



EUROPEAN DATA PROTECTION SUPERVISOR

# Annual Activity Report

## 2020



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# 1. Introduction

The Financial Regulation (Article 74.9<sup>1</sup>) provides that each **authorising officer by delegation** (AOD) shall send an annual activity report to their institution, together with financial and management information. This report shall present the achievements of their institution in relation to the resources used. It shall also be a management report on performance in the context of their task as AOD. This requirement is the logical consequence of paragraph 2<sup>2</sup> of this same article, which gives the AOD responsibility for internal controls.

In the annual activity report of the AOD, this latter must include a statement of assurance (“Statement”) based on their own judgment and on the information available in which the AOD:

- ) states that the information contained in the report gives a true and fair view;
- ) declares that the AOD has reasonable assurance that the resources allocated to the activities described in the report have been used for their intended purposes and in accordance with principles of sound financial management, and that the control procedures put in place give the necessary guarantees as to the legality and regularity of the underlying transactions;
- ) confirms that the AOD is not aware of any matter not reported which could harm the interests of the institution.

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<sup>1</sup> Financial Regulation, Article 74(9): The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management; and
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The annual activity report shall include information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report shall include an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

<sup>2</sup> Financial Regulation, Article 74(2): For the purposes of paragraph 1 of this Article, the authorising officer by delegation shall, in accordance with Article 36 and the minimum standards adopted by each Union institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost effectiveness and performance considerations.

## 2. Operational achievements

### 2.1 EDPS in 2020

2020 was a unique year for the world, and, by extension, for the European Data Protection Supervisor (EDPS) due to the COVID-19 pandemic. Like many other organisations, the EDPS had to adapt its working methods as an employer, but also its priorities since COVID-19 strengthened the call for the protection of individuals' privacy with the appearance of contact tracing apps and other technologies used for the fight against the coronavirus. While technology can certainly contribute to limiting the spread of the virus, the EDPS' priority is to ensure the protection of individuals' personal data and right to privacy.

This year also marked new beginnings for the EDPS. On 30 June 2020, we presented our [Strategy for 2020-2024](#). The Strategy's overarching aim is to shape a safer digital future, with three core pillars outlining the guiding actions and objectives for the organisation to the end of 2024: **Foresight, Action and Solidarity**.

These three pillars, and our strategy as a whole, were the driving force for our work in 2020.

#### 2.1.1. Data Protection in a global health crisis

Following the outbreak of the COVID-19 pandemic, the EDPS immediately established an internal [task force](#) to actively monitor and assess governmental and private responses to the outbreak. Throughout 2020, the COVID-19 task force has been following developments and to prepare for the future of data protection and privacy after the COVID-19 crisis.

From the outset, [the EDPS emphasised](#) the need for a pan-European approach in tackling the pandemic. In addition to providing guidance to EU institutions, the EDPS closely cooperated with other Members of the European Data Protection Board (EDPB) to offer practical guidance in relation to the most pressing challenges of the pandemic. Among other important points covered in its guidance, the EDPS stressed that pandemic-related technologies requiring the processing of personal data must be temporary, have a defined and limited purpose, and comply with EU data protection law.

#### 2.1.2. Leading by example in safeguarding EU digital rights

In 2020, the EDPS continued its efforts to supervise European institutions, bodies and agencies' (EUIs) compliance with data protection laws. As outlined in our Strategy 2020-2024, we are determined to support EUIs to continue to lead by example in safeguarding digital rights and responsible data processing. Examples of several initiatives the EDPS has worked on in 2020, and will continue to work on during this mandate, are described below.

### ***Microsoft investigation***

On 2 July 2020, the EDPS issued a [Public Paper](#) detailing its findings and recommendations of the EDPS investigation into the use of Microsoft products and services by EUIs. These findings aim to help public administrations to keep control and ensure adequate level of data protection when contracting ICT services. Based on the similarities between the [General Data Protection Regulation](#) (GDPR) and [Regulation \(EU\) 2018/1725](#), applicable to the EUIs, the findings of the EDPS investigation proved to be of interest to other public authorities as well. The Public Paper emphasised that when EUIs enter into contractual relationships with ICT service providers, they should reinforce their control over how and why personal data is processed, as outlined in the EDPS' strategic objective on 'digital sovereignty' from the EDPS Strategy 2020-2024.

The Public Paper was presented at the second edition of the Hague Forum. Initiated on 29 August 2019, the Hague Forum for Cloud Contracting is a cooperation platform for public authorities, EUIs and other international and non-governmental organisations to ensure compliance with data protection law when using ICT services including cloud service and communications providers.

### ***Schrems II***

On 16 July 2020, the Court of Justice of the European Union issued a judgement in the case C-311/18, so-called "[Schrems II](#)" ruling, in which it invalidated the EU-US Privacy Shield, a personal data transfer mechanism.

The EDPS recognised the impact of the judgement and the role of data protection authorities (DPAs) in ensuring that the decision is complied with. Therefore, on 29 October 2020, the EDPS [issued](#) its Strategy for Union institutions, offices, bodies and agencies to comply with the "Schrems II" ruling, aiming to monitor compliance of these bodies with the ruling and to ensure that ongoing and future international transfers are carried out in accordance with EU data protection law. The EDPS identified the transfers carried out by EUIs (or by private entities on their behalf) in the context of contractual relationships with organisations based in the US as deserving priority attention. In order to streamline compliance and enforcement measures, the strategy distinguishes between short-term and medium-term compliance actions.

### ***Inquiry on Europol's big data challenge***

The EDPS concluded its inquiry into the processing of large datasets by Europol, originally launched in April 2019. The EDPS' inquiry concerned Europol's processing of large datasets, collected by national law enforcement authorities in the context of criminal investigations, as this is an important part of their mandate to produce criminal intelligence. While the processing of such information might be lawful under national law, the Europol Regulation is much more restrictive. In particular, Europol can only process information about certain categories of individuals, namely suspects, contacts and associates, victims, witnesses or informants and certain categories of data. The volume of information is so considerable that its content is often unknown until the moment when analysts extract the relevant entities for entry into the relevant database.

**During the EDPS' inquiry**, Europol was not able to provide appropriate reassurance that all the personal data contained in its large datasets comply with the limitations set up by the Europol Regulation. As a result, the EDPS decided to [admonish](#) Europol in September 2020, urging Europol to submit an Action Plan and to inform the EDPS about the measures put in place to address these concerns. Admonishments are meant to signal data processing activities that are not in line with the applicable data protection framework and to invite the agency to adjust its practices.

### ***Launch of supervision of Eurojust and EPPO***

[Eurojust](#) and the **European Public Prosecutor's Office (EPPO)** are two EUIs which the EDPS has recently started to supervise. As for any other EUI, the EDPS supervises EPPO's and Eurojust's data processing activities.

In 2020, **Eurojust** has sought the EDPS' advice several times on how to best comply with the EU data protection regime. This included, among many others, advice on Eurojust's adoption of implementing rules on their data protection officer (DPO) and a consultation regarding the legal basis for information exchange between Eurojust and the European Border and Coast Guard Agency (or Frontex).

**The European Public Prosecutor's Office (EPPO)** is the EU's first prosecution office, with the power to investigate, prosecute and bring to judgement large-scale, cross-border crimes against the EU budget, such as fraud and corruption. The EDPS has started preparations to supervise EPPO's activities since the EPPO Regulation came into force on 20 November 2017.

In its supervisory role at EPPO, the EDPS has been faced with a number of unparalleled questions due to EPPO's multi-layered legal framework and inhomogeneous structure. With its unprecedented scope, multiple references to national law and Regulation (EU) 2018/1725, Regulation (EU) 2017/1939 (the EPPO Regulation) presents a particular challenge for the supervision of personal data processing. Moreover, the unique investigative and judicial powers of EPPO in the area of criminal law may have profound impact on other fundamental rights.

To ensure that the EDPS is best prepared to conduct its supervisory role, an external study is being carried out. The purpose of the study, which started in June 2020, is to analyse EPPO's legal framework to distinguish the supervisory role of the EDPS from the supervisory role of national DPAs and to identify any potential problems this may pose. In 2020, the EDPS continued to contribute to EPPO's development by providing recommendations on [EPPO's rules of procedure](#) and on EPPO's [rules on the processing of personal data](#). Consultations on [DPO rules](#) and [Article 25 restrictions](#) also took place.

### ***Overview of remote audits***

[Audits](#) are an exercise that the EDPS carries out on a regular basis as the data protection authority of EUIs. However, this year's audits were carried out remotely due to the COVID-19 pandemic. Two examples of the type of audits that we carried out are described below. In early 2020, an audit was conducted on the EUI's publically accessible registers, as part of their obligations under Article 31(5) of Regulation 2018/1725. Article (31(5) states that:



*“Union institutions and bodies shall keep their records of processing activities in a central register. They shall make the register publicly available.”*

Another audit was carried out on EUIs’ newsletters. In particular, the EUIs’ level of transparency in and accessible of their data protection statements, which aim to inform an individual on how their personal data will be processed when they subscribe to an EUI’s newsletter.

### ***Advising and guiding EUIs***

Delivering **training sessions** to EUIs and providing them with the necessary **tools** to protect individuals’ personal data in data processing activities are an integral part of how the EDPS monitors EUIs’ compliance with data protection laws.

A number of **training sessions** are routinely carried out every year, 2020 was no exception - although most of them were carried out remotely. These training sessions are on themes that we identified as areas in which further clarity or assistance to ensure compliance with Regulation 2018/1725 is required. For example, the EDPS organised training sessions on the relationship between data controller and processor, and joint controllership, data protection in procurement and on outsourcing the processing of personal data, and on international data transfers.

In addition, the EDPS also organised on-demand training sessions requested by EUIs and their DPOs, focusing on data protection operations and their implications in relation to the EUI’s core activities and area of business. The on-demand sessions include expert presentations on the subject, case studies and practical examples that DPOs may encounter.

The EDPS also produced guidance on how to use data protection impact assessments (DPIAs). A DPIA is an important tool of data protection law which can help EUIs, as well as other organisations, to assess and mitigate risks to the rights and freedoms of individuals that may arise when processing sensitive data. To best support EUIs, the EDPS carried out a survey in February 2020 to determine specifically how EUIs have been using DPIAs since the entry into force of Regulation 2018/1725. As a follow-up, in July 2020, the EDPS published a [Report](#) on how EUIs carry out DPIAs. The report contains lessons learned and best practices observed by the EUIs. The aim of the Report is not only to highlight good practice, but also to provide additional supporting guidance to EUIs as they carry out DPIAs.

Other factsheets on this topic, as well as many other pertinent subjects relevant for EUIs, were published on our website in 2020. A practice that we will continue in 2021 as it is an efficient and accessible way to support DPOs of the EUIs.

### ***EDPS meetings with the network of DPOs***

Due to the important role played by DPOs as interlocutors between the EDPS and EUIs, a meeting is held twice a year to discuss current and upcoming data protection challenges. This provides an opportunity to realign data protection priorities for the DPOs of EUIs and to identify areas where extra guidance or support from the EDPS is needed.

Two remote EDPS meetings with the network of DPOs were held in 2020, one on 8 May 2020 and one on 11 December 2020.

- ) The [meeting in May](#) covered, among other topics, the use of social media as a means of communication for EUIs to inform the public and acting as a source of information. The EDPS' investigation into the use of Microsoft services by EUIs was also covered. Importantly, challenges faced by DPOs, the processing of personal data in the context of COVID-19, as well as the best practices relating to the publishing of data protection registers were discussed as well.
- ) The [meeting in December](#) covered the Schrems II Judgement and the EDPS' Compliance Strategy to comply with the Judgement in question.

### **2.1.3. Shaping a safer digital future for the EU**

Throughout 2020, the EDPS has closely examined technological developments and multiple initiatives presented by the EU's legislators. The EDPS places importance on analysing the possibilities, risks and challenges that up and coming technologies and other initiatives may have on data protection and individuals' personal data in order to shape a safer digital future for the EU, as explained in our EDPS Strategy 2020-2024. An overview of several examples demonstrating this are provided below.

#### **Monitoring technologies**

##### ***Artificial intelligence and Facial Recognition***

Artificial intelligence (AI) is a reality and has woven its way into everyday life: navigation systems, spam filters, weather forecasts to name but a few. There have been significant advancements in the field of machine learning, a subset of AI. The machines learn due to the complex algorithms that allow them to analyse huge data sets and make predictions using this data. Along with enhancing the machines' skills, increasing amounts of data are being collected and information on human behaviour are being monitored; all of which present challenges for privacy and data protection.

On 23 January 2020, the EDPS organised a side event at the [CPDP](#) as a follow-up to the EDPS World Café on AI, which took place earlier that month. The common purpose for both EDPS events was to gather a variety of perspectives and ideas on how to prepare for the challenges of AI supervision and the role of DPAs in this regard.

On 13 February 2020, the EDPS organised a workshop to discuss the EU's approach to and the challenges and opportunities of AI and facial recognition applications. The high-level discussions at the workshop also contributed to the EDPS Strategy 2020-2024 and our long-term view of global trends, such as the need to ensure the sustainable development of new technologies and the assessment of their potential impact on fundamental rights. On 19 February 2020, as a first step towards an EU regulatory framework to address the human and ethical implications of AI, the European Commission published its [Communication - A European strategy for data](#) and [White Paper on Artificial Intelligence - A European approach to excellence and trust](#). The EDPS [Opinion](#) presents our views on the White Paper as whole, as well as on certain aspects, such as the proposed risk-based approach, the enforcement of AI regulation and the specific requirements for remote biometric identification (including facial recognition). Our recommendations aim to clarify

and where necessary, further develop the safeguards and controls in regard to the protection of personal data.

### ***IPEN***

The EDPS founded the [Internet Privacy Engineering Network \(IPEN\)](#) in 2014 to bring together experts from a range of different areas to encourage the development of engineering solutions to privacy problems. Through facilitating exchange between regulators, researchers and developers who build privacy into new and existing digital tools, IPEN aims to promote and advance state-of-the-art practices in privacy engineering. In 2020, the EDPS held several IPEN workshops on a variety of topics, such as the state of the art in encryption and its role for protection of privacy and personal data, and contact tracing apps as a large-scale exercise in privacy engineering.

### ***TechDispatches***

The EDPS continued to publish [TechDispatches](#) to explain emerging developments in technology. Each TechDispatch provides factual descriptions of a new technology, preliminarily assesses the possible impact upon privacy and the protection of personal data, as we understand them now, and provides links to further recommended reading. Examples of the topics covered were, contact tracing and quantum computing.

### **Legislative Consultation**

The EDPS also issued several Opinions in 2020 as part of our duty to advise the European Commission, the European Parliament and the Council on legislation and policy initiatives with impact on personal data protection. Examples of the Opinions we have issued are presented below.

### ***Opinion on the opening of negotiations for a new partnership with the UK***

On 24 February 2020, the EDPS issued an [Opinion](#) on the Commission's Recommendation to authorise the opening of negotiations for a new partnership with the United Kingdom (UK).

In its Opinion, the EDPS supports a partnership which affirms the EU and UK commitment to, and respect for, a high level of data protection and the EU data protection rules. The Opinion recommends:

- ) commitments to respect fundamental rights, including data protection, equivalent to those for the economy and security;
- ) defining priorities for international cooperation other than law enforcement, particularly between public authorities (including EUIs); and
- ) assessing transfers of personal data in light of the CJEU [Opinion 1/15](#), for the economic and security partnerships.

Given the aim of continued close cooperation at the end of the transition period, the EDPS welcomes the Commission's commitment to work towards the adoption of adequacy decisions, but highlights:

- ) the importance of an assessment of adequacy under the General Data Protection Regulation (GDPR) and Law Enforcement Directive (LED) for cooperation between public authorities and its impact on transfers by EUIs to the UK;

- ) the importance of defining the scope of adequacy decisions, particularly under the LED;
- ) that adequacy decisions are subject to specific conditions;
- ) the EDPB should be appropriately involved if the Commission present a draft adequacy decision;
- ) any substantial deviation from the EU data protection acquis lowering the level of protection would obstruct an adequacy decision; and
- ) the EU should prepare for all eventualities, including where adequacy decision(s) cannot be adopted within the transition period or at all, or only for some areas.

***Opinion on a proposal for an amendment of Council Directive 2011/16/EU relating to administrative cooperation in the field of taxation***

On 28 October 2020, the EDPS issued an [Opinion](#) containing recommendations to minimise the impact on the fundamental right to privacy by the Commission proposal amending Directive 2011/16/EU on administrative cooperation in the field of taxation. The EDPS acknowledges that tax compliance is in the public interest, but insists upon the right balance with privacy via emphasis upon data protection by design and by default, and data accuracy and minimisation in the context of automatic exchanges of data between national tax authorities.

The EDPS recommends that in respect of the management of the secure central interface on administrative cooperation on taxation:

- ) the Commission ensures that this management complies with the security provisions of Regulation (EU) 2018/1725, following our [Guidelines on the protection of personal data in IT governance and management of EUIs](#); and
- ) the Commission's role in respect of this management is ascertained in the context of any further arrangement with Member States and the technical and logistical support for the interface.

The EDPS stresses it expects to be consulted, pursuant to Article 42(1) of Regulation (EU) 2018/1725, on the acts defining the administrative arrangements for technical and logistical support for the interface where Member States communicate via standard forms pursuant to Directive 2011/16/EU, before their adoption.

As the competent supervisory authority under Regulation (EU) 2018/1725, the EDPS may follow up on updates concerning the interface and implications of the Commission's role within the processing operations in the context of administrative cooperation on taxation.

***Opinion on the Proposal for temporary derogations from the ePrivacy Directive for the purpose of combating child sexual abuse online***

On 11 November 2020, the EDPS issued [Opinion 7/2020](#) in relation to the Commission [Proposal](#) for a Regulation on a temporary derogation from certain provisions of the [ePrivacy Directive \(2002/58/EC\)](#). The Proposal relates to voluntary use of technologies for combating child sexual abuse online.

The EDPS considers that the measures envisaged by the Proposal would constitute an interference with the fundamental rights of electronic communications service (for

example, instant messaging) users to respect for their private life and data protection (in particular, confidentiality of their communications), which should only be possible under certain conditions. The issues at stake are not specific to the fight against child abuse, but to any initiative involving private sector collaboration for law enforcement purposes. The EDPS stresses that measures to detect, remove and report child abuse must be accompanied by a comprehensive legal framework which meets the requirements of [Articles 7](#) and [8](#) of the Charter of Fundamental Rights of the EU.

