF) and the European Defence Agency (EDA) and general workshops in the field of e-Communication, the use of mobile devices in the workplace and on websites managed by EU institutions and bodies.

- **Surveys and policies**

The results of our fourth general stock taking exercise, Survey 2013, which was launched on 17 June 2013 as part of our compliance monitoring activities, will be published in early 2014. We also published a report compiling the results of the survey on the status of DPCs at the European Commission in January 2013.

We adopted our Inspection Policy in 2013, setting out the main elements of the EDPS inspection

procedure, offering guidance to all those concerned and ensuring transparency to stakeholders. A comprehensive internal inspection manual for EDPS colleagues dealing with inspections, compiled on the basis of experience in previous inspections, was also adopted.

- **Scope of consultation**

In recent years, the number of EDPS Opinions issued for proposals on EU legislation and related documents have increased steadily. In 2013 this number decreased: we issued 20 legislative Opinions and 13 sets of formal comments, and we provided informal advice to the Commission or other institutions in 33 cases. The two main reasons for this decrease are that our efforts to focus on strategic priorities were successful, and that many resources were dedicated to the reform of the data protection framework.

- **Review of the data protection legal framework**

Throughout 2013, we continued to be closely involved in the on-going work on the reform of the **EU data protection framework**. On 15 March 2013, we sent additional comments on the reform to the European Parliament, the Commission and the Council. We also continued our involvement in the discussions that followed in both the Parliament and Council.

- **Digital agenda and technology**

We addressed the issue of the digital agenda and internet several times, for example, in our Opinion on the Commission communication on the Digital agenda for Europe – Driving European growth digitally, our Opinion on the European Single Market for electronic communications and the Opinion on a green paper entitled Preparing for a fully converged audio-visual world: Growth, Creation and Values.

- **Area of Freedom, Security and Justice**

In the Area of Freedom, Security and Justice (AFSJ), we published Opinions on Europol, the EU cyber security strategy and smart borders, as well as on EU-Canada passenger name records (PNR) and the European information exchange model.

- **Cooperation with data protection authorities**

In the area of cooperation, we continued to actively contribute to the work of the Article 29 Working Party. In particular, we were heavily involved as rapporteur or co-rapporteur for the Opinions on purpose limitation and on legitimate interest (key provisions subgroup), the Opinion on the smart grid data protection impact assessment template (technology subgroup) and the Opinion on open data (eGovernment subgroup).

- **Coordinated Supervision**

In 2013, we provided the secretariat for the new SIS II Supervision Coordination Group (SCG) and we continued to chair the EURODAC, VIS and CIS SCGs.

Changes in coordinated supervision were accompanied by challenges. The new EURODAC Regulation contained significant amendments, such as possible access by law enforcement authorities to EURODAC data. In addition, SIS II became operational. To reduce the financial, travel and administrative burdens, we established back to back meetings of the SCGs and aimed to ensure consistent, horizontal supervision policies of the large-scale IT systems where possible.

The SCG model will expand in 2014 with a new supervision coordination group for the Internal Market Information System (IMI). We consulted the national data protection authorities (DPAs) and the Commission to take stock of the status and developments in the IMI Regulation in order to organise the first meeting for the group in 2014.

- **IT Policy**

In terms of our IT policy, we contributed to several Opinions on Commission proposals, which are strategic in the future of the digital society in Europe. Our IT expertise also resulted in the EDPS leading a visit to the EU Large-Scale Information Systems Agency in the context of SIS II migration. This expertise has been very useful in our supervision cases, including complaints, prior checks and inspections.

Our exchanges with relevant staff in the EU administration in the preparation of our guidelines relating to data protection and technology issues have benefitted from this IT expertise; these exchanges have initiated discussions in the EU institutions on their general approach to risk assessment and security measures in light of the revelations of the weaknesses of widely used cryptographic and security tools.

- **Information & Communication**

In the communication area, we increased the visibility of the EDPS at institutional level as we carried out our supervisory, consultative and cooperative roles. We use a number of indicators, such as the number of information requests from citizens, media enquiries and interview requests (press relations), the number of subscribers to our newsletter, followers of the EDPS account on Twitter, as well as invitations to speak at conferences and website traffic. These all support the view that we are increasingly a point of reference for data protection issues at EU level.

