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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: European Data Protection Supervisor
Priorities for providing advice in 2017, the implementation of our advisory
role to the EU legislator

Delegations will find in the Annex the publication of the European Data Protection Supervisor "Priorities for providing advice in 2017, the implementation of our advisory role to the EU legislator".



EUROPEAN DATA PROTECTION SUPERVISOR

GIOVANNI BUTTARELLI
SUPERVISOR

President of the Council of the European
Union
Rue de la Loi 75
B-1048 Brussels

Brussels, 15 February 2017
GB/ABU/ssp/D(2017)0135 C 2016-1046
Please use edps@edps.europa.eu for all
correspondence

Subject: EDPS Priorities 2017

Dear Mr President,

I am pleased to inform you that today I have published the EDPS Priorities for 2017: "The implementation of our advisory role to the EU Legislator" which sets out those initiatives of the Commission on which the EDPS, as advisor to EU institutions on data protection matters, is most likely to offer a contribution in the coming year.

The document highlights a number of areas such as, ensuring that the rules for data processing applicable to EU institutions, bodies, offices and agencies are aligned as much as possible with the principles of the GDPR, ensuring protection of confidentiality and privacy in electronic communications, contributing to a Security Union and stronger borders, a new framework for adequacy decisions on exchange of personal data with third countries as well as initiatives falling under international agreements. Such initiatives are likely to have implications for the fundamental rights to privacy and to the protection of personal data for which the EDPS aspires to play a constructive role.

I look forward to continuing our close and fruitful engagement.

Yours sincerely,

Giovanni BUTTARELLI

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General
Ms Marlene BONNICI, Permanent Representative of Malta
Mr Ralph KAESSNER, Secretarial General of the Council

Annex: EDPS Priorities 2017 and Annex

Contact person: *Anna BUCHTA (tel: 02 283 19 10)*

Postal address: rue Wiertz 60 - B-1047 Brussels
Offices: rue Montoyer 30
E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu
Tel.: 02-283 19 00 - Fax : 02-283 19 50



Brussels, 15 February 2017

EUROPEAN DATA PROTECTION SUPERVISOR

Priorities for providing advice in 2017

The implementation of our advisory role to the EU legislator

Part of the statutory mission of the EDPS is to advise the EU legislator, with a view to advancing fundamental rights, in particular the right to privacy and its protection. Such advice must take account of the pace of technological developments where data protection becomes increasingly important¹.

This consultative role relates to proposals for new legislation, as well as soft law instruments, communications and other policy initiatives that affect personal data protection in the EU, international agreements and positions of the EU and its institutions and bodies in international fora. The objective underlying the interventions by the EDPS is to ensure that both the Commission, as the most frequent initiator, and the European Parliament and the Council, as the co-legislators are aware of data protection requirements and integrate data protection in new legislation.

Providing substantive guidance to policy-makers becomes even more pressing in view of the complexity of many legislative files, as well as the impact of information technology on modern society. Today, there are hardly any legislative or policy proposals which do not imply some form of automated data processing, ranging from e-government applications, to security and anti-terrorism measures, to large-scale IT systems.

This document presents the EDPS' approach in the area of consultation for 2017, in line with the priorities identified in the EDPS Strategy 2015-2019². We aim to act selectively and focus our attention and efforts on those initiatives and areas that present the highest risk of non-compliance or where the impact on privacy and data protection are greatest³.

While this document and the list in annex are intended to provide guidance, the EDPS will adjust his priorities throughout the year so as to be able to respond to developments as they arise. Without prejudice to the Commission's privilege of initiative, we will ensure that we are consulted where relevant by Commission services in a timely manner. As in the past, we will engage constructively with the European Parliament, the Council and the Commission and remain available to provide targeted and timely advice at any stage of the EU decision-making process.

¹ "The EDPS as an advisor to EU institutions on policy and legislation: building on ten years of experience", Policy paper available at:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/PolicyP/14-06-04_PP_EDPSadvisor_EN.pdf.

² "Leading by example, the EDPS Strategy 2015-2019", available at:

<https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/Strategy2015>.

