

EUROPEAN DATA PROTECTION SUPERVISOR

EDPS answers to the 2019 Discharge Questionnaire



30/10/2020

HORIZONTAL & GENERAL QUESTIONS

1. Can we really say after two and half years from introducing GDPR that we have a success story? Do we have a better data protection in the institutions? What are the benefits and costs?

The GDPR remains a tremendous achievement.¹ It has strengthened data protection as a fundamental right and harmonized the interpretation of data protection principles. Data subject rights have been reinforced and data subjects are increasingly aware of the modalities to exercise their data protection rights². Moreover, data controllers and processors within the EU now benefit from one single set of rules bringing more legal certainty and a single interlocutor through the one-stop-shop mechanism. The GDPR also contributes to an increased global visibility of the EU legal framework and is being considered a model (almost a de facto standard) outside of the EU.

Effective enforcement is an important element of any data protection framework. The enforcement regime of the GDPR marries the principles of proximity with the citizen, the independence of supervisory authorities and an obligation to cooperate constructively. Its experimental nature, between a central regulatory body and a loose grouping of national regulators, may require some adjustments over time. As European supervisory authorities, it is our responsibility to ensure that existing mechanisms are maximised so that the law is enforced adequately and proportionally.

Since the entry into application of the GDPR, all supervisory authorities have started to take decisive actions in respect of controllers, large and small, who are found to have breached the rules. Despite limited resources, authorities represent the interests of individuals and their fundamental right to data protection, in the face of the largest companies in the world bound by procedural rules that often vary from Member State to Member State.

In relation to the EU institutions, we can also definitely say that we have a ‘success story’ and that data protection is better in the EU institutions and bodies (EUIs) since the entry into force of Regulation 2018/1725 (the EUDPR)³ on 11 December 2018. The entry into force of the EUDPR in the wake of the GDPR turned the spotlight on data protection in EUIs. The new legal framework and the supervisory work of the EDPS have greatly contributed to **creating a culture of data protection** in the EUIs. Although the EUIs have a long tradition of data protection - the EUDPR builds on the previous legal framework

¹ See also the Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens’ empowerment and the EU’s approach to the digital transition - two years of application of the General Data Protection Regulation, COM/2020/264 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0264> (“The general view is that two years after it started to apply, the GDPR has successfully met its objectives of strengthening the protection of the individual’s right to personal data protection and guaranteeing the free flow of personal data within the EU”).

² See also the results of the survey carried out by the European Union Agency for Fundamental Rights (FRA), “Your Rights Matter: Data Protection And Privacy”, 2020, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-fundamental-rights-survey-data-protection-privacy_en.pdf.

³ EUIs are not subject to the GDPR, but to Regulation 2018/1725, which mirrors the GDPR.

(Regulation 45/2001), which was already ambitious - the EUDPR goes a step further and takes into account the status of **data protection as a fundamental right** under Article 8 of the EU Charter of Fundamental Rights. The EUIs have to lead by example on fundamental rights, including data protection

Data protection is not only a matter for the individual, but also for society and democracy. The use of technology creates new forms of surveillance, both from the state (not only for law enforcement or intelligence purposes, but also for administrative purposes), and from the private sector, which are in most cases invisible and therefore difficult to perceive. The EDPS' role is to ensure effective protection of peoples' fundamental rights and freedoms against the (mis)use of technologies, in particular in relation to the processing of personal data by EUIs.

The benefits of the data protection culture put in place by the EUDPR therefore go beyond a mere compliance with the data protection rules. In addition, when EUIs are guided by the utmost respect for the protection of the fundamental rights and freedoms of individuals in relation to the processing of personal data, it has a positive impact on the image of the European project as a whole.

In practice, we focus our activities on **providing guidance and on exercising a risk-based supervision**.

Awareness-raising and guidance

We **promote public awareness** and understanding of the risks to people's rights and freedoms as well as to society, in particular among EUIs when they act as data controllers.

How do we do this?

- The EDPS continuously issues **thematic guidelines**. The guidelines are a valuable tool for both controllers (i.e. the services in charge of processing personal data) and DPOs. They help improving compliance and ensuring that the principle of data protection by design is respected. In 2019, the new guidelines included the following themes: concepts of controller, processor, and joint controllership; accountability on the ground (documenting processing operations for EUIs); DPIAs; and international data transfers after Brexit⁴, and internal rules on restricting data subjects' rights (Article 25 EUDPR).
- The EDPS regularly gives **trainings** to data controllers - both senior management and the 'business owners' - and DPOs of the EUIs. These trainings are both general and in some cases targeted to a specific area, e.g. procurement or data breaches. In 2019, the EDPS gave 32 trainings sessions with a very high satisfaction rate (95%). We have seen a **significant increase in demand** for such training sessions since the entry into force of the EUDPR and we continue providing training online during the Covid-19 crisis.
- We have also made available to EUIs DPOs and data protection coordinators (DPCs) a **Wiki** with an annotated version of the EUDPR. The wiki reflects the EDPS 'case law', i.e. the interpretation of the EUDPR as derived from EDPS opinions and decisions on consultations and complaints. This up-to-date repository of EDPS information

⁴ https://edps.europa.eu/data-protection/our-work/our-work-by-type/guidelines_en.

enables DPOs to better advise their colleagues when it comes to putting data protection into practice within EUIs. The DPOs and DPCs have welcomed this initiative that helps them in their daily work and the number of incoming **connection requests** is constantly **increasing**. In 2019, we also launched the newsletter **Quicknews for DPOs**, where we inform DPOs of important data protection developments every month.

- The EDPS also provides guidance through the **DPO network**, in particular at the meetings we hold twice a year with the DPOs of all EUIs, but also via working groups set up with a number of DPOs to tackle specific issues (e.g. contractual clauses). These are an excellent way of keeping in touch with the DPOs - our point of contact in the EUIs.
- Together with the Dutch Ministry of Justice and Security, the EDPS organised the first EU software and cloud suppliers customer council in The Hague in August 2019. **The Hague Forum**, a cooperation platform for EUIs, EU public administrations and international organisations, which aims to discuss both how to take back control over the IT services and products offered by the big IT service providers and the need to collectively create standard contracts instead of accepting the terms and conditions as they are written by these providers. The EDPS encourages all concerned parties to join the Forum and help set fair contractual terms for public administration, working in synergy and exchanging best practices in outsourcing services, to **achieve digital sovereignty for the EUIs**.

Risk-based approach

In the spirit of the EUDPR, the EDPS adopted a **risk-based approach** in its supervisory activities. Even if we continue to deal with the complaints that we receive and we investigate and enforce any reported lack of compliance, our focus lies on the impact of EUIs' data processing activities on data subjects' rights and freedoms. In order to identify and explain the risks, we must understand what is at stake. A violation of a data protection provision should not be considered in isolation. We should also consider that an interference with the right to data protection or to privacy might have an impact on other fundamental rights. For these reasons, we must understand and explain the impact of misuse or non-compliance on people and on society. The focus has thus shifted from risks for the EUI (reputation, business continuity, etc.), in case of a violation of data protection rules, to risks for the data subjects, and the society as a whole.

The risk-based approach means focusing on the nature of data processed and the number of data subjects affected. It is fundamental for implementing the new **principle of accountability**, which requires that organisations put in place appropriate technical and organisational measures and be able to demonstrate what they did and its effectiveness when requested.

How the risk-based approach translates into our supervisory activities:

Audits and visits

Under the EUDPR there is now a greater emphasis on ensuring that the EUIs adopt an approach to data protection based on increased accountability.

For this reason, a round of **accountability visits** to Heads of EUIs took place even before the new Regulation entered into force to raise awareness.

When establishing the **Annual Audit Plan**, the EDPS performs a **risk analysis** based on specified criteria whose value may indicate serious compliance issues or failings within the institution concerned. The **mapping** of risks refers, in particular, to the nature and number of consultations submitted and or DPIAs performed, whether sensitive data are processed as a core business, whether there are transfers of data to recipients which are not subject to the GDPR, whether there is an increase in complaints received by the EDPS, etc.

In July 2018, we began a programme of **remote inspections on the web services** of EUIs. Having published Guidelines in November 2016 on the protection of personal data processed through web services provided by EU institutions, the remote inspections were to serve as a follow-up exercise. The first inspection wave focused on web services likely to have the highest impact on the individuals using them, and the second on the most visited websites of the EUIs. The results of the first inspection, which we announced in June 2019, revealed that several of the websites inspected were not compliant. One of the issues encountered was third-party tracking without prior consent, which is particularly problematic in cases where the third-party concerned operates under a business model based on the profiling and subsequent behavioural targeting of website visitors. Other issues included the use of trackers for web analytics without visitors' prior consent and insufficient connection security. **The institutions inspected reacted swiftly to start rectifying the problems we identified. All those concerned now provide secure HTTPS connections and have significantly reduced the number of third-party trackers they use.** We carried out **nine audits and two compliance visits in 2019**, at a variety of different EUIs. Audits are used to assess how well an EUI is implementing data protection rules, while during compliance visits we work with an EUI to draw up a roadmap to ensure that they implement the rules. We share the results of our audits with the institutions concerned and follow up with each institution to ensure that they have implemented our recommendations.

Investigations

Similarly, the risk-based approach has played an important role in how we prioritise our investigations. By monitoring and analysing new data trends in the light of the potential risks to rights and freedoms of data subjects, we select the processing operations to investigate.

This approach proved its efficiency in two high-profile investigations carried out in 2019:

European Parliament - NationBuilder

In 2019, the EDPS carried out an investigation into the European Parliament's use of NationBuilder, a US-based political campaigning company, to process personal data as part of its activities relating to the 2019 EU parliamentary election. The website thistimeimvoting.eu collected data from over 329.000 people interested in the election campaign activities. The **threat posed by online manipulation** led the EDPS to act proactively and decisively in the interest of all EU citizens to **help to foster trust in our institutions and the democratic process**, through promoting the responsible use of personal data and respect for individual rights.