There has been a consistent increase in the number of visits to the EDPS website over the year (63% compared to 2012), the number of study visits has increased (17 groups, compared to two in 2012), as well as the number of requests for information and advice received from individuals (176 written enquiries translates to an increase of 51% from 2012). In December, we launched a corporate page on LinkedIn which is another avenue to promote the EDPS as an institution, strengthen our online presence and enhance our visibility.

- **Internal organisation**

Following the departure of the Head of Sector of Operations, Planning and Support after our records management system (CMS) had become operational in October 2013, we restructured our organisation chart so that the record management team now reports to the Director.

Further to the recommendations of the Internal Audit Service (IAS) and to increase efficiency, the Internal Control Coordinator's function was separated from the Human Resources Budget and Administration (HRBA) team and now also reports to the director.

- **Resource management**

In 2013, we successfully increased our budget implementation rate. However, the final result fell short of our expectations because of the decision by the Court of Justice on the adjustment of salaries of EU staff. This unexpected decision was adopted late in the year, which left very little margin of manoeuvre to organise redeployment. Furthermore, the Council's refusal to consider any transfers to other lines from the salaries' budget reduced the margin further. If, as intended by the Commission, an agreement had been reached between the Council and the Parliament before the end of the year, the final implementation rate (84.7%) would have been higher (87.2%).

Key EDPS figures in 2013

- 91 prior-check Opinions adopted, 21 non-prior check Opinions
- 78 complaints received, 30 admissible
- 37 consultations received on administrative measures
- 8 on-the-spot inspections (including 2 fact finding visits) and 3 visits carried out
- 1 set of Guidelines published on the processing of personal data in the area of procurement
- 20 legislative Opinions issued
- 13 sets of formal comments issued
- 33 sets of informal comments issued

Strategy 2013-2014

In our *Strategy 2013-2014*, we identified a number of strategic objectives to help increase the impact of our core activities on data protection at European level. To assess our progress towards these objectives, we identified the activities which play a key role in achieving our goals. The related key performance indicators (KPIs) will help us to monitor and adjust, if needed, the impact of our work and the efficiency of our use of resources.

Overall, the results show a positive trend in the performance of our activities. The implementation of

the strategy is broadly on track and no corrective measures are needed at this stage.

The KPI scoreboard

The KPI scoreboard contains a brief description of the KPIs and the methods of calculation.

The indicators are measured against initial targets in most cases. For three indicators, the results of 2013 will set the benchmark for coming years.

KPIs	Description	Results 2013	Target 2013
KPI 1	Number of inspections/visits carried out. <i>Measurement</i> : compared to target	3 visits 8 inspections	8 minimum
KPI 2	Number of awareness-raising and training initiatives within EU institutions and bodies which we have organised or co-organised (workshops, meetings, conferences, training and seminars). <i>Measurement</i> : compared to target	4 trainings 4 workshop (3 in cooperation with ITP)	8 workshops + trainings
KPI 3	Level of satisfaction of DPOs/DPCs on training and guidance. <i>Measurement</i> : DPOs/DPCs satisfaction survey to be launched every time a training is organised or a guidance is issued	DPO basic training: 70% positive feedback EDA staff training: 92% positive feedback	60% positive feedback
KPI 4	Number of EDPS formal and informal opinions provided to the legislator. <i>Measurement</i> : compared to previous year	Opinions: 20 Formal comments: 13 Informal comments: 33	2013 as benchmark.
KPI 5	Rate of implementation of cases in our policy inventory which we have identified for action. <i>Measurement</i> : percentage of "Red" initiatives (where the dead-line for comments has expired) implemented as planned in the Inventory 2013	90% (18/20)	90 %
KPI 6	Number of cases dealt with by the Article 29 Working Party for which the EDPS has provided a substantial written contribution. <i>Measurement</i> : compared to previous year	13	2013 as benchmark
KPI 7	Number of cases in which guidance is provided on technological developments. <i>Measurement</i> : compared to target	21	20
KPI 8	Number of visits to the EDPS website. <i>Measurement</i> : compared to previous year	293 029 (+63% in comparison to 2012)	2013 as benchmark
KPI 9	Rate of budget implementation <i>Measurement</i> : amount of payments processed during the year divided by the budget of the year.	84.7%	85%
KPI 10	Rate of training implementation for EDPS staff. <i>Measurement</i> : number of actual training days divided by the number of estimated training days	85%	80%

The KPIs implement the strategic objectives as follows:

1. **Promote a *data protection culture* within the EU institutions and bodies whereby they are aware of their obligations and accountable for compliance with data protection requirements.**

KPIs numbers 1, 2 and 3. All targets have been achieved.