Moreover, in order to satisfy the requirement of proportionality, the legislation must set clear and precise rules governing the scope and application of the relevant measures and imposing minimum safeguards to provide sufficient guarantees of the protection of personal data against the risk of abuse. Our Opinion provides an overview of the necessary safeguards.

As the Proposal will serve as a precedent, the EDPS considers it essential that it is not adopted, even as a temporary derogation, until all the necessary safeguards set out in its Opinion are integrated.

### ***Opinion on the New Pact on Migration and Asylum***

In light of the proposals presented in the [New Pact on Migration and Asylum by the European Commission](#), the EDPS issued an [Opinion](#) on 30 November 2020.

The European Asylum Dactyloscopy Database (EURODAC) is an EU database that identifies asylum seekers applying for international protection by collecting their fingerprint data. A proposed amendment concerns the Regulation applicable to EURODAC, by implying the automatic linking of all data corresponding to the same third-country national in a “sequence”. This amendment would potentially broaden EU Member States’ and authorities’ access to sensitive data irrelevant to asylum.

The EDPS understands the need for more effective management of asylum and migration, but recommends:

- ) as per the recommendations under [Opinion 07/2016](#), a fundamental rights and data protection impact assessment should be carried out in regard to the amendment;
- ) EU Member States and their authorities should continue to only be able to see the data that is relevant for the performance of their tasks, even if the datasets are linked in a sequence;

and that the Commission:

- ) clarifies the type of data stored in EURODAC in line with the data protection principles of necessity and proportionality;
- ) updates the EURODAC security infrastructure with appropriate data protection safeguards; and
- ) introduces the single model of coordinated supervision.

On the proposal for a Screening Regulation to collect data on the identity, health and security checks of third-country nationals, the EDPS advised the Commission to evaluate their method of collecting and processing this data. This would mean accounting for

national practices featuring different levels of efficacy, ensuring data accuracy and upholding data subjects' right to rectification.

### ***Opinion on the European Health Data Space (EHDS)***

On 17 November 2020, the EDPS published a Preliminary [Opinion](#) on the European Health Data Space (EHDS), a platform for exchanging health data and fostering medical and scientific research. The EDPS supports the EHDS objectives, and stresses that protecting individuals' personal data should be a priority within its development. The EDPS advises the European Commission to clearly demarcate the nature, categories and purpose for which the data being processed, along with pinpointing the roles and responsibilities of each of the actors making this data available. Additionally, the technical requirements of the EHDS should ensure the right to data portability. The EDPS considers that solidarity between EU Member States, data protection authorities, EHDS users and healthcare professionals combined with an entrenched data governance mechanism embodying EU values will ensure the ethical, responsible and safe processing of personal data.

#### **2.1.4. The EDPS as a member of the EDPB**

The [European Data Protection Board](#) (EDPB) is an independent body established under the GDPR that promotes cooperation between national DPAs to ensure the consistent application of data protection rules across the EU. The EDPS is both a member of the EDPB and the provider of an independent Secretariat, which offers administrative and logistic support, performs analytical work and contributes to the EDPB's tasks. A [Memorandum of Understanding](#) determines the terms of cooperation between the EDPS and the EDPB.

As a member of the European Data Protection Board (EDPB), the EDPS contributed to multiple EDPB initiatives in 2020.

In July 2020, following the European Commission's first review of the General Data Protection Regulation (GDPR), which emphasises that the consistent and efficient enforcement of the GDPR remains a priority. The EDPS proposed the establishment of a **Support Pool of Experts (SPE)** within the EDPB to assist DPAs in their complex tasks. The EDPS, together with the EDPB Secretariat and other EDPB members, developed a [terms of reference](#) with a view to preparing a pilot project in 2021, which will serve as a basis for establishing the SPE, as outlined in the [EDPB Strategy 2021-2023](#). The SPE will be deployed to provide expertise (i.e., assisting analysis, investigative reports and performance findings) and enhance cooperation to support investigations and enforcement activities.

The EDPS also contributed to the drafting of the [Recommendations on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data](#) and the [Recommendations on the European Essential Guarantees for surveillance measures](#), published on 10 November 2020. These documents were adopted after the "[Schrems II](#)" ruling to ensure ongoing and future international data transfers are carried out in accordance with EU data protection law. The EDPS and EDPB will continue to work collaboratively to protect individuals' personal data throughout the EU / EEA.

### **2.1.5. International cooperation in data protection**

As data flows across borders, there is a need to consider data protection in a global context.

In 2020, the EDPS actively participated in a number of international fora with the aim of sharing information and good practices, finding common ground and developing guidance, and working together to improve the understanding of data protection law.

Examples of international conferences that the EDPS has participated in throughout 2020 are presented below.

#### ***Global Privacy Assembly***

The EDPS is an active member of the [Global Privacy Assembly](#) (GPA) (previously known as the International Conference of Data Protection and Privacy Commissioners, ICDPPC) and former host of the 2018 Conference that gathered more than 1000 delegates discussing digital ethics and the challenges of a data driven society.

The 2020 Closed Session of the GPA took place remotely due to the COVID-19 pandemic emergency, from 13 to 15 October 2020.

The Assembly started by providing a follow-up to the work performed in the context of the GPA Policy Strategy, based on the three pillars of:

- ) advancing global privacy in a digital age, confirming a move towards a global regulatory environment;
- ) maximising the conference's voice and influence, notably in enhancing the conference's role in digital policy and strengthening relationships with other international bodies and networks. The update on this pillar was provided by the EDPS, as chair of this working group; and
- ) capacity building to support members sharing expertise year-round.

#### ***International organisations workshop***

Generating and fostering global partnerships in the field of data protection has always been one of the priorities for the EDPS. One of the ways in which we do this is by co-organising a yearly workshop dedicated to data protection within international organisations. The workshop is a forum for the exchange of experiences and views on the most pressing issues in data protection faced by international organisations all over the world.

The size and the relevance of this event has been growing since the first edition in 2005. This confirms the need for a platform for international organisations to engage, share best practices and discuss unsolved dilemmas, and demonstrates the increasing awareness of the importance of ensuring strong safeguards for personal data.

The most recent [workshop](#) was a markedly different event than in previous years. The continuing global health crisis prevented an in-person workshop, so the EDPS hosted a shorter online workshop on the afternoons of 8 and 9 October 2020. In light of the

COVID-19 pandemic, the theme of this online workshop was ‘Data Protection in International Organisations in Times of Crisis’.

## 2.1.6 EDPB

The European Data Protection Board (EDPB) is an independent European body, which contributes to the consistent application of data protection rules, such as the General Data Protection Regulation 2016/679 (GDPR), throughout the European Economic Area.

The EDPB is composed of representatives of the national EU and EEA EFTA data protection supervisory authorities, and the European Data Protection Supervisor (EDPS).

In addition to its role as member of the European Data Protection Board (EDPB)<sup>3</sup>, the EDPS also provides the Secretariat to the EDPB<sup>4</sup>. The Secretariat of the EDPB works under the exclusive instructions of the EDPB Chair and is managed by the head of the EDPB Secretariat. The EDPB Secretariat provides analytical, administrative and logistical support to the EDPB. In practice, the EDPB Secretariat deals with a range of tasks, from drafting EDPB documents, providing IT solutions to ensuring transparent communications, handling media relations, ensuring respect of the legal framework and planning as well as organizing meetings. The EDPB Secretariat is composed of a multifaceted team facilitating the Board’s fair and effective decision-making and acts as the gateway for clear and consistent communications.

### 2.1.6.1 EDPB Strategy 2021-2023

**On December 2020, the EDPB adopted its Strategy 2021-2023 with four main pillars of strategic objectives.**

In line with Article 29 of the EDPB Rules of procedure, the EDPB was adopted on March 2021 a two-year work program for 2021-2022.

The main types of activities planned by the EDPB: for 2021-2022 are organised around the 4 pillars identified in its 2021-2023 Strategy adopted in December 2020:

#### **Pillar 1: Advancing harmonisation and facilitating compliance**

The EDPB will continue to strive for a maximum degree of consistency in the application of data protection rules and limit fragmentation among Member States. In addition, the EDPB will develop and promote tools that help to implement data protection into practice, taking into account practical experiences of different stakeholders on the ground.

- **Further guidance on key notions of EU data protection law to promote consistent application of data protection rules**, taking into account stakeholders’ practical experience gathered through events and public consultations (e.g., guidelines on data subject rights, on legitimate interest, on children’s data...).

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<sup>3</sup> See Article 68.3 GDPR, Official Journal, L 119, Vol. 59, 4 May 2016.

<sup>4</sup> See Article 75 GDPR.



- **Pursue consistency activities directly addressed to national supervisory authorities**  
to ensure consistency of their decisions in a number of areas (evaluation of Codes of conduct, Certification schemes and criteria, Binding Corporate Rules, creation of Standard contracts, list of risky processing to be subject to an impact assessment,...) in accordance with Article 64(1) and (2) GDPR. The EDPB will also continue acting as a dispute resolution body for any dispute between EEA supervisory authorities (Article 65(1) GDPR binding decisions; urgency procedure Article 66 GDPR decisions/opinions).
- **Promote compliance mechanisms** for controllers and processors (e.g., guidelines on assessment of certification criteria).
- **Advising the EU legislator** on any important issue related to the protection of personal data in the EU (e.g., Data Governance Act; ePrivacy; Anti-Money Laundering legislation, ...), **and intensified engagement and cooperation with other regulators and policymakers.**
- **Develop raising awareness common tools on GDPR for a wider audience** (e.g., tools specifically tailored for non-expert professionals, such as SMEs and data subjects).

## Pillar 2: Supporting effective enforcement and efficient cooperation between SAs

The EDPB will facilitate a more efficient functioning of the cooperation and consistency mechanisms between all national supervisory authorities that work together to enforce European data protection law. It will also strive for the development of a genuine EU-wide enforcement culture among supervisory authorities.

- **Encouraging and facilitating the use of the full range of cooperation tools enshrined in GDPR and the Law enforcement directive (LED), and continuously evaluating and improving the efficiency and effectiveness of these tools, as well as further promoting a common application of key concepts in the cooperation procedure** (e.g., guidelines on Article 60 GDPR (One-Stop-Shop), on Article 65 GDPR (binding decisions), on the calculation of administrative fines, ...).
- **Implementation of the Coordinated Enforcement Framework (CEF)**<sup>5</sup> to carry out annual coordinated actions on a pre-defined topics to allow SAs to pursue joint actions in a flexible but coordinated manner, ranging from joint awareness raising and information gathering to enforcement sweeps and joint investigations.
- **Implementation of the Support Pool of Experts (SPE).** The EDPB will launch the pilot project of SPE to provide material support to EDPB Members in the form of expertise that is useful for investigations and enforcement activities and to enhance cooperation and solidarity between EDPB Members by sharing, reinforcing and complementing strengths and addressing operational needs.

## Pillar 3: A fundamental rights approach to new technologies

The EDPB will monitor new and emerging technologies and their potential impact on the fundamental rights and daily lives of individuals, and will help to shape Europe's digital future in line with our common values and rules, continuing to work with other regulators and policymakers to promote regulatory coherence and enhanced protection for individuals.

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<sup>5</sup> [https://edpb.europa.eu/our-work-tools/our-documents/ovrigt/edpb-document-coordinated-enforcement-framework-under-regulation\\_en](https://edpb.europa.eu/our-work-tools/our-documents/ovrigt/edpb-document-coordinated-enforcement-framework-under-regulation_en)

- **Reinforcing the application of fundamental data protection principles and individual rights, and establishing common positions in the context of new technologies** (e.g., guidelines on Blockchain, on anonymisation and pseudonymisation, on the use of facial recognition by law enforcement authorities, ...).
- **Strengthening cooperation with external stakeholders** (e.g., ENISA advisory group, ISO liaison, Contact point of the Stakeholder Cybersecurity Certification Group, ...).

#### Pillar 4: The global dimension

The EDPB is determined to set and promote high EU and global standards for international data transfers to third countries and will reinforce its engagement with the international community to promote EU data protection as a global model and to ensure effective protection of personal data beyond the EU borders.

- **Providing guidance on the use of transfer tools ensuring an essentially equivalent level of protection, and increasing awareness on their practical implementation and on issues relating to government access to personal data** (e.g., opinions on draft adequacy decisions (e.g., UK, Republic of Korea, ...); PNR agreements (e.g., UK, Canada, ...); guidelines on codes of conduct or certification as tools for transfers, guidelines on Article 48 GDPR (transfers or disclosures not authorised by Union law); ...).
- **Engaging with the international community to promote EU data protection as a global model and to ensure effective protection of personal data beyond EU borders and facilitating the engagement between EDPB members and third countries' SAs** with a focus on cooperation in enforcement cases involving controllers/processors located outside the EEA.
- **Finally**, the EDPB will continue to take any actions to foster the cooperation between EU and EEA EFTA data protection supervisory authorities. In particular, the **coordination of the supervision of European large-scale IT systems will fall within the framework of the activities of the EDPB** (EPPO during 2021, EES and ETIAS during 2022), in addition to the already existing ones (IMI and Eurojust).

##### 2.1.6.2 Meetings

The EDPB Secretariat organised 27 EDPB plenary meetings in 2020 (instead of 11 planned ones), during which EDPB members formally adopt documents, discuss developments or policy questions in relation to issues of significant strategic importance.

In addition, to prepare the document for adoption, 145 expert subgroup meetings were held in 2020 (instead of 90 in 2019) as well as 96 drafting team meetings. The EDPB Secretariat takes part in all of those meetings, provides analytical support and makes all the administrative arrangements. Due to COVID-19, EDPB meetings were held remotely from March 2020 onwards. The IT team helped set up and host all remote meetings and was able to secure additional webmeeting rooms and a higher capacity virtual room to accommodate these meetings.

##### 2.1.6.3 Guidelines, Opinions, Decisions and other documents

During the plenary meetings, the EDPB adopted Guidelines, Opinions, Decisions and other documents such as statements or informative notes to advise the European Commission, national Supervisory Authorities, and other stakeholders on GDPR matters. The EDPB

Secretariat's legal team drafted over 60% of the guidelines, opinions, recommendations and statements adopted by the EDPB in 2020.

#### **2.1.6.3.1 Guidelines**

In 2020, the EDPB adopted ten new Guidelines and two Recommendations aimed at clarifying the range of provisions under the GDPR.

- J [Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications - version for public consultation](#)
- J [Guidelines 2/2020 on Articles 46 \(2\) \(a\) and 46 \(3\) \(b\) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies - version adopted after public consultation](#)
- J [Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak](#)
- J [Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#)
- J [Guidelines 05/2020 on consent under Regulation 2016/679](#)
- J [Guidelines 06/2020 on the interplay with the Second Payments Services Directive and the GDPR - version adopted after public consultation](#)
- J [Guidelines 07/2020 on the concepts of controller and processor in the GDPR - version for public consultation](#)
- J [Guidelines 8/2020 on the targeting of social media users - version for public consultation](#)
- J [Guidelines 09/2020 on relevant and reasoned objection under Regulation 2016/679 - version for public consultation](#)
- J [Guidelines 10/2020 on restrictions under Art. 23 GDPR - version for public consultation](#)
- J [Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data supplementary measures - version for public consultation](#)
- J [Recommendations 02/2020 on the European Essential Guarantees for surveillance measures](#)

Three Guidelines adopted in 2019 were approved by the EDPB in their final form in 2020, following public consultations:

- J Guidelines 3/2019 on processing personal data through video devices - version adopted after public consultation
- J Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR (part ) - version adopted after public consultation
- J Guidelines 4/2019 on Article Art. 25 Data Protection by Design and by Default Version 2.0 - version adopted after public consultation

#### **2.1.6.3.2 Consistency opinions**

In 2020, the EDPB adopted the following 32 opinions (Art. 64 GDPR):

- J One Opinion on the draft list regarding the processing operations exempt from the requirement of a data protection impact assessment (DPIA) submitted by SAs in France.

- J Eleven Opinions on draft accreditation requirements for a code of conduct monitoring body pursuant to Art. 41 GDPR, submitted by the Belgian, Danish, Dutch, Finnish, French, German, Greek, Irish, Italian, Polish and Spanish SAs.
- J Ten Opinions on draft accreditation requirements for a certification body pursuant to Art. 43.3 GDPR submitted by the Austrian, Czech, Danish, Dutch, German, Greek, Irish, Italian, Luxembourg and UK SAs.
- J One opinion on draft Standard Contractual Clauses by the Slovenian SA.
- J Nine opinions on Binding Corporate Rules (Fujikura Automotive Europe Group, Reinsurance Group of America (2), Jotun, Tetra Pak, Coloplast, Iberdrola, Novelis and Equinix)).

#### **2.1.6.3.3 Binding Decisions**

In 2020, the EDPB adopted its first dispute resolution binding decision on the basis of Art. 65 GDPR:

- J [Decision 01/2020 on the dispute arisen on the draft decision of the Irish Supervisory Authority regarding Twitter International Company under Article 65\(1\)\(a\) GDPR](#)

#### **2.1.6.3.4 Documents and register related to consistency procedures**

The EDPB adopted document relating to consistent procedures:

- J [EDPB document on the procedure for the approval of certification criteria by the EDPB resulting in a common certification, the European Data Protection Seal](#)
- J [EDPB Document on the procedure for the development of informal “Codes of Conduct sessions”](#)

Additionally, the EDPB has published a register for decisions taken by Supervisory Authorities and courts on issues handled in the consistency mechanism

#### **2.1.6.3.5 Other documents, including legal advice**

The following documents were adopted in 2020:

- J Contribution of the EDPB to the evaluation of the GDPR under Article 97
- J Statement on the processing of personal data in the context of the COVID-19 outbreak
- J EDPB Letter concerning the European Commission's draft Guidance on apps supporting the fight against the COVID-19 pandemic
- J Statement on the data protection impact of the interoperability of contact tracing apps
- J Statement on restrictions on data subject rights in connection to the state of emergency in Member States
- J Statement on the processing of personal data in the context of reopening of borders following the COVID-19 outbreak
- J Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB
- J Statement on the protection of personal data processed in relation with the prevention of money laundering and terrorist financing
- J Statement on privacy implications of mergers

- ) Statement on the Court of Justice of the European Union Judgment in Case C-311/18 - Data Protection Commissioner v Facebook Ireland and Maximillian Schrems
- ) Frequently Asked Questions on the judgment of the Court of Justice of the European Union in Case C-311/18 - Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems
- ) EDPB Document on Coordinated Enforcement Framework under Regulation 2016/679
- ) EDPB Document on Terms of Reference of the EDPB Support Pool of Experts
- ) Pre-GDPR BCRs overview list
- ) Information note on BCRs for Groups of undertakings / enterprises which have ICO as BCR Lead SA
- ) Information note on data transfers under the GDPR to the United Kingdom after the transition period (considering the political developments in December 2020, this note was superseded on January 2021).
- ) Statement on the end of the Brexit transition period (considering the political developments in December 2020, this note was superseded on January 2021).

