2015 discharge

Questionnaire to the European Data Protection Supervisor

1. Please name 3 of the institution’s main achievements and successes in 2015. How do they impact in the institution’s challenges for the future? Please focus mainly on operations, activities and results achieved.

A new strategy for a new mandate
In March 2015 the new European Data Protection Supervisor (EDPS) adopted a strategy for its five years’ mandate to turn his vision into reality and to identify innovative solutions quickly.
The aim of the Strategy 2015-2019, ‘Leading by Example’ was to seize the historic opportunity to develop data protection in a crucial moment for data protection, a period of unprecedented change and political importance, not only in the EU but globally. The Strategy set out the institution’s objectives for the next five years and the actions necessary to achieve them. The Key Performance Indicators (KPIs) of the EDPS were reassessed to ensure that the institution remains fully accountable and transparent on how we achieve our objectives.

Data protection reform
After almost four years of intense negotiation and public debate, a political agreement on the General Data Protection Regulation was reached in December 2015. The EDPS was active as an advisor throughout this process, including meeting with civil society organisations in May.

Our final message to the legislators was in July, when we provided them with our first set of comprehensive, article-by-article recommendations for enhancing safeguards, cutting bureaucracy and ensuring the relevance of the reform during the next generation of technological change. We launched our Opinion in the form of a free-to-download mobile app, which allowed users to compare the Commission proposal, the Parliament and Council texts for negotiation and the EDPS recommendations, all on one screen.

In October, we added our detailed recommendations on the proposed Directive for the sectors of police and justice to this app, urging the legislators to be consistent in the standards required of all controllers, with only limited deviations to account for the special circumstances of law enforcement data processing.

The advice provided by the EDPS for this historical change in the regulatory framework of one of the fundamental rights of the European Union was very welcomed by the Commission and highly praised by the co-legislators.

A specialist competition
With the assistance of EPSO, we organised a specialist competition for data protection experts. This was a big challenge for a small organisation like the EDPS as there were days when a substantial number of our staff were sitting in selection panels in EPSO. The

---

1 3 Managers and 4 Heads of Activity
competition resulted in a reserve list of 21 excellent candidates which will cover the forthcoming recruitment needs of the EDPS, the future EDPB and the new EDPS supervisory task of Europol. 6 candidates of this reserve list have already been recruited and 4 additional new recruitments are foreseen in January 2017.

Staff

2. How many seconded national experts, contract staff, interim staff, consultants, temporary agents and officials were working for your institution in 2015?

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>SNE²</td>
<td>0</td>
</tr>
<tr>
<td>CAs²</td>
<td>15</td>
</tr>
<tr>
<td>Interim</td>
<td>0</td>
</tr>
<tr>
<td>Consultants</td>
<td>0</td>
</tr>
<tr>
<td>Temporary agents</td>
<td>0</td>
</tr>
<tr>
<td>Officials</td>
<td>42</td>
</tr>
<tr>
<td>External contractor</td>
<td>1</td>
</tr>
</tbody>
</table>

3. Please present a gender and nationality breakdown of your middle and senior management positions.

² Please note that due to the impact of the financial crisis, 2 out of the 15 contract agents were in fact officials seconded by national data protection authorities taking a leave in their Member States.
4. Please introduce and evaluate your institution’s policy for training of staff.

The fundamental aim of L&D within the EDPS is the development of each staff member. By developing a culture of Learning and Development staff members improve their knowledge, competence and skills. They both contribute to the achievement of the institution’s aims and to fulfil their potential, maintain their professional expertise and develop in their respective careers. Accordingly, L&D is an essential part of the EDPS' human resources management policy, which contributes to career development.

Learning and Development activities, language courses included, are available to all members of the EDPS staff without distinction based on grade, function or category.

The EDPS, as a small institution with limited resources, recognizes the opportunities offered by classroom training while at the same time encourages the use of all other learning opportunities (On-the-job learning, mentoring, learning on feedback, knowledge sharing, exchange and short secondment, eLearning ...).

The impact on the organisation, in terms of time and cost, of the participation in a traditional training course is taken into account. The average time devoted to L&D is estimated as 8 working days per person per year. Exceptionally, if the request is fully justified and feasible from the financial and budgetary point of view, extra L&D days can be approved with the agreement of the responsible line manager and the head of HR.

From the results of the staff satisfaction survey we conducted in April 2016 (see chart below) we can conclude that the EDPS training policy helped the staff to improve their performance (58.14 % agree on that). Moreover staff are satisfied about their access to the right learning and development opportunities (65.11 %) and about the help they receive from their line manager to identify their needs (79.07 %) and the support they receive to implement their learning and development actions in the workplace (72.09 %).
5. Please provide a list of the external contractors in line with the employment conditions in 2015.

There is one external contractor: Cronos International SA.

6. Would you say that your institution had a fair recruitment practice policy in 2015? Were there any complaints, law-suits or otherwise reported cases of non-transparent hiring or firing of staff?

Yes: we follow an objective and carefully documented recruitment process. The candidates have been treated fairly and the same way regarding the whole recruitment process: publication of the vacancy notices, selection of the short listed, information, interviews and evaluation criteria and the recruitment of the selected candidate.

No: there were no complaints, law-suits or otherwise reported cases of non-transparent hiring of staff.

7. What was the amount of the highest pensions for officials of your institution paid in 2015? What was the average pension paid in 2015 for officials of your institution? What is the average pension paid for officials of your institution who retired in 2015?

EU pension rights are acquired by staff in proportion to the service rendered throughout their whole career across all EU institutions and bodies.

As EU Pension scheme is unique and there are no specific pensions associated with individual EU institutions or bodies, the Commission will provide consolidated figures for all Institutions.
8. What were the costs in 2015 respectively for away days, closed conferences or similar events for staff? How many staff members participated in the respective events? Where did these events take place?

<table>
<thead>
<tr>
<th>EDPS AWAY DAYS 2014</th>
<th>Cost</th>
<th>City</th>
<th>N° Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>RMS Away Day</td>
<td>1.180,00</td>
<td>Brussels</td>
<td>8</td>
</tr>
<tr>
<td>S&amp;E Away Day</td>
<td>3.170,00</td>
<td>Brussels</td>
<td>14</td>
</tr>
<tr>
<td>I&amp;C Away Day</td>
<td>778,12</td>
<td>Liège</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5.128,12</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. How many former MEPs, Commissioners or high officials (from AD 14) still receive money from the budget of your institution as advisors, contract agents or others? What are their tasks and their respective salaries?

None

10. How many officials in which functions and grades were retired in 2015 in the interest of service according to Article 50 of the staff regulations?

None

11. How many working days were granted as vacation days in 2015 for years of service in your institution? How many persons were concerned?

Non applicable

12. We would appreciate a comprehensive overview of staff on sick leave in 2015 broken down by the number of staff members that were on sick leaves and by how many days they were on sick leave? How many days lasted the three longest cases of sick leave? How many days of sick leave concerned Mondays and Fridays in 2015?

Please see attached the Annex called “Discharge 2015 - question 12”. A number has been given to each staff member, but the link is easily available on request.

13. Well-being activities are being put in place in some institutions to the benefit of people working in those institutions. Has the Supervisor put in place such initiatives and/or actions on risk prevention and protection at work? If so, when? How much did those activities cost in 2015?

Yes: well-being activities have been put in place at the EDPS. There is a running club and a yoga club which are organised for free by two staff members. Moreover with the active support of the Staff Committee, the EDPS organised a wine tasting evening at MMMMH SA (cost 2.800 €) and a bowling evening (cost 249.08 €).

14. The Equal Opportunities Strategy adopted in 2015 was subject to consultation with the
Staff Committee in the first half of 2016. What were the results?

After its adoption on 22 December 2015, the Equal Opportunity Strategy was sent to the Staff Committee that provided some suggestions for its implementation. The EDPS decided then to update the strategy taking into account the results of the staff satisfaction survey of March 2016 (e.g. filtering answers by sex), and the discussions/feedback of the focus group at the Away Day of 12 May 2016. In July 2016, HR staff also participated to the Intercoppec meeting (inter-institutional focus group on Equal opportunity).

This analysis has resulted in a few changes to the Strategy adopted last year, incorporating the results of the survey and the contributions of the work of the focus group of the Away day and the Intercoppec conclusions (of July 2016).

The new draft was sent to the Staff Committee of the EDPS on 7 November 2016 that has largely endorsed the changes. The updated strategy was adopted by the Management Board of the EDPS in December 2016.

Transparency

15. What activities has your institution started and what policies implemented in the area of transparency in 2015?

Our policies on transparency have been enshrined in Articles 52, 54 and 56 of the EDPS Rules of Procedure.

The information is available under this link:
https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Membersmission/Duties

We continued to respond to requests for public access to documents throughout 2015 and to increase the transparency of our work. In particular, this will include a project to update the EDPS website, making it more accessible and increasing the amount of information available on it.

16. Had the minutes of the institution’s management meeting (apart from the points which the legislation defines as internal / confident / secret) been made public?

No, the minutes of the management meetings are not made public but staff are informed internally.

17. Had all meetings with lobbyists (in case you had such meetings) been registered and made public (where applicable)?

The code of conduct for the Supervisors adopted on 16 December 2015 deals with this issue on point 2 (Meetings and conferences outside the EU Institutions). Paragraphs 1 & 2 mention:

“Attendances by the Supervisors at professional meetings with organisations or self-employed individuals outside the EU institutions are published, at a minimum, on the institution’s website. Similarly, all conferences in which the Supervisors participate are published on the EDPS website, together with formal speaking notes if any.