2. **Ensure that the EU legislator (Commission, Parliament and Council) is aware of data protection requirements and that data protection is integrated in new legislation.**

KPIs numbers 4 and 5. The target for KPI number 5 has been achieved. The results of 2013 will determine the target for KPI number 4.

3. **Improve the good cooperation with data protection authorities, in particular the Article 29 Working Party, to ensure greater consistency of data protection in the EU.**

The results of 2013 will determine the target for KPI number 6.

KPI number 7 refers to strategic objectives 1, 2 and 3. The target has been achieved.

4. **Develop a creative and effective communication strategy.**

The results of 2013 will determine the target for KPI number 8.

5. **Improve the use of the EDPS human, financial, technical and organisational resources (through adequate processes, authority and knowledge)**

KPIs numbers 9 and 10. The target for KPI number 10 has been achieved.

We did not achieve the target for KPI number 9. In this respect, whilst we increased our budget implementation rate the final result fell short of the target, following the decision by the Court of Justice on the adjustment of salaries of EU staff.

If the Court had approved the Commission's proposed approach, our final implementation rate (84.7%) would have been higher (87.2%) and would have achieved our target.

SUPERVISION AND ENFORCEMENT

One of the main roles of the EDPS is to supervise in an independent manner, the processing operations carried out by European institutions or bodies. The legal framework is the Data Protection Regulation (EC) No 45/2001, which establishes a number of obligations for those who process data, along with a number of rights for those whose personal data are processed.

Supervisory tasks range from advising and supporting data protection officers through prior checking of risky data processing operations, to conducting inquiries, including on-the-spot inspections and handling complaints. Further advice to the EU administration can be provided in consultations on administrative measures or the publication of thematic guidelines.

Our strategic objective

Promote a 'data protection culture' within the EU institutions and bodies so that they are aware of their obligations and accountable for compliance with data protection requirements.

Data Protection Officers

All EU institutions and bodies must have at least one data protection officer (DPO). In 2013, five new DPOs were appointed, both in existing institutions and bodies and in new agencies or joint undertakings, bringing the total number of DPOs to 62. Regular interaction with them and their network is an important condition for effective supervision. The EDPS has worked closely with the *DPO quartet* composed of four DPOs (Council, European Parliament, European Commission and the European Food Safety Agency) who coordinate the DPO network. The EDPS attended the DPO meeting held in March at the EMCDDA in Lisbon and hosted another one in Brussels in November. At these meetings, we took the opportunity to update the DPOs on our work and give an overview of recent developments in EU data protection.

Prior checking

Regulation (EC) No 45/2001 provides that all processing operations of personal data likely to present specific risks to the rights and freedoms of data subjects are to be prior checked by the EDPS. The EDPS then determines whether or not the processing complies with the Regulation.

In 2013, we saw an increase in the number of prior check notifications. This increase is due primarily to the June 2013 deadline for *ex-post* prior check notifications for processing operations already in place. Despite the fact that for these *ex-post* cases, the EDPS is not bound by the two month deadline within which to adopt an Opinion, we have strived to deliver our Opinions within a short timeframe. The increase in the number of Opinions issued - 91 prior check and 21 non prior check Opinions - during the year is also a result of the high number of notifications - 272 - received. We continued to follow up recommendations made in prior check Opinions already issued and were able to close a considerable number of cases.

Monitoring compliance

In June 2012, we launched a survey on the function of the DPC at the Commission. A report of our findings was published in January 2013.

The findings reveal a great disparity between the resources allocated to the function by the DGs: between 5% and 100% of a DPC's time is assigned to his/her function as DPC. One of the first conclusions of our report is the need to establish minimum criteria to be satisfied by DGs in order to preserve the useful nature of the role. We also highlighted the good practices in certain DGs, such as creating a functional mailbox that can be used to consult the DPC. We used the report to express support for the DPC function, as contributing to good governance.

