

Memorandum of Understanding between the European Data Protection Board and the European Data Protection Supervisor

I. Purpose of this document

1. Independent data protection authorities in the European Union are cooperating in a spirit of trust, good faith and collegiality.
2. The General Data Protection Regulation (EU Regulation 679/2016, hereinafter ‘GDPR’)¹ reinforces the terms for this cooperation by the creation of a new European body, the European Data Protection Board (hereinafter ‘EDPB’), to be composed of all national supervisory authorities and the European Data Protection Supervisor (hereinafter ‘EDPS’).
3. The EDPB is an EU body with legal personality that acts independently (Article 69.1 of the GDPR) when performing the tasks described in Articles 70 and 71 of the GDPR. Article 51 of the Data Protection Directive² (hereinafter ‘DPD’) and other relevant applicable EU law.
4. The EDPS is an independent EU supervisory authority with legal personality that acts in complete independence in the performance of its duties (Articles 41.1 and 44.1 of Regulation 45/2001³). The EDPS is recognised as an EU institution in the Financial Regulation applicable to the general budget of the Union and its rules of application⁴ and therefore benefits from budgetary autonomy. The tasks of the EDPS are defined in Regulation 45/2001 (Articles 41.2 and 46).

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA.

³ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

⁴ Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002,
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0966&from=en>.

5. Article 75 of the GDPR stipulates that the Secretariat of the EDPB will be provided by the EDPS, which involves taking on responsibilities for organisational matters in order to support the providing of the Secretariat, in line with Article 44 of the Regulation 45/2001⁵ and Article 69.1 of the GDPR, including on matters where the EDPB, although being an EU body with legal personality, cannot legally adopt the decisions such as budget, human resources and financial administration.
6. The GDPR states that the Secretariat shall perform its tasks exclusively under the instructions of the Chair. The EDPS staff involved in carrying out the tasks conferred to the Board shall be subject to separate reporting lines from staff involved in carrying out tasks conferred to the EDPS (Article 75.3).
7. Given the positive spirit of cooperation among the community of supervisory authorities in the EU, the EDPB and the EDPS have agreed that a Memorandum of Understanding (hereinafter 'MoU') serve as a valuable guide and additional point of reference as to the common commitment of the EDPB and the EDPS concerned towards sound administrative management and synergies and the effectiveness of the EDPB.
8. This MoU also applies to the staff of the EDPS carrying out the tasks supporting the EDPB for implementing the DPD Article 51.1 and other relevant applicable EU law.

II. Definitions

In this document:

1. "Party" means the EDPS or the EDPB, all together referred as "the Parties";
2. "Staff" means officials, contract agents, seconded national experts, temporary agents and trainees hired according to Staff Regulation 31 (EEC), 11 (EAEC), which lays down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community⁶;
3. "Secretariat" means the Secretariat of the EDPB according to Article 75 of the GDPR;
4. "Secretariat staff" consists of members of staff of the EDPS, including the Head of Secretariat provided by the EDPS, carrying out analytical, administrative and logistical tasks to support the EDPB exclusively under the instructions of the Chair of the EDPB and subject to separate reporting lines as provided in Article 75 of the GDPR;
5. "EDPS staff" means members of staff who carry out tasks conferred on the EDPS and work exclusively under the instructions of the Supervisor;
6. "Supervisor" means the Supervisor of the EDPS;
7. "Director" means the Director of the EDPS both in his or her capacity as Appointing Authority and Authorising Officer by Delegation, pursuant to Articles 9 and 10 of the Rules of Procedure - Decision of the EDPS;⁷

⁵ In particular, paragraph 1 and 2 ("1. *The European Data Protection Supervisor shall act in complete independence in the performance of his or her duties.* 2. *The European Data Protection Supervisor shall, in the performance of his or her duties, neither seek nor take instructions from anybody*").

⁶ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>

⁷ Rules of Procedure - Decision of the EDPS of 17 December 2012 on the adoption of Rules of Procedure, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0504\(03\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0504(03)&from=EN)

8. "Head of Secretariat": means a staff member of the Secretariat responsible for coordinating the work of the Secretariat;
9. "Chair" means the EDPB elected chair.

III. Principles

The terms of this MoU are underpinned by the following principles:

- (i) independence and impartiality of action of the EDPB and the EDPS in performing their tasks and powers;
- (ii) good governance, integrity and good administrative behaviour in acting in the public interest;
- (iii) collegiality;
- (iv) cooperation and endeavouring to operate by consensus;
- (v) confidentiality for restricted information
- (vi) efficiency and modernisation to ensure the highest level of synergies;
- (vii) proactivity in anticipating and supporting modern, future-oriented solutions to the new digital challenges to data protection.