The information made public includes the date and location of the meeting or conference,
the name of the Supervisor or Assistant Supervisor attending and the name of the representative of the organisation or self-employed individual or the name of the institution or of the organiser of the conference and the subject of the meeting or the conference”.

The information is available under this link:
https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Events

18. How many access to documents’ requests were received, fully replied, only partially granted and how many were rejected? What were the main grounds for those rejected? Please provide a list of the requests, including the nature of the requested documents and the final decision whether to grant the access.

In 2015, we received four requests for public access requests for documents held by the EDPS (down from 18 requests in 2014).

Access granted: 3
(1) EDPS informal comments on the draft Reg. of the ECB on the collection of granular credit and credit risk data (2015-1012),
(2) EDPS decision on a complaint against the European Commission relating to personal information (postal address) asked by the EC in the context of access to documents requests lodged pursuant to Reg. 1049/2001
(3) Third party consultation - consultation on the EDPS comments to the EC on the impact assessment of a common EU approach to the use of PNR data for law enforcement purposes.

Access partially granted: 0

Access denied: 1
(1) Request for access to all documents and internal records in relation to a complaint case. Access denied on the basis of Art. 4(1)(b) and 4(2) third indent.

19. How many of the rejected cases were transmitted to the European Ombudsman or the Court of Justice? And what were the results of these procedures?

None

20. What is the rate of compliance of your institution with regard to the recommendations of the Ombudsman?

Non applicable

21. Has your Institution introduced internal whistleblowing rules on the basis of the Staff Regulation and the Ombudsman’s recommendations?

Yes. The decision on internal rules concerning whistleblowing was adopted on 14 December 2015 and even revised on 14 June 2016 to align them with some data
22. How many whistle-blower case did your institution had, since the adoption of those internal rules?

None

23. What were the results of the procedures?

Non applicable

24. Did you forward any whistle-blower case to the Ombudsman or at the ECJ?

Non applicable

**Fraud & Corruption (including co-operation with OLAF)**

25. What further measures / rules your Institution had at your disposal - or had introduced in 2015 - to fight against fraud & corruption? How did those rules changed up till today?

The EDPS has set up a decision on 12 September 2007 “concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities’ interests”. In 2015, two other decision/documents have been adopted.

First the decision of the EDPS “adopting implementing provisions regarding the conduct of administrative inquiries and disciplinary proceedings” of 23 April 2015 where potential cases denouncing financial fraud to OLAF are referred to. Please find attached the Annex called “Discharge 2015 - question 25”.

The second document is the Code of conduct for the European Data Protection Supervisor and the Assistant Supervisor of 16 December 2015 (see question 17). This document reflects the highest ethical standards of behaviour, the purpose of which being to prevent any temptation of fraud or corruption.

26. How did you co-operate with OLAF and ECA in the spheres of prevention, investigation or corrective measures?

Prevention is done through regular information session to staff. Regarding the cooperation with OLAF and ECA in the sphere of investigation or corrective measures, we have not been confronted with any such case in the history of the EDPS.

**Performance Based Budget approach**

27. How did you include the principles of Economy, Efficiency and Effectiveness in your daily operations and annual planning and controls?

The finance team of the EDPS setup in 2011 a budget implementation control mechanism, consisting of an excel report updated quarterly, which monitors the implementation rate of each budget line. This tool provides the Management Board of
the institution with a regular comparison between the estimated and the actual consumption, as well as the evolution of the implementation rate from one year to another. The intensive and continuous use of this tool, which has been further developed over the time, has consolidated a positive evolution of the implementation rate of the budget, from 75% in 2010 to 94% in 2015.

28. Which Key Performance Indicators have you included in the managing and budgetary planning and how did you check up on their achievement?

In the framework of the setup of the EDPS Strategy 2015-2019 and after a thorough consultation exercise carried out in 2015, the list of KPIs was reviewed. The new list of KPIs does not include any indicator to measure and monitor budget execution.

Until 2015 there was a KPI to measure budget execution, which each year used to show very good results. With the aim to restrain the KPIs list to the minimum possible and to measure only the more critical issues, the EDPS management decided to exclude and/or modify some indicators. As a result, the budget execution indicator was excluded from the EDPS list of (external) Key Performance indicators but maintained as an internal performance indicator.

29. What follow-up measures did you introduce following the annual revision of the goals achieved?

The follow-up is carried out through the quarterly budget implementation review as explained in question 27.

30. Have you also set medium to long-term goals allowing you to also check the effectiveness and not just the efficiency of your operations?

Given the size of the EDPS budget, this has not been identified as necessary so far.

Conflict of Interests (Rules and control mechanism)

31. What measures / rules has your Institution had at your disposal - or had introduced in 2015 - to prevent and fight against the conflict of interests? How did those rules changed up till today?

Conflict of interests are dealt with the two codes of conduct adopted in the EDPS. The new code for Staff of June 2014 has dedicated a specific point to it (part 3 - Trust and transparency - point 1 Conflicts of interest and integrity). Please find attached the Annex called “Discharge 2015 - question 31”. The Code of Conduct for the European Data Protection Supervisor and the Assistant Supervisor of 16 December 2015 deals with this issue specifically in point 4 (conflicts of interest, financial interests and assets and declaration of interests - see question 17).

32. Do you have any regular/ad hoc controlling mechanism at place?

An HR official is dealing with all requests of conflict of interests in relation with those two codes. The adoption of an Ethics Framework in 2016 with the official appointment of an independent Ethics Officer has introduced an effective control mechanism.
33. Were there any cases reported, investigated and concluded in 2015?

None

Harassment

34. What measures / rules has your Institution had at your disposal - or had introduced in 2015 - to prevent and fight against harassment? How did those rules changed up till today?

On December 2014, the EDPS adopted implementing measures regarding Articles 12a and 24 of Staff Regulations about the procedure relating to anti-harassment. Please find attached the Annex called “Discharge 2015 - question 34”. The EDPS has also designated two confidential anti-harassment counsellors who belong to the network of the Commission.

35. Were there any cases reported, investigated and concluded in 2015?

None

36. What was the expenditure in 2015 for the management/ Court sentences of harassment cases?

Not applicable

Activities to Lower the Environmental footprint (EMAS rules, Energy, water, paper consumption, CO2 offsetting)

37. Please present your activities in these fields from 2012 to 2015.

The EDPS is hosted by the European Parliament in one of its buildings. As far as energy consumption is concerned, the building we occupy together with the European Ombudsman, the Court of Auditors and some services from the Parliament, is qualified as a “smart building” with a low energy consumption.

A paperless policy was adopted in 2015 (implemented in 2016) as regards the archiving system of the EDPS core activities. This policy has resulted in a huge saving on paper consumption.

Services

38. Which were the costs for translation and interpretation ordered by your institution?

The total cost of translation and interpretation was of EUR 405.523,10.
<table>
<thead>
<tr>
<th>Staff Member n°</th>
<th>Sick leave days</th>
<th>Total</th>
<th>Monday + Friday</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>5</td>
<td>5</td>
<td>Monday trough Friday</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>4</td>
<td>Monday</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td></td>
<td>Friday</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Monday</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td>5</td>
<td>includes Monday and Friday</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>4</td>
<td>Friday</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td></td>
<td>Thursday Friday</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>2</td>
<td>Friday</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Friday</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>1</td>
<td>Monday</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Friday</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td>1</td>
<td>Monday</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Friday</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Monday</td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>6</td>
<td>Monday trough Wed</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td></td>
<td>Thursday Friday</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>2</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Monday</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Wednesday</td>
</tr>
<tr>
<td>14</td>
<td>15</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5</td>
<td></td>
<td>Friday to Tuesday</td>
</tr>
<tr>
<td>15</td>
<td>4</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Monday</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td>Friday</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Friday</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>4</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>3</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Friday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Friday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>5</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday to friday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Friday</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---------</td>
<td>---</td>
</tr>
<tr>
<td>31</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>32</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>1</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>1</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>1</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>39</td>
<td>2</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>1</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>1</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>5</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>1</td>
<td>friday</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>1</td>
<td>Monday</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Friday</td>
<td></td>
</tr>
</tbody>
</table>

**Three biggest cases are:**

- Staff member 18: 25 days
- Staff member 37: 60 days
- Staff member 42: 23 days
DECISION OF THE EUROPEAN DATA PROTECTION SUPERVISOR ON INTERNAL RULES CONCERNING WHISTLEBLOWING

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (CEOS) laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68[1]

Whereas:

(1) As provided for in Article 22.c of the Staff Regulations, the EDPS has to adopt internal rules regarding whistleblowing by members of its staff;

(2) These rules aim to safeguard the rights and interests of whistleblowers and provide adequate remedies if they are not treated correctly and fairly in relation to their whistleblowing, hence materialising the institution's commitment to provide a safe environment for reporting and addressing suspected misconduct;

(3) Staff members have the obligation to report possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union;

(4) The appointing authority shall lay down the procedures to be followed for reporting such serious irregularities, including the protection of the legitimate interests of those officials, as well as a procedure for the handling of their complaints. Confidentiality is extremely important in the whistleblowing procedure, and the EDPS is committed to providing a safe environment for reporting and addressing suspected misconduct.

Having consulted the Staff Committee of the EDPS;

HAS DECIDED AS FOLLOWS:

**Article 1 - Scope**

The rules apply to every staff member working in the EDPS’s Secretariat, irrespective of their administrative position or status.

**Article 2 - Definitions**

For the purpose of these rules, a *whistleblower* is a person who, in good faith, reports facts which he or she honestly and reasonably believes suggest the existence of serious irregularities in the EDPS.

Disclosure is made *in good faith* if the whistleblower honestly and reasonably believes that the information disclosed, and any allegation contained in it, is substantially true. Good faith is presumed unless and until proven otherwise.