On 17 June 2013, we initiated our fourth general stock taking exercise, Survey 2013, to ascertain the progress made in the implementation of the Regulation in all 62 [institutions and bodies](#). In addition to the issues analysed in previous surveys (level of notifications to the DPO, level of prior checks, etc.) we requested information on the data protection training given to staff; contractual clauses for processors; involvement of the DPO in designing new processing operations and transfers to recipients not

subject to national provisions implementing Directive 95/46.

General surveys allow us to identify underperforming bodies and take specific action to address the problems. The results of the survey will be published in early 2014.

Complaints

One of the main duties of the EDPS, as established by the Data Protection Regulation, is to hear and investigate complaints as well as to conduct inquiries either on his own initiative or on the basis of a complaint.

In 2013, the EDPS received 78 complaints, a decrease of approximately 9% compared to 2012, confirming the effectiveness of the online complaint submission form available on our website in reducing the number of inadmissible complaints. Of these, 48 complaints were inadmissible, with the majority relating to processing at national level as opposed to processing by an EU institution or body.

The remaining 30 complaints required in-depth inquiry, a decrease of about 25% compared to 2012. In addition, 20 admissible complaints, submitted in previous years (two in 2009, one in 2010, four in 2011 and 13 in 2012), were still in the inquiry, review or follow-up phase on 31 December 2013.

Consultation on administrative measures

The aim of our policy on consultations in the field of supervision and enforcement, adopted in November 2012, is to provide guidance to EU institutions and bodies and DPOs on consultations to the EDPS based on Articles 28(1) and/or 46(d) of the Regulation. As outlined in the paper, we encourage controllers to submit consultations to us in specific, limited cases when the matter presents (a) a certain novelty or complexity where the DPO or the institution has a genuine doubt, or (b) a clear impact on data subjects' rights, either due to the risks posed by

the processing activities, or due to the scope of the measure.

In principle, the EDPS will only consider consultations which have first been submitted for consultation to the DPO of the institution concerned (Article 24.3 of the EDPS Rules of Procedure). In 2013 we received 37 consultations on administrative measures. A variety of issues were addressed in these consultations including transfers of staff data to EU permanent representations, purpose limitation and public access to documents containing personal data.

Horizontal guidance

In 2013, the EDPS received numerous notifications for prior checks from EU institutions and bodies linked to our Guidelines on the processing of personal information in the area of leave and flexitime. These notifications allowed us to analyse the implementation of the Guidelines more precisely. Instead of adopting a general Opinion covering all the notifications received, we adopted specific Opinions covering leave and flexitime processing operations in general per each agency and we focused our analysis on the aspects of the processing operations that diverged from the Guidelines.

In June 2013, we published Guidelines on the processing of personal information in the context of public procurement, grants, selection and use of external experts. In addition, as a follow up to the 2011 Staff Evaluation Guidelines, we conducted a survey on the conservation of personal information in an evaluation context in June 2013. A questionnaire was sent to the participants of our 2012 Data Conservation Workshop to gather information from HR experts and Document Management Officers on the reasons for the existing time limits as well as the storage on electronic files.

We also organised basic training for new DPOs on the prior checking procedure; special training for the DPOs of five EU Joint Undertakings; workshops for controllers at ETF and EDA and general workshops in the field of e-communication, the use of mobile devices in the workplace and on websites managed by EU institutions and bodies.

POLICY AND CONSULTATION

The EDPS advises the European Union institutions and bodies on data protection issues in a range of policy areas. This consultative role relates to proposals for new legislation as well as other initiatives that may affect personal data protection in the EU. It usually takes the shape of a formal opinion, but the EDPS may also provide guidance in the form of comments or policy papers.

Our strategic objective

Ensure that the EU legislator (Commission, Parliament and Council) is aware of data protection requirements and integrates data protection in new legislation.

Major trends

2013 continued to be a year of major developments in the field of data protection, two of which had a significant influence on our work.

The debate following the Edward Snowden revelations shed light on the methods of mass surveillance in the EU and the USA. The revelations did much to raise awareness about privacy and data protection among the general public and were an opportunity for us to offer guidance to the EU legislator and other interested parties.

The reform of the existing data protection rules in the EU was the other dominant theme of the year. This project featured high on our agenda in 2013 and will remain there as the legislative procedure continues.

