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Hearing of candidate Yann PADOVA

I have been working in the field of data protection for over 15 years. Through my career, first with the legislator, then with the regulator (CNIL) and most recently as a legal adviser, I have been able to gain a complete picture of the subject.

As an administrator at the National Assembly I was in charge of the implementation of Directive 95/46, which profoundly changed the powers of the CNIL (on the basis of a 2004 law). Through my experience at the **National Assembly**, where I was a specialist in criminal matters and personal data law, I gained the **habits, method and, in particular, taste for working with, advising and negotiating with elected officials, political groups** and members of the executive. All these tasks are integral to the work of the European Supervisor (EDPS), as set out in the policy paper published on 4 June 2014.

As its secretary-general, I set up the ‘new CNIL’ which resulted from the 2004 law. I modified its organisation and diversified its resources in legal expertise and, especially, its technological resources because the less a regulator is comfortable with the technology, the more inclined it is to be conservative, less pragmatic in its analysis, and consequently more sensitive to external pressures. With this in mind I tripled the number of engineers at the CNIL. **To be independent nowadays a regulator needs to be multidisciplinary.** I put on a secure legal footing the exercise of coercive powers and control by the CNIL, developed new online services for users, introduced innovations in communication and in an international context sought to promote and explain the European model (e.g. the Strasbourg conference in 2008, which led to the Madrid Declaration). This ‘new CNIL’ and its communication strategy provoked hostile reactions and threats to its independence through parliamentary amendments aimed at reducing its budget and political pressure in the case of certain subjects having a direct bearing on public freedoms. Such cases included the supervision of the STIC police database and the project to create an intelligence services databases (EDVIGE). **Therefore I understand the precise meaning of independence**, and why it is required, and also that it

needs to be open to dialogue, otherwise it can become inaccessible, self-contained and misunderstood. **It is this notion of independence, demanding and open, yet firm, which the EDPS will need to accomplish the new tasks.**

Finally, **the economic dimension of data protection is now more relevant than ever.** I see this every day as a lawyer in an international law firm. Personal data is the economy's new 'black gold'. It creates new services and new markets. These new actors in the digital economy are fundamentally 'disruptive' because they diversify horizontally through their control of personal data. This understanding of economic reality is **vital in order for the EDPS to remain relevant and pragmatic in the task of advising** the European institutions.

It is in this context of continuous innovation and competition between regulatory systems that Europe has decided to reform its own model. The draft regulation introduces a **new governance structure** for the authorities, through the consistency mechanism placed under the authority of the future European Board, for which the EDPS will provide the secretariat. This **new and strategic task is one which is particularly difficult. So a new EDPS needs to be invented**, with a new team for a new project. **I know from experience what managing change requires in terms of energy, commitment, capacity for innovation and enthusiasm.** Enthusiasm, organisational flexibility, a multidisciplinary approach to data protection and an open but firm notion of independence: these are the requirements of the 'new' EDPS. And they are the qualities I wish to bring to the role.

Pending the entry into force of the new regulation, the Supervisor (EDPS) should exercise his supervisory tasks by capitalising on the achievements in this field over the last 10 years, which are clearly set out in the policy paper. One of the first obligations of a supervisor is to be **predictable.**

Being predictable means first of all explaining and communicating one's criteria for prioritising the supervisory actions to be carried out. Whether it involves site visits or prior checking in the case of processing which may present a risk, this prioritising could be based on the following criteria: (i) complaints received, although their number has been steadily falling since 2011 (from 100 to 80 in 2013); (ii) issues selected by the EDPS (e.g. data security, comment fields, geolocation, the 'bring your own device' (BYOD) practice in the European institutions etc.). Faced with a growing number of requests for prior checking (80 in 2010, 280 in 2013), the EDPS could regulate this flow, and implement his or her priorities, through judicious use of the tacit opinions provided for in Article 27 of Regulation 45/2001.