**Article 3 – Which irregularities to report**

A staff member, who acting in good faith, in the course of or in connection with his or her duties discovers facts which point to the existence of serious irregularities, shall report this. The reporting should be made in writing, without delay and contain relevant evidence of which the staff member is aware of.

Fraud, corruption, theft, serious violation of rules on public procurement and serious violation of professional obligations that may be detrimental to the interests of the Union are to be considered, in particular, serious irregularities. Serious professional misconduct, which may constitute serious failures to comply with the obligations of staff members, either intentionally or by negligence, may also constitute a serious irregularity.

**Article 4 – What does not constitute serious irregularities**

Some types of information do not qualify as serious irregularities that need to be reported within the meaning of these internal rules, such as:

- information already in the public domain;

- unsubstantiated rumours;
- information relating to a person’s private life, which is not relevant to his or her duties.

For some situations other procedures are established and should be followed, for example:

- claims of harassment or personal disagreement between colleagues\(^1\);

- personal issues where staff have a personal interest in the outcome\(^2\) or matters relating to a staff member’s legal position for which he or she may have recourse to appeal under the Staff Regulations/Conditions of Employment of Other Servants\(^3\).

**Article 5 – Reporting procedures**

Without prejudice to Article 22.a which provides for the possibility for the whistleblower to address his or her report directly to the European Anti-Fraud Office (OLAF) and without prejudice to Article 22.b which provides for the additional possibility to report to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament or of the Ombudsman, if certain conditions are met, members of the EDPS staff shall report, in writing, suspicions of serious irregularities.

Such reports should be made to the Director or exceptionally to the Supervisor:

a) If the Director is involved in the subject matter of the report, or

b) The serious irregularity or professional misconduct is of such nature or importance that informing personally the Supervisor is considered necessary by the whistleblower.

**Article 6 - Guidance and support**

Potential whistleblowers may approach the Ethics Officer (of the EDPS) to seek guidance and support.

To the maximum extent permitted by the Staff Regulations, guidance and support to potential whistleblowers shall be provided in confidence.

---

\(^1\) Staff members can lodge a complaint under Article 90 of the Staff Regulations and there is an EDPS policy adopted to that effect.

\(^2\) Staff members can lodge a complaint under Article 90 of the Staff Regulations and there is an EDPS policy adopted to that effect.

\(^3\) Staff members can lodge a complaint under Article 90 of the Staff Regulations and there is an EDPS policy adopted to that effect.

\(^4\) [http://ec.europa.eu/anti_fraud/investigations/eu-staff/index_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-staff/index_en.htm)
Where a report of serious irregularities has been made, the whistleblower may request guidance and support, which shall be provided to the maximum extent possible in the circumstances.

Article 7 - Information guarantees

A whistleblower who reports to the Director has the following information rights:

(i) to be provided with an acknowledgement of receipt as rapidly as possible and, in any event, within five working days;

(ii) to be told which staff member is responsible for dealing with the matter;

(iii) to be told, as soon as possible and, in any event, no later than 60 days following receipt of the report, of the time it will take the EDPS to take appropriate action;

Article 8 - Protection of whistleblowers - Confidentiality and security measures

Staff members play a critical role in raising concerns, which help the EDPS better identify, address, and ultimately deter irregularities and misconduct. Therefore, the EDPS shall protect a whistleblower against any acts of retaliation or reprisal.

When an individual who is involved in serious irregularities subsequently decides to blow the whistle, the fact of having reported the matter shall be taken into account, in his or her favour, in any disciplinary procedure.

The EDPS shall protect the identity of a whistleblower and the confidentiality of the report received to the greatest extent possible. Their identity should never be revealed to the alleged wrong-doers except in certain exceptional circumstances if the whistleblower authorises such a disclosure, if this is required by any subsequent criminal law proceedings, or if the whistleblower maliciously makes a false statement. This shall be done after the consultation of the DPO.

Inadequate protection of the whistleblowing files might bring severe prejudice to the whistleblower. The EDPS shall identify and assess relevant risks and put in place adequate technical and organisational countermeasure to protect the confidentiality of the whistleblower's identity and the security of relevant information. The risk management process and relevant countermeasures shall be documented. Specific advice on what procedures and tools should be used by the whistleblower and any other staff involved in the process shall be also documented.
Where the Director or any of the Supervisors of the EDPS refers the matter to OLAF, the identity of the whistleblower shall not normally be disclosed to OLAF.

Whistleblowers who consider that the EDPS has not adequately protected their confidentiality and their related personal data may complain to any of the Supervisors or the EDPS DPO.

In case a disciplinary action or an anti-harassment procedure is launched, both procedures will have to follow the relevant Decisions adopted by the EDPS.

**Article 9 - Mobility**

Where, as a protection against any possible retaliation, a whistleblower wishes to be moved internally if it is possible or to another EU body, the EDPS will support and assist with this request as much as possible.

**Article 10 - Appraisal and promotion**

Managers shall ensure that acts of whistleblowing done in good faith are not taken into consideration, favourably or unfavourably, in staff appraisal and promotion procedures.

They shall ensure that whistleblowers suffer no adverse consequences in this context.

Whistleblowing shall only be mentioned in the whistleblower's staff report, if he or she explicitly requests that such a reference should be included. In such cases, the whistleblower will be informed that the confidentiality rules may be different than those applied in the whistleblowing procedure.

**Article 11 - Penalties for persons taking retaliatory action**

Any form of retaliation against a whistleblower is prohibited. It shall be up to the person taking any adverse measure against a whistleblower to establish that the measure was motivated by reasons other than the reporting.

If such retaliation occurs, the EDPS will take appropriate action, including, if necessary, disciplinary measures, against any member of staff concerned.

**Article 12 - Remedies**

Members of the EDPS staff who blow the whistle and who consider that they have not received adequate support and protection may request assistance in accordance with Article 24 of the Staff Regulations.
An express decision, including reasons, shall be given to the whistleblower as rapidly as possible and in any event no later than two months after he or she submitted the request.

Where the whistleblower regards the decision as unsatisfactory, he or she may make a complaint, within three months, under Article 90(2) of the Staff Regulations.

If the whistleblower so requests, the EDPS shall offer the opportunity to present the complaint orally. The whistleblower has the right to be accompanied by a member of the Staff Committee and/or any other person at a meeting for this purpose.

In dealing with Article 90(2) complaints, the EDPS may, with the whistleblower's agreement, consult a person or persons from outside the EDPS's Secretariat in order to ensure that the procedure is as fair and equitable as possible.

Unless a longer period is justified in the circumstances, the EDPS's express decision on the complaint shall be given to the whistleblower no later than two months after he or she submitted the complaint.

**Article 13 – Malicious or frivolous reports**

A malicious or frivolous report does not constitute whistleblowing and may lead to disciplinary measures.

**Article 14 - Rights of persons implicated**

Staff members (the whistleblower, the alleged wrongdoer, witnesses and third parties) implicated in reports of serious irregularities shall be informed in as soon as possible of the allegations made against them. Where there is a substantial risk that such notification would jeopardise the ability of the EDPS to effectively investigate the allegation or gather the necessary evidence, notification may be deferred\(^4\) as long as such risk exists.

If the opening of investigations is considered necessary, the EDPS may seek the assistance of IDOC in accordance with the terms of the Service Level Agreement signed with that office.

Upon termination of any internal investigation, the staff members concerned shall be informed as rapidly as possible of the results of the investigation.

\(^4\) In accordance with Article 20 Regulation 45/2001
This obligation of information applies where the whistleblower reports to the Director of the EDPS. Where a whistleblower reports to OLAF, it is for the latter to decide how to proceed.

**Article 15 - Awareness raising**

These rules and the relevant procedures shall be drawn to the attention of persons when they join the EDPS's staff and not less than once a year thereafter.

Information sessions shall be organised with the aim of ensuring that all members of the EDPS's staff understand that readiness to blow the whistle on serious irregularities plays an essential role in maintaining a culture of integrity in the Secretariat.

A training session shall be organised for the Director on how to deal with whistleblower reports.

**Article 16 - Reporting**

The annual activity report to the budgetary authority shall include a section on whistleblowing by members of the EDPS's staff, and shall respect all the confidentiality commitments as per article 8 of this decision. It shall also give details of the activities mentioned under Article 15 above.

**Article 17 - External whistleblowers**

Every person who enters into a contract with the EDPS shall be informed of the existence of this decision and that it is possible to raise suspicions of serious irregularities either with the EDPS or with OLAF and that making use of this possibility in good faith will not result in any retaliation, reprisal or other negative action on the part of the EDPS.

The EDPS shall also, whenever appropriate, consider encouraging contractors to adopt whistleblower rules of their own.

**Article 18 - Data protection**

Any processing of personal data in application of these rules is subject to Regulation (EC) No 45/2001[3] and shall be carried out in accordance with the EDPS's notification on whistleblowing. Staff members shall be informed of their data protection rights in this area through the privacy statement prepared as part of that notification.

**Article 19 - Data retention**
Upon the closing of an initial investigation led by the EDPS, the data gathered to build the investigation will either be sent to OLAF if it concerns fraud or if not relating to fraud, dealt with through the appropriate channels within the EDPS. If a case is sent to OLAF and an investigation is opened, there is no need for the EDPS to keep the information for a longer period. In cases OLAF decides not to start an investigation, the EDPS will delete the information without delay. Files on the basis of which an administrative inquiry or disciplinary procedure is opened by the EDPS, the information should be kept in line with the retention periods foreseen for those files. When the investigation has dismissed a report of whistleblowing, the data gathered to build the investigation will be retained for a period of 2 months after the final decision has been issued to all the parties involved.