Notwithstanding these issues and following the trend of past years, the areas covered by our Opinions continue to diversify in 2013. Aside from our traditional priorities, such as the further development of the Area of Freedom, Security and Justice (AFSJ) or international data transfers, new fields are emerging, such as the Digital Agenda and the internet as well as financial issues and eHealth.

In 2013, there was a slight decrease in the number of Opinions we issued compared to the steady increase of previous years. To a large extent, this is the result

of a successful focus on strategic priorities, including the review of the data protection framework. The EDPS issued 20 Opinions, 13 formal comments and 33 informal comments on a variety of subjects. With these Opinions and other instruments used for intervention, we implemented the EDPS priorities for 2013, as laid down in our Inventory.

EDPS opinions and key issues

Following our many activities on the [EU data protection reform](#) in 2012 and our Opinion of March 2012, we sent additional comments to the European Parliament, the Commission and the Council on 15 March 2013. Our comments related to specific areas that needed clarification and also reacted to the amendments proposed by the relevant committees of the European Parliament.

Important progress has been made, such as the LIBE committee voting in support of its report on 21 October 2013, but the political process within the European Parliament is not yet complete as the next and final step in the Parliament's first reading is a plenary vote.

In Council, less progress has been made. Negotiations between Member States on important parts of the legislative framework such as the one-stop-shop mechanism and the approach of a package containing a Regulation and a Directive, among other politically sensitive and legally complicated issues, are continuing.

In the course of 2013, we continued to give advice to the European Parliament and the Council and contributed to the debate. We also contributed to the beginning of the process of revision of Regulation (EC) No 45/2001, which governs data processing carried out by the European Institutions, by sending a letter to the Commission outlining our initial views.

The **Digital Agenda** and the **internet** were addressed in a number of our Opinions. Our overriding message was that to enhance consumer confidence, users need to be certain that their rights to privacy, confidentiality of their communications and protection of their personal information are respected. In our Opinion on the Commission communication on the *Digital agenda for Europe – Driving European growth digitally*, we also emphasised the principle of privacy by design, the need for an appropriate legal basis for data sharing between

databases and referred to the extensive data protection guidance on cloud computing from DPAs and the EDPS to help foster trust of individuals and customers in these new technologies, which in turn will ensure their successful deployment.

In our Opinion on the *European Single Market for electronic communications*, we cautioned that the proposed measures would unduly limit internet freedom. We welcomed the inclusion of the principle of net neutrality - the impartial transmission of information on the internet - in the text, but also said that it is devoid of substance because of the almost unlimited right of providers to manage internet traffic. We also warned against the use of highly privacy intrusive measures under the broad umbrella of crime prevention or to filter content illegal under national or EU law, as they are incompatible with the principle of an open internet.

In our Opinion on a green paper *Preparing for a fully converged audio-visual world: Growth, Creation and Values*, we stressed that new modes of distribution and consumption of audio visual works generate new forms of collection and processing of users' personal information, without users being aware of it or being in control of their information. We highlighted that full transparency in terms of consent, collection and types of personal data must be ensured to users.

In the **AFSJ**, we published Opinions on *Europol* in which we emphasised that a strong framework of data protection is important not only for data subjects, but also contributes to the success of police and judicial cooperation; and on the *EU Cyber security strategy* in which we said that it was not clear how data protection principles will be applied in practice: if cyber security is to contribute to the protection of personal data in the online environment, it cannot be an excuse for the unlimited monitoring and analysis of the personal information of individuals.

In our Opinion on the Commission proposals to create a *smart border* system for the external borders of the EU, we considered that one of the stated aims of the proposals was to replace the existing 'slow and unreliable' system, but the Commission's own assessments do not indicate that the alternative will be sufficiently efficient to justify the expense and intrusions into privacy. In our Opinion on *EU-Canada PNR*, we once again questioned the necessity and proportionality of PNR schemes and the bulk transfers of PNR data to third countries.

In our Opinion on the *European Information Exchange Model*, we emphasised the need for a full evaluation process of the existing instruments and initiatives in the Justice and Home Affairs area, the outcome of which should lead to a comprehensive, integrated

and well-structured EU policy on information and exchange management.