IV. The tasks of the Secretariat

1. Under Article 75.5 of GDPR, the Secretariat is required to provide analytical, administrative and logistical support to the EDPB.
2. Article 75.6 of the GDPR provides for a list of tasks to be carried out by the Secretariat. These tasks will allow the Secretariat to effectively carry out the support function foreseen in Article 75.5. Those tasks also include:
 - (i) the organisation of EDPB meetings (sending invitations, booking rooms, catering, gathering evidence and preparing of the reimbursement of travel costs and drafting the agenda and the minutes);
 - (ii) providing further development, use, maintenance and support for the EDPB IT communication tool and One Stop Shop communication tool (covering the EDPB IT system);
 - (iii) the handling of public access to documents requests;
 - (iv) record management;
 - (v) security of information (LISO);
 - (vi) ensuring information and communication tasks, such as maintaining press relations and the drafting/publication press releases, producing web or social media content, briefings, speeches, blog posts, audio-visual material and presentations (communication);
 - (vii) ensuring public relations with other institutions, including representation of the Board before the courts, in accordance with the Rules of Procedures;
 - (viii) the Data Protection Officer's (DPO) activities;

- (ix) Providing the translation of the relevant documents, in accordance with the Rules of Procedure of the EDPB.
3. Certain activities mentioned in paragraph 2, such as translations and interpretation, will be provided by other EU institutions or bodies under SLAs. Where it is identified that existing or new SLAs concluded by the EDPS with other EU institutions or bodies are relevant to the EDPB, the EDPS will involve the EDPB in any (re)negotiation.
 4. The EDPB and EDPS DPOs will meet regularly in order to ensure that their decisions remain consistent.

V. Internal organisation of the Secretariat – Cooperation and Confidentiality

1. The Chair of the Board is tasked, inter alia, with ensuring the timely performance of the tasks of the Board and shall be assisted by the Secretariat to perform this task.
2. The Secretariat staff are separated from EDPS staff. This means that they are subject to separate reporting lines and that the Secretariat will consist of Secretariat staff only.
3. Should any matter of relevance for the EDPB concern both Parties, the Secretariat staff and the EDPS staff, the Supervisor and the Chair shall work together to reach consensus and to find solutions which are in the best interest of both parties and their respective staff.
4. The Head of Secretariat and the EDPS Head of Human Resource, Budget and Administration Unit will meet regularly to ensure full synergy, coherence and consistency in the administrative management of the EDPB and the Secretariat, and to safeguard the administrative accountability of the EDPS. These meetings will enable the Parties to better share administrative information and improve best practices on budget implementation, procurement, expenditures, logistics and good administration. The Chair may make, in principle via the Head of Secretariat, any request to the EDPS Head of Human Resource, Budget and Administration Unit concerning the administrative management of the EDPB and the Secretariat.
5. The Secretariat staff must also act according to the requirements and best practices established in the EDPS Code of Conduct⁸.
6. The Secretariat staff will be located in dedicated offices separated from the offices of the EDPS staff to which access will be restricted. They will have specific e-mail addresses (XX@edpb.europa.eu) and all official documents produced by the Secretariat will be formally identified as EDPB documents.
7. Without prejudice to the professional secrecy⁹, the Parties agree to exchange on a regular basis relevant information to make this MoU effective.

⁸Code of Conduct:

<http://www.edpsnet.ep.parl.union.eu/edpsnet/webdav/site/edpsnet2/shared/HRAB/Documents/code%20of%20conduct.final.pdf>.

⁹ For EDPS staff, including the Secretariat staff, Art 17 of the Staff Regulation, Article 45 of Regulation 45/2001 on the basis of Article 339 of the Treaty on the Functioning of the European Union will be applicable. For national supervisory authorities staff, Article 54.2 of the GDPR and 44.2 of the DPD will apply.

8. To maintain mutual trust through the sharing of information flow in both directions, the Parties:
 - (i) will ensure that any sensitive non classified information and classified information will only be exchanged and used exclusively for lawful purposes and only where relevant for the respective duties of the Parties, in compliance with relevant EDPS and EDPB Decisions on Security and according to EU standards;
 - (ii) will restrict access where appropriate to ensure the separation of functions and the sensitivity of information;
 - (iii) will respect confidentiality and security rules, preventing any unauthorised access to restricted information.
9. Similarly, IT systems and tools used by the Secretariat should be designed in a way which mitigates the risk of security breaches. The same rules shall apply to external staff performing tasks for the Secretariat through ad hoc contractual clauses imposing the same confidentiality rules and the Information Security Policy of the EDPB will provide for the necessary access restrictions which are implemented in relevant IT systems.
10. In the case of a breach of the EDPB or EDPS Security Rules, with regards to the EDPB information or to the implementation of the MoU, the Chair and the Director will be notified after the intervention of the respective Local Information Security Officer (LISO) and the EDPS Local Security Officer (LSO), so that appropriate action may be taken.