#### **2.1.6.4 Stakeholder engagement**

The EDPB organises stakeholder events to gather input and opinions on issues with a view to developing guidance. In 2020, the EDPB Secretariat organised one stakeholder workshop on the topic of legitimate interest.

Following the preliminary adoption of Guidelines, the EDPB Secretariat organises public consultations to give stakeholders and citizens the opportunity for additional input. This input is then taken into account by the EDPB members in charge of drafting.

In 2020, the EDPB Secretariat launched the following consultations:

- ) In February, the EDPB opened two public consultations, on Guidelines on processing personal data in the context of connected vehicles and mobility related applications (1/2020) and on Articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies (2/2020) ,
- ) In July, the EDPB opened a public consultation on Guidelines on the interplay between the Second Payments Services Directive and the GDPR (6/2020),
- ) In September, the EDPB opened two public consultations, on Guidelines on the concepts of controller and processor in the GDPR (7/2020) and on the targeting of social media users (8/2020).
- ) In October, the EDPB opened a public consultation on Guidelines on relevant and reasoned objection under Regulation 2016/679 (9/2020).
- ) In November, the EDPB opened a public consultation on Recommendations on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data supplementary measures (1/2020)
- ) In December, the EDPB opened a public consultation on Guidelines on restrictions under Art. 23 GDPR (10/2020). This consultation was still open at the end of 2020.

For the third year in a row, the EDPB Secretariat conducted a survey as part of the annual review of the Board's activities under Article 71.2 GDPR. Questions focused on the content and adoption process of the EDPB's Guidelines, with a view to understanding to what extent stakeholders find them helpful and practical to interpret GDPR's provisions.

#### **2.1.6.5 Transparency**

Transparency is a core principle of the EDPB. Upholding the principle of transparency means that any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State has the right to access EDPB documents. This right applies to all documents held by the EDPB, concerning any matter relating to its responsibilities. The EDPB Secretariat coordinates public access requests on behalf of the EDPB. In 2020, the number of public access requests registered for documents held by the EDPB was 42.

To further enhance transparency, the EDPB Secretariat publishes the agendas and minutes of the EDPB plenary sessions on its website. The EDPB Secretariat also adapted its website to enable the publication of stakeholders' contributions to public consultations.

In 2020, the EDPB decided to publish a register containing the final decision taken by the Lead supervisory authorities following the One Stop Shop procedure.

#### **2.1.6.6 IT solutions**

As part of its support to the EDPB, the EDPB Secretariat has developed IT solutions to enable effective and secure communication between the EDPB members, including the Internal Market Information System (IMI), Confluence, a video-conferencing system and several webmeeting rooms. The EDPB IMI Helpdesk, created within the EDPB Secretariat, provides day-to-day assistance to users.

In 2020, SAs registered 628 cases in the IMI system. From the case register, different procedures were initiated:

- ) Identification of the Lead Supervisory Authority (LSA) and Concerned Supervisory Authorities (CSA): 742 procedures.
- ) Mutual Assistance Procedures: 246 formal procedures and 2,258 informal procedures.
- ) OSS: 203 draft decisions, out of which 93 resulted in final decisions.

#### **2.1.6.7 Communications**

The EDPB Secretariat set up a network of communication officers within the Supervisory Authorities, to ensure joint communication on EDPB news, joint information campaigns and joint development of communication tools. In 2020, the EDPB communications team published 20 plenary press releases, as well as 6 ad hoc press statements.

The EDPB Secretariat assists the Chair in preparing for and presiding over the plenary meetings, as well with her speaking engagements. In 2019, EDPB Chair Andrea Jelinek had 26 speaking engagements, including keynote speeches, presentations and panel debates with a range of institutes, think tanks and forums. She also remotely met with EU

Commissioners. EDPB Deputy Chair Ventsislav Karadjov took part in four speaking engagements during 2020.

#### **2.1.6.8 Rules of Procedure**

The EDPB Secretariat ensures that all of the EDPB's activities comply with the legal framework applicable to the EDPB as an EU body and with its Rules of Procedure (RoP). In January 2020, the EDPB [adopted](#) revisions to Arts. 10(1), 10(2) and 10(5) RoP and in October 2020, it [adopted](#) an amendment to Art. 11(2) RoP.

#### **2.1.6.9 Coordinated Supervision Committee**

In October 2018, Regulation 2018/1725 on the protection of personal data processed by the EU institutions and bodies was adopted. In accordance with Article 62 of this regulation, the European Data Protection Supervisor (EDPS) and the national SAs shall cooperate actively to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies.

The EDPB Secretariat will provide the secretariat for this coordinated supervision activity. For this reason, a Coordinated Supervision Committee was established end of 2019 within the framework of the EDPB. The Coordinated Supervision Committee (CSC) functions autonomously with respect to the EDPB's activities, adhering to its own rules of procedure and working methods. The CSC's tasks include, among others, supporting SAs in carrying out audits and inspections; working on the interpretation or application of the relevant EU legal act; studying problems within the exercise of independent supervision or within the exercise of data subject rights; drawing up harmonised proposals for solutions; and promoting awareness of data protection rights.

Participation in the CSC meetings can occur under various arrangements, depending on the IT system, body, office or agency for which supervision is taking place, as well as the respective EU legal act.

In 2020, the Coordinated Supervision Committee was responsible for the coordinated supervision of the Information Market Information System and EuroJust. More large-scale IT systems and of Union bodies, offices and agencies will be covered by the CSC in the future.

The CSC held two meetings in 2020, one in July and one in December. During its December plenary meeting, the CSC elected Clara Guerra from the Portuguese SA to succeed Giuseppe Busia as its new Coordinator for a term of two years. Iris Gnedler from the German Federal SA will stay on as Deputy Coordinator for another year.

## **2.2. Implementation of the EDPS Ethics Framework**

### **2.2.1 Introduction**

Questions of ethics and morality are relevant at all levels of society. Ethical behaviour is equally important in the workplace as it is in our personal lives. Everywhere business or policies are conducted, ethics matters. The same applies to public administration, whether at national or European level. Since the early beginning of our institution, the EDPS has given the utmost importance to ethical behaviours and standards which were already enshrined in several administrative decisions.

The EDPS first adopted a code of conduct for its staff in early 2005, which was substantively updated in 2014 and one more time at the end of 2019. This new version of the Code builds on and modernises the previous versions. The EDPS culture, heavily influenced by its small size, has experienced some changes, in particular since the creation of the EDPB Secretariat, and new tasks and new technologies have also changed the way we work in practice. This new version of the code of conduct is its response to those changes. In order also to update the code with the new legal framework (notably Regulation 2018/1725) and to put more emphasis on some issues such external activities and whistleblowing, the new code was also the occasion to include staff working at the EDPB Secretariat to whom the code of conduct also applies.

A series of decisions following the Staff regulations were put in place at the EDPS, such as on anti-harassment, disciplinary proceedings and administrative investigations, or on whistleblowing. The latter was revised on 29 November 2019 in order to implement Article 25 of Regulation 2018/1725 and to reinforce the rights of the persons concerned whether whistleblowers and alleged wrongdoers. It also introduces an annex of a risk assessment concerning this procedure as well as resulting mitigating measures. The decision on anti-harassment was also revised on 22/12/2020 in order to define the role as well as the selection procedure of the confidential counsellors.

The specific code of conduct for the Supervisors was adopted at the end of 2015. It underlines the accountability of the Supervisors to integrate ethical insights into their daily work as independent regulators and policy advisors in the field of data protection, following the new EU institutional framework and the Lisbon treaty. The code has also been revised and adopted on 6 December 2019.

The Ethics framework of the EDPS was adopted on 17 October 2016. It is regarded as an important contribution to the EDPS strategy of leading by example as the guarantee of Ethics reinforces the principles of transparency, professionalism and accountability of the institution and its staff. It was revised on 12 November 2019 due to the new legal framework (notably Regulation 2018/1725).

The formal establishment of the position of the Ethics Officer of the EDPS with a clear mandate, independence and tasks, including reporting to the Management Board at least once per year on the implementation of the Ethics Framework, shows the commitment of the institution to achieving high levels of Ethical standards.



The Ethics Framework of the EDPS governs the conduct of the Supervisors and all the members of the Secretariat, including detached national experts, trainees and all other external staff, in their relations with other EU Institutions, with other stakeholders, and with the general public at large.

Staff members shall comply with the provisions of the EDPS ethics framework. The conduct of staff shall neither undermine their professional integrity and impartiality nor harm the reputation of the institution. Save as otherwise provided by the Memorandum of Understanding between the EDPS and the EDPB<sup>6</sup>, the conduct of members of the Secretariat providing assistance to the Secretariat of the EDPB shall also be governed by this Ethics Framework. A specific raising awareness session was provided on 6 December 2018 to the staff members of the EDPB Secretariat.

## **2.2.2 The 2019 discharge questionnaire and the Ethics Officer Activities**

In the 2019 discharge questionnaire to the EDPS (November 2020), the Committee on Budgetary control has requested detailed information on the achievements arising from the ethics framework to be presented in the next annual activity report. To answer this request, the activities where the Ethics Officer was implied were the following:

### **2.2.2.1 External activities**

The 13/9/2019 EDPS external activities decision, mirrored in the revised code of conduct of end 2019, has left the main principles remaining identical but the process is clearly lighter. There is a need for prior permission to engage in an outside activity or an assignment but there is no need to declare activities when all of the following conditions are met:

- (a) they are unpaid or do not generate revenues;
- (b) they are neither pursued in a professional capacity nor are performed for a commercial entity;
- (c) they are performed outside the working hours agreed with the line manager of the staff member concerned or are covered by a duly approved leave or recuperation;
- (d) the impartiality and objectivity of the staff member while performing his duties are not compromised, or may not appear to be compromised in the eyes of third parties, because of interests which diverge from those of the institution;
- (e) the outside activity or assignment has not a negative impact on the reputation and/or on the trustfulness of the institution;
- (f) the other obligations laid down in the Staff Regulations are complied with.

The Ethics Officer assessed the content of those activities; the related triggered absences if any, the financial arrangements if any, related publications and if they were compatible with the interests of the EDPS.

During 2020, the Ethics Officer has reviewed nine requests for authorisation to engage in an outside activity related to the following areas:

- ) activities in the context of seminars, researches, lectures or courses in Universities
- ) member of editorial board of law periodical

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<sup>6</sup> Art. 75.4 of the General Data Protection Regulation

- ) external activities linked to former or current functions without any conflicts of interests
- ) external activity totally outside EDPS activities area but remunerated (at a Museum in the context of a CCP)

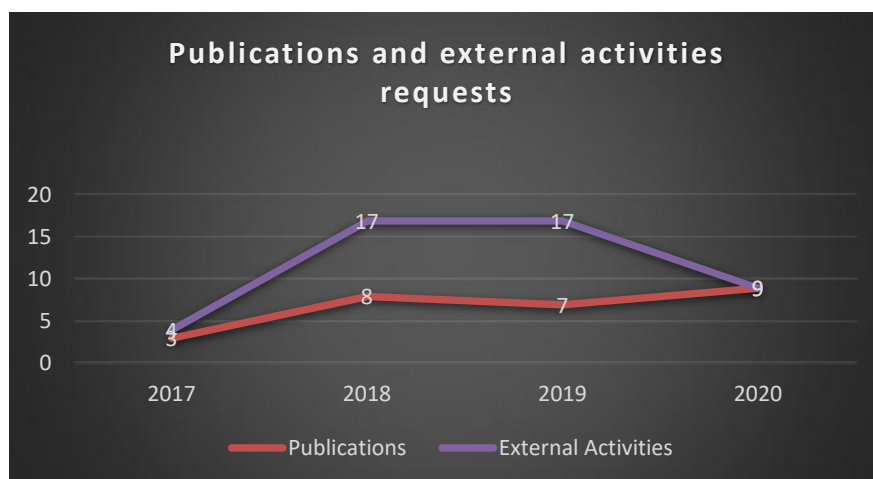
The number of request has halved as compared to 2019, most probably as a result of the impact of the sanitary crisis. See chart below.

### 2.2.2.2 Publications

When an official wants to publish an article, he/she needs to ask for a prior authorisation.

During 2020, the Ethics Officer has reviewed nine requests to publish texts in different law reviews (Italian, Polish, French, Belgian, English and even in Uruguay). See chart below. The Ethics Officer assesses if the content of those intended publications is liable to prejudice the interest of the EU.

It should also be noted that these two types of queries could come both from the EDPS staff members as from the staff members of the EDPB Secretariat. Indeed, the Code for staff is applicable to all staff.



### 2.2.2.3 Code for the Supervisor: monitoring of the action plan

When the code of conduct for the Supervisor was revised in 2019, the action plan adopted at the first edition of 2015 was still applicable in addition with further checks by the Ethics officer. With the new code of conduct for the Supervisor, this action plan remained in place as the content and the obligations on the Supervisor remain the same. The Ethics Officer ensured the controls in the same way in 2020.

1. Conferences and meetings with related missions are published regularly on the EDPS website
2. the declaration of interest (annex 1 of the code for the Supervisor) to avoid any conflicts of interest and to declare any outside activities is completed
3. Representation expenses, hospitality, gifts given by the Supervisor are mentioned in the appropriate document.

4. Gifts given to the Supervisor are listed as appropriate
5. Decorations, prizes or honors are listed as appropriate
6. Post term of office activities of former supervisors are declared where necessary,
7. The Ethics officer communicates information to the new Supervisor about obligations and application of the Code to any new Supervisor where necessary.

#### **2.2.2.4 Comments of the budgetary authority within the framework of the discharge 2018**

On 28.2.2020, the report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, from the Committee on Budgetary Control noted the following elements as far as the Ethics framework is concerned:

- ) Notes that the first action plan of the ethics officer was fully accomplished and that the second report foresees several measures such as the revision of the codes of conduct for supervisors and staff, a revised decision on external activities and the possible adhesion to the new transparency register for Union institutions, etc.; invites the EDPS to implement such requested measures as soon as possible; welcomes the awareness raising sessions in line with the ethics framework; asks for detailed information on the achievements arising from the ethics framework to be presented in the next annual activity report;
- ) Welcomes the fact that the internal rules concerning whistleblowing adopted in 2016 will be updated in order to strengthen the protection of whistleblowers and alleged wrongdoers; notes the existence of some protection measures such as a risk assessment and an access limitation to a strict “need to know basis” to the related files; encourages the EDPS to ask its ethics officer to give special attention to this issue in the next awareness raising session organised for all staff; notes with satisfaction that EDPS has had no case of whistleblowing so far;
- ) Welcomes the fact that the decision on anti-harassment has been made available to the entire staff via the EDPS intranet; notes with satisfaction the fact that the EDPS is currently working on revising the anti-harassment decision, as well as on a mandate to appoint additional confidential counsellors; notes that 69 % of colleagues acknowledged in the 2018 staff survey that they were aware of the existing policy on psychological and sexual harassment; welcomes the fact that in 2018 one confidential counsellor was trained;
- ) Welcomes the fact that the curricula vitae and declarations of interests of the supervisors are available on the EDPS website; notes that those declarations are necessarily of a self-declaratory nature and neither the EDPS nor its ethical officer have any investigating powers to ensure the veracity and the exhaustiveness of the declared data; calls on the EDPS to evaluate how to improve the system together with other Union institutions and bodies;
- ) Calls on the EDPS to guarantee publication and regular updating on its website of all its guidelines and procedures related to the ethical framework; calls on the EDPS to continue its efforts to improve the information available online, in terms of transparency and public scrutiny.

As a global answer to all those welcoming and positive points, the Ethics Officer is paying careful attention to all online information relating to guidelines and procedures related to the ethical framework. All those new decisions mentioned above have been downloaded on the Intranet immediately of their adoption. The importance of this topic has been underlined in staff meetings and should be detailed at the next possible awareness session available to all EDPS and EDPB staff.

### **2.2.3 Action plan 2020**




In the third action plan (of year 2020) of the Ethics officer, it was foreseen to present a raising awareness session to all staff (EDPS and EDPB) just after the publication of the EDPS strategy. It was supposed to take place end of March 2020. A group of participants met several times in January and February to make of this presentation a bit different from usual with lived situations. However, as all other Institutions, the EDPS/EDPB staff has been blocked by the Covid situation. A virtual presentation at distance was not chosen, as some staff were not able to attend. The Ethics Officer with the agreement of the Director is waiting for the first opportunity to have it in real which will be the occasion of going in an in-depth presentation coming to every major changes in particular on the new external activities decision and the new whistleblower decision. Nevertheless, it should be mentioned that all new comers are provided with a raising awareness session on the EDPS Ethical Framework and with the new Code of conduct for staff. It already occurred three times (February, June, September and November) with around 40 persons concerned.

The other topics of the action plan 2020 mentioned in the activity report of the EDPS Ethics officer were postponed to a later time when we will come back to some kind of normality. Most of them are relating to the transparency issue, whether the Registry or a possible SLA, have put on hold by the other institutions. The same is applicable to the relations with the European Ombudsman and the Ethics Departments of the European Parliament and the Council. The same goes with the Code of conduct for the EDPB Chair and Vice Chairs which have been considered by themselves as not a priority.

The Ethics officer is of course willing to come back on those issues as soon as the situation is back to normal but it may take unfortunately a while. But she will do the utmost possible to trigger at minimum discussions on the topics

### **2.2.4 Action plan for 2021**

The fourth report provided by the Ethics Officer (8 January 2021) to the Management Board established the following action plan:

-  A new presentation raising awareness of EDPS/EDPB staff in the course of 2021 due to the fact the sanitary crisis has made impossible in 2020
-  To deepen the relations with the European Ombudsman in particular and with the Ethics departments of the European Parliament and the Council.
-  To reflect with the EDPB on the opportunity of having a code of conduct for the EDPB Chair and Vice Chairs.

- ✚ To actively engage in any organizational changes for the so-called new normal to ensure that the principles of the Ethics Framework are fully integrated as part of the DNA of our organisation.

