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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

“EDPS Annual Report 2022”

Presentation of the EDPS Annual Report 2022 at
Committee on Civil Liberties, Justice and Home
Affairs (LIBE)

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I have the honour of presenting to you the annual report summarising the work of the European Data Protection Supervisor and its Office in 2022. Let me start by sharing with you the foundations of our works during that period.

As you know, the EDPS is responsible for monitoring and ensuring the application of Union law relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Union institution or body, and for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data.

The fundamental rights are at the foundations, which the European Union as the idea is built on. Enshrined in the Charter and Treaties they form not only the lens through which we look at all policies of the Union. They also set limits:

- Right to life prevents torture and inhuman treatment.
- Right to privacy, when questioned, as we observed last year in the US with the Supreme Court decision relating to Roe v Wade case, might have a significant impact on personal lives and choices.

In this sense, we need to be honest and say that data protection can also put limits to certain ideas. Data protection is not something we can be in favour of only up to the moment when its application in practice means setting limits. We need to accept that fundamental rights are positive, but also negative, in the sense that they set the limits to what public authorities can do.

The reflection on how these limits are being set and applied in practice is therefore essential. In 2022, the EDPS organised Conference on *“The Future of Data Protection: Effective Enforcement in the Digital Age”*. With this conference, we gathered over 2000 participants, both in person and remotely, with an objective to foster progress in the debate on the enforcement of the GDPR four years after its entry into application. I am proud of this event, since the richness of the discussions held during the Conference have, in my view, triggered tangible actions taken by the data protection community.

The European Data Protection Board’s commitments reflected in the Vienna Summit Statement and the European Commission’s plans to propose a legislation harmonising certain procedural aspects of cross-border cooperation between data protection authorities, are, in my opinion, two important examples of the effect that the Conference has had.

As the EDPS, an EU authority, located in Brussels, we see a particular role of promoting and pursuing the solutions delivering best the promises of EU law. There is still a lot to do in this regard and I thank the European Parliament for its careful monitoring of the enforcement of the data protection rules and the roles of the data protection authorities, like the EDPS.

Actions speak more than words though, so let me highlight the concrete actions the EDPS has done to protect fundamental rights.

The Russian invasion of Ukraine triggered an unprecedented reaction from the European Union, which involved also the EDPS. We have been supporting closely EU lawmakers in the legislative initiative, aimed at coordinating criminal investigations related to war crimes committed by Russia, with new tasks for Eurojust. Subsequently, we have been exercising our supervisory role by monitoring the development of Eurojust’s new infrastructure for data processing.



By concentrating our efforts in this area, we demonstrate our commitment to promoting EU-wide solutions, especially in the face of external threat, whilst also reaffirming that individuals' fundamental right to data protection can be at the core of such initiatives, even when measures need to be executed in times of crisis.

In terms of other supervisory actions, I would like to stress we are a supervisory authority that does not shy away from addressing all EU institutions, in particular the key ones, such as the Commission or even the Court of Justice itself, for example in terms of compliance with the Schrems II judgement.

The EDPS' investigative work in 2022 focused therefore on EUIs' contracts with private entities, in particular large ICT providers such as cloud providers. At the moment, we have 2 ongoing investigations in this field: (1) the use of Microsoft Office 365 by the European Commission, (2) the use of cloud services provided by Amazon Web Services (AWS) and by Microsoft. We recently submitted preliminary analysis on the first investigation carried out in the Commission's activities and we aim to conclude both investigations this year - this may involve the use of corrective powers by the EDPS.

In terms of our actions in the Area of Freedom, Security and Justice, I would like to specifically mention the conclusion of the investigation on "Europol's big data challenge". This resulted in the EDPS ordering Europol to erase data concerning individuals with no established link to criminal activity - known as Data Subject Categorisation, on 10 January 2022. Our EDPS Order followed an EDPS Admonishment that we issued in September 2020 because Europol continued to store large volumes of data with no Data Subject Categorisation.

In this context, I would like to mention the EDPS' application to the Court of Justice, submitted on 16 September 2022, in which we requested that the Court annuls two provisions of the newly amended Europol Regulation, which came into force on 28 June 2022 (Case T-578/22 – EDPS v Parliament and Council).

Let me now recap the main highlights from as the advisor to the EU legislator. Regulation 2018/1725 has strengthened the consultative role of the EDPS and the numbers clearly show this. In 2022, we received 110 requests for legislative consultation. In the span of 2 years, the the number of consultations have doubled.

I would like to mention here that in order to provide the European Parliament (EP) with better support on the ground, in terms of legislative advice; we opened an antenna office in the EP building in Strasbourg, with the EDPS staff being at your disposal.

In 2022, a spotlight was shone on our Opinions on the growing use of measures interfering with confidentiality of communications, which is, amongst others, at the heart of the debate regarding efforts to combat child sexual abuse. Given the horrific nature of these crimes, it may be tempting to allow far-reaching measures that affect the communications of large volumes of users. However, we must take care that legislation does not inadvertently undermine the security of private communication channels, by imposing obligations that would result in weakening or discouraging encryption. We should also be mindful of potential psychological long-term effects of such measures.

As an authority supervising exclusively public authorities, we feel a sense of responsibility to contribute to the reflections on the very nature of the role of the state in a democratic society. This prompted us to share, in February last year, the EDPS Preliminary Remarks on Modern Spyware aimed at using the shocking revelations about the use of Pegasus by several EU Member States'



governments as an opportunity to create better democratic oversight over practices related to law enforcement or national security. We are glad to see this document being useful in the works of the PEGA committee.

I am also proud to share with you our successes in the field of technological monitoring. We believe we should be able to anticipate the developments of emerging technologies, so that we can foresee their risks and better support the value-creation process of these technologies. With this view, we developed the so-called TechSonar reports. The second TechSonar was published last November, covering 5 technologies: fake news detection systems, Metaverse, synthetic data, federated learning and central bank digital currency.

But, we not only monitor technologies, we also create our own solutions! For instance, the EDPS launched the pilot phase of EU Voice and EU Video in 2022 to contribute to achieving digital sovereignty and foster the independence of the public sector in the digital world.

Let me reach the conclusion of my intervention, by underlining that the increase of the EDPS' activities is not without its challenges, putting pressure on its resources. We are all here acting under budgetary constraints, and as the EDPS, we fully recognise the external circumstances contributing to this situation. But it is the EU legislator that decides on the EDPS' increasing number of tasks - e.g. with new competencies for EU agencies, with the upcoming Artificial Intelligence Act, with interoperability, with Digital Markets Act and our role in the high-level group to ensure a coherent regulatory approach, with a radical increase of legislative consultations we need to reply to under strict deadlines.

These are examples of new circumstances that make the EDPS face a very challenging situation. We are a small institution that is supposed to supervise agencies that have had their resources augmented dramatically in recent years. I therefore would like to use this opportunity to make a kind request to support the EDPS' request during the work carried out on the budget for 2024. At the same time, we thank you for the support of the EP for their work on the previous budget.

This applies as well to the role of the EDPS as a provider of the Secretariat for the European Data Protection Board, but I leave this aspect to the EDPB, during their Annual Report presentation.

With this, I would like to conclude my address and I remain at your disposal for any questions, comments or feedback you may have to me.