The investigation into the European Parliament's use of NationBuilder resulted in the first ever EDPS reprimand issued to an EU institution following the selection and approval of sub-processors used by NationBuilder. A second reprimand followed when the Parliament failed to publish a compliant Privacy Policy for the [thistimeimvoting](https://thistimeimvoting.eu) website within the deadline set by the EDPS. In both instances, **the European Parliament acted in line with EDPS recommendations**.

Contractual arrangements with software providers (Microsoft)

In April 2019, the EDPS launched an investigation into the compliance of contractual arrangements concluded between the EUIs and Microsoft. The EUIs rely on Microsoft services and products to carry out their daily activities and this includes the processing of large amounts of personal data. Considering the nature, scope, context and purposes of this data processing, it is vitally important that appropriate contractual safeguards and risk-mitigating measures are in place to ensure compliance with the new Regulation. The EDPS investigation aimed at assessing which Microsoft products and services are being used by the EUIs, and whether the contractual arrangements in place were fully compliant with data protection rules. The EDPS issued its findings and recommendations upon the closure of its investigation in March 2020. The purpose of the EDPS' report was to **provide EUIs with forward-looking assistance in bringing their arrangements into compliance with data protection law**. In particular, the EDPS' findings and recommendations were oriented towards supporting the renegotiation of the Inter-Institutional Licensing Agreement (signed by the EUIs and Microsoft in 2018) and EUIs' contract and implementation of robust technical and organisational measures that should accompany the contract. The objective is to **achieve digital sovereignty** for EUIs and an adequate protection of the personal data processed by them.

All in all, we can conclude with a high level of certitude that both the GDPR and the EDPR are a success story and we have now a higher level of data protection in the EUIs. As to the costs, as far as the budgetary impact is concerned, the answer is provided in response to the following question.

2. In 2019 what was the impact of the implementation of the GDPR on the budget and organisational changes of the Supervisor?

In 2019 the only organisational change impacting the EDPS was the increase in staff and thus the amount of selections as well as newcomers to this entity. Our institution has received the mandate from the legislator to provide the Secretariat to the new European

Data Protection Board (EDPB) that led to the creation of the Title III of our budget, specifically dedicated to the staff and the financial means of EDPB. Because 2019 was the first entire year of the EDPB functioning, the related allocated budget increased by 51% (from 3.594.746 EUR in 2018 to 5.413.838 EUR in 2019). Costs in 2018 were 2.834.826 EUR for Title III and in 2020 is estimated to be 4.433.581 EUR.

3. The Regulation (EU) 2018/1725 came into force in 2019. What has been the administrative and budgetary effort allocated into the enforcement activities carried out by the institution? Based on the experience of 2019, what budgetary and staff increase would be necessary?

The new Regulation (EU) 2018/1725 impacted some of the traditional areas of activity of the EDPS and differed compared to the supervision so far exercised by the EDPS on EU institutions and bodies. That is why in terms of resources we hired 8 new people in 2019 and 7 in 2020.

From a budgetary point of view, we estimated that the hiring of new staff and the additional EDPS activities related to the new regulation (EU) 2018/1725 led to a budget increase in 2019 of 3.29% of the 2018 budget and in 2020, an increase of 6.2% of the 2019 budget.

4. Is there a cost evaluation of the GDPR?

A cost evaluation of the GDPR has not been undertaken either by the EDPS or EDPB. Prior to the entry into application of the GDPR, the European Commission examined the administrative costs imposed by existing regulation and by the preferred policy option in accordance with the European Commission Impact Assessment Guidelines.⁵ In its first evaluation and review of the GDPR pursuant to Article 97 GDPR, the Commission did not include a cost evaluation. It noted, however, that despite the harmonised rules a degree of fragmentation and diverging approaches remain, creating challenges and possible unnecessary burden on companies.⁶ The Commission also notes a number of challenges for organisations, in particular small and medium-sized enterprises.⁷ As indicated in our response to question 11, supervisory authorities have developed several tools to help SMEs implement the GDPR appropriately and to alleviate their administrative burden as much as possible.

⁵ See Commission Staff Working Paper, Impact Assessment Accompanying the document Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (COM(2012) 10 final) {COM(2012) 11 final} in particular Annex 9 and 10.

⁶ Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, Brussels, 24.6.2020 COM(2020) 264 final, p. 7.

⁷ Ibid, p. 9.

5. What results have been achieved between the EDPS and the national data protection authorities in the Member States to ensure effective supervision and collaboration for the new legal framework?

A. Support to GDPR National Cooperation

While Directive (EC) 95/46 provided a general duty of cooperation among supervisory authorities, it did not provide for a comprehensive system of cooperation and therefore the cooperation among national authorities was very limited. Under the GDPR cooperation is no longer an option or an ancillary task, but a core and integral part of the tasks of every supervisory authority. The new instruments for cooperation introduced by Chapter VII GDPR have been an important step towards formalising and strengthening the exchanges and the cooperation among supervisory authorities (SAs) within the EU.

The high number of interactions between SAs in the dedicated system developed to support exchanges among supervisory authorities (see response to question 6) proves that cooperation is already a concrete reality.

Since the entry into force of the GDPR on 25/5/2018 until the end of 2019:

- **807⁸** cross-border cases have been created in the case register.
- **115⁹ Mutual Assistance** (Art 61 GDPR) procedures were triggered. Besides this, authorities have launched **2427¹⁰** procedures to assist each other on a voluntary basis;
- 142 draft decisions related to the **One-stop-shop** (Art 60 GDPR) were initiated out of which 79¹¹ resulted in **Final Decisions**.

B. Collaboration within the EDPB

The national data protection authorities in the Member States and the EDPS cooperate as members of the EDPB to ensure consistent application of the EU data protection legal framework. The EDPB is a newly established EU body and constitutes the platform for exchanges between the EDPS and the national supervisory authorities. The European Commission also participates to the activities of the EDPB.

In addition to being a member of the EDPB, the EDPS also provides the EDPB Secretariat which is responsible for drafting EDPB documents, providing IT solutions to ensure transparent communication, handling media relations and planning as well as organizing meetings.

Between 1 January and 31 December 2019, the EDPB held 11 plenary meetings¹². The agendas of the plenary sessions are published on the EDPB website. In addition, 90¹³ expert subgroup meetings were held. The purpose of these meetings is to allow the members of the Board to exchange information and prepare and adopt the EDPB documents.

⁸ 1269 up to 2 Oct 2020.

⁹ 313 on 2 Oct 2020.

¹⁰ 4093 on 2 Oct 2020.

¹¹ 140 on 2 Oct 2020.

¹² 24 plenary meetings in the course of 2020 until 20/10/2020.

¹³ 106 expert subgroup meetings in the course of 2020 until 21/10/2020.

1. General guidance

In 2019, the EDPB adopted 5 new guidelines¹⁴, which interpret important notions and principles of the GDPR, thus contributing to a more homogeneous implementation of the GDPR.

The adopted Guidelines dealt with codes of conduct and monitoring bodies at a national and European level, clarifying the processing of personal data under a range of circumstances, namely during the provision of online services and through video devices, on the principles of Data Protection by Design & Default, and on the Right to be Forgotten by search engines.

Three Guidelines adopted in 2018 were approved by the EDPB in their final form in 2019, following public consultation. These Guidelines clarify accreditation and certification criteria and the territorial scope outlined in the GDPR¹⁵.

2. Consistency findings

Supervisory authorities from EEA countries must request an Opinion from the EDPB before adopting any of the measures enumerated in article 64(1) GDPR. The EDPB uses this consistency mechanism to promote consistent application of the GDPR by supervisory authorities.

In 2019, the EDPB adopted 16 Consistency Opinions¹⁶ (to ensure consistency on different fields, such as the processing that needs to be subject to a Data protection Impact assessment by the controllers, on the accreditation criteria to establish monitoring bodies for the use of Code of Conduct as compliance tools, on the creation of standard contractual clauses between controllers and processors...).

3. Other actions

In 2019, national data protection authorities and the EDPS also worked together to provide advice to the European Commission (e.g. on the interplay between the Clinical trials regulation and the GDPR, on eHealth digital service infrastructure, on the ePrivacy draft regulation, on the EU-US Privacy Shield joint review, etc.).

The EDPB also published statements on the US Foreign Account Tax Compliance Act, on the use of personal data in political campaigns and took part, on invitation by the Court, in the hearing before the CJEU in case C-311/18 (Facebook Ireland and Schrems).

¹⁴ Since the entry into force of the GDPR, the EDPB has adopted 18 guidelines.

¹⁵ In 2020, the EDPB had to face the COVID-19 crisis and demonstrated a high capacity of flexibility and resilience: the EDPB answered to important legal and societal questions relating to COVID-19 and other pressing matters.

The EDPB played amongst others an important role in providing guidance relating the use of health data for the purpose of scientific research in the context of Covid 19 as well as on the use of location data and contact tracing apps tools in the context of Covid-19. This guidance contributes to setting a consistent EU model to guide the Member States willing to develop contact tracing apps while respecting the data protection fundamental rights of their citizens.

¹⁶ Since the entry into force of the GDPR on 25/5/2018, the EDPB has adopted a total of 67 consistency opinions, 25 of which were adopted in the course of 2020.

B. Coordinated Supervision

The EDPB has also contributed to deepening its collaboration with the national supervisory authorities through the creation of a Coordinated Supervision Committee, which is provided for in article 62 Regulation (EU) 2018/1725.

The Committee was formally established within the EDPB in December 2019 and it comprises the EDPS and the national supervisory authorities to ensure effective supervision of large-scale IT systems and of EU bodies, offices and agencies. The EDPB's rules of procedure were amended to include a new Article 37, which formally establishes the Coordinated Supervision Committee within the EDPB.

In 2019, the EDPB adopted its own rules of procedure and elected its chair and deputy chair¹⁷.

6. What steps were taken to improve cooperation between the institution and the national data protection authorities in the Member States?

A. Continue the development of the IT system for the national cooperation

Before the entry into application of the GDPR, the EDPS assisted the national data protection authorities to develop the IT system to exchange information necessary for the GDPR cooperation and consistency mechanism in a standardised and secure way. The Internal Market Information (IMI) system was developed by the European Commission's DG GROW to enhance and facilitate administrative cooperation among the Member States. The Secretariat of the EDPB (which is provided by the EDPS) and the national SAs worked closely to adapt IMI to cater for the needs under the GDPR.