In relation to the **internal market**, there are a growing number of proposals to harmonise and centrally supervise the financial sector. As many affect the right to privacy and data protection, we followed and closely scrutinised these in 2013. We published Opinions on anti-money laundering and terrorist financing, payments in the internal market, European company law and corporate governance and electronic invoicing in public procurement.

In the same vein, there is a growing trend to incorporate digital technologies when providing health care services which imply data protection and privacy risks. In the area of eHealth, our Opinions on medical devices, drug precursors and the eHealth action plan were highlights.

Court cases

In 2013, the EDPS intervened in a number of cases before the Court of Justice of the European Union and the Civil Service Tribunal.

The EDPS made oral submissions at a hearing before the Grand Chamber of the Court of Justice in a preliminary reference procedure. This hearing concerned joined cases *Digital Rights Ireland* (C-293/12) and *Seitlinger and Others* (C-293/12). Both cases relate to the validity of the Data Retention Directive 2006/24/EC.

It was the first time that the Court had invited the EDPS to appear at a hearing in a preliminary reference procedure. For the EDPS, this was an important step that may lead to a landmark decision on an issue that we have been following closely for a number of years.

The EDPS pleaded at the hearing of *Commission v. Hungary* (C-288/12). This case is the third infringement case on the independence of data protection authorities, the other two being *Commission v. Austria* (C-614/10) and *Commission v. Germany* (C-518/07) for which rulings were given in 2012 and 2010 respectively.

Other cases in which the EDPS intervened are still pending, such as *Pachtitis v Commission* and *EPSO* (T-374/07), *Pachtitis v Commission* (F-35/08), *ZZ v. EIB* (Case F-103/11) as well as *Dennekamp v. European Parliament* (T-115/13).

In October 2013, the EDPS asked for leave to intervene in two further cases: *Elmaghraby and El Gzaerly v. Council of the European Union* (Case T-319/13) and *CN v Parliament* (Case T-343/13).

COOPERATION

The EDPS cooperates with other data protection authorities in order to promote consistent data protection throughout Europe. This cooperative role also extends to cooperation with supervisory bodies established under the former EU "third pillar" and in the context of large scale IT systems.

Our strategic objective

Improve the good cooperation with Data Protection Authorities, in particular the Article 29 Working Party, to ensure greater consistency of data protection in the EU.

The Article 29 Working Party is composed of representatives of the national DPAs, the EDPS and the Commission (the latter also provides the secretariat for the Working Party). It plays a central role in ensuring the consistent application of Directive 95/46/EC.

In 2013, we continued to actively contribute to the work of the Article 29 Working Party. In particular, we were heavily involved as rapporteur or co-rapporteur for the Opinions on purpose limitation and on legitimate interest (key provisions subgroup), the Opinion on the smart grid data protection impact assessment template (technology subgroup) and the Opinion on open data (eGovernment subgroup).

Direct cooperation with national authorities is also important for large-scale international databases such as EURODAC, the Visa Information System (VIS), the Schengen Information System II (SIS II) and the Customs Information System (CIS), which require a coordinated approach to supervision. In 2013, we provided the secretariat for the new SIS II Supervision Coordination Group (SCG) and we continued to chair the EURODAC, VIS and CIS SCGs. We organised two meetings in Brussels for each of the SCGs in 2013.

Changes in coordinated supervision were accompanied by challenges. The new EURODAC Regulation contained significant amendments, such as possible access by law enforcement authorities to EURODAC data. In addition, SIS II became operational. To reduce the financial, travel and administrative burdens, we established back to back meetings of the SCGs and aimed to ensure consistent, horizontal

supervision policies of the large-scale IT systems where possible.

The SCG model will expand in 2014 with a new supervision coordination group for the Internal Market Information System (IMI). We consulted the national data protection authorities (DPAs) and the Commission in 2013 to take stock of the status and developments in the IMI Regulation in order to organise the first meeting for the group in 2014.

The coordinated supervision model has become a standard for the EU legislator and the Commission has proposed it in a number of proposals such as those on Europol, smart borders, Eurojust and the European Public Prosecutor's Office.

Cooperation in international fora continued to attract attention, most notably the European and International Conferences of Data Protection and Privacy Commissioners. In 2013, the European Conference in Lisbon focused on the recent developments for the modernisation of the data protection frameworks of the EU, the Council of Europe and the OECD. In particular, the concepts of personal data, the rights of individuals on the internet and information security were discussed.