# 3. Resource management

## 3.1 Human resources

The EDPS has been working on different projects during 2020, notably:

- ) 360 exercise for managers
- ) Paperless appraisal in Sysper
- ) Preparation of a new Data protection specialist competition
- ) Internal coaching and HRBA teasers for staff
- ) EDPB secondment programme - pilot
- ) Revamping the welcome day for newcomers and adapting it to remote working conditions
- ) Review of the procedure relating to anti-harassment and the appointment of confidential counsellors
- ) Review of the general provisions regarding the conditions of employment of contract staff
- ) Guidelines for jobshadowing
- ) Guidelines to recognise, prevent and manage staff burnout
- ) Guidelines on the probationary period procedure for officials
- ) Definition of the role of the EDPS wellbeing coordinator

Due to the COVID-19 pandemic, HRBA focussed additionally on adapting to remote working, recurrent updates and information to staff as well as adapting the EDPS premises to safety and health measures required. Moreover, the focus went on helping our colleagues coping with the new way of working and supporting them as much as possible by proposing initiatives to increase morale and well-being.

Initiatives such as “peer learning virtual chats” facilitated by the internal coach were set up as an opportunity for staff to share in small groups what they were experiencing during the lockdown period both professionally and personally, connect with each other and learn from each other. A specific workshop on the theme of managing stress and coping with anxiety was also organised in June for voluntary participation by staff members. This workshop offered various methods to help staff cope with the stress and anxiety caused by the pandemic situation.

In November and December, the EDPS organised a remote collective exercise for all staff centred around the idea of bringing staff/teams back closer together with a sense of “collective” belonging to the institution. A report was drawn up at the end of the cycle with the main outcomes of the sessions and was presented to the management team. Also, inspired by an initiative in the European Commission, the EDPS organised random virtual coffees for staff who could join on a voluntary basis. This gave staff the occasion to meet up with colleagues they might not see often and served as a replacement for ad hoc encounters one may have usually in the office when we take the lift or walk down the corridor.

### **Guidelines on prevention of burnout**

We also developed guidelines to recognise, prevent and manage staff burnout. The objective of these guidelines is to help identify what characterises burnout and the possible causes of burnout so as to be able to define the EDPS response to this complex phenomenon at different levels: prevention, during absence for cause of burnout and reintegration of staff when they return to work.

### **Wellbeing coordinator**

The EDPS has developed a new role aiming at supporting the wellbeing of EDPS/EDPB colleagues. The wellbeing coordinator will collaborate with other key actors to ensure that wellbeing activities are being organised for staff members. In addition, this person will be the contact point for all wellbeing related questions colleagues may have.

Annex 2 provides a series of charts relating to Human resources as regards:

- ) Staff distribution by nationalities and gender
- ) Staff distribution by grades for officials
- ) Staff distribution by function group for contract agents

## **3.2 Budget**

### **3.2.1. Allocated budget for 2020**

In 2020, the EDPS was allocated a budget of EUR 19.476.998. This represents an increase of 16.3% compared to the 2019 budget (see Annex 3).

The overall increase was mainly due to the impact of the new tasks resulting from the European Data Protection Regulation 1725/2018 and the new supervisory tasks in connection with enforcement and judicial cooperation agencies (e.g. EPPO, Eurojust). Other elements impacting the 2020 budget were the consolidation of the European Data Protection Board secretariat (created the 25th May 2018) for which the EDPS was entrusted to provide an independent secretariat, the EDPS strategy 2020-2024 linked to the new mandate and the temporary allowances foreseen for the end of the mandate of the previous Supervisor.

### **3.2.2 Budget execution 2020**

As regards budget implementation, the overall rate in commitment appropriations amounted to 73%. This rate is substantially lower than the previous year due to the impact of COVID-19 related restrictions on the Institution's activities.

Implementation of Titles 1 and 2, 80% and 74% respectively, were substantially lower than last year especially due to the global pandemic restricting missions and external trainings and slowing down the implementation of certain service and supply contracts. Furthermore, participation in and organisation of events were made impossible. Another obstacle preventing us from a higher implementation in Title 2 was the delay on the foreseen expansion within the building we are currently occupying and sharing with the European Ombudsman. Indeed, due to the staff increases foreseen both for 2019 and

2020, it was agreed with the European Parliament (in who's building we are hosted) that we would get further office space and would occupy the whole building as from the last quarter of 2020. The corresponding budget line was therefore increased to cover for the related extra rent and charges. Due to several reasons, this expansion did not occur as foreseen and therefore the extra funds remained unused.

As to Title 3, dedicated to the EDPB secretariat, the implementation rate was only 62%. This is even lower than titles 1 and 2. This is because a substantial part of the EDPB budget relates to meetings of the Board, which are suspended since the month of March. There were in consequence few travel expenses reimbursements and also other meeting related expenses (catering, interpretation, etc.) were negatively affected.

### **3.2.3 Working methods**

2020 marked the start of the implementation of a new budget management tool, Bluebell. Bluebell is a tool developed and used by the ERCEA in order to:

- establish and revise forecast for the budget based on data uploaded and updated by operational units;
- give a finer view of all budget lines by detailing them into actions (activities) and linking these actions with posting criteria in ABAC so that the forecast can be compared in real time with the actual execution.

The implementation of this system is expected to increase the efficiency as the operational units will enter directly the appropriation requests in the system. The Finance team will in consequence not encode the information anymore but play a supportive and coordination role. In addition, the monitoring of budget execution will require less manual intervention and will in consequence be more reliable.

As Bluebell would dramatically change our way of working, we have decided to start a first year with only two pilot units working directly in it while HRBA will still ensure encoding data provided by other units. The pilot units were trained in the last quarter of 2020 and had a first hands-on experience while entering the 2021 appropriations in the system.

### **3.2.4 Draft budget 2021 exercise**

The 2021 budget exercise was of particular importance for two main reasons:

- it also covered the forecasted appropriations needed under the new Multi-annual Financial Framework (MFF);
- it was supposed to reflect the priorities under the new EDPS mandate which was being finalised at the same time.

Apart from the above, which required substantial efforts from all units throughout the Institution, the exercise was also affected by the start of COVID-19 outbreak. It was, certainly at that point, difficult to foresee how long and to which extent the pandemic would affect the activities of the Institution and in consequence the appropriations needed to conduct them.



Notwithstanding these challenges, the EDPS successfully completed the exercise. The budget and MFF were subsequently approved by the budget authority without major modifications.

### **3.2.5 Discharge 2018 Budget**

As every year, the Court of Auditors carried out an audit with respect to the reliability of the annual accounts and the annual activity report of the year N-2. The Court confirmed the absence of material error and the effectiveness of the control systems.

The Budgetary Authority subsequently granted the EDPS discharge in respect of the implementation of the 2018 budget and only issued some minor observations in its recommendation which the Institution will address.

### **3.2.6 Staff**

In 2020 the tendency to grow in terms of staff numbers continued. Twenty new positions (FTE) were granted by the Budgetary in 2020 to cover the responsibilities stemming from Regulation 2018/1725, new supervisory tasks and new tasks for the EDPB, which resulted in an increase of 16% since previous year, reaching a total of 113 staff members at the end of December.

## **3.3 Procurement and contracting**

### **3.3.1 Professionalization**

In 2017, the procurement professionalization project was kicked off in order to increase the staff's knowledge on the subject and to implement more appropriate working methods. Substantial progress was made in 2020.

The internal documentation was completed with a procurement process guide which provides staff in an extensive way with the information on the processes of the different procedures. It furthermore includes a set of templates to be used by staff. This document was endorsed by senior management and made available to staff through publication on the Institution's intranet.

The procurement team also compiled a catalogue of interinstitutional framework contracts in which the EDPS is participating and made this available to staff as well.

The team furthermore organised several training sessions for staff involved in financial operations and procurement.

A second aspect of this professionalization process relates to the tools we have at our disposal. The growing budget and the increasing number of procurement procedures indeed justifies the implementation of appropriate tools. HRBA assessed the possibility to implement the Public Procurement Management Tool (PPMT) which is now used by the departments of the European Commission. Although it was concluded that this tool would be suitable, also to manage very low value procedures which constitute the majority of

files at the EDPS, its implementation requires the implementation of the Commission’s document management system ARES. ARES Migration was then explored and kicked off at the end of the year.

Awaiting implementation of the PPMT, procurement files are processed through and archived in the Case Management System (CMS), which is the system developed for the EDPS core activities.

In addition, the EDPS implemented eTendering and eSubmissions after signature of the Service Level Agreement and training of relevant staff. These platforms were successfully used for the Institution’s first open procedure.

### 3.3.2 Framework contracts

The participation in large Interinstitutional Framework Contracts is part of the approach adopted by the EDPS to come to a higher degree of administrative efficiency. By its participation, the Institution is not mobilising resources for the preparation and the management of these procedures, which often requires advanced technical knowledge (for instance for the drafting of tender documents). Secondly, the results of these procedures are resulting in services and supplies constituting better value for money. It is clear that the EDPS as a small Institution, could not come to the same prices and conditions for a relatively low volume of services it needs. The most important interinstitutional framework contracts we are relying on are related to IT consultancy, interim services, office supplies and office furniture.

In 2020, we have expressed our interest in participating in the following procedures:

Reference	Subject	LCA	Interest	Year
DIGIT/A3/PO/2017/023	Software Acquisition - SIDE II	DIGIT	Yes	2020
HR/2020/OP/IT	Information Technology Training Services	HR	Yes	2020
HR/2020/PO/LANG	Language training services	HR	Yes	2020
OIB/2020/OP/0071	Prestations archivistiques et services associés à ceprocessus pour les Institutions et organes de l’Union	OIB	Yes	2020
2019/OP/0073	Collecte et valorisation des encombrants	OIB	Yes	2020
Frontex/OP/534/2020/DT	Purchase of Personal Protective Equipment (PPE)	Frontex	Yes	2020
PE/ITEC-ITS20	Development and maintenance of production information systems	EP	Yes	2020
SCIC-PN-2020-000002	Provision of services and equipment in the field of audio-visual and conference technology	SCIC	Yes	2020
PE/ITEC-DEV-DISS-NP-2020	Development and maintenance of dissemination information systems	EP	Yes	2020
PE/ITEC-ICT-INFRA-NP-2020	External Provision of IT Services/Expertise in ICT infrastructures	EP	Yes	2020
PE/ITEC-ICT-SEC-NP-2020	External Provision of IT Services/Expertise in IT security	EP	Yes	2020

In addition to the participation in these interinstitutional procedures, the EDPS conducted few procedures itself leading to framework contracts.

One open procedure was launched and concluded in 2020 for services related to the “*production of the annual report of the European Data Protection Board and European Data Protection Supervisor, including stakeholder surveys and analysis*”. This procedure resulted in a Framework Contract with a duration of four years.

The EDPS has conducted two middle value negotiated procedures leading the conclusion of multiple framework contracts in cascade related to:

- video production services for the EDPS and EDPB;

- printing services and graphic design services in the context of various projects commissioned by the EDPB/EDPS.

### 3.3.3 Contracts concluded in 2020

Of the 69 procedures carried out, most were very low value procedures and procedures implementing existing framework contracts.

Six negotiated procedures without publication to be reported in line with art. 74, 10 FR were concluded in 2020.

## 3.4. Finance

In order to increase the degree of business continuity for financial operations, the list of appointed financial actors was completed taking into account back-up arrangements of the different units and sectors. In addition, another Authorising Officer by sub-delegation was appointed within the HRBA Unit which should allow timely payment validation and contracting also when management is prevented.

From 1 January 2020, the EDPS uses a new financial workflow Speedwell. It can be seen as an extension of ABAC, allowing the electronic circulation of invoices between all actors involved in a payment process and guides them through the verification. The system has an ECAS access which guarantees the identity of the person giving a visa, including the 'certified correct' visa of the invoice and 'passed for payment'. The implementation of this electronic workflow guaranteed the business continuity while remotely working due to the COVID-19 lockdown.

In 2020, HRBA also worked on the update of the EDPS Finance Guide in order to take into consideration the main recommendations of the Court of Auditors and, more generally speaking, to make it a more exhaustive document able to provide guidance to all colleagues in the Institution involved, directly or indirectly, in financial management. This review was substantially finalised at the end of the year and is planned to be endorsed by senior management in the first quarter of 2021.

### Statistics related to ex-ante controls

In 2020, the overall number of transactions decreased substantially compared to 2019 due to the COVID-19 pandemic. The travel related restrictions applicable since the first lockdown engendered cancellations of non-essential work related travel resulting in the quasi absence of mission and expert reimbursements (which normally constitute a substantial part of the payment request processed by the EDPS).

**Payment requests**

	2019	2020
Expert reimbursements	1542	319
Missions	298	85
Other	532	363
<b>Total</b>	<b>2372</b>	<b>767</b>

As required by art. 74, 5. of the Financial Regulation, all operations are subject to ex-ante controls. These controls comprise the initiation and ex-ante verification of an operation and concern both the operational and financial aspects. They are operated by staff with the required skills appointed by the Authorising Officer by Delegation.

The EDPS uses checklists listing the basic controls to be operated by the operational and financial agents involved in the processing of the operations. Since the beginning of 2020, the EDPS uses a new electronic processing system (Speedwell) which is connected with the accounting system (ABAC) and facilitates substantially the aforementioned basic controls applied on payments and commitments.

Missions, expert payments and salaries are processed by the Paymaster Office of the European Commission (PMO) in application of the Service Level Agreement concluded between the respective Institutions. These payments are subject to an additional layer of ex-ante controls which are operated by the PMO staff in addition to the controls applied at the EDPS.

In 2020, the EDPS verifying agent returned 8,17% of the files to the initiator. Most of these refusals are related to incorrect GL accounts, budget line and missing supporting documents.

	Total	Refused	
Payment orders	426	23	5,40%
Commitments	311	34	10,93%
<b>Total</b>	<b>737</b>	<b>57</b>	<b>8,17%</b>

(\*) A payment order can contain several payment requests

### 3.5 Missions management

Missions' management at the EDPS is conducted in accordance with the applicable rules of the Commission's Guide to Missions. The EDPS has adopted a speaking engagement policy, which clarifies the rules in those cases where the mission expenses should be paid by the organiser and is selective as regards attendance to external events.

For 2020, mission statistics only relate to the months January to March. All missions from mid-March till the end of the year have been cancelled due to the Covid 19 confinement.

2020	Supervisor	Staff
N° missions	4	39
Average cost	€537	€578

The chart above provides information about the number of missions and the average cost. All missions of the Supervisor are conducted with full transparency as provided in their

Code of conduct. Missions by staff are encoded in MIPs and a mission report is uploaded as a supporting document in the statement of expenses.

As requested by the European Parliament in the previous discharge report, the two following tables give more detailed information in terms of transparency.

<b>N° DAYS + COSTS PER TEAM 2020</b>			
<b>UNIT/SECTOR</b>	<b>N° MISSIONS</b>	<b>TOTAL COSTS</b>	<b>AT CHARGE ORGANISERS</b>
DIRECTOR	5	2.209,47	4
SUPERVISION & ENFORCEMENT	16	4.684,96	1
POLICY & CONSULTATION	7	2.853,63	2
HRBA	1	78,35	
ITP	4	1.040,32	1
EDPB	6	11.680,69*	3
<b>TOTAL EDPS/EDPB</b>	<b>39</b>	<b>22547,42</b>	<b>11</b>

\* 1 long term mission included for an amount of 10.377 €

<b>SUPERVISOR 2020 (detailed list in Annex 4)</b>		
<b>NAME</b>	<b>N° MISSIONS</b>	<b>TOTAL COST</b>
WIEWIOROWSKI Wojciech Rafal	4	2.146,84
<b>Total</b>	<b>4</b>	<b>2.146,84</b>

The EDPB Chair and Vice-Chairs did not carry out any mission in 2020.

In order to comply with the recommendation of previous discharge reports which calls for an overview in the Supervisor's annual activity report of the sections on procurement and missions' management, a comparative table of the last four years is included below. However, for 2020, mission statistics only relate to the months January to March. All missions from mid-March till the end of the year have been cancelled due to the Covid 19 confinement.

	<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>	
	<b>Members</b>	<b>Staff</b>	<b>Members</b>	<b>Staff</b>	<b>Members</b>	<b>Staff</b>	<b>Members</b>	<b>Staff</b>
<b>Number of missions</b>	52	253	39	204	29	301	4	39
<b>Average cost in €</b>	€860	€638	€885	€701	€885	€701	€537	€578
<b>Total cost in €</b>	€44.719	€161.486	€34.517	€143.107	€17.800	€207.497	€2.147	€22.547

# 4. Management and internal control systems

## 4.1 Characteristics and nature of activities

### 4.1.1 The mission of the EDPS

Data protection is a fundamental right, protected by European law and enshrined in Article 8 of the Charter of Fundamental Rights of the European Union.

In order to protect and guarantee the rights to data protection and privacy, the processing of personal data is subject to control by an independent authority. The European Data Protection Supervisor (EDPS) is the European Union's independent data protection authority, tasked with ensuring that the institutions and bodies of the EU (EUI) embrace a strong data protection culture.

In accordance with Regulation (EU) 2018/1725 (1) the EU as a policy making, legislating and judicial entity looks to the EDPS as an independent supervisor and impartial advisor on policies and proposed laws which might affect the rights to privacy and data protection. The EDPS performs these functions by establishing itself as a centre of excellence in the law, and in technology, insofar as it affects, or is affected by the processing of personal data.

The EDPS carries out its functions in close cooperation with fellow data protection authorities (DPAs) as part of the European Data Protection Board (EDPB), and aim to be as transparent as possible in its work serving the EU public interest. Under the General Data Protection Regulation (GDPR), the EDPS is also responsible for providing the secretariat to the EDPB.

Furthermore, the EDPS is also in charge of supervising the processing of personal data relating to activities at the EU's law enforcement agency, Europol and the EU's agency for judicial cooperation, Eurojust. The relevant legislation in this case is Regulation (EU) 2016/794, which applies to Europol and Regulation (EU) 2018/1725 and Regulation (EU) 2018/1727, which applies to Eurojust. A similar, specific data protection regime is in place for the European Public Prosecutor's Office (EPPO).

The EDPS:

- ) **monitors** and **ensures** the protection of personal data and privacy when EU institutions and bodies process the personal information of individuals.
- ) **advises** EU institutions and bodies on all matters relating to the processing of personal information. We are consulted by the EU legislator on proposals for legislation and new policy development that may affect privacy.
- ) **monitors** new technology that may affect the protection of personal information.
- ) **intervenes** before the EU Court of Justice to provide expert advice on interpreting data protection law.

- J **cooperates** with national supervisory authorities and other supervisory bodies to improve consistency in protecting personal information, in particular both as a provided of the Secretariat and member of the European Data Protection Board.