To ensure that the system is adapted to the evolving needs of the SAs, the EDPB created a dedicated expert subgroup gathering experts from national data protection authorities which discusses and validates the necessary changes to the system. Many changes were made in 2019 including the creation of a new workflow for EDPB written procedures. Additionally the Secretariat of the EDPB (provides a Helpdesk with dedicated staff providing day-to-day assistance to the users in the national data protection authorities.

B. Development of a new wiki platform to share information within the EDPB

In early 2019, the Secretariat of the EDPB (which is provided by the EDPS) developed a wiki platform to enable the EDPS and the national supervisory authorities to share information, create forums and store documents relating to EDPB activities.

This created a form of intranet between the members of the EDPB, that allows all the members to have an overview of the agenda of meetings, access meetings documents as well as share information on available legal and IT resources.

¹⁷ in 2020 adoption of its work program 2020-2022 and the exchange of information on the supervision of Eurojust and IMI system.

C. Deployment of videoconferencing tools

The Secretariat of the EDPB made the necessary arrangements with the European Parliament to offer secure video-conferencing tools to the EDPB members.

139 secured tokens were deployed to allow members to access the safe EP environment and to use the dedicated software thus enabling EDPB members to participate via remote means in EDPB subgroup meetings or bilateral or multilateral discussions among themselves.

D. Creation of a secondment programme

The EDPB, upon the initiative of the EDPS, has also launched in 2019 a secondment programme enabling staff exchanges between the EEA SAs and the EDPS, including the EDPB Secretariat.

This decision was an action in the context of the application of article 70.1 (v) GDPR, according to which the European Data Protection Board shall “promote common training programmes and facilitate personnel exchanges between the supervisory authorities (...)”.

7. Do you see any ways in which the Parliament could further support the work of the EDPB in order to achieve a harmonised application of the GDPR legislation in a Member States?

a) Ensuring allocation of sufficient resources

The effective application of the powers and tasks attributed by the GDPR to supervisory authorities is largely dependent on the resources available to them. This applies in particular to the one-stop-shop mechanism, as its success depends on the time and effort that supervisory authorities can dedicate to individual cases and cooperation. The ability for the Secretariat of the EDPB (which is provided by the EDPS) to support cooperation and promote consistent application likewise requires sufficient resources.

It is therefore of the utmost importance that all Members of the EDPB as well as the EDPB Secretariat are provided with sufficient resources to carry out their tasks. The European Parliament can clearly play an important role in this regard.

b) Support Pool of Experts

The success of the GDPR hinges on the ability for European supervisory authorities to enforce it, in particular vis-a-vis the most powerful global players active in Europe.

A major challenge in this regard is the lack of sufficient resources and efficient practical means to handle complex investigations, especially cross-border cases involving major global companies. Therefore, there is a need for a strategic and common approach to this challenge, based on solidarity and burden sharing.

In this regard, the establishment of a Support Pool of Experts within the EDPB, which would assist supervisory authorities in dealing with resource-heavy and complex cases, could be an effective tool to help implement these obligations in practice. In July 2020, the EDPS proposed the establishment of such a Support Pool of Experts and together with the EDPB Secretariat and EDPB members it is working on developing the terms of reference with a

view of preparing a first pilot project in 2021. Any support the Parliament could provide in relation to this initiative could help contribute to the consistent application and enforcement of the GDPR.

c) Political influence

In the first instance, the Parliament can help identify and give prominence to perceived risks of fragmentation or other specific issues to promote harmonised application of the GDPR, through reports, resolutions or parliamentary questions addressed to the Commission. Second, the Parliament can encourage the Commission to monitor whether national procedures present obstacles to the full effectiveness of the cooperation mechanism and enforcement of the GDPR. In the longer term, the legislature may also have a role to play in ensuring further harmonisation.

8. Which reflections do exist to minimize the danger of different approaches on the implementation of the regulation among the Member States?

The EDPB is by definition the EU body whose purpose is to ensure the consistent application of the GDPR, which is provided for explicitly in its article 70. More specifically, the consistency mechanism, which dictates the collaboration of SAs in cross-border cases, results in minimizing the divergent approaches. In addition, provisions in the GDPR, such as article 70 GDPR, refer explicitly to the obligation of the EDPB to draft guidelines on a series of data protection issues. Such guidelines are adopted by the EDPB following voting of its members and they offer a common interpretation of important clauses and notions of the GDPR thus contributing to their uniform application across the EU.

The cooperation and consistency mechanism (Chapter VII GDPR) contains the core clauses with which the EU legislator envisaged to deepen the collaboration among the national supervisory authorities in an aim to minimize the different approaches in the application of the GDPR across the EU. This is primarily ensured via the one-stop-shop mechanism, which provides for all supervisory authorities concerned by the same case, to cooperate with the lead supervisory authority and reach a common decision. At the end of 2019, 79 final decisions were made under the one-stop-shop mechanism¹⁸. Furthermore, according to article 64 GDPR, the supervisory authorities must seek the Opinion of the EDPB before adopting any of the measures referred to in paragraph 1 of this article. The opinion of the EDPB may be requested also in relation to any other matter of general application or producing effects in more than one member states (article 64(2) GDPR). In 2019 the EDPB adopted 16 Consistency Opinions.¹⁹

The European Commission has an important role to play towards reducing the divergent approaches in the implementation of the GDPR. For example, it is explicitly stated that the European Commission may adopt standard contractual clauses on the obligations in a controller-processor relationship (article 28(7) GDPR) as well as on international transfers (article 46(2)(c) GDPR).

¹⁸ 140 on 2 Oct 2020.

¹⁹ Since the entry into force of the GDPR on 25/5/2018, the EDPB has adopted a total of 67 consistency opinions, 25 of which were adopted in the course of 2020.

It is however important to underline that the EU legislator required the member states to legislate on certain aspects of personal data processing, and therefore the GDPR itself provides for a certain level of divergence in the data protection legislation. The European Commission is in charge of monitoring the implementation of the GDPR in the national legislation of Member States, to assess if the divergence is in line with the GDPR provisions.

In its first evaluation and review of the GDPR, the Commission also noted that there is still a degree of fragmentation which is notably due to the extensive use of facultative specification clauses (e.g. the difference between Member States in the age of children consent in relation to information society services). The Commission stressed that for the effective functioning of the internal market and to avoid unnecessary burden on companies, it is also essential that national legislation does not go beyond the margins set by the GDPR or introduces additional requirements where there is no margin.²⁰ Other specific challenges relate to the reconciliation of the right to the protection of personal data with freedom of expression and information and derogations from the general prohibition for processing special categories of personal data (e.g., for health and research purposes).²¹

9. Does the EDPB provide a platform for best practises among the national data protection authorities?

Following the adoption of the GDPR, the tasks and workload of the SAs under this new legal framework have evolved and increased. The exchange of best practices between the SAs has been identified as an important parameter in the work of the EDPB, especially considering the identified lack of resources²².

In cases of topics of common concern to several SAs, the EDPB has published the measures that some SAs have taken in order for them to serve as sources of inspiration and example to the other SAs. This has for instance been the case of the measures taken across the EU member states to support the SMEs²³ in their efforts to adapt to the GDPR or on the use of personal data in the course of political campaigns²⁴.

At the same time, early on in the application of the GDPR, the EDPB started elaborating mechanisms to ensure an informal exchange of ideas and best practices between SAs. Such an example is a wiki platform where all important documents relating to the daily work of the EDPB are uploaded and thus become accessible to the SAs. The same platform contains also a forum allowing the SAs to contact their peers. Its benefit was proven very recently in the context of the coronavirus situation, as the SAs could exchange views quickly e.g. on the compatibility of tracing apps with the data protection legislation.

²⁰ Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, Brussels, 24.6.2020 COM(2020) 264 final, p. 7.

²¹ Idem.

²² First overview on the implementation of the GDPR and the roles and means of the national supervisory authorities, EDPB contribution to the LIBE committee, February 2019

²³ https://edpb.europa.eu/sites/edpb/files/files/file1/19_2019_edpb_written_report_to_libe_en.pdf

²³ https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_contributiongdprevaluation_20200218.pdf

²⁴ https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-03-13-statement-on-elections-annexi_en.pdf

In comparison with the Directive (EC) 95/46/EC, where Supervisory Authorities (SAs) were working separately even on cross-border cases, the GDPR created a duty for the SAs to cooperate in order to provide a consistent application of the GDPR. The IMI tool as described above, offers a secure technological solution to the sharing of information relating to ongoing cases which allows the concerned SAs to consult in practice how the Lead supervisory authorities are enforcing the GDPR. This has created an important possibility of knowledge exchanges and the identification of best practices on the handling of concrete cases.

Furthermore, with the enforcement of transparency and of collaboration between the SAs as its purpose, the EDPB Secretariat created a register of all one-stop-shop final decisions. This register is hosted in the wiki internal platform and aims at enabling the Supervisory Authorities to follow the decisions made by Lead supervisory authorities, in consensus with concerned authorities. The purpose is to exchange information, to create somewhat of case law for administrative decisions on cross border matters. The intention was to make this register available to the general public in 2020, going beyond the transparency duties of the GDPR in this matter.

All the EDPB meetings (100 meetings in 2019) also offer a platform for SAs to debate on the various topics and share their experience and knowledge in the field of data protection.

10. How and by which means should the current legal framework be improved?

The EDPS is of the opinion that it would be premature to initiate the process of revision of the GDPR at this point.²⁵ Instead, it is suggested that the EU legislators intensify efforts towards the adoption of an ePrivacy Regulation to complete the EU framework for data protection and confidentiality of communications. In this regard, it is of utmost importance to address the current fragmentation of supervision, procedural complexity, as well as lack of consistency and legal certainty for individuals and companies. In this context, we continue to support the approach that the Data Protection Authorities should be entrusted with the supervision of the ePrivacy Regulation.