VI. EDPS responsibilities to provide the Secretariat

1. To provide the Secretariat, the EDPS will:
 - (i) provide **separate staff** to carry out tasks conferred to the Secretariat. The EDPS will take all reasonable measures to provide suitable staff in accordance with the needs identified by the EDPB. The EDPS will also provide Human Resources support, including selection, recruitment, payroll, appraisal, promotion, learning and development, mission organisation, respect for ethics and leave requests for the Secretariat staff;
 - (ii) provide a **working place** to staff carrying out tasks conferred on the Secretariat;
 - (iii) provide a **working infrastructure** to Secretariat including all reasonable and necessary communications and working equipment necessary for the EDPB Secretariat;
 - (iv) provide **financial resources and support** to the EDPB and the Secretariat. The EDPS will prepare, defend and implement the budget dedicated to the EDPB. The EDPS Annual Activity Report foreseen in Article 66.9 of the EU Financial Regulation will cover the budget dedicated to the EDPB and the EDPS will be responsible for the Internal Control Coordination function;
 - (v) ensure the **security** of the building via appropriate arrangements.
2. Where necessary, the EDPS may decide, after informing the EDPB, that one or several of the services mentioned in paragraph 1 such as payroll or the basic IT infrastructure made available to the Secretariat, will be supplied by other EU institutions or bodies under SLAs. The EDPS will consult the EDPB on any (re)negotiation and the EDPS will take utmost account of its opinion and give reasons why when taking a different position than the one expressed by the EDPB.
3. The EDPS will inform and consult the EDPB in advance where there is any matter of relevance for the EDPB and its functioning.
4. In addition, in all matters foreseen in paragraphs 5, 6 and 7, the EDPS, before taking a decision of relevance to the EDPB, will take utmost account of any opinion of the Board and endeavour to reach consensus. If consensus cannot be achieved, the EDPS will give reasons for not following the opinion of the EDPB.

5. On HR matters, a close cooperation with the Chair will take place in the definition of job profiles according to the EDPB needs and in the organization of the selection procedure of the Secretariat staff, in compliance with the EU staff regulations. Recruitment, appraisals and promotions will be carried out in accordance with the provisions of the Staff Regulations and the EDPS implementing decisions. Missions and trainings will be authorised by the Head of Secretariat and validated by the Authorising Officer by Delegation to ensure respect of the budget and of EU regulations.
6. For budget matters, a dedicated Title in the EDPS budget differentiates as much as possible resources and expenses of the EDPS from those of the EDPB. The EDPS will work in close cooperation with the Chair regarding the formulation and adoption of the EDPB budget on the basis of justified needs and after the consultation of the EDPB.
7. As regards the expenditure of the EDPB, the Head of Secretariat will act as operating agent deciding *de facto* on the commitments and expenditure of the EDPB. The expenditures will be executed and signed by the EDPS after verifying that the budget and EU Financial Regulations are respected. In case the EDPS refuses to execute an item of expenditure or decide differently than the views of the EDPB, for example to comply with a formal requirement under EU law, the EDPS will explain its decision to the Head of Secretariat.

VII. Additional functions performed by the EDPS to cooperate with the Secretariat

1. In order to enhance synergies, savings and economies of scale, the EDPS will ensure the technical tasks for EDPB information and administrative communication, such as:
 - (i) providing the technical development and assistance for the **EDPB website**;
 - (ii) producing audio-visual material;
 - (iii) providing technical support for events and study visits;
 - (iv) publishing, and sending documents promptly, such as news, press releases, speeches, blog posts, document, web content, upon request of the Head of Secretariat (because, for example, the person responsible for the publication of documents within the Secretariat is not available).
2. The EDPS Head of Information and Communication will be responsible for organising those tasks relating to EDPB activities as requested by the Head of Secretariat.
3. The EDPS Head of Information and Communication will cooperate with the Head of Secretariat when conducting appraisals and promotion exercises concerning his/her members of staff who also work on tasks relating to EDPB activities.

VIII. Implementation, revision and amendments

The Parties will meet regularly, at least once a year, in order to exchange views on the practical implementation of the working arrangements and may decide to amend this MoU.

IX. Entry into force and publication

This MoU will apply on the day following the date of its signature and its initial and amended version shall be published in the Official Journal of the European Union and on the websites of the Parties pursuant to Article 75(4) of the GDPR.

Drawn up at Brussels on 25 May 2018 in two original copies each in the English language and signed by the EDPB Chair and by the Supervisor.

For the European Data Protection Board

[signed]

Name:

25. 5. 2018

For the European Data Protection Supervisor

[signed]

Name:

A. von Bunkhorst