³ The EDPS consultation priorities documents for the past ten years can be found at: <https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/Priorities>

2. POLICY FRAMEWORK 2017

Following the adoption of the data protection reform package (comprising the General Data Protection Regulation⁴ and the Directive for data protection in the police and justice sectors⁵), the EDPS will continue to support EU institutions in the next steps towards completing a coherent legal framework for data protection in Europe⁶. In the light of the growing importance of the protection of fundamental rights within the EU legal order, it is crucial that new policy and legislative initiatives include appropriate safeguards to ensure compliance with the Charter of Fundamental Rights of the EU and the data protection principles.

Building on the Data Protection Directive 95/46/EC, the GDPR recognises and strengthens the powers of data protection supervisory authorities to advise national parliaments, government and other institutions and bodies on legislative and administrative measures relating to the protection of personal data. Analogous powers are granted to the EDPS by Regulation (EC) No 45/2001⁷. In setting our priorities, we strive for consistency with the Article 29 Working Party in view of ensuring a single and strong EU voice on data protection matters. This consists in particular of the dedication of additional resources to ensuring synergy with the WP29 action plan and of support for the work on key elements of the GDPR, including guidance for data controllers, data subjects and the interpretation of essential principles.

On the basis of the Commission Work Programme 2017⁸, we have identified the

We will contribute to the ongoing review of the ePrivacy Directive 2002/58/EC¹⁰, focusing, among other issues, on the need to adequately translate into secondary EU law the principle of confidentiality of electronic communications enshrined in Article 7 of the Charter and Article 8 of the European Convention on Human Rights¹¹.

- **Contributing to a Security Union and stronger borders based on respect for fundamental rights**

The initiatives which, in our view, are likely to have serious implications for the protection of privacy and personal data include in particular the implementation of the Security Union agenda and the Action Plan of terrorist financing, as well as several initiatives planned in the context of EU borders and security such as ETIAS, the revision of SISII and ECRIS, including the issue of interoperability between these systems.

For other initiatives listed in the Commission Work Programme 2017 that have been identified as warranting attention of the EDPS, please see the **Annex**.

3. OTHER PLANNED INITIATIVES

On 10 January 2017, the Council decided to consult the EDPS on a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content¹². In response to this request we

In January 2017, the Commission issued a Communication on "Building a European Data Economy"¹⁶ which, among other issues, explores the rules and regulations impeding the free flow of data and present options to remove unjustified or disproportionate data location restrictions, and launches a public consultation and dialogue with stakeholders to gather further evidence. The EDPS will provide input to this consultation.

Building on the preparatory work performed since 2015, we will publish a "toolkit" to assist policy makers and the co-legislator in assessing the **necessity of interference with the fundamental right to data protection**¹⁷. We will follow up with a background document on the **principle of proportionality** in EU data protection law. In this connection, the organisation of workshops devoted to specific policy areas (e.g. justice and home affairs, external relations) to train Commission staff and raise their awareness of data protection issues will be continued, in cooperation with the relevant Commission services.

4. PRIORITIES 2017: BACKGROUND

In order to be able to continue providing effective advice in spite of limited resources, we adopt a selective approach. These Priorities 2017 set out the direction for the work in the ongoing year and identify issues where the EDPS feels that he can provide most "added value" within the framework of legislative and non-legislative procedures. These priorities must be read in conjunction with the EDPS Strategy 2015-2019, which defines the EDPS strategic objectives for the five-year period.

- **green** = EDPS normally will not intervene, but will follow relevant developments and take a decision whether to intervene accordingly.

The Annex is, as a general rule, updated twice a year. The updates are published on the EDPS website.

All EDPS opinions are published on his website in English, French and German and an executive summary in all Community languages is published in the Official Journal. More information can be found in the 2014 policy paper "The EDPS as an advisor to EU institutions on policy and legislation: building on ten years of experience"¹⁸.

The EDPS would also like to encourage all stakeholders to monitor these Priorities, as updated, so as to ensure that the EDPS is consulted in the appropriate manner and at the appropriate stage on all initiatives included therein.

In order to be fully accountable, the EDPS has identified the impact of his advisory work on the quality of legislation adopted as a Key Performance Indicator, and will report on this, together with the other KPIs, in the EDPS Annual Report.

EDPS Priorities 2017

N°	Title	Description ¹
	A Connected Digital Single Market	

in the indication of the prices of products offered to consumers; Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees; Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market; Directive 2005/14/EC concerning misleading and comparative advertising; Directive 2009/22/EC on injunctions for the protection of consumers' interests and Directive 2011/83/EU on consumer rights (incl. impact assessment, Q4 2017)

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