The EDPS, as provider of the EDPB Secretariat, is committed to strengthening the cooperation of national supervisory authorities, which is of utmost importance especially in high-profile enforcement cases. While cooperation continues to improve, there is also a need to closely monitor and continuously assess the efficiency and effectiveness of the one-stop-shop mechanism. The Parliament can play an important role both in supporting mechanisms for better cooperation and in critically evaluating the extent to which the current competences of the EDPB allow it to achieve its mission of ensuring the consistent application of the GDPR, including in relation to its enforcement.

The Parliament can also encourage the Commission to take up its role in ensuring that national legal frameworks are fully aligned with the GDPR, in line with Commission's own Communication on the GDPR review (COM(2020) 264 final), and that national supervisory

²⁵ See also the Contribution of the EDPB to the evaluation of the GDPR under Article 97 Adopted on 18 February 2020, available at https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_contributiongdprevaluation_20200218.pdf.

authorities cooperate effectively and efficiently when enforcing the GDPR on a EU-wide dimension.

11. Is there a realistic risk of “over-regulating” or is there a need to enhance the efforts of awareness raising?

The GDPR provides an appropriate framework for regulating the processing of personal data. It remains sufficiently flexible and scalable, thanks to its technology-neutral character and its combination of principles, rights and risk-based approach.

Awareness raising is a task supervisory authorities take very seriously. For example, in order to address the specific needs of SMEs, supervisory authorities have developed several tools to help SMEs implement the GDPR appropriately and to alleviate their administrative burden as much as possible²⁶. One example is “Facilita RGPD”, a tool designed to support companies that carry out low-risk data processing in their compliance with the General Data Protection Regulation.²⁷

It should be recognised, however, that the implementation of the GDPR may be particularly challenging for SMEs. The EDPB is committed to continuing facilitating the development of the appropriate tools in order to further alleviate the administrative burden for SMEs.

12. Please name three of the institution’s main achievements and successes in 2019 from a budgetary/management perspective.

From a budgetary perspective, EDPS faced in 2019 the following three main challenges:

- The entry into force of the new regulation (EC)2018/1725 which led to a substantial staff increase
- The increase of supervision activities (e.g. new supervision of Eurojust, preparation of the new supervision of EPPO, ...) which led also to a substantial staff increase
- The need to provide the Secretariat to the EDPB for the entire year for the first time

Those challenges were successful, we assimilated in 2019 a budget increase of 12.12% regarding the staff appropriations and the budget dedicated to the Secretariat of the EDPB grew by 51% in comparison with 2018.

From the management perspective, the entry into force of the new Regulation meant also that the EDPS had to prepare to work without the position of the Assistant Supervisor. The institution reorganised its work in order to reallocate tasks and help the Supervisor prioritize its works. This had put stronger burden on senior and middle management and, subsequently, on case officers. For the time being, the EDPS managed to keep the level of

²⁶ An overview of the actions taken by the national authorities can be found in the EDPB contribution to the evaluation of the GDPR under Article 97 GDPR, pp. 35-45.

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_contributiongdprevaluation_20200218.pdf

²⁷ See <https://www.aepd.es/en/guides-and-tools/tools/facilita-rgpd>

efficiency required to perform its tasks but it may be necessary to revisit this issue in the future.

13. Please name the main challenges that you had to face in 2019.

EDPS faced multiple kind of challenges during 2019. Some of them were a result a new regulatory environment, some were linked to intensifying cooperation with other authorities and stakeholders.

The main challenges encountered by the EDPS during 2019 could be summarised in the followings bullet points, further developed below:

1. First year of implementation of the new Regulation 2018/1725 for the EUIs.
2. Preparation for the supervision of European Union Agency for Criminal Justice Cooperation (Eurojust) and European Public Prosecutor's Office (EPPO).
3. EDPS Work as a member of the European Data Protection Board (EDPB).
4. Cooperation with other regulators/authorities.
5. Engagement with Civil Society.

On a personal note, the sad loss in office of the late European Data Protection Supervisor, Giovanni Buttarelli, was a big blow for all EDPS staff. We cherish his memory and commit to continue his extraordinary legacy.

Ad 1) First year of implementation of the new Regulation 2018/1725 for the EUIs

The year 2019 marks an important and challenging mandate for the EDPS. Following the entry into force of the new regulation 2018/1725 (on 11 December 2018) it was actually the first full year of implementation of the new data protection framework.

Therefore, one of the main challenges we faced was to ensure that EUIs and the respective personnel are aware of their new obligations and are able to follow an action plan on how to put the new rules into practice.

To this respect, EDPS played a leading role in providing data protection trainings from EDPS experts presenting the new legal framework and providing practical sessions and scenarios. Among others, particularly important were:

- a dedicated training session on procurement for case officers of DG-FINS of the European Parliament.
- a session on the obligations under Regulation (EU) 2018/1725 for the European Commission's Directorate General for Human Resources (DG HR) case officers.
- a series of sessions (8 sessions of 2,5 hours) to the EU Head of Unit/Heads of Sector hosted by the European School of Administration (EUSA) lunch conferences.
- a tailor-made training sessions on joint controllership and research projects to some DGs of the Commission as well as Executive Agencies.

While the general supervisory role of the EDPS is based on ensuring and enforcing compliance, the EDPS approached this challenge in close cooperation with EUIs in order to help them to better understand and adapt to the new regulatory framework.

Ad 2) Preparation for the supervision of European Union Agency for Criminal Justice Cooperation (Eurojust) and European Public Prosecutor's Office (EPPO).

The Supervision of Eurojust, is based on a new supervisory framework, so-called Eurojust Regulation, which came into force on 12 December 2019. Given the particular character of Eurojust (an agency in the field of cooperation in criminal matters), the EDPS had to create a tailor-made methodology of supervision, adapted not only to specific role of Eurojust (which includes processing of operational data), but also particular legal framework (with Eurojust Regulation applicable as *lex specialis*).

Towards the goal of creating a customised supervision program, the EDPS worked intensively and in close cooperation with Eurojust. This helped the EDPS identify main challenges including by acquiring a deeper understanding of Eurojust's operational activities. At the same time, the EDPS has given several presentations and organised training sessions for Eurojust staff members in order to raise awareness in respect the nature of the EDPS supervision.

Ad 3) EDPS work as a member of the European Data Protection Board (EDPB)

Made up of the EU Member State data protection authorities (DPAs) and the EDPS, the EDPB is responsible for ensuring the consistent implementation of the GDPR across the EU. Furthermore, under the General Data Protection Regulation (GDPR), the EDPS is responsible for providing the secretariat to the EDPB.

As a member of the EDPB, the EDPS contributed to several initiatives in 2019, such as:

- Issuing joint advice to the European Parliament on the EU response to the US CLOUD Act, which gives US law enforcement authorities the power to request the disclosure of data by US service providers, regardless of where in the world this data is stored.
- Working with the EDPB to produce the first joint EDPS and EDPB Opinion, on the processing of patient data through the EU's eHealth network.
- Working closely with the EDPB on the topic of international data transfers, participating in the review of the Privacy Shield agreement for data transfers between the EU and the US, as well as the EDPB contribution to the hearing on the Schrems case at the EU Court of Justice, focused on the legality of standard contractual clauses for data transfers.

The main challenge encountered working as a member of the EDPB is the high volume of work and the extremely tight deadlines. Moreover, as an EU institution, the EDPS gives specific attention and importance to the works of the EDPB and therefore contributes to them actively.

Ad 4) Cooperation with other regulators/authorities

During 2019, the EDPS continued to increase its cooperation with other regulators and authorities. More specifically, cooperation between data protection, consumer protection and competition authorities was of high importance to improve understanding of market dynamics and develop coherent and consistent responses to the challenges posed by the digital economy.

To this respect, EDPS responded to the challenge for further cooperation in the abovementioned fields with a series of workshops, conferences and projects organised during 2019 such as the following:

- *Cooperation with global community of Data Protection Authorities*

The EDPS engages actively with Data Protection Authorities outside of European Union. This cooperation takes place mainly through the participation in the works of two entities - European Conference of Data Protection Authorities (so-called Spring Conference, associating Data Protection Authorities from Europe) and Global Privacy Assembly (formerly known as the International Conference of Data Protection and Privacy Commissioners), a global forum for data protection and privacy authorities. The EDPS also represents the Global Privacy Assembly in the Consultative Committee (T-PD) of Convention 108 of the Council of Europe.

- *Digital clearinghouse.*

The EDPS launched the initiative of the Digital Clearinghouse back in 2016. Its aim is promoting a more coherent enforcement of EU fundamental rights between data protection, consumer protection and competition. In 2019, two meetings were organised to this end, and EDPS took active part in the discussions. During the first, the discussion focused on the challenges of regulating non-monetary price services and on recent consumer decisions and actions taken against Facebook. The second meeting focused on data sharing, analysing the similarities and differences in the approaches of competition, data protection and consumer law and on how to strengthen cooperation in this area.

- *Workshop on data protection and disinformation and online manipulation “ Europe votes 2019: How to unmask and fight online manipulation”*

In the light of the European Parliament elections the EDPS organised a highly strategic workshop aimed at facilitating the conversation between data protection authorities, electoral regulators, audio-visual regulators, media & platforms in the fight against online manipulation of personal data in elections. We believe that this initiative was a practical and timely contribution to fight online manipulation during the electoral process.

- *Data Protection and Competitiveness in the Digital Age*

In a further effort to strengthen cooperation between regulators in the areas of data protection, consumer protection and competition policy, the EDPS also organised an event in collaboration with the Federal Commissioner for Data Protection and Freedom of Information in Germany. The event, which took place on 9 July 2019, took the form of a panel discussion on Data Protection and Competitiveness in the Digital Age. It assessed the intersection between data protection and competition policy in an era in which business models are increasingly reliant on the exploitation of large amounts of personal data.

Ad 5) Engagement with Civil Society

The EDPS is particularly proud of its strong engagement with Civil Society aimed at listening the views of Civil Society on important files and issues and better understand some specific aspects and repercussions of the legal framework in the society.