In addition, the EDPS:

- J Aims to develop a culture of accountability whereby the institutions recognise their own responsibility to ensure the protection of personal data when developing new EU policies and legislation;
- J Provides support to the EU institutions to be accountable: to help the legislators carry out their own assessment of proposed measures implying the processing of personal data, the EDPS has developed a toolkit on the concept of necessity;
- J Aims to provide pragmatic advice by analysing the complexity of a proposal and take advantage of the experience gained in its supervision cases with the EU institutions; the EPDS looks for constructive and workable solutions;
- J As an advisor on all data protection matters at EU level, in addition to providing advice on a consultation by the Commission (or other institution), the EDPS also issues advice on its own initiative, when there is a matter of particular significance.
- J The EDPS is not for or against any measure involving the processing of personal data and bases its assessment and advice on the evidence justifying its need.

## 4.1.2 Core values and guiding principles

### 4.1.2.1 The core values

The EDPS approach to its tasks and the way in which it works with its stakeholders are guided by the following values and principles:

- **Impartiality** – working within the legislative and policy framework given to the EPDS, being independent and objective, finding the right balance between the interests at stake.
- **Integrity** – upholding the highest standards of behaviour and to always do what is right
- **Transparency** – explaining what we are doing and why, in clear language that is accessible to all.
- **Pragmatism** – understanding its stakeholders’ needs and seeking solutions that work in a practical way.

### 4.1.2.2 General principles

1. The EDPS serves the public interest to ensure that EU institutions comply with data protection policy and practice. He contributes to wider policy as far as it affects European data protection.
2. Using his expertise, authority and formal powers to build awareness of data protection as a fundamental right and as a vital part of good public policy and administration for EU institutions.
3. He focuses his attention and efforts on areas of policy or administration that present the highest risk of non-compliance or impact on privacy. He acts selectively and proportionately.

### **4.1.3 Data Protection and the EDPS in 2020**

The characteristics and nature of activities at the EDPS dealing with data protection are dealt in point 2 of the present report. This sections deals only with internal administration and communication

#### **4.1.3.1 Internal administration HRBA**

The EDPS continued to grow in 2020, both in terms of financial and in human resources. The Budgetary Authority, upon a through HR forward planning, granted the EDPS the requested increase of staff that was esteemed to be necessary to cope with the increased responsibilities assigned to us, mainly stemming from:

- ) Regulation 2018/1725
- ) New supervisory tasks in connection with enforcement and judicial cooperation agencies (e.g. EPPO, Eurojust)
- ) New tasks for the EDPB
- ) EDPS strategy 2020-2024

Despite the exceptionally difficult context, the HR team at the EDPS kept recruiting as from the early stages of the first lockdown. This required agility, flexibility and creativity. We went on using the list of (33) Data Protection experts (competition started in 2018), from which only one third is remaining. Besides, he EDPS also hired contract staff, to fill in specific needs or fill in positions temporarily free due to long absences.

#### **4.1.3.2 Communicating data protection**

The reach and influence of EDPS' communication are constantly expanding. Effective communication is vitally important in ensuring that information on EDPS activities reaches the relevant external audience.

With public interest and engagement with data protection increasing, its communication efforts in 2020 aimed to build on successes of previous years and reinforce our status as a respected, international leader in the data protection field. This involved sustained efforts in several areas, including online media, events, publications and external relations with press and stakeholders.

Its main communication exercise in 2020 was the publication of the EDPS Strategy 2020-2024, together with a new corporate brochure and video. The EDPS has also developed a consistent and targeted communication strategy with various stakeholders to address the COVID-19 pandemic's newest developments and data protection issues.

As social media have become an indispensable communication tool for the EDPS, it continued its efforts to implement an effective social media strategy that helped it to expand its influence and reach online. Through its accounts on Twitter, LinkedIn and YouTube, the EDPS is now able to reach an increasingly diverse and global audience. The three platforms are directly accessible from the EDPS homepage.



## **4.2 Strategy 2020-2024**

### **4.2.1 EDPS strategic objectives**

The EDPS issued in June 2020 its 2020-2024 Strategy 'Shaping a Safer Digital Future: a new Strategy for a new decade'. In a connected world, where data flows across borders, solidarity within Europe, and internationally, will help to strengthen the right to data protection and make data work for people across the EU and beyond. The Strategy focuses on three pillars: foresight, action and solidarity to address digital challenges for a safer, fairer and more sustainable future. Its 3 strategic pillars and related actions are detailed in Annex 5.

### **4.2.2 Action plan**

The related action plan is detailed in Annex 6. This action plan is implemented and monitored through the yearly annual management plan (AMP).

### **4.2.3 Measuring performance**

The EDPS uses a number of key performance indicators (KPIs) to help it monitor its performance in the context of the main objectives set in the EDPS Strategy. This ensures that it is able to adjust its activities, if required, to increase the impact of its work and the efficiency of its use of resources.

The KPI scoreboard below contains a brief description of each KPI and the results on 31 December 2020. These results are measured against initial targets, or against the results of the previous year set as benchmark.

The outbreak of the COVID-19 pandemic, and its far-reaching consequences at every level, changed substantially the context and circumstances in which the EDPS had to operate. The KPIs monitoring results should be considered against this background. In 2020, the EDPS met or surpassed - in some cases significantly - the targets set in five out of eight KPIs.

With regard to KPI 5 (level of satisfaction on guidance and training), in 2020 the vast majority of training and meetings were conducted remotely, and satisfaction surveys were not conducted due to technical limitations on ensuring anonymous feedback. The sample of sessions that took place in presence is not representative to draw meaningful conclusions, therefore this KPI has not been assessed in 2020.

KPI 7 (Staff satisfaction) fell short of reaching its target. The figure reflects the staff satisfaction in June 2020, when the survey took place. This was three months after the beginning of the Covid crisis, in a climate of anxiety and uncertainty. In this year's survey, a chapter was added about the implementation of EDPS Business Continuity Plan during the lockdown. These extraordinary circumstances may have played a role in failing of reaching the set target. In addition, it is to be noted that the rate of participation was rather low (45%) and that there were quite a lot of newcomers, for whom it may have been difficult to answer some questions.

For KPI8 (Budget implementation), the implementation of 72.97 was substantially lower compared to 2019 (92%) and well below the benchmark of 90%. This is mainly a consequence of the COVID-19 pandemic which affected dramatically the activities of the Institution. Since the first lockdown in March 2020 by the Belgian government severe restrictions apply on movement of staff and other persons. This affected directly the mission budget and expert reimbursement which constitute a major part of the budget but other budget items were affected indirectly as well (e.g. interpretation). There were furthermore some other external factors which also impacted budget execution to a lesser extent (postponement of the removal of the Ombudsman from the building). We expect that the impact of the pandemic will be substantial for 2021 (drafted and voted before COVID-19) as travel restrictions are still applied and expected to continue until the vaccination campaign is in an advanced stage.

## KEY PERFORMANCE INDICATORS 2020

KEY PERFORMANCE INDICATORS		Results at 31.12.2020	Target 2020
KPI 1 Internal indicator	Number of initiatives, incl. publications, on technology monitoring and on promoting technologies to enhance privacy and data protection organised or co-organised by EDPS	9 initiatives	9 initiatives
KPI 2 Internal & External Indicator	Number of activities focused on cross-disciplinary policy solutions (internal & external)	8 activities	8 activities
KPI 3 Internal Indicator	Number of cases dealt with at international level (EDPB, CoE, OECD, GPEN, International Conferences) for which EDPS has provided a substantial written contribution	42 cases	10 cases
KPI 4 External Indicator	Number of opinions/comments issued in response to consultation requests (COM, EP, Council, DPAs...)	5 opinions 12 formal comments	10 cases
KPI 5 External Indicator	Level of satisfaction of DPO's/DPC's/controllers on cooperation with EDPS and guidance, including satisfaction of data subjects as to training	/	70%
KPI 6 External Indicator	Number of followers on the EDPS social media accounts <sup>7</sup>	62970 (LI: 38400, T: 22493, YT: 2077)	Previous year's results + 10%
KPI 7 Internal Indicator	Level of Staff satisfaction	71%	75%
KPI8 Internal Indicator	Budget implementation	72.97%	90%

### 4.3 Inter-institutional cooperation

In 2020, inter-institutional cooperation continued in the areas in which the EDPS is assisted by other EU institutions and bodies.

The Commission's assistance is extremely valuable to us in particularly with regard to financial, accounting and budgetary matters. DG Budget provides technical assistance to the EDPS in financial and accounting matters and the Central Financial Service assists our small organisation providing information upon request. The Commission's Accounting Officer acts simultaneously as Accounting Officer to the EDPS. The same applies to the Commission's Internal Audit Service.

Inter-institutional cooperation presents many advantages from the perspective of good financial management and budget consolidation. This cooperation is vital for the EDPS, not only because of the small size of our organisation, but also because it increases

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<sup>7</sup> Twitter, LinkedIn, YouTube.

efficiency and allows for economies of scale; in addition, most of the expenditure remains within the EU administrations, therefore resulting in appreciable savings for the EU budget.

#### **4.4 Ex post controls**

According to art. 74.6 of the Financial Regulation, the Authorising Officer can organise, in addition to the mandatory ex-ante controls, also ex-post controls on sample basis depending on risks related to the transactions. As the Institution grew over the years with a substantially increasing budget and number of financial transactions, the EDPS Director, being the Institution's Authorising Officer by Delegation, appointed a verifier who issued ex-post verification reports since 2011. Results and major findings were systematically taken into consideration to re-enforce the existing internal controls.

Due to an internal re-organisation at the end of 2019, whereby the previous ex-post verifier was re-assigned to a position within the Finance Team, the ex-post could not be carried out. In order to avoid the risk of self-review, the ex-post verifier should not be involved in the financial circuits but on the other hand, have a thorough understanding of the financial legal and regulatory framework. For a small Institution as the EDPS, it was therefore not possible to find a replacement fulfilling both of the aforementioned requirements even after an Institution wide call for expression of interest was launched.

The EDPS is now exploring the following alternatives to the appointment of an internal ex-post verifier:

- finding a mutual arrangement whereby the verifications are performed by a competent agent of another Institution;
- contracting an audit company who would then perform a set of verifications in accordance with terms of reference, or
- reallocate the task to a newcomer in another team with the relevant knowledge and skill to accomplish this task

#### **4.5 Events during the year that affected reputation**

There were no events during 2020 that might have had a negative impact on the institution's reputation. The business continuity plan in place was effective and the period of compulsory closing of our premises did not lead to any issues of significance. The transition to the online and teleworking method was smooth and did not lead to any incidents.

#### **4.6 Internal control management system**

Internal control covers the totality of the policies and procedures put in place by the institution to ensure the economic, efficient and effective achievement of its objectives. In order to assess and improve the effectiveness of the internal control system, in 2013 the EDPS adopted 15 out of the 16 Internal Control Standards (ICS), laid down in the European Commission decision of 2007<sup>8</sup> <sup>9</sup>. The ICS decision was revised on 12/11/2019

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<sup>8</sup> Communication SEC(2007)1341.

<sup>9</sup> Only ICS number 16 related to Internal Audit Capability is not applicable to the EDPS.

in order to update the legal framework applicable to the EDPS. Furthermore, in the context of the Court of auditors' audit in relation with the Statement of Assurance 2019, the Court of Auditors in its decision of 6/5/2020 requested the EDPS to update its ICS decision in order to formalise the applicability of ICS 16.

Indeed, since its decision of 22 January 2013 on ICS, the EDPS decided that the ICS 16 as laid down in the European Commission decision of 2007, related to the Internal Audit Capability, was not applicable to it. The EDPS especially considered that the IAS being the internal auditor of the EDPS and taking care of the annual audit work plan which is the main task of the Internal Audit Capability, there were no need of applying ICS 16. The Court wanted the EDPS ICS decision to be clearer on this specific issue. Therefore a revised ICS decision was adopted on 6/10/2020 indicating that the EDPS relies on the internal audit capability provided by the European Commission. It is based on a Service Level Agreement. The IAS is setting up for the EDPS the annual audit work plan and as such, the EPDS applies the relevant provisions of the Financial Regulation as regard the implementation of an Internal Audit function.

An increasing number of implementing measures have been adopted to provide effective internal control of the processes in place. By way of example, measures taken to implement the internal controls standards (ICS) included in 2020:

- ) the adoption of updated Rules of Procedure on 15 May 2020 marked the consolidation of the organisation.
- ) The EDPS conducted a deep review and update of our acquis and all manual and procedures before the end of the mandate (this project was called "the book of rules"). The project was completed in time and all documents were uploaded on the Intranet for the benefit of everybody on the 20<sup>th</sup> of February 2020 as the management decided to give direct access to all these documents to all staff. They are categorized by units / sectors and by themes for HRBA. The ICC oversees any updates, and the staff can address any questions or comments to her.
- ) during the COVID CRISIS the contingency plan for the administrative preparedness for a possible pandemic COVID 19 was adopted on 10 March 2020
- ) The ICS decision was revised on 6/10/2020 (see the first paragraph above).

The EDPS shall establish each year an Annual Management Plan. That plan shall translate the long term strategy of the EDPS into general and specific objectives. The plan sets out the activities to be undertaken by specific objectives. The Annual Management Plan also includes the key performance indicators, defined in the Strategy 2020-2024, which are regularly measured to monitor progress achieved during the implementation phase.

Since the adoption of the decision on risk management in July 2012 –modern tools that help to identify the risks and possible plans of action- the EDPS has included risk management as an essential element of its global strategy. Risk management goes beyond assessing the risks; it also involves putting controls and measures in place that then need to be monitored. This assessment of risks and controls and measures in place is detailed in a risk register which is adopted, with close involvement of all managers of the organisation, at the end of every year. Due to the very specific EDPS circumstances and the Covid-19 situation, the 2020 risk register has been adopted in July 2020 and the one of 2021 was formally adopted at the Management Meeting of 17 March 2021. In view of

the sensitivity of some of the issues mentioned in the register, from now on the risk register will only be disclosed upon request.

These controls put in place by the EDPS, along with the procedural channels, are intended to correct any financial or procedural error that might arise. They are an integral part of the management of the EDPS, as are any corrections to which they give rise. The AOD is thus aware of any corrections. Neither the nature nor the frequency of the identified risks has been significantly relevant.

#### **4.7 Internal evaluation of the internal control system and indicators underpinning the statement of assurance**

The monitoring of the implementation of the ICS is the responsibility of the Internal Control Coordinator (ICC), who reports directly to the Director. Regular controls are carried out on the basis of a control matrix, which includes all the recommendations and actions to be undertaken in order to comply with the adopted ICS. The matrix is the object of regular reviews and updates. The ICC also meets the EDPS units/sectors to ensure effective implementation.

Since July 2014 a report on the implementation of the ICS is established twice a year to assess their effectiveness. The report is presented to the Management Board. Following a suggestion from the Court of Auditors , the ICS monitoring report will issued from now on once per year. The very last one has been issued on 16 December 2020.

Furthermore, the ex-post facto verification and the accounting correspondent functions monitor, on a sample basis, the legality and regularity of the financial transactions as well as the quality of accountancy once a year. Due to new recruitments and appropriate training, the ex post control and the accounting correspondent functions were again performed within the EDPS. Unfortunately due to an internal re-organisation at the end of 2019, whereby the previous ex-post verifier was re-assigned to a position within the Finance Team, the ex-post could not be carried out. The EDPS is searching for a appropriate solution (see point 4.4 above) in order to carry out the ex post facto verification.

This enables the institution to demonstrate that the overall internal control system is effective, not only that sufficient controls are in place but also that these controls take account of the risks involved and are effective.

At this stage, the AOD estimates that the level of management and control put in place is appropriate and improving. Such improvements are not likely to have a 'material' impact within the meaning of paragraph 0. No reservations are necessary with regard to the improvements underway.

At the time of writing this annual activity report, no significant errors have occurred, and no reservations are necessary as regards preventive controls.

No recommendations that are currently being implemented are therefore likely to have a material impact<sup>10</sup>.

## **4.8 Cost effectiveness and efficiency of Internal Control**

Being a very small Institution, the EDPS has neither the means nor the resources to carry out a classic cost-benefit analysis. Therefore, we have taken as a base the model applied by EPSO, since this office, as the EDPS, only manages administrative appropriations under Heading V of the EU budget. This model consists of a single global indicator which is calculated by dividing the approximate total cost of control by all expenditure made during the year (budget implementation in terms of payments).

The total number of FTE's involved in the four main control activities (internal control, procurement and finance) is estimated at around 5 FTE's.

The estimated average cost (all categories of cost included) of the control activities for 2020 would be around 550.000 Euros.

The total budget implementation in terms of payments for 2020 is expected to be of 14.211.719 EUR.

It means that the cost of the internal control activities represents only 3.87% of the EDPS expenditure.

## **4.9 Results of independent audit during the year**

There are two independent audits applicable to the EDPS: the European Court of Auditors and the institution's Internal Auditor.

### **4.9.1 Court of Auditors**

#### **4.9.1.1 Statement of Assurance 2020**

For the Statement of Assurance 2020, the Court of Auditors, in the context of the SoA 2020 approach as regards legality and regularity, will select one transaction for the main sample. If the transaction is a payment resulting from a contract signed between 2011 and 2020, the auditors will audit the related procurement procedure and treat any error according to their methodology (i.e. a significant error results in the whole payment being considered as affected by a 100% error), as they did in previous years.

As a specific topic, under SoA 2020, the Court will examine the management of expenditure by the EU institutions on Personal protective equipment (PPE) for their staff in the context of the Covid-19 crisis and the need to safeguard the physical protection of EU staff. The EDPS will not be included in the scope of this task.

As regards audit work on supervisory and control systems and the Examination of the 2020 Annual Activity Report (AAR), In SoA 2020, we will apply a rotational approach in terms of the assessment of supervisory and control systems (except for the Commission),

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<sup>10</sup> The materiality criteria used for this judgment are given in Chapter 0 of this report.

by which we examine in-depth the systems of two/three institutions and bodies each year.

The EDPS was selected for the in-depth assessment of systems for SoA 2019. Therefore, in SoA 2020, the work will be limited and include only:

- ✚ Internal procedure manuals;
- ✚ Ex-ante and ex-post verifications of commitments and payments;
- ✚ Registers of exceptions;
- ✚ Summary reports and indicators on (ex-ante and ex-post) controls;
- ✚ Recent relevant internal audit reports;
- ✚ Self-assessments on compliance with, and effectiveness of, internal control standards;
- ✚ Risk assessments;
- ✚ AARs.