The International Conference was held in Warsaw and focused on the reforms of data protection all over the world, the interaction with technology and the roles and perspectives of different actors, including data subjects, data controllers and supervisory authorities.

Within the framework of the Council of Europe, the EDPS attended three meetings of the Consultative Committee of the Council of Europe Convention 108. These meetings enable us to follow and influence the on-going modernisation of the Convention.

The EDPS also took part in the experts group tasked with updating the privacy guidelines of the Organisation for Economic Co-operation and Development (OECD).

We also gave significant input on data protection issues in many other important fora such as the Asia-Pacific Economic Cooperation (APEC), the French-Speaking Association of Personal Data Protection Authorities (AFAPDP) and the International Working Group on Data Protection in Telecommunications (Berlin Group).

MAIN OBJECTIVES FOR 2014

The following objectives have been selected for 2014 within the overall Strategy for 2013-2014. The results will be reported in 2015.

Supervision and enforcement

- **Guidance and Training**

DPOs and DPCs are essential keys to being truly accountable. We will continue to develop training and guidance for DPOs and DPCs and continue to foster close contacts with the DPOs and the DPO network.

In this regard, we intend to organise training activities for new DPOs, to organise a workshop on data subject rights and to adopt guidelines on topics such as declaration of interests, transfers and eCommunication. We also plan to update existing guidelines in light of new developments. As part of our plan to support DPOs we will continue in our work on the EIPA certification programme for DPOs.

- **Visits**

Within the EU administration, the commitment of management and the awareness of the persons processing data are essential conditions to the success of ensuring compliance with data protection. We will continue to invest resources to raise awareness at all levels and to engaging the commitment of management, primarily through visits.

- **Closer dialogue with EU institutions**

Ensuring that data protection rules are adequately respected within the constraints of the EU administration is a permanent challenge in our supervision work. We will continue to engage in dialogue with data controllers, but also improve the language of our Opinions in order to promote a pragmatic and practical application of the Regulation. We will also endeavour to improve the format of our Opinions so as to make the content as accessible as possible.

- **Inspections**

Inspections will continue to be an important element of the EDPS Compliance and Enforcement Policy, based on criteria set in our Inspection Policy adopted in 2013.

- **Follow up of our Opinions and Decisions**

In recent years there has been a huge increase in the number of prior check Opinions, due to the June 2013 deadline for so called *ex-post* prior checks. The challenge for 2014 is to ensure that the recommendations made in these Opinions are effectively followed up. This will be the case for prior checks, as well as for complaints, consultations on administrative decisions, inspections and visits.

Policy and consultation

- **New legal framework for data protection**

We will continue to interact with all relevant actors in the on-going legislative procedure for a new legal framework, as well as with stakeholders and interested parties at all levels in order to achieve the goal of a speedy adoption of the legislative package.

- **Rebuilding trust in global data flows in the aftermath of PRISM**

We will closely follow developments as the *PRISM* story *continues to unfold* and provide input to the initiatives taken by the EU institutions, in particular, the Commission, in the context of rebuilding trust in global data flows.

- **Initiatives to bolster economic growth and the Digital Agenda**

Most of the work planned by the Commission in the area of the information society and new technologies for 2014 is carried over from 2013. Particular emphasis will be given to the objective of bolstering economic growth in the EU. Some of the planned initiatives are likely to have significant data protection relevance.

- **Further developing the Area of Freedom, Security and Justice**

In 2014, the programme for the Area of Freedom, Security and Justice adopted in Stockholm in 2010 will be concluded. A new set of strategic guidelines and a multi-annual roadmap will be adopted, with some policies initialled for 2013 to be carried over.

- **Financial Sector Reforms**

Since the outbreak of the economic crisis, the Commission has undertaken a comprehensive overhaul of the financial regulation and its supervision. In 2013, we paid close attention to developments in financial legislation. Apart for the envisaged 'New approach to business failure and insolvency', on which we may issue a comment or an Opinion, the majority of measures planned for 2014 are items carried over from 2013.

- **Combatting tax fraud and banking**

Following the trend of 2013, initiatives developed at EU level to combat tax fraud and banking secrecy are expected to have data protection significance. Apart from the EU legal framework on VAT, fiscal policies remain outside the competences of the EU. Nevertheless, the EU is increasingly supporting, coordinating or complementing the actions taken by member states on administrative cooperation in the fiscal field, thus exercising the competence conferred on it by article 6 TFEU.