The dialogue with the civil society was empowered during 2019, with the organisation of the EDPS civil society summit, which took place as part of the Privacy Camp. The EDPS had the opportunity to exchange views and discuss a variety of data protection related issues (i.e. freedom of expression threats, privatised law enforcement, ePrivacy, Privacy-by-Design and Privacy-by-Default) being able to examine these issues under a different perspective.

Among others, the EDPS took part at the *Freedom not Fear* conference (Wojciech Wiewiórowski, *Challenges for data protection. EU regulatory perspective, speech at the conference Freedom not Fear 2019, Brussels (8-11 November 2019)*).

The EDPS was also present at the *RightsCon* conference organised in Tunis, June 11-14, 2019 (www.rightscon.org), the world's leading summit on human rights in the digital age.

Last but not least, the EDPS remains in regular contacts with BEUC - an umbrella consumers' group bringing together 45 European consumer organisations from 32 countries. This cooperation was acknowledged by the keynote speech of BEUC Director Monique Goyen at *Reflections on the 2015-2019 EDPS mandate* event on 3 December 2019.

14. In 2019, the institution reached the end of the EDPS Strategy 2015-2019. What are the main achievements and future challenges identified in terms of administrative and budgetary management in the frame of this strategy?

One of the main achievements in the 2015-2019 EDPS strategy was the creation of the EDPB with its extremely demanding requirements in terms of administration (e.g. office space), HR (e.g. selections and recruitments) and budget so that this new EU body could be fully operational on day one.

Administrative and budgetary management defines to some extent the results of the yearly goals of an organisation and aims to allocate the resources with the most efficient and productive way.

As certified yearly by the AIPN in his Annual Activity Report²⁸, the EDPS during the 2015-2019 mandate achieved its main goals and allocated its resources taking into consideration the administrative and budgetary management, with a view to meet the strategy's cornerstones.

More specifically:

²⁸ https://edps.europa.eu/sites/edp/files/publication/aar_2019_en.pdf

- In the EDPS Strategy 2015-2019, we set ourselves the goal of developing an ethical dimension to data protection. EDPS launched the **EDPS Ethics Initiative back** in 2015, as part of our commitment to forging global partnerships. We wanted to generate a global discussion on how our fundamental rights and values can be upheld in the digital era. We committed to establishing an independent advisory group on digital ethics, tasked with exploring the relationships between human rights, technology, markets and business models in the twenty-first century. One of the main achievements in relation to the Ethics Initiative was that EDPS organised, during 2017, in cooperation with the Ethics Advisory Group, the Data Driven Life workshop. The conversation focused on five areas where data makes a big difference and managed to bring together speakers from a variety of academic and practical perspectives.
- In line with the priority outlined above, in October 2018, the EDPS hosted the **40th edition of the International Conference of Data Protection and Privacy Commissioners (ICDPPC)** in Brussel. The aim was to achieve an inclusive, cross-disciplinary and interactive conference Debating Ethics: Dignity and Respect in Data Driven Life, while convening data protection and privacy authorities from around the globe. The event gathered over 1000 people in the EP's hemicycle in Brussels from very different backgrounds, nationalities and professions, high-profile speakers and considerable media coverage which benefitted from the recent entry into force of the GDPR. It served to put ethical and legal questions high on the agenda of DPAs and other stakeholders across the world. The speeches delivered by Giovanni Buttarelli and Steve Jobs are already part of the history of data protection in the world.
- We developed a work stream on **online manipulation and personal data**. Building on the Opinion on Online Manipulations and personal data, with an eye on the European Parliament elections, the EDPS organised the high-level workshop already mentioned above in order to facilitate the conversation between data protection authorities, electoral regulators, audio-visual regulators, media & platforms in the fight against online manipulation of personal data in elections.
- EDPS founded the **Internet Privacy Engineering Network (IPEN)** initiative in 2014. This initiative has continued to grow, focusing its work on standardisation initiatives on privacy, online tracking and privacy engineering and proved to have a leading role during the EDPS Strategy 2015-2019. IPEN events have been organised from 2015 to 2019 on a yearly basis and invite participants from different areas such as regulators, academia, open source and business development, and other individuals who are committed to finding engineering solutions to privacy challenges.
- EDPS launched the initiative of the **Digital Clearinghouse** in a 2016 Opinion as a voluntary network of regulators involved in the enforcement of legal regimes in digital markets, with a focus on data protection, consumer and competition law, with the aim of facilitating understanding of market dynamics in the digital ecosystem. Four meetings among regulatory authorities took place in 2017 and 2018 as facilitated by the EDPS. From 2019, the Digital Clearinghouse is jointly hosted by

the Research Centre in Information, Law and Society (CRIDS) at the University of Namur, the Tilburg Institute for Law, Technology, and Society (TILT) at Tilburg University, and the European Policy Centre (EPC) in Brussels.

15. How much of the EDPS's budget is allocated to :a. Administrative costs, b. Over-head costs, c. Operational costs, d. Staff remuneration, e. Staff entitlements/benefits, f. Paid leave.

The overall 2019 budget amounted to 16.746.493,00EUR. The repartition was the following:

- a) administrative costs: 6.359.516EUR (38%)
- b) over-heads costs: 2.083.746EUR (12%)
- c) operational costs: 0 (0%) - remark: EDPS uses only administrative appropriations
- d) staff remuneration: 8.043.011EUR (48%)
- e) staff entitlements/benefits: 260.220EUR (2%)
- f) paid leaves: 0 (0%)

16. What carry-over of appropriations has been made in 2019? Does the EDPS plan to make carry-over operation to the following year?

The amount of 1.284.291,43 EUR was carry-forwarded from 2019 to 2020. We will plan to carry-over a part of our budget for the following year because we have several contracts straddling two budgetary periods and because several purchase orders made in 2020 will be achieved (and paid) the next year.

17. How many call for tenders did your institution organise in 2019? Please indicate the value and the number of applicants for each tender.

The majority of purchases were done as very low value procedures requiring a single tender and by using interinstitutional framework contracts.

In addition to this, the Procurement team launched the following competitive procedures in 2019:

- Open procedure: call for tenders with the reference EDPS/2019/02 (Legal studies). The value amounted to 600.000EUR and there were nine participants.
- Low value negotiated procedure: 2 calls for tenders were organised:
EDPB Annual report, 34.490 EUR, 3 participants
EUI App audit training, 28.802 EUR, 4 participants

18. What measures has the EDPS implemented in order to improve its procurement procedures?

The EDPS committed to increase the professionalisation of its public procurement. This relates to the building of technical capacity of staff on the one hand, and improving the regulatory framework in which it operates, on the other hand.

The EDPS Director has formally appointed the financial actors in order to increase awareness and accountability of staff involved in the processing of financial operations.

The EDPS had furthermore taken preparatory steps to ensure implementation of the following measures in early 2021:

- Ad-hoc training for operational initiating agents;
- A “procurement process guide” to provide financial actors with practical information on the processing of procurement files;
- Migration of procurement files were planned to to the Institution’s repository, Case Management System, in order to ensure better auditability;
- Implementation of eSubmissions with a view to a first open call to be launched in 2021.

19. What measures were taken during 2019 to make the Institution more cost efficient and to reduce overall administrative costs of the Institution? Could the EDPS outline the core cost-effective and sustainable measures in place for the EDPS' premises? How much savings were made in 2019 from which budget lines? Could it be indicated for which purpose these savings were used /or transferred to other budget lines?

As concerns sustainable measures put in place in the premises, the EDPS is purchasing eco-friendly alternatives, namely: The discarded cups that we acquire are in paper instead of plastic. A further improvement was the purchase of glass carafes for the meeting rooms to avoid plastic bottles. Since the water fountains were installed, the plastic bottles orders for meetings have been discontinued. In addition, reusable sustainable bottles have been provided to staff to be used with the water fountains. In addition, recycle bins have been placed on every floor. The EDPS follows the simple principle of reduce, reuse and recycle.

As a small Institution, main savings are furthermore generated by cooperation with other Institutions by concluding Service Level Agreements and by participating in Interinstitutional procurement procedures. While this cooperation leads to savings (see question 21 below), it is difficult to make an estimation on the amount involved or an exact allocation of the budget lines within Title 2.

The Institution’s measures to make savings relate more in detail to the following domains:

1. Working methods: An important part of the savings relate to the adoption of new working methods. The HRBA unit is making the EDPS turn into a more modern administration and has been focussing on the implementation on new more efficient ways of working and more in particular the implementation of paper workflows for HR matters and Finance.

- One of these electronic workflows which was under preparation in 2019 to be implemented as from the start of 2020 is Speedwell, a workflow system developed by the ERCEA for the processing of payments, provisional commitments and de-commitments. The aforementioned financial transactions are circulated to the financial actors without them having to constitute a paper file and having to physically circulate it. In addition, the system communicates with ABAC which implies also a substantial saving of time in terms of encoding of the transaction and uploading supporting documents. It

makes a more efficient use of the time of the financial actors and implies moderate savings on office supplies (paper and printing). Especially for high volume transactions (such as experts and missions) this has contributed to improved financial management and has allowed a re-allocation of tasks to the team members.

- The HRBA unit also works on the implementation of the next application of the ERCEA suit, "Bluebell". This application is meant to improve the efficiency and the accuracy of the inputs of the units in their contributions to the establishment of the Budget, and the corrections and validations of the relevant actors. Bluebell has been tested in 2020 and is planned to be deployed in 2021. The second functionality of this application relates to the monitoring of budgetary execution which will partly replace and facilitate - by reducing manual intervention - the quarterly Budget Implementation Reports.

- Also the procurements are now conducted through the workflow functionality of the Institution's document management system, CMS. This again engenders a more efficient use of staff's time as well as savings on office supplies. The EDPS is currently exploring the possibility to implement ARES, which is a prerequisite for the implementation of the Public Procurement Management Tool (PPMT). This Tool, which is now mandatorily used in the Commission services, has a potential to substantially increase the efficiency of the management of the Institution's procurement files. This efficiency does not only relate to the management of the procedures itself but also to reporting and repatriation of files in case of audit. The EDPS will appoint a project steering committee in charge of the HAN migration.