The Court approach as regards the audit of the accounts and other work on supervisory and control systems and on the annual activity report remains the same as in previous years. On rotational basis (except for the Commission), they will examine in-depth the accounts of one/two institution(s) and bodies each year. The EDPS was not selected for this in-depth review for SoA 2020. They will perform only:

- ✚ Analytical review of financial data;
- ✚ Examination of bank confirmations;
- ✚ Review of budgetary reports and consolidation package.

At the date of issuing this AAR, preliminary findings of the Court of Auditors for 2020 are already available but should remain confidential at that stage. The final report will only be made public at a later stage, most probably in July. The EDPS will be informed in case of any remarks.

#### **4.9.1.2 Statement of Assurance 2019 conclusions**

For the nine consecutive year, the Statement of Assurance of the European Court of Auditors concerning the financial year 2019 (SoA 2019) did not contain any observation on the reliability or the 2019 provisional accounts. As to the remark of the Court on the compliance to the principle of annuality, the EDPS has underlined that all three automatic carry-overs are related to translations, which were ordered in 2019 but invoiced only in 2020. Translations, as well for the EDPS as for the EDPB, are often urgent and stemming from an obligation related to the Institution's and the Board's mandate and the need to comply with strict deadlines. They are therefore ordered immediately after internal approval and allocated to the current budget year regardless of when the translation is delivered and invoiced. As the timing of the delivery and invoicing is to a certain extent unsure at the time of ordering, the allocation to the current budget year is the only approach we can consistently apply.

The audit examined the 2019 annual activity report and the supervisory and controls systems of the EDPS. This examination did not give rise to any additional observations to



the ones reported in the clearing letter of 7 April 2020. Its examination has included procedures for implementing the actions and for analysing the results as well as resulting action plans. The main concerns were:

**On the formalisation of the applicable Internal Control Standard (ICS) N°16 in the EDPS decision on ICS requested by the Court,** the EDPS understands the need of the ICS decision to be clearer on this particular issue. The ICC has issued a new ICS decision on 5 October 2020 indicating that the EDPS relies on the internal audit capability provided by the European Commission. It is based on a Service Level Agreement. The IAS is setting up for the EDPS the annual audit work plan and as such, the EDPS applies the relevant provisions of the FR as regard the implementation of an Internal Audit function.

**On the requirement of Article 123 of the Financial Regulation to set up an internal audit progress committee,** as the EDPS is a very small institution, the need of an internal audit progress committee was never considered so far. The EDPS believes that the Internal Control Coordinator (ICC) is ensuring a comprehensive monitoring of the implementation of the recommendations made by the internal auditor with an excellent record that has never led to any complaints or difficulties with our internal auditor. After having consulted the Ombudsman and the committees, the EDPS will further discuss with the Court of Auditors how to reinforce the Internal Audit and the ICC function to achieve a similar goal.

**On the weaknesses in the newly introduced Policy on identification of sensitive functions,** the EDPS has conducted a review of the current “EDPS policy on identification of sensitive functions” by means of a careful assessment of the current situation and the potential growth of both the EDPS and the EDPB. Guidelines on sensitive functions have been adopted at the Management meeting on 13/1/2021 focusing on:

- ) differentiation between sensitive functions and sensitive posts
- ) complete further the list of sensitive functions
- ) assessment of mitigating measures
- ) set up a monitoring system to keep the assessment as an alive process

HRBA and the ICC will do the necessary in order to implement all relevant actions

**On the absence of timely monitoring of ABAC rights,** because the small size of the EDPS and the extremely limited resources of the finance team, it has been difficult to ensure the necessary stability on the function of Local Access Manager (LAM). The HRBA unit has appointed a new colleague for this function who is receiving the necessary training. She is currently not involved as OIA in any of the financial operations so the required segregation of duties is complied with. The periodical review of the active accesses will be carried out in line with the relevant guidelines of DG BUDG.

**On the weaknesses in the formalisation of the financial workflows and designation of financial actors**

The revised EDPS Financial Guide has been formally adopted at the Management Meeting of 17 March 2021. The new guide includes the necessary updates and integrate all finance related working instructions. Financial circuits and responsibilities of the different financial actors are only few of the topics covered. For transactions, where the validation is prepared by another entity (e.g. PMO), there is a more elaborate description of the differentiated responsibilities between entities. In addition, the necessary annexes, such as ex-ante checklists, charters of the financial actors, are attached to the guide. The

updated checklists have been integrated in our new electronic workflow system (Speedwell).

**On the weaknesses in the ex-post verification process and inadequate disclosure of results in the annual declaration of assurance:** the Court welcomes the intentions to appoint a verifier, develop relevant guidelines and align this exercise to be used by the Appointing Officer. However, HRBA's attempt to attract interested staff to perform the duties (by publishing a call for interest in HRBA-news) remained not successful. The EDPS is currently reflecting with the Court of Auditors on how to mitigate the risk of not having ex-post controls in place. It may be a contract with an external audit company to carry out the ex-post verification on sample basis (through a related engagement). Or if this is considered disproportionate, the EDPS envisages to integrate a second layer verification (FVA2) in the circuit for certain types of transactions, but the small size and structure of the Institution (and the finance team) constitutes a serious practical problem to implement this. A third option would be of having the ex-post control carried out by Ombudsman staff. As a counterpart, we could perform the ex-post verification of their transactions, meaning an additional workload on the finance team not only to carry out the verification but to develop the methodology (whereas normally ex-post is not done by finance). This option is going to be further explored. If a newcomer with the right skills and knowledge joined our organisation in the future in another EDPS team different from HRBA, we could consider entrusting him/her with this task.

#### **On the weaknesses in the register of exceptions**

The EDPS acknowledges the weakness in the register of exceptions related to 2018. We were already aware of this and it is for this reason that on 17/12/2019 a new decision was adopted which covers comprehensively and substantially the types of deviation that are subject of the new procedure as well as the formalities to be accomplished. This relates more in particular to the use of a form covering the background of the deviation, impact and remediating actions. It furthermore specifies which staff should be involved with their respective responsibilities and provides a circulation sheet to be used for the routing.

Following the Court's recommendation, the decision has been completed with the information on the provision or rule from which there has been a deviation. The exception register and the forms as well as the supporting documents related to the individual cases are registered and stored digitally in the Case Management System. The implementation of this updated procedure ensures proper documentation and facilitates reporting on the exceptions and non-compliance events.

Ex-ante checklist are adapted to the recommendation whereby the standard question on exception justification is replaced by the obligation of financial actors to justify a negative answer on questions.

#### **4.9.2 Internal Audit Service (IAS)**

The Commission's Internal Auditor is the internal auditor of the EDPS. To make sure that EDPS resources are effectively managed, the internal auditor conducts regular checks on EDPS internal control systems and on its financial transactions.

In 2020 the IAS has conducted an audit of the EDPS activities when supervising Europol. The objective of the audit was to assess the adequacy and effectiveness of the internal control system for the supervisory activities related to Europol, activities related to the Secretariat of the Europol Cooperation Board, and the IT security controls specifically related to the above-mentioned activities.

The fieldwork was finalised on 13 March 2020. The final Audit Report on the Supervision of the processing of personal data by Europol by the European Data Protection Supervisor was issued on 24 September 2020.

The auditors recognise the ongoing efforts of the EDPS to improve the governance arrangements and internal control systems for the Supervision of Europol. The EDPS has put in place the necessary processes for managing the supervision of the processing of personal data by Europol in compliance with its regulation. However, the Internal Audit Service concludes as a result of its audit that a number of significant weaknesses exist that could negatively impact the effectiveness and efficiency of these processes. It found significant weaknesses relating to the follow-up of EDPS recommendations, the IT security controls applied to Europol-related information and with regard to IT security governance. The IT-related weaknesses should be seen in the context of the current small size of the EDPS' IT operations and its limited capacity for implementing IT controls to mitigate risks stemming from handling sensitive non-classified and classified information.

On 15 October 2020, the EDPS has proposed and sent to the IAS an action plan for following up all IAS recommendations and on 21 October 2020, the IAS acknowledged the action plan considering it was adequate to mitigate the risks identified. The ICC is ensuring a close follow up regarding the deadlines agreed and the content, to be able to upload accordingly the IAS database, Team Central.

It should be noted that in second half of 2021 the IAS will launch an in-depth risk assessment of the EDPS in order to establish the IAS Strategic audit plan in EDPS for the next three years.

#### **4.9.3 ICS monitoring situation**

The EDPS follows 14 of the 16 ICS established by the European Commission (see EDPS decisions 2012 and 2015). The ICS are regularly monitored and reports (twice a year) are established since 2014 to keep management up to date with their implementation. The ICS decision has been revised on 12 November 2019 in order to update the legal framework applicable to the EDPS. A revised ICS decision was adopted on 6/10/2020 indicating that the EDPS relies on the internal audit capability provided by the European Commission (see point 4.6 above).

On 16 December 2020, the ICS monitoring situation at the EDPS was the following: the EDPS report on the implementation of the ICS shows that the level of internal control is satisfactory and effective except for the ex-post control function where a pragmatic solution needs to be identified soon (keeping in mind that this ex-post controls are not mandatory, only advised by our external auditor). IAS and Court of Auditors recommendations are closely monitored and implemented. The same goes with other action plans and expected deliverables. It is of the utmost importance that the EDPS

remains in full compliance with IAS and Court of Auditors recommendations and the control of the ICC is key at this regard. The EDPS will continue to ensure a regulatory and organisational framework in line with the legitimate expectations linked to its growing importance in the panorama of EU institutions.

#### **4.9.4 Follow-up to the European Parliament's discharge resolution of 2019**

On 30 October 2020, the EDPS provided answers to the long 2019 discharge questionnaire. A document of 57 pages is available on request. The related hearing on the 2019 discharge took place at the European Parliament on 10 November 2020.

At the issuance date of the AAR, the report is not tabled yet for plenary and no date can be given for the circulation yet. The EDPS is therefore waiting for the final report of the discharge.

#### **4.10 Conclusions on the effectiveness of internal control**

In light of the information above, with all observations of the Court of Auditors being implemented, the authorising officer by delegation considers that the internal control system is operating appropriately; bearing in mind the level of expenditure and budget handled by the institution, and thus gives the necessary assurance to his annual statement.

# 5. Reservations and impact on the statement

## 5.1 Materiality criteria

In order to establish the Statement of Assurance the AOD applies the materiality criteria adopted by the Court of Auditors.

### 5.1.1. Objectives of materiality criteria

The materiality threshold gives the AOD a basis on which to establish the significant weaknesses that require a formal <sup>11</sup> reservation to his statement. The assessment of a weakness falls to the qualitative and quantitative judgment of the authorising officer by delegation, who remains responsible for the statement of assurance, including the reservations made.

The purpose of this chapter is to define the qualitative and quantitative criteria for determining the level of materiality.

### 5.1.2. Qualitative criteria

The following parameters were used to establish significant weaknesses:

- significant/repeated errors without mitigation
- weakness in the internal control system
- insufficient supporting documents
- material problems identified by the Court of Auditors or the Internal Audit Service
- problems of reputation.

### 5.1.3. Quantitative criteria

Once a significant weakness has been identified, quantitative criteria must be applied to determine the level of materiality. This level will be used to determine whether the weakness 'merits' being reported.

- margin of error
- maximum amount of risk.

The Court of Auditors uses a 2% materiality threshold. Should the residual risk of an error be higher, the institution must explain the reasons for this.

The EDPS has decided on 2% of annual appropriations as the materiality threshold in this regard, namely: EUR 389.539,96 €.

### 5.1.4. Criteria of the Internal Audit Service

A 'table of significance' is added to the internal auditors' report.

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<sup>11</sup> The Commission (COM (2003)28 of 21 January 2003) considers that only 'material' reservations can be used to qualify the annual statement.

In this table, a distinction is made between recommendations and observations on the one hand, and levels of importance on the other: critical, very important, important and desirable.

According to the internal auditors, only 'critical' level observations *may* result in a reservation in the statement given in the annual activity report. For the EDPS, there are no observations at this level.

## **5.2 Reservations**

No reservation.

## **5.3 Conclusion**

Based on the above, the Director of the EDPS Secretariat has issued the annual statement with no reservation.

## 6. Statement of assurance from the authorising officer by delegation

I, the undersigned, Leonardo CERVERA NAVAS,

Director of the EDPS Secretariat,

as Authorising Officer by Delegation

hereby declare that the information contained in this report is true and faithful.

I state that I have had reasonable assurance that the resources allocated to the activities described in this report have been used for the purposes anticipated and in accordance with the principle of sound financial management, and that the control procedures established provide the necessary guarantees as to the legality and regularity of the underlying operations.

This reasonable assurance is based on my own judgment and on the information available to me, such as the results of the self-evaluation and the report of the Internal Audit Service.

I confirm that I am not aware of any matter not reported that might be harmful to the institution's interests.

Signed at Brussels on 25 March 2021

  
Leonardo CERVERA NAVAS

## 7. Annexes



## Annex 1: Summary of annual activity report

The Financial Regulation (Article 74.9)<sup>12</sup> provides that the annual activity report for the financial year of the authorising officer of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution.

Following the report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2016 issued on 26 March 2018, the European Parliament requested to set a deadline for the submission of the annual activity reports of 31 March of the year following the accounting year. The disruption resulting from Covid-19 crisis has made it impossible to respect this deadline. The report has been adopted on the 3rd of April 2020.

Alongside this, Article 60 of Regulation (EC) No 2018/1725 provides that the EDPS shall submit an annual report on his/her activities to the European Parliament, the Council and the Commission.

The proposal is thus to summarise the authorising officer by delegation's annual activity report and include this summary in the activity report that is provided for in Article 60 of Regulation (EC) No 2018/1725:

**Overall, the European Data Protection Supervisor considers that the internal control systems in place provide reasonable assurance as to the legality and regularity of the operations for which the institution is responsible.**

**The European Data Protection Supervisor will ensure that his authorising officer by delegation continues his efforts to guarantee that the reasonable assurance given in the statement attached to his activities report is effectively backed up by appropriate internal control systems.**

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<sup>12</sup> Financial Regulation, Article 74(9): The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

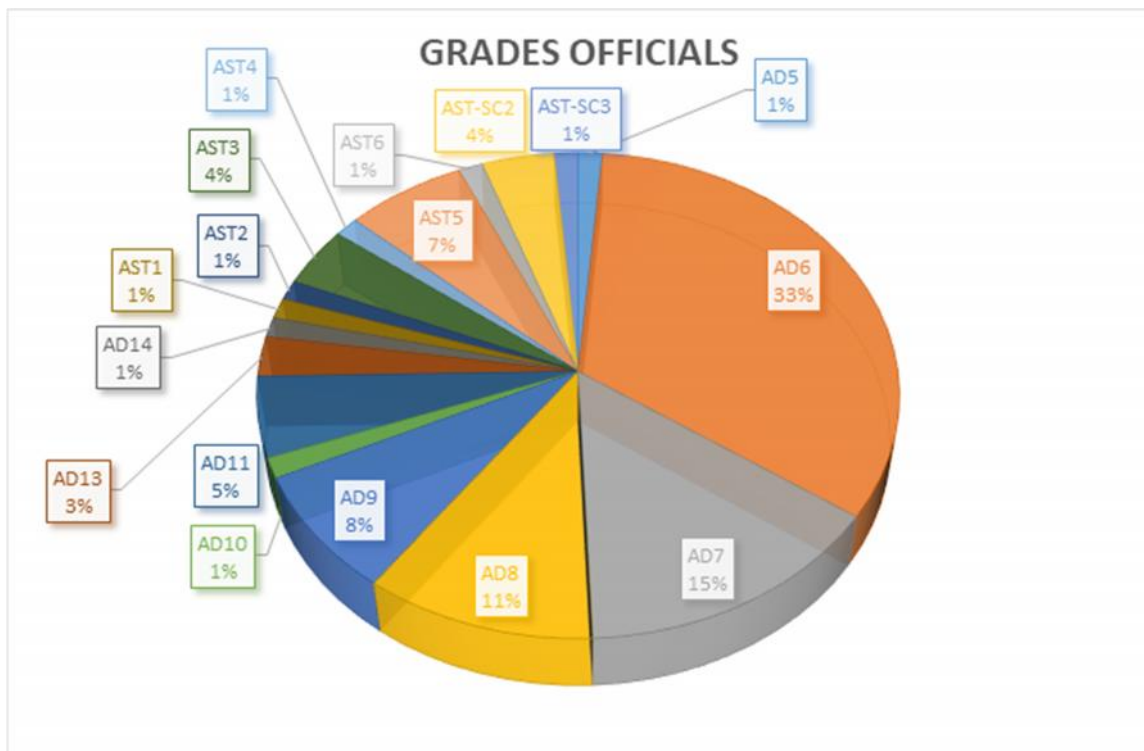
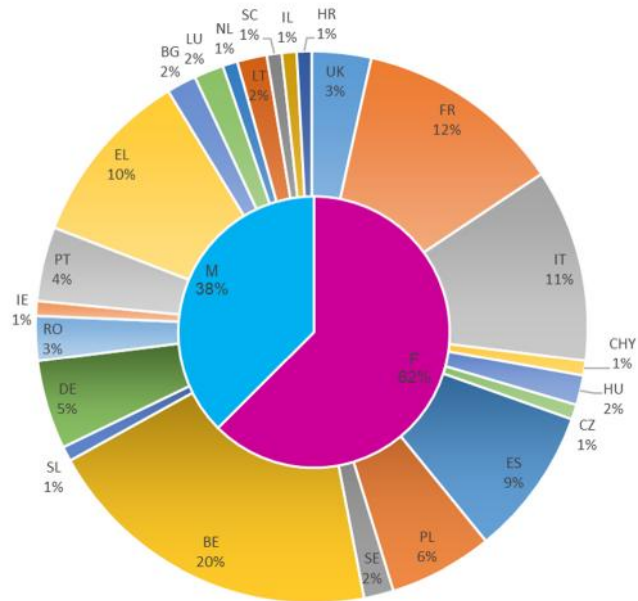
- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management; and
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The annual activity report shall include information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report shall include an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