**Article 20 – Dealing with excessive personal information**

Should the EDPS receive information that is clearly of no interest/relevance to the investigation because the information is not relevant for the purposes of investigating fraud or other serious wrong doing through the whistleblowing procedure, the information should not be further processed and should be erased. This requires doing a first check of the reports as soon as possible.

**Article 21 - Review**

These rules shall be reviewed within two years of their adoption, with a view to deciding whether they need to be supplemented or revised.

Before deciding on any changes to these rules, the EDPS shall consult the Staff Committee.

---


**Article 22 - Entry into force**

The decision shall enter into force on the day of its signature.

Done at Brussels on 14/06/2016

Giovanni BUTTARELLI

Supervisor
Brussels, 23 April 2015
EDPS(2015) DEC/

EUROPEAN DATA PROTECTION SUPERVISOR DECISION
of 23 April 2015

Adopting Implementing provisions regarding the conduct of administrative inquiries and disciplinary proceedings

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (CEOS) laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 and, in particular, Article 2 of the Staff Regulations and Article 30 of Annex IX thereto,

Having consulted the Staff Committee,

Having consulted the Staff Regulations Committee,

Whereas:

(1) General implementing provisions to govern the conduct of administrative inquiries and disciplinary proceedings should be adopted,

(2) Account should be taken of EDPS Decision of 12 September 2007 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and illegal activity detrimental to the Communities’ interests,

---

(3) Under Article 22 of the Staff Regulations, the formalities laid down for disciplinary matters must also be observed in the case of a procedure concerning the pecuniary responsibility of an official,

(4) Due to the small size of the institution and to ensure the fairness of the process, the investigator should be external to the EDPS.

HAS DECIDED AS FOLLOWS:

Article 1

Without prejudice to Annex IX to the Staff regulation, Administrative inquiries and disciplinary proceedings shall be conducted as laid out in the Annex of this decision.

Article 2

For the purpose of this decision, the AIPN of the EDPS is the Director, who may consult, as he considers appropriate, the European Data Protection Supervisor.

Article 3

This Decision shall enter into force on the day following its signature.

Done at Brussels on 23 April 2015

The EDPS
Giovanni BUTTARELLI
Annex

Administrative inquiries and disciplinary procedures

CHAPTER I Administrative inquiries

1. Launching an administrative inquiry

i. Where the AIPN has received information indicating a failure by a EDPS staff member to comply with his obligations under the Staff Regulations, whether intentionally or through negligence on his part, the Appointing Authority (hereinafter the AIPN) may, in accordance with Article 86(2) of the Staff Regulations and Article 2 of Annex IX thereto, decide to launch an administrative inquiry in cases where it needs to further establish the facts and responsibility of the staff member(s) concerned.

ii. In cases of alleged financial fraud in which OLAF has launched an investigation or intends to do so, the AIPN will postpone the launch of an administrative inquiry on the same facts until OLAF has completed its inquiry, unless otherwise agreed with OLAF.

iii. Under Article 1 of EDPS Decision of 12 September 2007 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests, the AIPN may ask OLAF to carry out an administrative investigation.

iv. The Head(s) of Unit or Sector to which the staff member concerned belongs or the Head of Unit in charge of HR matters may ask the AIPN to launch an administrative inquiry.

v. The AIPN may launch an administrative inquiry on its own initiative.

vi. The decision to open an administrative inquiry shall specify the subject and scope of the inquiry and designate the external person(s), service or body to carry it out (hereinafter ‘the investigator’).

vii. The investigator shall respect the duty of professional secrecy with regard to any confidential information which has come to his/her knowledge during the conduct of the inquiry.

viii. The investigator shall also ensure that all processing of personal data are in compliance with the provisions of Regulation 45/2001.

ix. As soon as an administrative inquiry suggests that an official may be personally involved in an affair, that official shall be kept informed provided that information does not hinder the inquiry, in accordance with Article 20 of Regulation 45/2001.
2. Conducting the inquiry

x. **The investigator** shall carry out the investigation independently, thoroughly and as quickly as possible. Investigators may request documents or any other information from any person as they deem relevant and may carry out on-the-spot checks. In carrying out the investigation, the investigator shall neither request nor receive instructions from the AIPN, other EDPS staff or anyone else.

xi. The investigator may not draw conclusions about any named member of staff without having given the staff member the opportunity to comment on the facts concerning him. The conclusions shall make reference to these comments.

xii. The staff member under inquiry may be accompanied by a person of his choice. Any costs pertaining thereto are to be borne by the staff member.

3. Closure of the administrative inquiry

xiii. When the inquiry is complete, the investigator shall submit a report to the AIPN. The report shall:
- set out the facts and circumstances in question;
- establish whether the rules and procedures applicable to the situation were respected;
- take account of any aggravating or mitigating circumstances
- detail the extent of any damage suffered by the Institution.

xiv. Copies of all relevant documents and records of any relevant hearings shall be attached to the report.

xv. The AIPN shall inform the staff member concerned of the conclusion of the inquiry and communicate to him the conclusions of the inquiry report. The AIPN shall, if requested, and subject to the need to protect the legitimate interests of third parties, provide all documents directly related to the administrative inquiry in accordance with the provisions of Article 2(2) of Annex IX to the Staff Regulations.

xvi. The AIPN may reopen a closed administrative inquiry if new relevant facts come to light.

xvii. After receiving an inquiry report from OLAF, the AIPN may, if the facts and responsibilities are not sufficiently established, either ask OLAF to supplement the report or decide to launch a supplementary administrative inquiry.

xviii. In addition to opening an administrative inquiry, the AIPN may also take administrative or preventive measures which he deems in the interest of the EDPS, such as relocating the staff member subject to the inquiry to another team or sector.

CHAPTER II Disciplinary procedures

4. Preliminary hearing by the AIPN

i. In accordance with Article 3 of Annex IX, the AIPN shall invite the staff member in question to a hearing to respond in person to the alleged failure to comply with the Staff Regulations. The AIPN may delegate this task to another person, service or body provided that that person, service or body was not the investigator.
ii. This procedure may be initiated on the basis of an investigation report, or on the basis of information received where the facts are sufficiently clear and do not warrant further investigation.

iii. The staff member concerned may be accompanied by a person of his choice. Any costs pertaining thereto are to be borne by the staff member unless the AIPN decides otherwise.

5. Decision to close the procedure with no further action

If the AIPN decides, pursuant to Article 3(1)(a) of Annex IX to the Staff Regulations, that no case can be made against the staff member concerned, he shall inform the staff member by electronic mail or registered letter with acknowledgement of receipt. The staff member may request that a copy of this letter be included in his or her personal file.

The letter will be kept in the administration filing system (disciplinary files of the HRBA Unit).

6. Decision to address a warning where there is no disciplinary measure

If, however, the AIPN decides, pursuant to Article 3(1)(b) of Annex IX to the Staff Regulations, to take no disciplinary measure and if appropriate to address a warning (mise en garde) to the official concerned, the latter shall be informed by electronic mail or registered letter with acknowledgement of receipt. A copy of this letter shall be included in the staff member's personal file. The staff member may ask for this letter, and any reference to it, to be deleted from his or her personal file after a period of 18 months following the receipt of the letter.

7. Decision to initiate disciplinary proceedings without consulting the Disciplinary Board

If the AIPN decides to apply the provisions of Article 11 of Annex IX to the Staff Regulations, it may decide on the penalty to be imposed without consulting the Disciplinary Board. This decision will be included in the staff member's personal file.

A copy of the decision shall be forwarded to the staff member concerned by electronic mail or registered letter with acknowledgement of receipt.

8. Decision to initiate disciplinary proceedings before the Disciplinary Board

8.1. Consultation of the Disciplinary Board

If the AIPN decides to initiate disciplinary proceedings before the Disciplinary Board pursuant to Article 12 of Annex IX to the Staff Regulations, it shall do so by means of a report submitted to the chairman of the Board. A copy of the report shall be forwarded to the official concerned.
Pursuant to Article 16(2) of Annex IX to the Staff Regulations, the AIPN shall inform the chairman of the Disciplinary Board of the name of the official representing the Institution who unless otherwise specified shall be the Head of Unit in charge of HR matters at the EDPS.

8.2. Opinion of the Disciplinary Board

The opinion of the Disciplinary Board shall be forwarded to the AIPN and the staff member concerned.

In exceptional circumstances, the AIPN may decide, pursuant to Article 142 of Annex IX to the Staff Regulations, to withdraw the case from the Disciplinary Board.

8.3. Decision on disciplinary measures after consulting the Disciplinary Board

On receipt of the opinion of the Disciplinary Board and after hearing the staff member concerned, the AIPN shall decide on the disciplinary penalty and implement it.

The original of the decision shall be kept by EDPS for archiving and inclusion into the personal file of the staff member concerned. The latter shall receive a copy of the decision addressed to him either by electronic mail or by registered letter with acknowledgement of receipt.