- In 2019, the EDPS also made the initial arrangements for the implementation of eSubmission, which allows the tenderers to submit their tenders electronically for open and restricted procedures. This substantially decreases time needed in several steps of the procedure, more in particular the opening and administrative compliance and notification of results.

2. Interinstitutional cooperation, namely:

- the participation in large Interinstitutional Framework Contracts. On the one hand, the Institution is not mobilising resources for the preparation and the management of these procedures, which often requires advanced technical knowledge (for instance for the drafting of tender documents). Secondly, the results of these procedures are resulting in services and supplies constituting better value for money. It is clear that the EDPS as a small institution, could not come to the same prices and conditions for a relatively low volume of services it needs. The most important inter-institutional framework contracts we are relying on are related to IT consultancy contracts by EC DG DIGIT or the EP DG ITEC (web development, IT Security, etc.), interim services (DG HR) and office supplies and office furniture (OIB, and EP).

- the conclusion of Service Level Agreements with other Institutions. Similarly as with inter-institutional procurement procedures, the EDPS saves money by not having to put in place the structure to manage these administrative services (security, accounting services or not having to procure these services from third parties. The most important services the Institution is relying on relate to the SLA with HR (Sysper, medical services,

IDOC services, etc.), with DG BUDG (for accounting services), PMO (for payment of salaries and missions).

3. Human Resources expenditure:

- a substantial part of the staff are contract staff which are employed for a temporary period and which cover particular needs (replacement of staff on maternity leaves, implementation of specific actions). The use of contract agents is interesting from a cost-efficiency standpoint but allows also the necessary flexibility in terms of allocation of posts within the organisation.
- The new telework decision allows staff to work at home which allowed the Institution to make more use of shared offices and make savings on the related expenditure. The EDPS is thus promoting structural and occasional teleworking in order to avoid colleagues to spend hours and gas in traffic. The EDPS furthermore reimburses 50% of the public transport tickets to staff who cease to use the parking spaces and return their parking vignette. Both initiatives are aiming at using office space more sustainably and optimising it as well as reducing the energy level in the building.

All of the above measures were important as the tasks and responsibilities of the EDPS and the EDPB increased over the years while the Guidelines of the budgetary authority asked for the submission of a frozen budget.

In addition, for 2021, the Institution plans to allocate all costs under title 2 related to the EDPB to the title 3 which is expected to increase ownership of the budget by the Board's secretariat and improve sound financial management, more in particular efficiency and effectiveness of its operations.

20. Has your institution developed synergies or rationalizations with other European bodies? If so, which ones?

Inter-institutional cooperation represents many advantages from the perspective of good financial management and budget consolidation. This cooperation is vital for the EDPS, not only because of the small size of our organisation, but also because it increases efficiency and allows for economies of scale; in addition, most of the expenditure remains within the EU administrations, therefore resulting in appreciable savings for the EU budget.

EDPS therefore participates in around 60 framework contracts (FWC) initiated by different institutions of the EU and has multiple Service Level Agreements (SLA) with the services of the European Commission and the European Parliament above all.

INSTITUTION	SERVICE	FEES	Remarks
COMMISSION - DG EAC	Traineeships Office	114.896,64	Forfait per trainee
COMMISSION - DG HR	Medical service, IDOC, L&D, Art 90, RUE and EUCI	61.245,72	Depending on consumption
COMMISSION - PMO	Staff and administration	68.769,04	Forfait per person per service
COMMISSION - DG DIGIT	SYSPER2 implementation	97.479,00	Fix amount
COMMISSION - EUSA	Training and development	11.795,00	Depending on consumption
COMMISSION - DG BUDG	Use of ABAC	50.000,00	Fix amount
COMMISSION - OIB	Catering services	39.098,67	Depending on consumption
COMMISSION - OIB	Transportation - Service cars for the MB and STIB tickets	2.944,51	Depending on consumption
COMMISSION - OPOCE	Publications and communication	7.096,40	Depending on consumption
COMMISSION - DGT	Translation services et Interpretation	-	
COMMISSION - SCIC	Interpretation costs	544.812,00	Depending on consumption
CENTRE DE TRADUCTION	Translation services	1.310.175,20	Depending on consumption
EP - DG INLO	Administrative agreement for building and logistics	1.143.847,55	Depending on consumption
EP - DG ITEC	Administrative agreement for IT services	132.359,08	Forfait per user
EP - DG PRES	Administrative agreement for security, accreditation and mail	289.228,79	Depending on consumption
EP - DG SAVE	Guard and security services	32.136,53	Depending on consumption
ENISA	Security audit for Eurodac database	-	
		3.905.884,13	

In 2020 there are further SLAs to be concluded, e.g. with the Commission's DG BUDG, DG HR as well as with PMO.

21. What budgetary savings have been achieved through the cooperation with other institutions?

Due to the very small size of our Institution, we are making savings in concluding SLA's with other institutions for the management of administrative costs (see table under question 20). Examples are the SLA's with the European Commission for trainings, medical service, use of Sysper, appraisal system, etc. (DG HR), for the payment of salaries, the staff insurances and the organisation of missions (DG PMO), for accounting services (DG BUDG), for transportation services (OIB). In addition, we have SLA's with the European Parliament for IT and building related expenditure.

In addition, the EDPS also participates in many inter-institutional calls for tenders.

The savings made by the above mentioned cooperation relate to:

- The resources the Institutions does not have to mobilise should it have to conduct its own (procurement) procedures;
- The economies of scale it benefits from by participating in calls whereby the volume of different institutions are added up.

22. In a report last year, the European Court of Auditors deplored the fact that the majority of EU bodies had not drawn up a real sustainability strategy? Can you tell us what measures and initiatives have been taken in this area in your institution in 2019 ?

From a point of view of energy, we are hosted by EP in a smart building consisting of 10 quality environment modules, two of which are aimed at health and energy conservation as well as cost efficiency. In the framework of the ground floor works, the isolation of the new meeting room was considerably improved. We have also aimed at providing more flexible ways of working for our staff (occasional and structural teleworking) which helps reduce energy as well as using our space in a more optimal way.

EDPS strived to reduce the use of plastic bottles by installing water fountains on each floor and reducing the use of plastic bottles by purchasing glass carafes for meetings. In addition, reusable sustainable bottles have been provided to staff to be used with the water fountains. The discarded cups that we acquire are in paper instead of plastic. EDPS installed recycling bins in offices.

Furthermore, EDPS is closely following the EMAS initiatives and has started to convert HR (selections, appraisal) and financial and administrative processes (payments, MiPS) into paperless procedures.

Last but not least, the EDPS acknowledged the importance of sustainability in new Strategy 2020-2024.

23. Which proposals have been developed in 2019 by the institution together with the Parliament's Secretary-General to better integrate the EDPS's relevant documents (namely guidelines, opinions, decisions) into Parliament's work? How do you communicate and make sure your opinions are taken into consideration by the relevant Parliament's committees?

In 2019, the EDPS handled a number of transversal consultations submitted by the European Parliament. One of them concerned the Parliament's draft internal rules laying down how the European Parliament as an EUI can **restrict data subjects' rights**. This consultation is a direct implementation of the EDPS guidelines on the matter issued in earlier the same year. Another consultation concerned the Parliament's efficient printer system, and was linked to the EDPS guidelines on controller and processor relationship.

Furthermore, the EDPS cooperates closely with the Parliament's DPO and we provide **training** to the Parliament's DPCs twice a year. Providing active support to the DPO and the DPCs in their role in ensuring the internal application of the EUDPR helps strengthening the data protection culture of the Parliament, enabling it to lead by example in guaranteeing this fundamental right.

See as well our investigation on NationBuilder explained under question 1.

As regards its Opinion on legislative proposals, the EDPS always transmits its Opinion to the European Parliament, with the LIBE Committee in copy. In addition, the EDPS regularly communicated with the relevant Parliamentary committees on specific data protection issues through his regular interventions before European Parliament. These intervention concerned specific issues handled by EDPS as well as a presentation of the EDPS' tasks and activities.

More specifically, during 2019, the following interventions took place:

- Wojciech Wiewiórowski, *"Presentation of the EDPS-EDPB Joint Reply on US CLOUD Act and EDPS Opinions 2/2019 and 3/2019, speech before Committee on Civil Liberties, Justice and Home Affairs (LIBE) in European Parliament, Brussels"*. (7 November 2019).
- Wojciech Wiewiórowski, *"Europol Joint Parliamentary Scrutiny Group, speech at European Parliament, Brussels"*. (23 September 2019).

- Wojciech Wiewiórowski, *“Presentation of EDPS Tasks and Activities, speech before the Committee on Civil Liberties, Justice and Home Affairs (LIBE), European Parliament, Brussels”*. (5 September 2019).
- “Giovanni Buttarelli, *Annual Report 2018 speech to LIBE in European Parliament, Brussels*”. (26 February 2019).

The above mentioned presentations provided the opportunity to EDPS to communicate with the Parliament the main issues and activities carried out within 2019 with a view to better understand and integrate them.

24. What are the reasons behind the reduction of missions by Members by almost half?

The reduction of missions by Members is because the former Supervisor Giovanni Buttarelli’s health situation deteriorated and he travelled much less (5 missions in 2019 - 18 missions in 2018). After his passing in August 2019, we only had 1 Assistant Supervisor.

25. Can the EDPS explain the reasons for the significant budget increases? What was the budget for 2019?

The new legal framework for the protection of personal data (GDPR) in the EU became a reality in May 2018, therefore the new tasks and responsibilities entrusted to the data protection authorities needed to be resourced accordingly. The main impact for 2019 was the increase of the budget part allocated to the European Data Protection Board (EDPB).

In addition to that, as the area of law enforcement and criminal justice (former third pillar) became an EU competence, the EDPS was taking over the supervision of the large scale IT databases and the EU agencies with responsibilities in this field. This complex and extremely sensitive task also needed to be resourced appropriately.

An assessment of resource needs was also carried out while preparing the draft budget for 2019. At this point, the assessment of needs mirrored the budgetary increases applied in the supervisory authorities in the Member States over the years 2017 and 2018 (25% on average) due to the new tasks and responsibilities resulting from the GDPR.