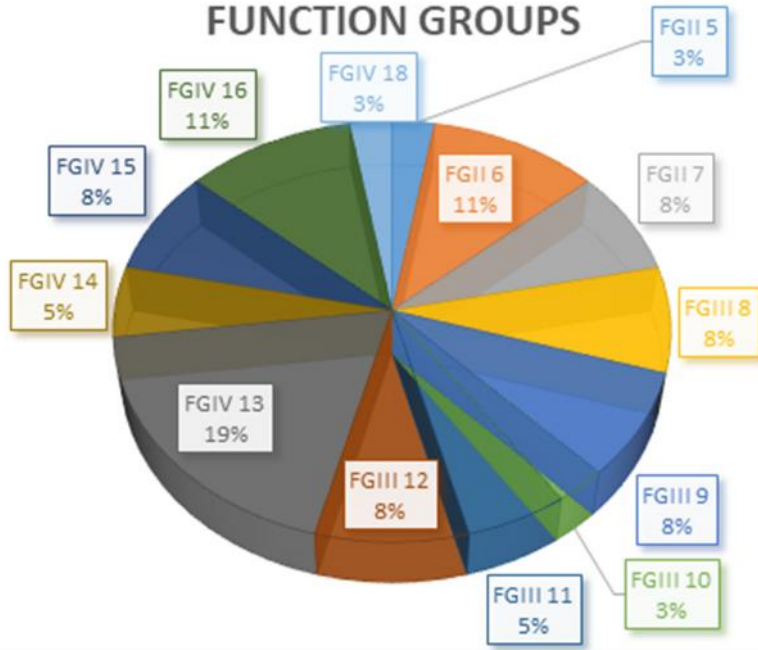
The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

## Annex 2: Human resources at the EDPS

Staff distribution by gender & nationalities



# FUNCTION GROUPS



## Annex 3: Budget 2020

TITLE 1 - EXPENDITURE RELATING TO PERSONS WORKING WITH THE INSTITUTION		2019 (after transfers)	execution 2019	2020 (after transfers)	DB 2020 vs 2019	DB 2020 vs 2019 (%)	execution 2020
<b>Chapter 10</b>	<b>Members of the institution</b>						
<b>Article 100</b>	<b>Remuneration, allowances and other entitlements of Members</b>						
	Item 1000 Remuneration and allowances	705.363,00	88,74%	432.046,60	-273.316,40	-38,75%	80,88%
	Item 1001 Entitlements on entering and leaving the service	0,00		2.647,40	2.647,40		100,00%
	Item 1002 Temporary allowances	0,00		331.925,00	331.925,00		0,00%
	Item 1003 Pensions	0,00		0,00	0,00		
	Item 1004 Provisional appropriation	0,00		0,00	0,00		
	<b>TOTAL Article 100</b>	<b>705.363,00</b>	<b>88,74%</b>	<b>766.619,00</b>	<b>61.256,00</b>	<b>8,68%</b>	<b>45,93%</b>
<b>Article 101</b>	<b>Other expenditure in connection with Members</b>						
	Item 1010 Further training	25.000,00	6,00%	25.000,00	0,00	0,00%	0,00%
	Item 1011 Mission expenses, travel expenses and other ancillary expenditure	59.394,00	34,28%	59.394,00	0,00	0,00%	12,09%
	<b>TOTAL Article 101</b>	<b>84.394,00</b>	<b>25,90%</b>	<b>84.394,00</b>	<b>0,00</b>	<b>0,00%</b>	<b>8,51%</b>
	<b>TOTAL Chapter 10</b>	<b>789.757,00</b>	<b>82,03%</b>	<b>851.013,00</b>	<b>61.256,00</b>	<b>7,76%</b>	<b>42,21%</b>
<b>Chapter 11</b>	<b>Staff of the institution</b>						
<b>Article 110</b>	<b>Remuneration, allowances and other entitlements of officials and temporary staff</b>						
	Item 1100 Remuneration and allowances	4.946.174,24	97,08%	6.720.765,00	1.774.590,76	35,88%	81,76%
	Item 1101 Entitlements on entering, leaving the service and on transfer	94.541,76	100,00%	50.000,00	-44.541,76	-47,11%	81,39%
	Item 1102 Overtime	0,00		0,00	0,00		
	Item 1103 Special assistance grants	0,00		0,00	0,00		
	Item 1104 Allowances and miscellaneous contributions in connection with early termination of service	0,00		0,00	0,00		
	Item 1105 Provisional appropriation	0,00		0,00	0,00		
	<b>TOTAL Article 110</b>	<b>5.040.716,00</b>	<b>97,14%</b>	<b>6.770.765,00</b>	<b>1.730.049,00</b>	<b>34,32%</b>	<b>81,75%</b>
<b>Article 111</b>	<b>Other staff</b>						
	Item 1110 Contract staff	1.360.644,17	98,76%	1.073.815,00	-286.829,17	-21,08%	99,93%
	Item 1111 Cost of traineeships and staff exchanges	237.618,90	99,48%	285.440,00	47.821,10	20,13%	83,41%
	Item 1112 Services and work to be contracted out	0,00	#DIV/0!	52.748,00	52.748,00	#DIV/0!	82,50%
	<b>TOTAL Article 111</b>	<b>1.598.263,07</b>	<b>98,86%</b>	<b>1.262.003,00</b>	<b>-186.260,07</b>	<b>-11,65%</b>	<b>95,94%</b>
<b>Article 112</b>	<b>Other expenditure in connection with staff</b>						
	Item 1120 Mission expenses, travel expenses and other ancillary expenditure	171.236,88	97,70%	105.000,00	-66.236,88	-38,68%	15,75%
	Item 1121 Recruitment costs	4.718,12	88,02%	6.789,00	2.070,88	43,89%	82,25%
	Item 1122 Further training	57.000,00	100,00%	80.000,00	23.000,00	40,35%	71,97%
	Item 1123 Social service	0,00	#DIV/0!	0,00	0,00	#DIV/0!	#DIV/0!
	Item 1124 Medical service	14.844,00	100,00%	14.844,00	0,00	0,00%	100,00%
	Item 1125 Union nursery centre and other day nurseries and after-school centres	62.834,00	74,53%	108.577,75	45.743,75	72,80%	100,00%
	Item 1126 Relations between staff and other welfare expenditure	14.000,00	96,71%	9.422,25	-4.577,75	-32,70%	100,00%
	<b>TOTAL Article 112</b>	<b>324.633,00</b>	<b>93,54%</b>	<b>324.633,00</b>	<b>0,00</b>	<b>0,00%</b>	<b>65,47%</b>
	<b>TOTAL Chapter 11</b>	<b>6.963.612,07</b>	<b>97,37%</b>	<b>8.507.401,00</b>	<b>1.543.788,93</b>	<b>22,17%</b>	<b>83,49%</b>
	<b>TOTAL TITLE 1</b>	<b>7.753.369,07</b>	<b>95,80%</b>	<b>9.358.414,00</b>	<b>1.605.044,93</b>	<b>20,70%</b>	<b>79,73%</b>

TITLE 2 - BUILDINGS, EQUIPMENT AND EXPENDITURE IN CONNECTION WITH THE OPERATION OF THE INSTITUTION		2019	execution 2019	2020	DB 2020 vs 2019	DB 2020 vs 2019 (%)	execution 2020
<b>Chapter 20</b>	<b>Buildings, equipment and expenditure in connection with the operation of the institution</b>						
<b>Article 200</b>	Rents, charges and buildings expenditure	1.832.286,00	91,98%	2.192.454,00	360.168,00	19,66%	68,57%
	<b>TOTAL Article 200</b>	<b>1.832.286,00</b>	<b>91,98%</b>	<b>2.192.454,00</b>	<b>360.168,00</b>	<b>19,66%</b>	<b>68,57%</b>
<b>Article 201</b>	<b>Expenditure in connection with the operation and activities of the institution</b>						
	Item 2010 Equipment	618.000,00	92,42%	543.559,00	-74.441,00	-12,05%	98,39%
	Item 2011 Supplies	15.000,00	99,95%	15.000,00	0,00	0,00%	25,90%
	Item 2012 Other operating expenditure	236.460,04	100,00%	313.490,00	77.029,96	32,58%	99,34%
	Item 2013 Translation and interpretation costs	350.539,96	91,71%	546.510,00	195.970,04	55,91%	73,73%
	Item 2014 Expenditure on publishing and information	158.000,00	55,46%	158.000,00	0,00	0,00%	70,50%
	Item 2015 Expenditure in connection with the activities of the institution	174.000,00	74,47%	144.000,00	-30.000,00	-17,24%	47,11%
	Item 2016 Other activities related to external stakeholders	195.000,00	57,45%	80.000,00	-115.000,00	-58,97%	22,89%
	<b>TOTAL Article 201</b>	<b>1.747.000,00</b>	<b>84,34%</b>	<b>1.800.559,00</b>	<b>53.559,00</b>	<b>3,07%</b>	<b>80,57%</b>
	<b>TOTAL CHAPTER 20</b>	<b>3.579.286,00</b>	<b>88,25%</b>	<b>3.993.013,00</b>	<b>413.727,00</b>	<b>11,56%</b>	<b>73,98%</b>
	<b>TOTAL TITLE 2</b>	<b>3.579.286,00</b>	<b>88,25%</b>	<b>3.993.013,00</b>	<b>413.727,00</b>	<b>11,56%</b>	<b>73,98%</b>

TITLE 3 - EUROPEAN DATA PROTECTION BOARD (EDPB)		2019	execution 2019	2020	DB 2020 vs 2019	DB 2020 vs 2019 (%)	execution 2020
<b>Article 301</b>	<b>Remuneration, allowances and other entitlements of officials and temporary staff</b>						
	Item 3010 Remuneration and allowances	988.406,00	71,82%	1.419.410,28	431.004,28	43,61%	79,74%
	Item 3011 Entitlements on entering, leaving the service and on transfer	50.000,00	26,06%	61.361,72	11.361,72	22,72%	100,00%
	Item 3012 Allowances and miscellaneous contributions in connection with early termination of service	0,00		0,00	0,00		
	<b>TOTAL Article 301</b>	<b>1.038.406,00</b>	<b>69,61%</b>	<b>1.480.772,00</b>	<b>442.366,00</b>	<b>42,60%</b>	<b>80,58%</b>
<b>Article 302</b>	<b>Other staff</b>						
	Item 3020 Contract staff	747.786,43	100,00%	811.788,00	64.001,57	8,56%	94,98%
	Item 3021 Cost of traineeships and staff exchanges	152.450,17	96,64%	88.615,00	-63.835,17	-41,87%	64,59%
	Item 3022 Services and work to be contracted out	72.495,40	57,80%	67.748,00	-4.747,40	-6,55%	81,12%
	<b>TOTAL Article 302</b>	<b>972.732,00</b>	<b>96,33%</b>	<b>968.151,00</b>	<b>-4.581,00</b>	<b>-0,47%</b>	<b>91,22%</b>
<b>Article 303</b>	<b>Other expenditure in connection with staff of the Board</b>						
	Item 3030 Mission expenses, travel expenses and other ancillary expenditure	37.000,00	80,64%	35.700,00	-1.300,00	-3,51%	41,43%
	Item 3031 Recruitment costs	6.000,00	53,52%	6.000,00	0,00	0,00%	49,36%
	Item 3032 Further training	25.000,00	79,92%	25.000,00	0,00	0,00%	50,13%
	Item 3033 Medical service	4.000,00	50,00%	4.000,00	0,00	0,00%	99,20%
	Item 3034 Union nursery centre and other day nurseries and after-school centres	20.000,00	0,00%	32.000,00	12.000,00	60,00%	0,00%
	<b>TOTAL Article 303</b>	<b>92.000,00</b>	<b>96,33%</b>	<b>102.700,00</b>	<b>10.700,00</b>	<b>11,63%</b>	<b>33,35%</b>
<b>Article 304</b>	<b>Expenditure in connection with the operation and activities of the Board</b>						
	Item 3040 Meetings of the Board	895.700,00	72,85%	858.500,00	-37.200,00	-4,15%	13,33%
	Item 3041 Translation and interpretation costs	1.538.624,50	99,40%	1.599.436,00	60.811,50	3,95%	56,81%
	Item 3042 Expenditure on publishing and information	106.375,50	99,22%	92.500,00	-13.875,50	-13,04%	77,30%
	Item 3043 Information technology equipment and services	400.000,00	89,50%	677.500,00	277.500,00	69,38%	70,86%
	Item 3044 Travel expenses of external experts	10.000,00	2,94%	20.000,00	10.000,00	100,00%	51,29%
	Item 3045 External consultancy and studies	220.000,00	53,18%	177.600,00	-42.400,00	-19,27%	42,31%
	Item 3046 Other expenditure in connection with the activities of the EDPB	140.000,00	65,21%	148.412,00	8.412,00	6,01%	17,09%
	<b>TOTAL Article 304</b>	<b>3.310.700,00</b>	<b>86,21%</b>	<b>3.573.948,00</b>	<b>263.248,00</b>	<b>7,95%</b>	<b>47,16%</b>
	<b>TOTAL CHAPTER 30</b>	<b>5.413.838,00</b>	<b>84,39%</b>	<b>6.125.571,00</b>	<b>711.733,00</b>	<b>13,15%</b>	<b>61,97%</b>
	<b>TOTAL TITLE 3</b>	<b>5.413.838,00</b>	<b>84,39%</b>	<b>6.125.571,00</b>	<b>711.733,00</b>	<b>13,15%</b>	<b>61,97%</b>
	<b>TOTAL BUDGET</b>	<b>16.746.493,07</b>	<b>90,50%</b>	<b>19.476.998,00</b>	<b>2.730.504,93</b>	<b>16,30%</b>	<b>72,97%</b>

## Annex 4: Detailed list of missions undertaken by the Supervisor (2020)

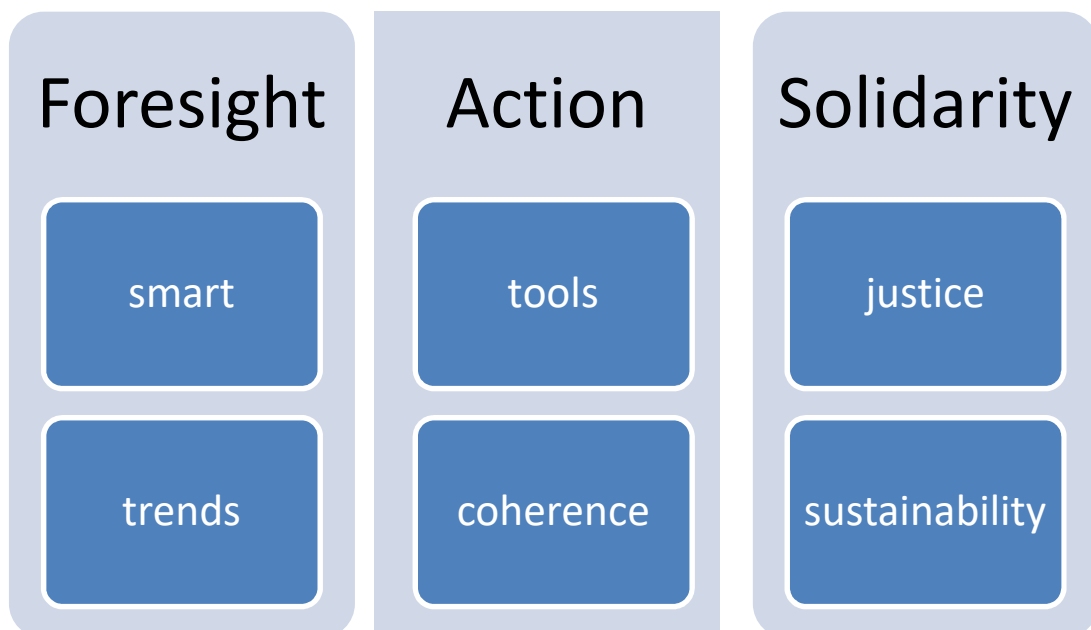
WIEWIOROWSKI Wojciech Rafal - 2020				
Location	Mission Purpose	Date from	Date to	Cost €
Warsaw (POL)	Invitation letter from the Chairman of the Frontex Management Board.	04/02/2020	06/02/2020	1.295,28
Leiden (NLD),The Hague (NLD)	Meeting at Eurojust Lecture at Leiden University	11/02/2020	11/02/2020	190,03
The Hague (NLD)	Meeting between the Supervisor and Europol ED	13/01/2020	13/01/2020	140,24
Zagreb (HRV)	Croatian DPA - invitation for participation as a panelist at the Conference Personal Data Protection 2020: Facing New Challenges in the framework of the Croatian Presidency of the Council of the European Union	15/01/2020	17/01/2020	521,29
<b>TOTAL MISSIONS COSTS</b>				<b>2.146,84</b>

As a reminder, the EDPB Chair and Vice-Chairs did not carry out any mission in 2020 (see point 3.5 above).

## Annex 5: EDPS strategic objectives

The EDPS strategy describes how it intends to carry out its statutory functions and deploy the resources available to address these challenges. There are three pillars to the strategy, each reflecting its values.

- ) **Foresight:** the EDPS commitment to being a **smart** institution that takes the long-term view of **trends** in data protection and the legal, societal and technological context.
- ) **Action:** proactively develop **tools** for EUI to be world leaders in data protection. To promote **coherence** in the activities of enforcement bodies in the EU with a stronger expression of genuine European solidarity, burden sharing and common approach.
- ) **Solidarity:** the EDPS belief is that **justice** requires privacy to be safeguarded for everyone, in all EU policies, while **sustainability** should be the driver for data processing in the public interest.





## Annex 6: EDPS strategic objectives and its Action Plan

### Our objectives: what we aim to achieve by the end of 2024

The strategic objectives under the three pillars express what we intend to achieve by 2024. A number of strategic initiatives will support the achievement of those objectives. We will take more actions than can be described in this strategy; all of these will appear in our Annual Management Plan for each year of this mandate. This strategy is a live, iterative document. It will be kept under regular review as a reference point for our staff and stakeholders.

### Foresight

**EDPS to be a recognised and respected centre of expertise that helps understand the impact of the design, evolution, risks and deployment of digital technology on the fundamental rights to privacy and data protection.**

#### 1.1 Smart

##### **We want to be a smart administration in a smart EUI environment**

Knowledge is an essential asset for the EDPS to effectively support strategic objectives. However, we do not want to be a centre of excellence in a way that does not benefit the outside world. We want to share knowledge, expertise and contribute to the smart administration of the EUI environment.

Our aim is to use the best expertise and latest sustainable technology, to look after our people, promote diversity in all its forms, as well as being transparent and inclusive towards our stakeholders.

Hence, this part of the strategy is dedicated to outline the specific actions for this mandate.

To this extent, we will:

- J Carefully monitor jurisprudence, pursue our interventions in cases before the Court of Justice of the European Union (CJEU).
- J Make an inventory of the measures introduced by EUI during the Covid-19 crisis. Distinguishing those that have naturally developed from the measures that were only accelerated due to extraordinary circumstances. The latter should be recognised as temporary and discarded when the crisis is over.
- J Plan a simple and short online training module for all new EUI staff and propose that this becomes compulsory. We will equip [Data Protection Officers \(DPOs\)](#) with the tools they need and help build a 'satellite' network of data protection experts.