---

2 "If, in the presence of the Chairman of the Board, the official concerned acknowledges misconduct on his part and accepts unreservedly the report referred to in Article 12 of this Annex, the Appointing Authority may, in accordance with the principle of proportionality between the nature of the misconduct and the penalty being considered, withdraw the case from the Board. Where a case is withdrawn from the Board the Chairman shall deliver an opinion on the penalty considered" (...).
Foreword by the Director

Introduction

How to read the new EDPS code of conduct

1. Some basics about the new EDPS code of conduct
2. The reflex
3. Example of the main principles

Part 1

General principles

1. Towards excellence
2. Professionalism
3. Accountability

Part 2

My own governance

1. Confidentiality
2. Respect for diversity
3. Professional Discretion
4. Compliance with the law and appropriate use of power

Part 3

Trust and transparency

1. Conflict of interest and integrity
2. External activities
3. Gifts, honours and distinctions
4. Relations with the public and other institutions

Part 4

Raising concerns

1. Careful analysis and, where appropriate, dialogue
2. Confidentiality protections
3. Retaliation protections
4. Whistleblower protections

Part 5

Administration of the code

1. Ombudsman code
2. Administration of the code
3. Future revision

List of annexes
Foreword by the Director

I am very pleased to welcome this new version of the Code of Conduct of the EDPS. It updates and modernises the original Code, which was adopted in December 2006 during the early start-up phase of the institution. Since then, the EDPS’ evolution and the outcome of our activities have led to the development of good practices which were reviewed over 2011 and 2012 during the Strategic Review of the organisation. The Code has been adopted following the report on the Strategic Review (22 January 2013), the resulting Strategy 2013-2014¹ (the “Strategy”) and the Rules of Procedure. The adoption of the Code is a further milestone in the maturity of the institution.

This new version of the Code is informed by the core values and principles enshrined in the Rules of Procedure and the Strategy 2013-2014. It also includes modern and concrete examples of good practice which match the highest levels of accountability and good administrative practice to be found in the Codes of Conduct of the other EU institutions.

It is also inspired by the work of the “DNA group” which prepared the discussions about the core personal and collective values of the staff of the institution and the unique elements of our organisational culture at the whole house conference (Away Day) of the EDPS on 23 October 2013. The group will continue its work on a collaborative “DNA paper” which will focus on the distinctive features of the culture of the EDPS as one of the institutions and bodies of the EU.

I invite all colleagues to read through the Code and, by doing so, to develop the necessary reflex proper to all the public servants of the EU institutions and bodies.

Christopher DOCKSEY

EDPS members and staff

Brussels
23 October 2013
Introduction

This Code of Conduct (hereafter “the Code”) is a revised version of the EDPS code of conduct of 2006, building on our experience and the evolution of the institution over the last years. The revision is meant to modernise and clarify the professional conduct of the staff working for the EDPS.

It also serves as a reference for our stakeholders and for the general public on the accountability of the EDPS as an independent European institution in the field of data protection, following the new EU institutional framework and the Lisbon treaty, in accordance with the principles of good governance and good administration.

The general mission of the EDPS is to ensure that the fundamental rights and freedoms of individuals, and in particularly their right to privacy, are respected when the European institutions and bodies process personal data or develop new policies. A number of specific duties of the EDPS are laid down in Regulation (EC) No 45/2001. The specificity of these duties entails the institutional independence of the core supervisory and advisory activities.

The adoption of this revised Code confirms the commitment of the institution to aligning the ethical standards and rules laid down in the Staff Regulations and Conditions of Employment of EU officials and other servants of the European Communities, with the new organisational structure adopted in 2010 and with a renewed emphasis on quality control and high professional standards, in particular in the dealings that the EDPS has with the public. As a result, we strive to develop an organisational culture of strong collaboration and high performance while providing for advanced working conditions, equal opportunities and personal and career development for the members of our staff.

The Code is structured as follows:

- **The Code in brief**
- **Part I** describes broadly the general principles guiding the conduct of officials when delivering a high quality service
- **Part II** presents, also in general terms, the principles guiding a staff member in his/her own governance
- **Part III** offers guiding principles for officials in relation with trust and transparency
- **Part IV** describes all possible actions to address concerns and possible consequences
- **Part V** describes the way in which the Code is administered and its possible revision.
- List of annexes
How to read the new EDPS Code of Conduct
1. Some basics about the new EDPS Code of Conduct

**What is it?**
A guide that sets out principles for the professional conduct of staff working for the EDPS.

**Legal background:**
Staff Regulations, the Conditions of employment of other servants (CEOS), and the regulations or instructions derived therefrom.

**Purpose:**
The new Code aligns the commitment of the institution to high ethical and professional standards and rules with the new organisational structure and the guiding principles and core values enshrined in the Rules of Procedure. It also serves as a reference for our stakeholders and the public at large on the accountability of the EDPS as an independent European institution.

**Principles:**

- **General Principles**
  - Towards excellence
  - Professionalism
  - Accountability & Transparency

- **My own governance**
  - Confidentiality
  - Respect for diversity
  - Professional discretion
  - Compliance with the law and appropriate use of power

- **Trust and transparency**
  - Conflicts of Interest and integrity
  - External Activities
  - Gifts, honours and Distinctions
  - Relations with the public and other institutions
Objectives:

- Underlying ethics, values, and concepts
- Take responsibility for their actions
- Behave ethically
- Strive to achieve excellence
- Deliver an effective service
2. The reflex

Think first:
always be aware of the possible consequences of your actions (or inactions) (e.g. what you say when you participate in a meeting or when someone addresses a question to you).

React with independence
(from the outside world but with loyalty to the organisation):
always (re)act transparently, impartially and independently of any authority or person external to the EDPS but consulting your peers or hierarchy if necessary and appropriate.

Reflect:
conduct yourself always at the highest personal and professional level, reflecting the EDPS core values and principles.
3. A few examples of the kind of lessons you can learn from reading this document

<table>
<thead>
<tr>
<th></th>
<th>DO</th>
<th>DO NOT</th>
<th>REQUEST AUTHORISATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act independently</td>
<td>Incur in a conflict of interests</td>
<td>For any gift with a value of more than 100 Euros</td>
<td></td>
</tr>
<tr>
<td>Act professionally and strive for a high quality service</td>
<td>Forget your obligations of confidentiality</td>
<td>To publish a text dealing with the tasks and responsibilities of the EU institutions</td>
<td></td>
</tr>
<tr>
<td>Show loyalty</td>
<td>Hold simultaneously another job elsewhere</td>
<td>For any external activities that may raise a conflict of interest</td>
<td></td>
</tr>
<tr>
<td>Comply with the law</td>
<td>Abuse procedures</td>
<td>For any candidacy for public office</td>
<td></td>
</tr>
<tr>
<td>Your best to enhance the EDPS’ image</td>
<td>Criticise publicly the institution or your colleagues (where necessary you can rely on through your line manager or through the HR team)</td>
<td>To give an interview to the media</td>
<td></td>
</tr>
<tr>
<td>Show courtesy and respect</td>
<td>Harass or harm the dignity of colleagues</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>
Truth is the daughter of time, not authority

Francis Bacon
1. Towards excellence

In carrying out their duties, EDPS officials shall conduct themselves at the highest personal and professional level at all times, both on duty and off duty.

Acting as guardians of data protection, EDPS officials should strive to enhance the image of the institution. They act independently of any authority or person external to the EDPS, showing exclusive loyalty and refraining from any action or statement that might cast doubt on their ability to do the work to the best of their abilities with full impartiality and honesty.

**Strategy**

**General principles**

- We serve the public interest to ensure that EU institutions comply with data protection policy and practice. We contribute to wider policy as far as it affects European Data Protection.

- Using our expertise, authority and formal powers we aim to build awareness of data protection as a fundamental right and as a vital part of good public policy and administration for EU institutions.

**FOR EXAMPLE**

- Demonstrate professional competence and mastery of subject matter

- Develop clear goals that are consistent with agreed strategies
2. Professionalism

By professionalism we refer to a style of behaviour in the workplace that is courteous and efficient (at the disposal of the institution\(^2\), the duty to perform the tasks assigned, the duty to comply with the instructions of immediate superiors, assisting and tendering advice to superiors and being responsible for the performance of the duties assigned\(^3\) and the duty to assist investigating authorities), delivering to the public a quality service and an administration that is open, accessible and properly run. We also refer to autonomy at work, supporting team-work and fair distribution of work.

In case of serious misconduct, the official may be subject to Article 22 of the Staff Regulation: “an official (or other servant) may be required to make good, in whole or in part, any damage suffered by the Union as a result of serious misconduct on his part in the course of or in connection with the performance of his duties”.

FOR EXAMPLE

• Plan in advance and identify priorities, allocating an appropriate amount of time, foreseeing risks and allowing for some contingencies

• Use time efficiently and monitor and adjust plans when necessary

Strategy
Objective 5

Improve the use of EDPS human, financial, technical and organisational resources

Tips for personal and organisational performance through lifelong learning:

- Actively and proactively seek to develop yourself professionally, making proposals and taking actions
- Contribute to the learning of colleagues and subordinates
- Show willingness to learn from others
- Seek feedback to learn and improve
- Show willingness to learn new technologies and keep abreast of new technological challenges
3. Accountability

The EDPS is accountable to many different stakeholders. The relationships that we maintain with each of these stakeholders, and the extent to which we demonstrate the Core Values in our interactions with them, collectively shape the EDPS’ reputation. This reputation gives the institution credibility to move forward and work constructively on achieving its primary mission: to contribute to wider policy in data protection and its application within the EU institutions.

The EDPS, as a modern public institution, acknowledges and incorporates accountability in every day practice. Administrative accountability is ensured using well-known tools and mechanisms such as internal rules (see Rules of Procedure adopted on 17/12/2012)⁴, Internal Audit and Internal Control Standards.

The Supervisors and their staff enjoy independence but they are also transparent and accountable to third parties. By public accountability and transparency, the EDPS seeks to enforce high standards of behaviour.


Rules of Procedure and Strategy core value

Transparency

- Explaining what we are doing and the reasons behind in clear language that is accessible to all
- Having an open and proactive communication strategy

FOR EXAMPLE

• Accept your own responsibilities to support organizational success and hold yourself accountable for behaviours that drive results
Recognition of the inherent human dignity of all members of the human family is the foundation of freedom, justice and peace.