The 2019 budget thus amounted to 16.746.493,00€. It is an increase of almost 16% in comparison with the 2018 budget of 14.449.068 EUR.

26. The internal audit service carried out a survey concentrating on three main areas (the EDPS’s governance in connection with the EDPB, the framework for providing human resources, budget and financial administration, and the logistical support for the EDPB and EDPS support teams) which were the subject of close scrutiny. Can you explain why the internal audit service will not conduct a follow-up on these issues?

The overall objective of the consulting engagement performed by the IAS was to provide advice to the European Data Protection Supervisor and the Director on the adequacy and readiness of the EDPS’s governance, risk management process and internal control system to efficiently support the activities related to the Secretariat of the EDPB, in compliance with the EU regulatory framework. The IAS issued a final consulting report on the EDPB secretariat in the EDPS on the 10th of October 2018 that took into account all EDPS

comments. All recommendations are only "issues for consideration" and without any follow up from the IAS side nor to any implementation monitoring in their central database, being a consulting engagement and not an audit as such.

Some of the potential improvements suggested remain entirely in the EDPS' discretion. The IAS agreed to this consulting engagement as the setting up of the EDPB was very complex technically. The external advice of the IAS has been of a tremendous help for this. As the setting up was ongoing, it was not possible to carry out a formal audit.

27. How many complaints did the Supervisor investigate in 2019?

In 2019, the EDPS **received 59 admissible complaints** requiring an in-depth inquiry, and we **issued 48 complaint decisions**. The EDPS also received 151 inadmissible complaints - the majority relating to data processing at national level as opposed to processing by an EU institution or body. We replied to all inadmissible complaints, directing the complainant to the relevant authority.

STAFF

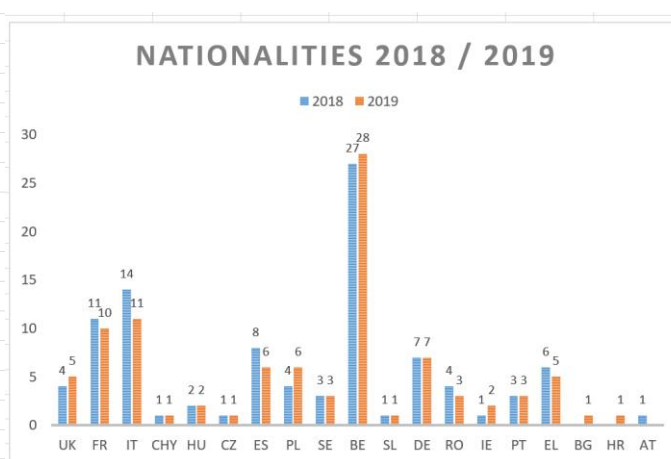
28. How many trainings concerning harassment, whistleblowing, preventing conflict of interest or other ethical issues did your institution organise in 2019 and how many staff members participated in such programmes?

These issues were addressed through the presentation to the staff of the Ethics Framework, the code of conduct and in the presentations to all newcomers that are organised regularly.

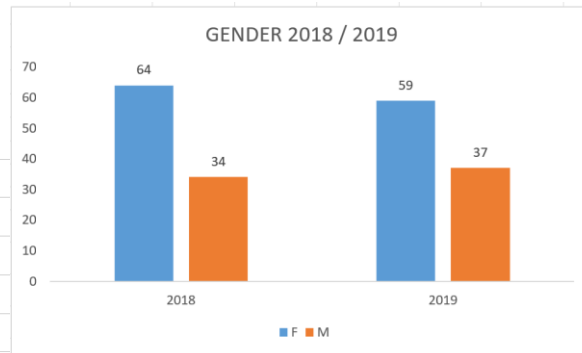
At the end of 2019, several decisions were revised and there were specific written communications to all staff. A lively presentation with theatrical performances done by staff members was foreseen for last Spring but the Covid crisis did not allow for this presentation that will be organised as soon as feasible.

29. Please provide a table of staff broken down by nationality, type of contract, gender and grade for the year 2019, and an overview of how these figures compare with the year 2018.

NATIONALITIES		
	2018	2019
UK	4	5
FR	11	10
IT	14	11
CHY	1	1
HU	2	2
CZ	1	1
ES	8	6
PL	4	6
SE	3	3
BE	27	28
SL	1	1
DE	7	7
RO	4	3
IE	1	2
PT	3	3
EL	6	5
BG		1
HR		1
AT	1	
Total	98	96



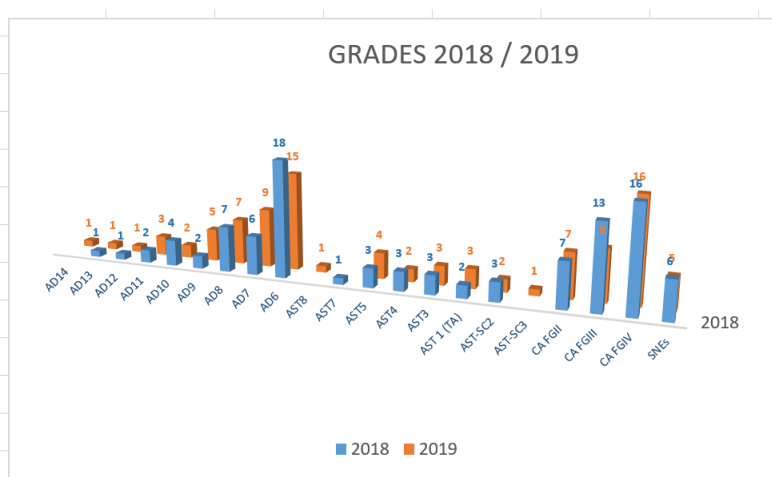
GENDER		
	2018	2019
F	64	59
M	34	37
Total	98	96



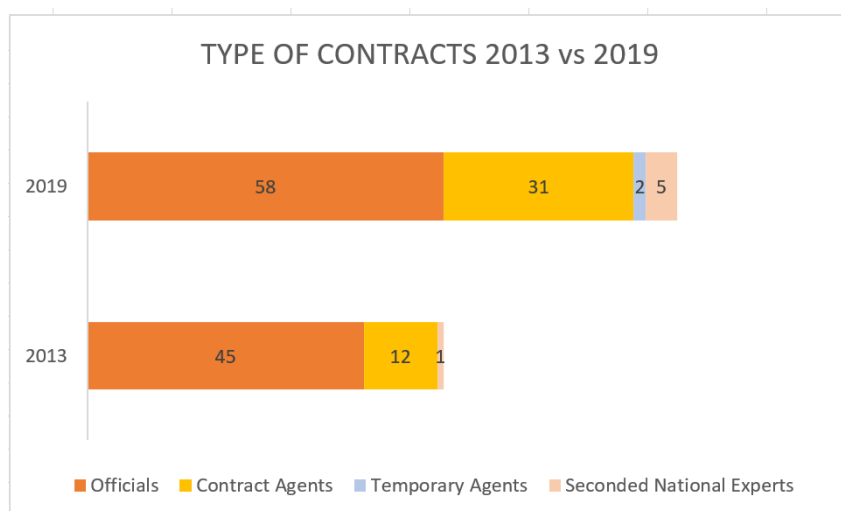
TYPE OF CONTRACT		
	2018	2019
Officials	54	58
Contract Agents	36	31
Temporary Agents	2	2
Seconded National Experts	6	5
Interim		3
External staff	4	3
Total	102	102



	GRADES	
	2018	2019
AD14		1
AD13	1	1
AD12	1	1
AD11	2	3
AD10	4	2
AD9	2	5
AD8	7	7
AD7	6	9
AD6	18	15
AST8		1
AST7	1	
AST5	3	4
AST4	3	2
AST3	3	3
AST 1 (TA)	2	3
AST-SC2	3	2
AST-SC3		1
CA FGII	7	7
CA FGIII	13	8
CA FGIV	16	16
SNEs	6	5
Total	98	96



30. Could you please provide us with a table of staff broken down by type of contract and average duration (of contractual employments) for 2013 and 2019?



The average duration of contracts in 2013 and 2019 is 2 years and 7 months (in 2013 is 2.95 and in 2019 is 2.25).

31. We would appreciate a comprehensive overview of staff on sick leave in 2019, broken down by the total number of staff members that were on sick leave and by how many days they were on sick leave in total.

Summary					Number of staff sick for					
Staff **	Total number of sick leave days	Proportion of staff sick at least once	Average number of days of sickness	Sick Leave Rate *	Not sick during the period	0-5 days (0<x<5)	5-10 days (5<=x<10)	10-20 days (10<=x<20)	20-30 days (20<=x<30)	30+ days (30<=x)
				EDPS						
93	2099,5	74,9%	22,5	6,2%	23	32	14	11	1	12
% of Staff:					25%	34%	15%	12%	1%	13%

** Number of staff is the number of officials, temporary agents, and contract agents computed pro rata temporis of their active employment during the calendar year (i.e. a person recruited on the 1st of July will be counted as 0.5 for that year).

Absence Type 2019	# of days	%
Absence with medical certificate	1659,0	79,0%
Absence without medical certificate	174,0	8,3%
Medical visit outside place of employment	1,0	0,0%
Part time for medical reasons	265,5	12,6%
Institution EDPS 2019	2099,5	1,0

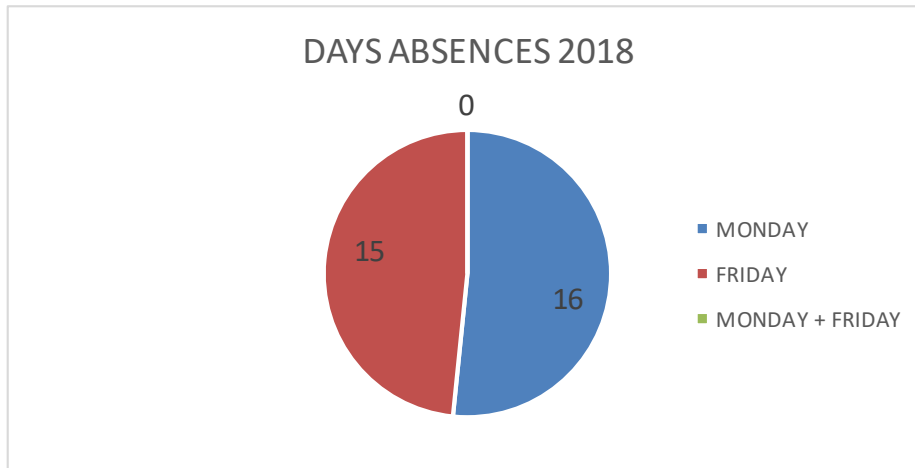
How many days did the three longest cases of sick leave last for?