Every year the EDPS should publish a supervision programme and communicate the results of the previous year's programme. Providing this information would also help to improve the data protection culture within the EU institutions by identifying best practices. The programme would be adopted on the basis of proposals from EDPS teams, and with the agreement of the Assistant Supervisor. It should therefore also be devised and implemented as a **managerial project.**

As the supervisory authority, the EDPS must be **fair and pragmatic**, so as to be more credible. Being fair means having an analytical framework to assess compliance with data protection rules and associated risks, a framework which is pre-established but regularly reviewed, for example to take account of technological developments (e.g. concerning safety

or use) or lessons learned from the checks, and is communicable. To that end the EDPS could seek support from information technology specialists (via ENISA or other resource centres). Being pragmatic means assessing the compliance of a processing operation using this analytical framework, while also taking into consideration the specific circumstances of the operation, the sensitivity of the data processed, the legitimacy of the purpose and the associated risks to people's rights. **The risk-based approach**, where the risks are explicit and understood, is also a means of improving the data protection culture because it has an empirical basis which the services and people concerned can easily appropriate.

As supervisor, the EDPS **must be effective**. Given the scarcity of resources available, the EDPS **will have to be selective** when it comes to the controls undertaken and **make use of external intermediaries**, primarily the Data Protection Officers (**DPO**) and Data Protection Coordinators (**DPC**). **Uniting and leading these external intermediaries** is one way to leverage the work of the EDPS and ensure a high level of data protection within the EU.

To do this the EDPS will need **innovative methods of communication**. For example, and depending on the availability of resources, the Supervisor could: (i) set up a dedicated extranet for DPOs and DPCs, through which they would have access to practical guides, forums and FAQs; (ii) organise web-conferences for training purposes; (iii) set up e-learning modules; (iv) based on feedback gathered from the DPOs and DPCs through questionnaires, produce tools or materials tailored to their needs; (v) possibly bring together the DPOs and DPCs once a year to address a particular topic or action.

In order to consider the future organisation of the European Data Protection Board (EDPB), we first need to clearly define its role. Based on the January 2012 drafts of the Regulation and the Directive, the EDPB is the instrument for ensuring their consistent application and the body for dispute resolution and conciliation between national authorities.

To that end, it will take action in the **following four ways**: **(a) in response to a request from a national authority** as part of its ex-ante supervisory powers (for example, when it wants to establish a list of processing operations subject to its prior consultation or adopt BCRs); **(b) acting on a request from a national authority** in the context of ex-post supervision (for example, where one authority refuses to involve another in a joint supervisory operation). Parliament has substantially increased the powers of the EDPB in this regard, having given it the power to hear disputes between authorities where one of them proposes a penalty; **(c) on its own initiative**, to establish good practice guidelines for national authorities; **(d) as a shared resource centre for the national authorities** (training services, provision of documentation).

These four tasks – obviously there can be crossover between them, e.g. training can take into account the difficulties encountered in joint operations – should initially structure the way in which the EDPS organises the EDPB secretariat. So **tasks (a), (b) and (c), linked to the 'business' of the EDPB**, should be identified as such in the organisational chart, while the **shared resource centre task (d) would be a horizontal activity in support of all the others**. That task should be based on the provision of a secure extranet open to the national authorities, which would provide access not only to training materials and the knowledge base, but also to a table monitoring the processing of various requests referred to the EDPB.

The processing of the most sensitive requests, most likely to be those arising in the context of ex-post supervision (b), should be given special attention. The EDPS should strive to achieve balanced, fair and impartial solutions in order to build consensus and trust within the authorities. In this context, the ‘diplomatic’ role of the EDPS and the Assistant Supervisor, their availability, ability to listen and maintain a dialogue, as well as their knowledge of the different national authorities and their cultures, will be essential to the success of their mission.

On a periodic basis (every 18 or 24 months), the EDPB should review **the relevance of this mission-based organisation with the support of a horizontal ‘resources’ directorate**, in order to ensure that it remains effective and flexible in a highly innovative digital world.

These different, new and strategic tasks which have been entrusted to the EDPS will involve amendments to Regulation 45/2001, primarily to Article 46 (‘Duties’) and Article 47 (‘Powers’).