Universal Declaration of Human Rights - 1948 United Nations
1. Confidentiality

The obligation of professional secrecy is of particular importance when working for the EDPS. For this reason, all our staff formally undertake to observe this obligation by signing a confidentiality commitment during the first days after their recruitment, usually in the presence of the Supervisor and the Assistant Supervisor.

Upon the termination of their activity, staff should be aware of the fact that they are still bound by the obligation of confidentiality and to protect the information that has come to their knowledge.

FOR EXAMPLE

- Treat EDPS documents carefully to protect their confidentiality, within and outside the office
- Do not disclose internal information unless there is a clear decision by the institution to do so
- In a social network always remain discreet about your professional activity inside the EDPS
2. Respect for diversity

Diversity and inclusion are at the heart of how the EDPS defines organisational and professional excellence. The EDPS seeks to promote in-house working relations based on mutual trust and respect. Relations between colleagues should be qualified by respect and understanding for differences in culture, nationality and sex.

We must work to achieve a positive work environment, characterised by professional, dignified, and respectful conduct—an atmosphere where every colleague is treated fairly. We must be particularly diligent in our multicultural environment to consider how our words or actions may be perceived.

When on duty, EDPS staff must never affront the dignity of colleagues, whatever their rank, by behaving improperly or using aggressive or slanderous language. Such behaviour, whether by actions or words, may result in disciplinary penalties. EDPS staff must show consideration for others, be they their superiors, colleagues, or subordinates. Outright discourtesy or lack of a minimum sense of solidarity is not acceptable, such as refusing to carry out instructions received, or refusing to work with or assist an overworked colleague, or reporting for work in a state unfitting the dignity inherent in the performance of their duties. In particular, harassment, discrimination and bullying of any kind are utterly unacceptable.

Should any member of the EDPS staff witness any form of harassment, discrimination or inappropriate behaviour as mentioned above, they are duty-bound to assist the victim and where appropriate report the situation to the hierarchical superior, the Director or the Head of the HRAB Unit, as appropriate. For more guidance on this highly sensitive matter, staff are strongly advised to consult the 2014 EDPS decision on anti-harassment policy and the part 4 of this Code.

---

FOR EXAMPLE

- Treat all people with dignity and respect
- Treat all colleagues as equal
- Do not discriminate against any individual or group

---

5 See provisions of Articles 12 and 12a of Staff regulation
3. Professional Discretion

The Staff Regulations provide that “an official [or other servant] shall refrain from any action or behaviour which might reflect adversely upon his position” (Article 12) and that “an official shall refrain from any unauthorised disclosure of information...” (Article 17).

The above provision establishes a general obligation of professional discretion, whereby officials and other servants, while remaining free to express their opinions as guaranteed by fundamental rights, must observe a degree of moderation and conduct themselves at all times with a due sense of proportion and propriety.

The obligation of professional discretion does not prohibit officials from participating in public life both as citizens and as elected representatives, but the Staff Regulations lay down provisions concerning two instances, namely standing for election (see Annexes 4 & 5) and publication of documents (see Annex 6).

Although specific reference is made to written material, officials and other servants must not underestimate the consequences of taking part in interviews or appearing on broadcasts on television, radio, or other media. If an interview or programme relates directly to their duties, they must transmit the request to the Information and Communication Sector (I&C). This is a simple acknowledgment that talking to journalists presents specific risks that need to be dealt with specific technics and experience.

Officials [and other servants] are entitled to exercise the fundamental right of freedom of association; they may in particular be members of trade unions or staff associations of European officials (Articles 24b of the Statute).

FOR EXAMPLE

- When contacted by a journalist for issues connected with your work, please refrain from answering any questions and refer the request immediately to the I&C sector
- Always ensure a balanced, impartial and moderate participation in conferences
4. Compliance with the law and appropriate use of power

EDPS staff shall act according to law and apply the rules and procedures laid down in European legislation. EDPS staff shall in particular ensure that the decisions which affect the rights or interests of third parties have a basis in law and that their content complies with the law.

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. EDPS staff shall in particular avoid misusing procedures for purposes which have no basis in the law or which are not motivated by any public interest.

Abuse of power is the misuse of authority in the course of performing work. It is important that EDPS staff use power wisely when performing their work. The effects can be damaging to working relationships. It can also be a factor in harassment. Requesting staff to do undue personal favours or personal assignments in an abusive manner will never be admitted.

FOR EXAMPLE

- Remain particularly vigilant when processing personal data
- Never pressure a staff member to distort facts or break rules
- Do not abuse your position within the institution for personal benefit

Strategy and Rules of Procedure core value: Impartiality

• Working within the legislative and policy framework given to us
• Being independent and objective
• Finding the right balance between the interests at stake
Wisdom and virtue are like the two wheels of a cart.

Japanese proverb
1. Conflicts of interest and integrity

EU staff may not hold any personal interest likely to conflict with the interests of the European Union or their institutions and bodies. Staff members are entrusted with placing the interests of the EU institutions and the EDPS ahead of personal, intragovernmental, and interorganisational interests. This commitment enables the EDPS to achieve its mission.

Should any member of staff be required to negotiate or conclude a contract with or supervise an undertaking in which they hold an interest they must inform the Director. In turn, the Director will obtain the views of the Head of Unit/Sector concerned and when necessary, will inform the Supervisor of this fact in writing without delay and decide whether it is necessary to transfer or relieve the staff member of their duties. If a staff member acquires without prior authorisation an interest in an undertaking that could create such a conflict of interest, this may also result in disciplinary sanctions.

Given that the activity or interests of a staff member’s spouse may also give rise to a conflict of interest, it is important that staff members declare the activities or interests of their spouses to enable a solution to be found whereby they can carry out their duties and conduct themselves solely with the interests of the European Union in mind, as required under Article 13 of the Staff Regulations (see Annex 3).

In general, the EDPS must be able to rely on the honesty and integrity of staff by asking them to inform the proper authority whenever their neutrality might be called into question or whenever their particular circumstances might cast doubt on their impartiality and hence on the impartiality of the EDPS itself.

---

FOR EXAMPLE

- **Act with responsibility and without consideration of personal gain**
- **Ensure that all actions and decisions are taken in the institution’s best interests**
- **Always follow an ethical approach**

---

6 As referred to in Article 11a (3) of the Staff Regulations
2. External Activities

In general, EDPS staff should maintain an institutional approach when interacting with others. EDPS staff may undertake non-remunerated and non-financial activities outside working hours in areas such as culture, education, sports, religion, social work or benevolent work, on condition that such activities do not have a negative impact on their obligations with regard to the EDPS.

Remunerated and other activities outside working hours of this nature require prior permission from the Director (see Annex 2). The same applies to persons wishing to carry out an assignment outside the EU.

Permission depends on two conditions being met:

- the activity or assignment which the staff wishes to carry out must not be “such as to interfere with the performance of the official’s duties”;
- the activity or assignment must not be “incompatible with the interests of the institution”.

EDPS staff may not be employed simultaneously in a public and private capacity (e.g. authorisation to work as a translator, doctor, nurse, architect, full-time teacher, lawyer or typist or to carry on a business, etc. is invariably refused).

The ban on holding two jobs also applies to EDPS staff working part time but does not affect those taking leave on personal grounds, provided that they conform to the ethos of the European Public Service and that there is no conflict of interest.

Particular caution is required when staff members are engaged in activities outside the EDPS which might prejudice their independence and neutrality (e.g. political activities). Officials or other servants who are candidates for public office must inform the Appointing Authority and ensure that a distinction is drawn between their status as candidates and their official duties (See Annexes 4 & 5).

When undertaking speaking engagements, EDPS staff should only aim at achieving the interests of the institution and should not accept a fee for speaking engagements. The EDPS has adopted an internal speaking engagements procedure to be followed by all EDPS staff members ⁷.

EDPS staff may engage in research and academic activities and may associate with academic associations and groups solely in the event that they are acting in a private capacity. Their views may not bind or prejudice the position of the EDPS, unless they have received an authorisation to represent the institution.

EDPS staff are authorised to publish texts on condition that they indicate that the opinions set out in the text constitute the personal opinion of the author, since this will enable the image and reputation of the EDPS to be maintained to the greatest possible degree. In the case of a staff member who intends to publish or cause to be published, whether alone or with others, any matter dealing with the work of the EU, they shall inform the Director in advance, who will seek the views of the Head of Unit/Sector concerned and, when necessary, the Supervisor (see Annex 6).

**FOR EXAMPLE**

- Always seek authorisation when required to participate in an event that may lead to a publication.
- Should you wish to pursue an external activity, always ask yourself whether:
  - It affects the activities of the institution
  - It affects the EDPS’ relations with stakeholders
  - It can create an impression of EDPS partiality
  - It overlaps with your role or responsibilities at the EDPS
  - It takes up EDPS time or resources
3. Gifts, Honours and Distinctions

Gift giving of low intrinsic value is a widely accepted way of showing appreciation to the individuals with whom we form working relationships. At the same time, officials and other servants need to proceed with the utmost caution and when confronted with a gift, they must show tact and exercise some judgment.

In principle, EDPS staff are generally advised not to accept gifts connected with work performed in the line of duty, except if the intrinsic value of the gift is less than EUR 100 and if it seems appropriate (for example, a simple bottle of wine after the participation as a speaker in a conference). Should any member of staff wish to accept an honour, distinction or gift from an outside source with an intrinsic value higher than 100 Euros, explicit permission has to be obtained from the Director (see annex 1) who will obtain the views of the Head of Unit/Sector concerned and will inform, when necessary, the Supervisor.

