



## PRESS RELEASE

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### **EDPS investigation into IT contracts: stronger cooperation to better protect rights of all individuals**

Cooperation between public authorities in the Member States, EU institutions and other international organisations is essential to ensure that **contractual arrangements and measures with Microsoft** provide the **same level of protection for individual rights throughout the European Economic Area (EEA)**. Amended contractual terms, technical safeguards and settings agreed between the Dutch Ministry of Justice and Security and Microsoft to **better protect the rights of individuals** shows that there is significant scope for improvement in the development of contracts between public administration and the most powerful software developers and online service outsourcers. The EDPS is of the opinion that such solutions should be extended not only to all public and private bodies in the EU, which is our short-term expectation, but also to individuals, the Assistant EDPS said today.

In April 2019, the European Data Protection Supervisor (EDPS) [launched an investigation](#) into the use of Microsoft products and services by EU institutions. The investigation identified the Microsoft products and services used by the EU institutions and assessed whether the contractual agreements concluded between Microsoft and the EU institutions are fully compliant with data protection rules. The EDPS also considered whether there were appropriate measures in place to mitigate risks to the data protection rights of individuals when EU institutions use Microsoft products and services.

Though the investigation is still ongoing, preliminary results reveal **serious concerns** over the **compliance of the relevant contractual terms with data protection rules** and the **role of Microsoft as a processor for EU institutions** using its products and services. Similar [risk assessments](#) were carried out by the **Dutch Ministry of Justice and Security** confirmed that public authorities in the Member States face similar issues.

Together with the Dutch Ministry of Justice and Security, the EDPS organised the first [EU software and cloud suppliers customer council](#) in The Hague on 29 August 2019, where participants established **The Hague Forum**, which aims to discuss both how to take back control over the IT services and products offered by the big IT service providers and the need to collectively create standard contracts instead of accepting the terms and conditions as they are written by these providers. The **EDPS encourages all concerned parties to join the Forum** and help us to set fair contractual terms for public administration, working in synergy and exchanging best practices in outsourcing services, especially in the demanding cloud environment.

**Wojciech Wiewiórowski, Assistant EDPS, said:** *“We expect that the creation of The Hague Forum and the results of our investigation will help improve the data protection compliance of all EU institutions, but we are also committed to driving positive change outside the EU institutions, in order to ensure maximum benefit for as many people as possible. The agreement reached between the Dutch Ministry of Justice and Security and Microsoft on appropriate contractual and technical safeguards and measures to mitigate risks to individuals is a positive step forward. Through The Hague Forum and by reinforcing regulatory cooperation, we aim to ensure that these safeguards and measures apply to all consumers and public authorities living and operating in the EEA.”*

When using the products and services of IT service providers, EU institutions outsource the processing of large amounts of personal data. Nevertheless, they remain accountable for any processing activities carried out on their behalf. They must assess the risks, and have appropriate contractual and technical safeguards in place to mitigate those risks. The same applies to all controllers operating within the EEA.

As the late EDPS **Giovanni Buttarelli** emphasised in a [blogpost in April 2019](#), transparency is vital to ensuring data and consumer protection in contractual agreements. Not only does it help expose any practices designed to *nudge* people towards accepting excessive personal data processing or rushing into purchase decisions but, when signing up to a service, people should not be compelled to accept personal data processing that they are not comfortable with.

## **Background information**

The rules for data protection in the EU institutions, as well as the duties of the European Data Protection Supervisor (EDPS), are set out in the new [Regulation \(EU\) 2018/1725](#). These rules replace those set out in [Regulation \(EC\) No 45/2001](#). The EDPS is an increasingly influential independent supervisory authority with responsibility for monitoring the processing of personal data by the [EU institutions and bodies](#), advising on policies and legislation that affect privacy and cooperating with similar authorities to ensure consistent data protection. Our mission is also to raise awareness on risks and protect people's rights and freedoms when their personal data is processed.

**Wojciech Wiewiórowski** (Assistant EDPS), was appointed by a joint decision of the European Parliament and the Council on 4 December 2014 to serve a five-year term.

**Personal information or data:** any information relating to an identified or identifiable natural (living) person. Examples include names, dates of birth, photographs, video footage, email addresses and telephone numbers. Other details, such as IP addresses and communications content - related to or provided by end-users of communications services - are also considered as personal data.

**Privacy:** the right of an individual to be left alone and in control of information about his or herself. The right to privacy or private life is enshrined in the Universal Declaration of Human Rights (Article 12), the European Convention of Human Rights (Article 8) and the European Charter of Fundamental Rights (Article 7). The Charter also contains an explicit right to the protection of personal data (Article 8).

**Processing of personal data:** According to Article 4(1) of Regulation (EU) No 679/2016, processing of personal data refers to "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction." See the [glossary](#) on the EDPS website.

The European Data Protection Supervisor (EDPS) is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies. He does so by:

- monitoring the EU administration's processing of personal data;
- advising on policies and legislation that affect privacy;
- cooperating with similar authorities to ensure consistent data protection.

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