- **Other initiatives**

As part of our strategy to promote a data protection culture in EU institutions and bodies and to integrate respect for data protection principles in EU legislation and policies, including in areas such as competition, we may decide to issue advice on our own initiative with a view to contributing to debates on legal and societal developments that may have a major impact on the protection of personal data. In issuing these *preliminary* Opinions, we hope to stimulate an informed dialogue on these important issues which could help shape a full Opinion and recommendations thereafter.

Cooperation

- **Coordinated supervision**

We will continue in our supporting role in the coordinated supervision of EURODAC, CIS and VIS, in close cooperation with the data protection authorities of the member states and further develop our role in the context of the second generation Schengen Information System (SIS II). In 2014, the first steps in coordinated supervision are to be expected also in relation to the Internal Market Information System (IMI).

- **Article 29 Working Party**

We will continue to actively contribute to the activities and the further development of the Article 29 Working Party, ensuring consistency and synergy between it and our own tasks in line with our respective priorities. We will also maintain our good bilateral relationships with national DPAs. As rapporteur for some specific dossiers, we will continue to steer and prepare the adoption of Working Party Opinions.

- **International organisations**

International organisations, such as the Council of Europe and the OECD, play an important role

in standard setting and policy development in different areas, including data protection and related subjects. Most international organisations are, at the same time, not subject to data protection legislation in their host countries, but not all of them have their own appropriate rules for data protection in place. We will therefore continue to reach out to international organisations, either to engage with their work in standard setting and policy development, or to involve them in workshops aimed at raising awareness and exchanging good practices.

IT Policy

Monitoring developments in information technology which impact data protection and the related discussion on technology policy and relevant business developments will help us to take technical elements better into account in our supervision activities and in our comments on EU policy initiatives. We will also continue to contribute to specific initiatives to assess and ensure the security of specific EU IT systems.

- **Guidelines for EU institutions**

We will finalise our guidelines on legal requirements and technical measures for the protection of personal data processed through the EU websites with mobile devices and in cloud computing environments. These guidelines will also form the basis for developing systematic and regular supervision methods and tools for these areas.

- **Privacy aware internet development**

Together with other DPAs, we will work on improving the communication between data protection experts and developer communities, through dedicated workshops, conferences and working groups, to build a better understanding of mutual needs and develop practical ways to implement data protection and privacy requirements in new protocols, tools, components, applications and services. We will also seek ways to ensure that more attention is given to privacy and data protection in the education of new engineers and developers. We also aim to provide advice to research agencies on supporting privacy friendly technological development.

- **IT infrastructure**

For our own IT needs, we will continue to increase efficiency and ensure that it complies with all requirements regarding data protection and security. We will further improve our internal procedures and the cooperation with our service providers. We will also ensure that the continuous learning programs for EDPS staff take proper account of IT related elements.

Other fields

- **Information and communication**

In line with our Strategy 2013-2014, we will continue to raise awareness of data protection within the EU administration, but also to inform individuals of their fundamental rights to privacy and data protection.

To do this effectively, our efforts to increase the visibility of the EDPS as experts in data protection, including in the press and the wider public, will garner both public confidence and the commitment of the EU institutions.

Our communication activities in 2014 will include:

- updating our website and developing a section for our IT policy observations;
- the review and update of existing information and communication tools (publications, website etc.) in view of the transition into the new EDPS mandate;
- continuing our use of straightforward language to make technical issues more accessible, with examples that the general public can identify with.

- **Resource management and professionalising the HR function**

The entry into force of the new Staff Regulations in January 2014 will trigger the update of many implementing measures dealing with a whole range of HR issues (appraisal, leave management, working conditions, etc.).

We will continue to work on HR activities started in 2013 (a more strategic Learning and Development Policy and review of the Code of Conduct) while also pursuing new activities such as improvements in recruitment procedures.

The existing HR and administration teams will be merged to increase the HR capacity of the organisation. We will endeavour to procure the best possible working conditions for staff within the limits of the Staff Regulations, so that the EDPS continues to be perceived as an ideal workplace, with highly motivated and engaged staff.

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