Normal hospitality or reimbursement of expenses in the context of a mission paid by the organiser should not be regarded as a gift, provided that the hospitality offered corresponds to what it could be reasonably expected for a work assignment outside the office.

FOR EXAMPLE

- Always remain vigilant about gifts offered to you
- If you ever accept a small gift, do not feel obliged to pay back in any way (e.g. a lobbyist may treat you to lunch but he or she cannot then expect you to keep him/her duly informed about the evolution of a given file)
4. Relations with the public and other institutions

EDPS staff shall cooperate loyally with other EU bodies and national authorities. They shall provide them, to the possible extent, with the requested information and services guided by independence, efficiency and courtesy.

When dealing with requests from the public and taking decisions, EDPS staff shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

The EDPS respects the principle of non-discrimination and guarantees equal treatment for members of the public irrespective of nationality, gender, colour, racial, ethnic or social origin, genetic features, language, religion or beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Any differences in treatment of comparable cases must be specifically justified by the objective relevant features of the particular case in hand.

They shall also refrain from processing personal data for incompatible non-legitimate purposes or the transmission of such data to non-authorised persons or third parties.

FOR EXAMPLE

- When dealing with the public, please keep in mind the public service principles of the European Code of good administration behaviour (see section 5.1 below)
Raising concerns

Our lives begin to end the day we become silent about things that matter.

Martin Luther King
It is not always easy to raise concerns when facing a challenging misconduct situation. In any case, EDPS staff members are advised to adopt a gradual and fair approach towards all parties involved with full consideration of their rights.

1. Careful analysis and, where appropriate, dialogue

The first step when confronted with a potential misconduct situation is to make sure that indeed there is a clear wrongdoing. Cultural differences and misunderstandings in an international environment like the EU institution should never be underestimated. If after this assessment, you are still convinced that a colleague might be involved in an inappropriate conduct, you are advised to discuss the matter in confidentiality, where appropriate, as it may be the case that this person is not aware of the consequences of his/her action.

You may also consider discussing the matter with your Head of Unit/Sector or the Director, who might be better place to conduct further dialogue, or drawing the attention of the Ethics officer.

If this gradual approach does not help, it might be necessary to conduct more formal investigations in serious cases.

2. Protection of confidentiality

Serious allegations and concerns should only be raised with the Head of Unit/sector, the Ethics Officer or the Director who will decide upon the procedure to engage and upon its urgency. Confidentiality is extremely important in the conduct of any investigation. The substance of an inquiry and/or the identity of staff members are only disclosed on a strict need-to-know basis. This is determined based on the facts needed to conduct a thorough investigation, respond appropriately, and resolve the situation. Staff members also have the option of raising concerns or allegations anonymously, although this can impede the EDPS’ ability to follow up and take action on a concern.

In case a disciplinary action or an anti-harassment procedure is launched, both procedures will have to follow the Decisions adopted by the EDPS in 2014.
3. Protection against retaliation

Retaliation is any direct or indirect detrimental action recommended, threatened, or taken because an individual has engaged in raising concerns. It undermines trust among staff members as well as between staff and management and can have a debilitating effect on morale and workplace productivity.

This can lead to serious consequences for the EDPS: nobody will bring issues forward if they fear retaliation. In the workplace retaliation encompasses a range of behaviour, from something as small as a personal remark to something as serious as an administrative action affecting a staff member’s work program or employment.

When taken as a means of retaliation, other examples can include: a written warning; a reprimand; a deferment of advancement to a higher step for a period of between one and 23 months; a relegation in step; a temporary downgrading for a period of between 15 days and one year; a downgrading in the same function group; a classification in a lower function group, with or without downgrading; a removal from post.

Any staff member who raises a concern in good faith is protected from retaliation.

---

8 See dispositions of Article 9 of Annex 9 of Staff regulation

4. Whistleblower protection

Staff members play a critical role in raising concerns, which help the EDPS better identify, address, and ultimately deter misconduct. The EDPS is committed to providing a safe environment for reporting and addressing suspected misconduct. The Ethics Officer should be involved.
Part 5
Administration of the Code
1. European Code of good administration behaviour

In June 2012, following a public consultation, the Ombudsman published a high-level distillation of the ethical standards to which the EU public administration adheres. These took the form of the following five public service principles:

1. Commitment to the European Union and its citizens
2. Integrity
3. Objectivity
4. Respect for the others
5. Transparency

These principles can be found in the present Code. In addition the EDPS publicly acknowledges and adheres to the principles in the European Code as the ethical foundations of an administrative culture of service, in which staff understand and internalise the principles of good administration.

2. Administration of the Code

The Staff Regulations lay down a number of obligations that extend beyond the sphere of performance and encompass life outside work. Infringements may be punished after conducting disciplinary proceedings and, depending on the seriousness of the case, they may result in prosecution.

The Director, with the assistance of the Human Resources Department and notably the Ethics Officer, is responsible for ensuring that the rules and guidelines laid down in this Code are properly observed and reasonably followed.

The Director may deliver opinions at the request of any interested party on the application and interpretation of this Code seeking the opinion, where appropriate, of the Staff Committee of the institution. Staff members should address to the Human Resources Department or directly to the Director, where appropriate, their requests, declarations or applications for authorisation, pursuant to the provisions of this Code.

This Code is published on the EDPS website and the Intranet.

3. Future revision

All EDPS staff should apply the principles set out in this guide. They may seek further clarification and improvement of its content at any time. The Ethics Officer remains at their disposal for any guidance and assistance.

A specific section of the Intranet is devoted to this code of conduct and to provide ethical awareness-raising.

The EDPS shall review the implementation of this Code during the second half of the Third Mandate of the EDPS 2014-2019.
List of annexes
List of annexes

• Annex 1:
  Request for prior authorisation: honour, decoration, favour, gift ...

• Annex 2:
  Request for prior authorisation to engage in an outside activity

• Annex 3:
  Declaration of gainful employment of spouse

• Annex 4:
  Declaration of candidacy for public office

• Annex 5:
  Declaration relating to the holding of public office

• Annex 6:
  Request for prior authorisation to publish a text dealing with the work of the Communities

• Annex 7:
  Form for change of private address

*Forms are available on Intranet.*
Code of Conduct
European Data Protection Supervisor
2014
Brussels, 10 December 2014
EDPS(2014) DEC/

EUROPEAN DATA PROTECTION SUPERVISOR DECISION
of 10 December 2014

Adopting Implementing measures regarding Articles 12a and 24
of Staff Regulations about the procedure relating to anti-harassment.

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Staff Regulations of Officials of the European Union and the
Conditions of Employment of Other Servants of the European Union (CEOS) laid
down by Council Regulation (EEC, Euratom, ECSC) No 259/68\(^1\)

After consulting the Staff Committee,

Whereas:

(1) Articles 12a & 24 of Staff Regulations relate to any kind of harassment and
the related assistance of the Union;

(2) The EDPS has to define its own procedure relating to anti-harassment.

HAS DECIDED AS FOLLOWS:

\(^1\) OJ L 56, 4.3.1968, p.1.
Article 1

The present Decision applies to all members of the EDPS staff. It sets out the EDPS policy and formal and informal procedures to prevent and to deal effectively and efficiently with any actual or potential cases of psychological or sexual harassment at the workplace.

The confidential counsellors of the EDPS are appointed by agreement between the Director and the Staff Committee and their names are published at the EDPS Intranet.

Article 2

The following annexes are part of the present decision.

- Annex 1: description of harassment
- Annex 2: your rights and responsibilities
- Annex 3: procedures against harassment at the EDPS

Article 3

The present Decision shall enter into force on the day following its signature.

Done at Brussels on 10 December 2014

The Director
Christopher DOCKSEY
Annex 1: Description of Harassment

Psychological harassment and sexual harassment stem from different issues but have certain similarities. In some cases, moreover, these two forms of harassment may be closely linked.

Offensive conduct of this type often stems from abuse of power or maliciousness, and can be perpetrated by both individuals and groups. Harassment, be it psychological or sexual, may come from colleagues on an equal footing, as well as superiors and subordinates.

1. Psychological harassment

Under the Staff Regulations psychological harassment means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that may undermine the personality, dignity or physical or psychological integrity of any person.

Psychological harassment can manifest itself in various forms, in particular by:

- offensive or degrading comments, in particular in public, bullying, antagonism, pressure, offensive behaviour, even refusal to communicate;
- insults relating to someone’s personal or professional competence;
- insulting or threatening remarks, both oral and written;
- belittling someone’s contributions and achievements;
- being isolated, set apart, excluded, rejected, ignored, disparaged or humiliated by their colleagues;
- impairing their social relations;
- setting unrealistic working objectives;
- Contrary to their job description, not giving someone any work, or systematically giving them work which does not meet their profile.

Such behaviour, while unacceptable, may in isolation appear of little consequence. When occurring on a regular basis, however, such conduct can cause serious harm to the person at whom it is directed.

Some kinds of behaviour may hurt certain people without constituting psychological harassment. A remark, a dispute, a clash of personalities at work, a management decision which is difficult to accept (allocation of new tasks, for instance), a duly substantiated negative assessment, even repeated, cannot therefore necessarily be considered psychological harassment.

2. Sexual harassment

Under the Staff Regulations, sexual harassment means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. This is the case where sexual harassment translates into psychological harassment, for instance after rejection of a request of a sexual nature.