- J Organise evidence-based discussions on intrusive, emerging or hypothetical practices, such as eHealth, biometric technologies and automatic recognition systems, quantum computing, edge computing and blockchain.
- J Engage with experts from the public health community in the EU and other international organisations, to better understand the needs for epidemiological surveillance and accurately measure the efficiency and purpose of the tools being developed with regard to personal data protection (e.g. by developing together practical guidance on data protection by design).
- J Continue to facilitate discussions between data protection experts, regulators and the research community, including ethics boards, to ensure that data protection enhances the efforts of genuine scientific research.
- J Collaborate more closely with academia and independent researchers by setting up a research visitor programme, hosting events and supporting summer academies in close cooperation with the EDPB and other DPAs. We will encourage and facilitate more exchanges between our staff and DPAs and between DPAs themselves.
- J Publish case law digests concerning data protection and privacy at EU level.
- J Keep exchanging information and best practices with international organisations and interlocutors in third countries.
- J To study and prioritise the impacts of data processing practices on individuals and groups, especially those in vulnerable situations, such as refugees and children.
- J Invest in knowledge management to ensure the highest quality of our work and to recruit a diverse, inter-disciplinary and talented workforce.

## 1.2 Trends

### **We want to know what is going on and what is going to happen**

The EDPS places strategic importance on integrating the technological dimension of data protection into our work. As a data protection supervisory authority, we must closely examine both the potential risks and opportunities offered by these advances, understand the possibilities of new technologies and, at the same time, encourage the integration of data protection by design and data protection by default in the innovation process.

We aim to explain in a simple way the interaction between these trends, and to include data protection in the new EU skills agenda. In our work with the EDPB, as well as an advisor to the EUI, we focus on areas where the interests of data protection interacts with technology and other areas of law, including competition law, consumer law, finance and payment services.

The EDPS is uniquely positioned to monitor developments in the [Areas of Freedom, Security and Justice \(AFSJ\)](#). This is particularly emphasised through our role as supervisory authority of Europol, Eurojust, EPPO, Frontex, EASO<sup>13</sup> or eu-LISA<sup>14</sup>.

- J We will actively follow the evolution of data processing practices and technology that may have an impact on privacy and data protection. We will continue to issue reports on emerging technology issues. Moreover, we will promote the understanding of what is the ‘state of the art’ of a specific technology, such as anonymisation, encryption, and network security.
- J Where the European Commission proposes measures with data protection implications, we will continue to provide legal advice regarding compliance with the EU Charter and the principles of data protection set out in applicable legislation.
- J We will focus on the potential impact of technology-driven policy, as recently demonstrated in our [opinions](#) on the European Commission’s “White paper on Artificial Intelligence: A European approach to excellence and trust”, and the European Commission’s Communication on “A European strategy for data”.
- J Where EUI intend to deploy new technologies, we will systematically request them to clearly explain the impact of these technologies and their risks on individuals and groups.
- J We will alert EUI and the public when digital technology is deployed in a way that does not respect the essence of the fundamental rights of personal data protection, privacy and other rights and freedoms enshrined in the EU Charter of Fundamental Rights.
- J We strive to do this in close collaboration with the European Commission, other EUI and agencies active in related areas, such as the Fundamental Rights Agency (FRA) or the European Agency for Cybersecurity (ENISA), via updated Memoranda of Understanding (MoU).
- J We will build on existing initiatives such as the [Internet Privacy Engineering Network \(IPEN\)](#) and consolidate the network for technology expertise among data protection authorities in Europe. We aim to develop core knowledge on how essential and emerging technologies work. This will include talking to innovators in the private sector.
- J We will invest special attention to the development of eHealth services at EU level.
- J We will develop a consistent and targeted communications strategy with various stakeholders to address the COVID-19 pandemic’s newest developments and data protection issues. In 2022, we will host a conference on how to safeguard individuals’ rights in a world that will, hopefully, be recovering from this current crisis.

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<sup>13</sup> EASO : European Asylum Support Office

<sup>14</sup> The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice

## Action

***EDPS to support EUI to continue to lead by example in safeguarding digital rights and responsible data processing.***

### 2.1 Tools

**We are going to use the tools we have and develop new ones**

Privacy and data protection are cornerstones in any democratic society based on the rule of law and fundamental rights. Likewise, a free internet society depends on the design of technology. This is particularly relevant whenever the EU adopts laws and policies related to the processing of personal data, or when EUI process personal data.

Personal data have and will continue to play an important role in the fight against the COVID-19 pandemic. Our laws, such as the GDPR and the ePrivacy rules, allow for the processing of personal data for public health purposes, including in times of emergency. Data protection law is well-equipped to help support the public good, and do not represent an obstacle, in fighting the virus. It is certainly possible to build technological solutions, which are compliant with the legal data protection framework. Some recent application show that societies can take up technologies while upholding privacy and data protection rights. It remains paramount that EUI and Member States continue to actively engage with DPAs.

Certain processing activities are however, by their nature, highly risky, they may even violate the essence of fundamental rights and freedoms and should be suspended or stopped altogether, i.e. when broad internet content monitoring interferes with privacy and freedom online. Being a supervisory authority, we must be equipped to monitor and anticipate problems and quickly respond to operational situations, policy and legal questions. We recognise DPOs' of EUI as the emissaries of positive change in how data is handled.

The outsourcing of tasks by EUI to providers of communications services and digital tools is an operational reality, and often a necessity. This, however, creates risks for data protection and good administration, particularly where there are few or no viable alternatives to monopoly providers with questionable standards on privacy and transparency.

The EU and European public administrations have considerable leverage to bring about real change to business models which are not consistent with EU values, fundamental rights and data protection rules. This was particularly relevant when an enforcement action was launched in 2019 concerning EUI contracts with software providers. There is now a renewed appetite for coordinated support to the European industry and for data to be processed according to our European values.

In this sense, our commitments are as follows, we will:

- )] Promote data protection by design and by default, to be implemented irrespective of the technology deployed or the political priorities.

- J Develop effective oversight mechanisms, particularly on technologies and tools, when these are deployed in the common fight against COVID-19, to empower and not control, repress or stigmatise citizens.
- J Contribute to developing strong oversight, audit and assessment capabilities for technologies and tools, which are increasingly “endemic” to our digital ecosystem (e.g., profiling, machine learning, AI). We will provide guidance on personal data processing using automated decision-making systems and AI.
- J Support the idea of a moratorium on the deployment, in the EU, of automated recognition in public spaces of human features, not only of faces but also of gait, fingerprints, DNA, voice, keystrokes and other biometric or behavioural signals, so that an informed and democratic debate can take place.
- J Reinforce the central role of the controller in relation to [processors](#) and sub-processors in EUI, both by raising awareness and, more formally, by providing advice on possible standard contractual clauses.
- J Aim to minimise our reliance on monopoly providers of communications and software services, to avoid detrimental lock-in and work with other EUI and other public administrations in the EU so they can do the same. We will call on EUI and other public administrations in the EU to review their external contracts on digital products, software, services and technology to achieve compliance as required by EU data protection laws. We will explore how to deploy free and open source software and solutions.
- J Review previous authorisations for transfers to third countries and adopt standard data protection clauses.
- J Continuously assist EUI by demonstrating and developing bespoke privacy tools and solutions. This also involves giving advice when [Data Protection Impact Assessments \(DPIAs\)](#) are necessary.
- J Publish standardised information about personal data breaches that are notified to us, including the types of organisations involved and the number of people affected.
- J Use our enforcement powers to ensure EUI websites and mobile apps are complying with EU law, particularly in respect of third party tracking.
- J Closely monitor the ongoing process that makes EU systems ‘interoperable’, with a particular focus on the access and processing of personal data (Europol, Frontex et al.), in collaboration with national supervisory authorities where needed, to ensure effective supervision.
- J Launch, explore and explain, as a follow up to the ‘[Necessity Toolkit](#)’ and ‘Guidelines on [Proportionality](#)’, the concept of the ‘essence’ of the rights to privacy and data protection, based on the jurisprudence of the Court of Justice and growing scholarship in this area.

## 2.2 Coherence

### **We do not protect data - we protect human beings**

The GDPR is directly applicable throughout the EU. Nevertheless, it provides Member States with the possibility to further legislate their respective laws. This could compound the fragmentation of national approaches. The EDPB exists to check and avoid such fragmentation.

The EDPS has a unique dual role as a full member and provider of the EDPB's secretariat. We will exercise this role creatively, seeking to represent the wider EU interest, and contribute to the success of the EDPB, as well as ensuring the consistent application and enforcement of the GDPR and [the Data Protection Law Enforcement Directive](#). We aim to develop with other DPAs a common set of tools.

The EU has not completed its updating of the data protection framework for the digital age. EU legal gaps remain, where specific data protection rules are either absent – for the processing of personal data by the Common Foreign and Security Policy (CFSP) mission as referred to in [Articles 42\(1\), 43 and 44 TEU](#), or fragmented police and judicial cooperation in criminal matters, as well as Europol and EPPO. Such a situation undermines the possibility of achieving a consistent approach to protecting individual's personal data in the EU. We will interpret the applicable rules in the spirit of the EDPR, and we will apply the principles of the Regulation in areas where specific rules are missing.

We need up-to-date - but also technologically neutral - rules on the protection of [confidentiality](#) of electronic communications. Sustainable economic growth cannot be achieved through the infinite monetisation of people's private conversations or indiscriminate retention of all communications data.

Personal data supports privacy, as well as other rights and freedoms, such as freedom of expression and non-discrimination. We recognise the synergies between the enforcement of data protection and other rules applicable to the digital economy, especially concerning consumer and competition law, and will carry on our work to ensure that they are mutually reinforced.

EUI are already making use of new and emerging technologies. In the interest of a coherent approach throughout the EU, the EDPS recommends that any new EU regulatory framework, such as potential AI, will apply both to EU Member States and to EU institutions, offices, bodies and agencies.

Data protection and privacy are the foundations for democracy in a time of digitisation. To this end, we will:

- )] Continue to build the capacity of the EDPB, both as a member and as a provider of its secretariat, to ensure that, by 2025, the GDPR is recognised as a model for all democracies around the world - a formidable blueprint to strengthen the trust and respect in the digital society.
- )] Call for a stronger expression of genuine European solidarity, burden sharing and common approach to ensure the enforcement of our data protection rules. The EDPS supports the establishment of a Support Pool of Experts within the EDPB, which would assist DPAs dealing with resource-heavy and complex cases.

- J Contribute to the review of Regulation (EU) 2018/1725, scheduled for April 2022, and make a strong case to address the gaps and discrepancies that continue to exist. In the meantime, the EDPS will interpret any specific rules in the spirit of Regulation (EU) 2018/1725.
- J Closely monitor the use of new tools involving data analytics and artificial intelligence by Europol and other agencies in the AFSJ, in compliance with the mandate assigned to them by law, while promoting solutions to protect individuals' rights and freedoms.
- J Call for a coherent approach regarding new EU regulatory frameworks on the use of new technologies so that EUI are subject to the same rules as those applied in EU Member States.
- J Supervise EPPO as new actor in the criminal justice area, and especially its relations with Europol and Eurojust.
- J Call for the adoption of the proposed ePrivacy Regulation, but not to the detriment of existing protections.
- J Contribute to the establishment of the Digital Single Market where European rules on privacy and data protection, as well as competition law, are fully respected. We will also make sure that the rules on the access and use of data are fair, practical and clear.
- J Develop European and international cooperation measures, and promote joint enforcement actions and active mutual assistance, by concluding - when necessary - Memoranda of Understanding with DPAs.

## Solidarity

***The EDPS promotes a positive vision of digitisation that enables us to value and respect all individuals. The full potential of data shall be dedicated to the good of society and with respect to human rights, dignity and the rule of law.***

### 3.1 Justice

**We actively promote justice and the rule of law.**

Solidarity, being aware of shared values, interests and objectives, is at the heart of the EU project. As an EU institution, the EDPS is committed to upholding the rule of law and democracy. As an independent data protection supervisory authority, we act in line with these values. When we believe that these are threatened, we speak up, and vigorously defend them. Likewise, we take action if the independence of other DPAs and the 'collective independence' of the EDPB are jeopardised.

When planning strategies on democracy and human rights, the EU should promote digital justice and privacy for all. Privacy and data protection can never be traded for access to

essential services. Data protection is one of the last lines of defence for vulnerable individuals, such as migrants and asylum seekers approaching EU external borders. Although the EU has accumulated a patchwork of measures in the areas of police and judicial cooperation and border management, the legal framework remains fragmented, creating unnecessary discrepancies. This puts unwarranted constraints on the EDPS' supervisory and enforcement powers.

Fundamental rights are necessary because they protect those less likely to have the means to fully defend themselves. In the so-called gig economy, workers and consumers find themselves governed by algorithms that make decisions based on data collected about them, with limited ability to understand or challenge those decisions. Women, people of colour and those with disabilities are routinely discriminated against, and this is reinforced by the proliferation of algorithmic decision-making.

We recognise the need for individuals to have greater control over whether data about them is collected, and, if so, how and for what purpose their personal data is processed. Where the digital environment becomes more complex, responsibility falls on controllers and enforcers to avoid any data practices that harm the rights or interests of the individuals concerned. The burden of proof should not fall on those individuals to understand risks and take action.

In complex scenarios, '[consent](#)' should not be relied upon because it indicates obvious power imbalances between the controller and the individual's rights to data protection. We are convinced that EU data protection legislation provides other lawful grounds for processing.

A misguided debate continues on the appropriateness of the concept of personal 'data ownership'. This is unlikely to be compatible with the Charter of Fundamental Rights and will not empower individuals in a digitised society. We believe data protection 'disrupts' the markets for personal data, where data as a commercial or political asset is monetised or used to manipulate people. DPAs acting collectively should be an agent for such positive changes.

In this context, we will actively:

- J Stress that privacy and data protection are an integral part of the rule of law and can never be treated in isolation. We will take actions if the independence of other DPAs or the 'collective independence' of the EDPB are jeopardised.
- J Advocate for the fundamental rights to data protection and privacy to be at the heart of the Conference on the Future of Europe. We will also support the efforts to integrate data protection considerations in the [European Democracy Action Plan](#), as a safeguard for independent journalism, lawful dissent and political activism.
- J Continue to enforce EUI compliance with the rules, to protect those who are in a position of weakness, such as minors or displaced persons near or at the EU's external border. Indeed, they have as much of a right to data protection and privacy as anyone else.
- J Identify discrepancies in the standards of data protection within EU law in the Areas of Freedom, Security and Justice (AFSJ) and we will consistently enforce the rules.



- J Encourage the European Commission to further harmonise the data protection rules on processing operational data (Chapter IX of the Regulation 2018/1725), including in the context of the [Europol Regulation](#) review
- J Advise EU lawmakers to safeguard data protection and privacy in [the New Pact on Migration and Asylum](#).
- J Keep contributing to the European Commission's proposals related to combatting discrimination.
- J Provide guidance to EUI on policies and measures (such as the [Digital Services Act](#)) that hold private companies accountable for manipulation and amplification serving private gain, but to avoid blanket monitoring and censorship of speech that inevitably interferes with the rights to privacy and data protection.
- J Building on our experience with the [Digital Clearinghouse](#) and other fora, we will work with the EDPB, the European Commission and the relevant EUI to establish practical cooperation and joint enforcement between digital regulators on specific cases and learn lessons from the past.
- J Actively contribute to the development of a common EU vision on digitisation and technology. For example, determining how AI can be used for humankind and re-engineered along the lines of EU rights and values and alongside strict liability rules; so that manufacturers and controllers are held responsible for damage caused by defects in their products, even if the defect resulted from autonomous decisions after its entry on the market. In the interest of a coherent approach throughout the EU, the EDPS recommends that any new regulatory framework should apply to both EU Member States and EUI. Where EUI use AI, they should be subject to the same rules as those applied in EU Member States.
- J Regularly engage in the debate on digital ethics, emphasising the need to not only comply with the law, but to also consider the effects of data processing by controllers in EUI and elsewhere, on individuals, groups and society; including shared values and the environment.
- J Promote diversity in all discussions on data protection, including those we organise ourselves. We will ensure gender balanced representation among speakers and panellists in the conferences or events we organise.

## 3.2 Sustainability

### We know there is only one world

Data processing and data protection have to go green.

The EDPS is a socially-responsible organisation. Our values are to treat people – our employees, the people whose activities we supervise, the individuals whose data is processed by EUI, our stakeholders - and the natural environment around us, with respect.

The ongoing development of AI and blockchain based technologies, as well as illegal tracking and profiling of individuals generate an increasing amount of dangerous waste, due to short-lived connected goods, combined with exponential carbon footprint emissions. This is a great source of concern in light of the [EU Green Deal](#) and data protection in this new decade.

Enforcing personal [data minimization](#) and responsible data processing can be part of the solution to help counteract these damaging trends. There should be competition on the most beneficial ways to use data, not on who can collect the most.

The redistribution of wealth and its practical application are bound to change with the continuous evolution of social norms, politics, and culture. As highlighted by [the EDPS' Preliminary Opinion](#) on scientific research and data protection, there is growing concern about how digitisation has contributed to the exponential growth in data generation; while also concentrating the control of the means for converting that data into valuable knowledge in the hands of a few powerful private companies. There are growing calls for regulated access across the EU to privately-held personal data for research purposes exclusively serving the public interest to improve health care, advance health research and address the climate crisis or growing social inequalities. While the [Open Data Directive](#) organises the access to public sector information to foster competition and economic innovation; access to privately held data by non-profit stakeholders to foster social and solidarity innovation and scientific research in the public interest deserves specific attention as well. Current barriers to such access reveals the need for a broader debate on a data redistribution policy for the digital age, to maximise societal benefits of data sharing initiatives, in compliance with the European fundamental rights framework. To address these challenges, we will:

- ) Convey a deeper understanding of the impact of digitisation on our world.
- ) Encourage broader and long-term view of the future of data protection in a period of environmental crisis, growing inequalities and geopolitical tensions.
- ) Pay particular attention to our energy consumption, emissions due to the travelling of officials (missions), procurement and commuting to and from work, promoting telework.
- ) Engage in the debate on data sharing to advocate for a data redistribution policy for the digital age based on a rigorous proportionality tests and appropriate safeguards - including anonymisation and pseudonymisation - against misuse and unlawful access.