---

All references to intention have been removed from this decision. We have decided to put the real impetus in having mechanisms in place to be able to detect any issues timely and to deal efficiently with them so the EDPS is a good performing institution where people feel valued and respected.
Sexual harassment may take different forms (physical, verbal, written or other), and involve persons of the opposite sex and of the same sex. The essential characteristic of sexual harassment is that it is unwanted by the recipient; it is therefore for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although, unlike psychological harassment, a single incident may constitute sexual harassment if it is sufficiently serious. Anyone who is guilty of such behaviour knows or should know that it affects the dignity of women and men at the workplace.

Sexual harassment is also treated as discrimination based on gender. A range of different types of behaviour can be considered sexual harassment, such as:

- Promises of some kind of reward (favourable career moves, etc.) in return for sexual favours, or threats of reprisals if such requests are turned down;
- Repetition of coarse or suggestive remarks, or sexual innuendo;
- Use of crude and obscene language and gestures;
- Repeated and exaggerated compliments on the appearance of a work colleague;
- Physical contacts, rubbing against someone, pinching, deliberate unwanted kisses;
- Acts of voyeurism or exhibitionism;
- Use of pornographic material.

3. Consequences of conduct constituting psychological harassment or sexual harassment

Psychological harassment or sexual harassment might have various consequences for the person who suffers it or feels they are being subjected to it:

- They become isolated and social relationships tend to deteriorate
- They make more and more mistakes, can no longer concentrate, become less productive, are demotivated, etc.;
- Their professional development is hindered, career jeopardised, their very job put on the line;
- They suffer mental and physical health problems such as stress, anxiety, shame, demoralisation, humiliation, disorientation, somatic disorders, depression or increasingly serious physical and psychological disorders, which may, in extreme cases, lead to suicide.

The adverse consequences do not just affect the victims, but also impact on other colleagues and on the institution itself: loss of expertise, staff transfers, fall in productivity, absenteeism, harming the image of the institution, etc.

4. General advice

If a certain type of conduct is felt to be inappropriate or embarrassing, it is advisable to make this clear. In the event of sexual harassment in particular, ambiguous behaviour should be set straight. It is important to react immediately, setting limits politely but firmly. In some cases, simply making it clear that the victim of such conduct finds it offensive and liable to undermine their performance at work or even their health could be sufficient to put an end to the situation.

If unwanted behaviour continues, a written record should be kept of all incidents: dates, circumstances, description of events, potential witnesses, personal reactions at the time and afterwards, any psychosomatic consequences.
5. The concept of the “victim” in the context of psychological or sexual harassment

Cases of psychological harassment are dealt with differently in the informal or the formal procedure.

At the formal level, in line with the Staff Regulations, psychological harassment will only be considered to exist if the conduct of the alleged harasser is regarded as abusive, repetitive, sustained or systematic, for instance, to discredit or undermine the person concerned. These criteria are cumulative. Objective facts will help verify whether these criteria have actually been met and if action can be taken.

At the informal level, however, the aim is to provide psychosocial assistance. Here, the perception of harassment is subjective and depends on the situation as perceived by the person concerned. The goal is to bring an end to the distress generated both by a “proven” situation of psychological harassment and by a situation that is perceived as such. The key characteristic of psychological harassment in this case is that the person subject to it considers it undesirable conduct.

As regards sexual harassment, the formal definition in the Staff Regulations covers the subjective perception of such behaviour (unwanted conduct).

In the informal procedure, therefore, the term “victim” refers to any person who defines themselves or identifies themselves as such. However, it is important to remember that there is a fundamental legal distinction between a person «who feels they are the victim of harassment and one who has actually suffered harassment» and is therefore recognised as a victim on the basis of proven facts, having gone through the formal procedure. No stage of the informal procedure may prejudice the outcome of the formal procedure.
ANNEX 2: Your rights and responsibilities

A. If you feel you are victim of psychological harassment or sexual harassment

YOU ARE ENTITLED

- to be heard within the informal procedure, uncritically and under the strictest confidentiality, by contacting one of the confidential counsellors of the EDPS;
- to be certain that the confidential counsellor will not take any steps without your agreement;
- within the context of the formal procedure, to submit a request for assistance to the appointing authority without embarrassment or fear of reprisals or indiscretions;
- to be accompanied by a person of your choice during meetings with investigators;
- to be assured of a fair and impartial investigation;
- to be informed of the result of the investigation and, where applicable, of the measures that will be taken.

YOU MUST
- within a reasonable period, make the person you are accusing aware of your disapproval or unease, where necessary accompanied by a confidential counsellor;
- keep a written record of all incidents;
- cooperate with those in charge of the investigation into your complaint.

B. If you have been accused of psychological harassment or sexual harassment

YOU ARE ENTITLED

- to contact, if necessary at the informal procedure stage, uncritically and under the strictest confidentiality, your human resources manager and/or one of the confidential counsellors of the EDPS;
- to be informed that an official complaint has been lodged against you, receive a copy of that complaint and have the opportunity to react to it;
- to be accompanied by a person of your choice during meetings with investigators;
- to be assured of a fair and impartial investigation;
- to be informed of the result of the investigation and, where applicable, of the measures taken.

YOU MUST
- keep a written record of all incidents;
- cooperate with those in charge of the investigation into the complaint against you.
Annex 3: Procedures against harassment at the EDPS

1 Informal procedure

The informal procedure allows monitoring of a pending case and may lead to an amicable resolution. However, it does not involve formal recording of the facts or the application of penalties: this is done in the formal procedure (see point 2 below).

Any person who feels they are the victim of psychological harassment or sexual harassment (see description in Annex 1) may contact one of the two confidential counsellors of the EDPS who will put the person in contact with the network of confidential counsellors of the Commission, to avoid any potential conflict of interest in view of the small size of our institution.

The first objective of the confidential counsellor is to recognise and alleviate the alleged victim’s distress suffering by receiving them and listening to them without preconceptions and without passing judgment. The confidential counsellor will inform the victim of the procedure laid down and of their rights. The counsellor will accompany and guide the victim, examining with them the various options and structures that will help find a satisfactory solution to the problem (directing them towards and placing them in contact with the Medical Service, etc). Any action taken by the confidential counsellor in the informal procedure may only be carried out with the prior agreement of the victim and must remain within the framework of their agreed mandate.

The confidential counsellor may meet the other party and play a conciliatory role in an attempt to reach an amicable solution. In all cases, confidential counsellors shall strive to listen carefully to the two parties, remain objective, clarify the facts and ensure good communication. Confidential counsellors have a period of one month within which to deal with the problem. This may be extended to two months if necessary. If no solution can be found in this period, counsellors may propose that the victim lodge a formal complaint (see point 2).

In the formal procedure, confidential counsellors are limited to providing support for the victim. Under this procedure, and depending on the requirements of the inquiry, confidential counsellors may also be called as witnesses, to testify to facts relevant to the inquiry which they have been informed during the informal procedure.

Emergency measures (moving one of the parties), which must take account of the needs of each particular situation, can be taken immediately. The aim of such a measure is to separate the two parties and may be proposed to the competent appointing authority by confidential counsellors or requested directly by one of the parties concerned.

These are precautionary measures designed to put an end to a given situation. They are also intended to give the victim a chance to recover. These measures may of course also be taken within the framework of the formal procedure, at the request of the alleged victim or on the initiative of the appointing authority concerned.

Requests for assistance from different people involving the same alleged harasser are to be considered disturbing. These will therefore be brought to the knowledge of the appointing authority. The Appointing Authority will decide on the most appropriate action to be taken and will inform IDOC of any recurrent cases it identifies. IDOC will inform the Appointing Authority which will, where appropriate, launch the procedures provided for in Annex IX to the Staff Regulations.
2 Formal procedure

Any person in the institution who feels they are the victim of psychological harassment or sexual harassment is entitled under the Staff Regulations to initiate a formal procedure: either immediately, without first going through the informal procedure, or in the course of or at the end of the informal procedure.

A formal procedure can be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations (concerning the Institution's obligation to assist its staff). When the administration has taken the appropriate steps, by carrying out an inquiry (under IDOC SLA) to establish the facts at the origin of the request in collaboration with the author of that request, this signifies that this request has been followed up and has not been implicitly rejected (absence of reply after 4 months).

If the request is rejected, either explicitly or implicitly, the person concerned can, where appropriate, lodge a complaint under Article 90 (2) of the Staff Regulations and - if it is rejected - submit an appeal to the Civil Service Tribunal.

Requests for assistance must be submitted to the Appointing Authority who will consult the Supervisors. The Appointing Authority can then instruct the IDOC to carry out an administrative inquiry to determine the facts of the case and apportion any responsibility.

Any person who feels they are the victim of sexual harassment must provide all details which might support their allegations.

In the case of psychological harassment, a degree of evidence is required. The person bringing a complaint of psychological harassment or sexual harassment may be accompanied at the hearings by a person of their choice, provided that person cannot be called as a witness in the course of the inquiry. At the end of its administrative inquiry IDOC will present its report, proposing either that the case be closed without further action or that disciplinary proceedings be opened. If it proposes the latter, the appointing authority may decide, once it has heard the person or persons concerned, to open disciplinary proceedings and apply the ensuing penalties if there is confirmation of the wrongful act. If the misconduct involves repeated action or behaviour, this will be taken into account in determining the seriousness of the misconduct and deciding on the appropriate disciplinary measure as well as a possible hierarchical relationship.

If the procedure results in recognition of psychological harassment or sexual harassment, victims shall receive compensation for the damage suffered under the terms set out in the Staff Regulations (second paragraph of Article 24) where appropriate.

If the procedure ends in no action, all those who have been interviewed will be informed. Nobody should be harmed or penalised by the fact that he/she has lodged a complaint; unless it is proven that it has been manifestly in an abusive manner or in bad faith. In this case, the appointing authority may take disciplinary measures, either on its own initiative or at the request of the wrongfully accused person.