	Sick Leave Days - Absence with medical certificate (1)	Sick Leave Days - Absence without medical certificate (2)	Sick Leave Days - Part time for medical reasons (3)	Sick Leave Days - Unauthorized absence (4)	Total Sick Leave Days (1+2+3+4)
1	361,0	2,0	0,0	0,0	363,0
2	233,0	1,0	78,5	0,0	312,5
3	253,0	4,0	0,0	0,0	257,0

How many days of sick leave were taken on Mondays and Fridays in 2018?

In 2018, 16 days of sick leave were taken on Mondays and 15 on Fridays.

There are no absences covering a Friday and a following Monday.



What was the evolution since 2013?

In 2013, there was a total of 23 absences on Mondays and Fridays for a total of 56 staff.

In 2018, there was a total of 31 absences on Mondays and Fridays for a total of 102 staff.

EDPS/EDPB	ABSENCES 2018	Total staff	EDPS	ABSENCES 2013	Total staff
MONDAY	16	102	MONDAY	8	56
FRIDAY	15		FRIDAY	15	
Total absences	31		Total absences	23	

32. What concrete measures on how to improve well-being at work and work-life balance have been implemented by the EDPS in 2019?

The EDPS benefits from the fit@work programme organised by the EC. It encourages staff to participate in initiatives like VeloMai etc. Furthermore, a body composition measuring exercise for all staff was organised with the support of the Commission's medical service. The EDPS adopted individual coaching guidelines and appointed an internal coach, who is ensuring sessions with EDPS staff interested. Furthermore, a new and more flexible teleworking decision was signed in February 2019.

A suggestion box was placed at the staff's disposal. Among the suggestions received some of them have been implemented; others have been discussed during the meeting with the Director and the Staff Committee.

33. Why are the results of the level of staff satisfaction in the KPI 2015-2019 not included?

The EDPS organises staff satisfaction surveys on a biannual basis (2016, 2018 and 2020), the KPIs are included for the respective years.

34. Has the EDPS already introduced a trainee scheme that ensures all traineeships are paid? If not, how many traineeships in 2019 were paid and how many non-paid?

The EDPS revised its traineeship decision on 20.12.2019. The revision was launched due to the fact that up until then not all of the obligations laid down in the SLA between EDPS and DG EAC of the European Commission were implemented. DG EAC had informally agreed that the EDPS would be able to advertise, interview and select its own pool of candidates and therefore not use the Virtual Blue Book (VBB) to find its trainees. The reason being that it was very difficult for the EDPS to secure Data Protection experts within the VBB.

However, as this practice was not in line with the SLA, the traineeship office of DG EAC agreed to include an EDPS/EDPB department in the VBB (this did not exist until then) so that the EDPS/EDPB would be able to have priority when the selection period started when candidates would mark EDPS/EDPB as a preferred choice.

Due to this change of practice and the exclusive use of the VBB as selection/recruitment method for the EDPS trainees, the traineeship decision had to be updated.

The current EDPS traineeship decision foresees paid traineeships as default, however, article 9 of the said decision foresees that under exceptional cases and upon the agreement of the EDPS Director, non-remunerated traineeships may be allowed: *“In exceptional cases, non-remunerated traineeships may be arranged for university students who are required to complete a traineeship as part of their studies or in other circumstances considered appropriate by the EDPS Director”*.

In 2019, the EDPS had no unpaid traineeship.

35. What were the costs in 2019 respectively for away days, training of staff, conferences or similar events?

For 2019, the cost for training sessions was 79.551 Euro for the EDPS staff. This figure includes trainings provided by the European Commission and EUSA via EU Learn, but also external trainings (ERA, EIPA etc.), the certification exercise, media trainings via EDPS framework contracts as well as coachings. For events and conferences (e.g. IPEN, CPDP, EDRI), the cost amounts to 194.632 Euro. For EDPS away days and teambuildings, the EDPS spent 21.568 Euro in 2019.

36. How many recruitments of Heads of Unit, Directors and Director' General were organised in 2019? How many women and men were selected as Heads of Unit, Directors and Directors-General?

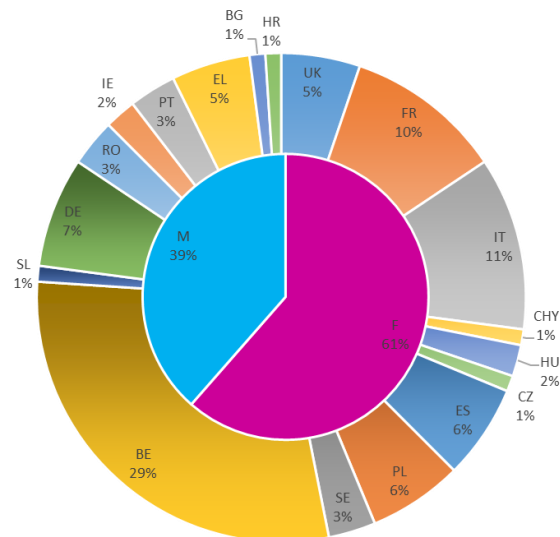
No recruitment of Director or Director General was organised in 2019.

Three selections for middle managers were organised; all three appointments were with female middle managers.

37. What is the overall and overseas gender distribution in the EDPS staff? Do you also have this breakdown by Function? And geographical distribution?

Gender& nationality distribution December 2019

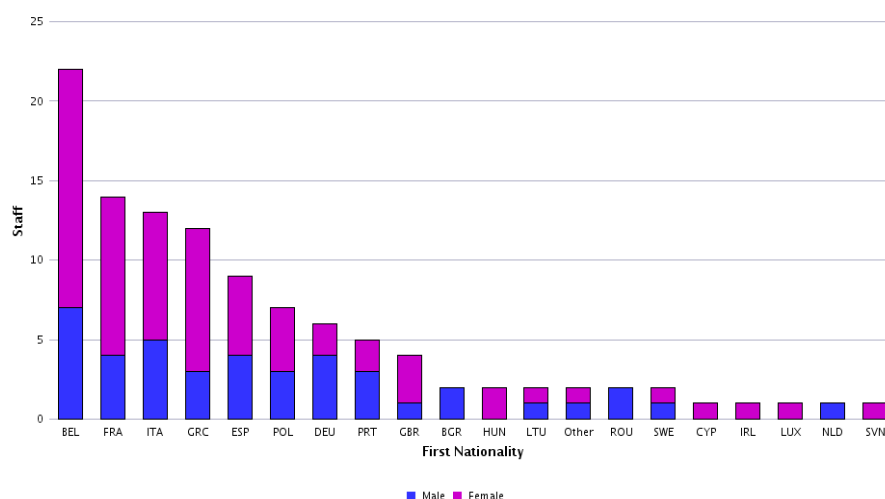
Staff distribution by gender & nationalities December 2019



Function distribution 31/12/2019



Gender & nationality distribution 1/11/2020



Functions distribution 1/11/2020



38. What is the gender distribution in your institution, especially for top management positions?

The EDPS senior manager, the Director, as well as the Supervisor are both male. Three out of the five middle managers are women.

39. What steps have been done to reach a gender balance in middle and senior positions in your institution? How about geographical balance?

In early 2019, 3 female middle managers have been nominated, bringing the number of Heads of unit to 4 (1 male and 3 female Heads of unit). As explained in the next question,

with 19 nationalities in 2019 and 20 in 2020 and given its small size as well as need for very specific profiles, the EDPS has a satisfactory geographical balance.

40. What were the most important actions taken by the EDPS in favour of gender equality and geographical balance?

The EDPS had 19 EU nationalities amongst its colleagues with a rather balanced gender representation. For 2019, the male representation was at 39% with a female overall representation of 61%. The most important actions supporting gender equality were the nominations on middle management level as well as general introduction of more flexibility as concerns remote working. With 20 nationalities in 2020, the EDPS has a satisfactory geographical diversity.

41. How does the Equal Opportunity Strategy ensure that there is proportionality between merit-based recruitment, geographical balance and gender balance?

Gender is mainstreamed into the selection procedure at the EDPS. Subject to appropriate considerations of merit, the candidate pool is constantly widened with the aim to balance the gender representation. When management positions are advertised, it is ensured, as far as possible, that at least one member of each sex is invited to the interview;

The selection panel in interviews is, as far as possible, gender balanced. All staff has been invited to undergo training on unconscious bias, which was also organised in-house. Members of selection panels have been asked to attend unconscious bias training with the aim of raising awareness.

An equal opportunities clause has equally been included in the recruitment materials and vacancy notice, stating that the EDPS is an equal opportunities employer and welcomes applications from those with disabilities.

42. What measures have been taken in respect to the safety of staff, security of buildings and communications, including cybersecurity? What were the additional expenses for security in 2019? What measures have been taken in order to improve the physical and mental health at the workplace?

As concerns safety, as the EDPS is hosted in an EP infrastructure building and in the framework of several cooperation agreements signed with the EP, the EDPS puts in place the same measures for its staff. We are part of the "Comité de Protection and Prevention au Travail" of the Parliament and the EDPS keeps staff updated on the initiatives taken by this internal body.

As for Security of the building the agents of EP DG SAFE provide us assistance and carry out access control at the entrance of the building. For logistical aspects, our GBI is in contact with DG INLO, who provides office equipment and cleaning staff. At the same time all IT infrastructure and related assistance is provided by DG ITEC, and our IT department in the Technology and Privacy unit keeps contact with them in case of need.

At the same time the EDPS reached an agreement with the European Commission in 2017 to extend the application of the Fit@work programme to EDPS staff. EDPS staff thus benefits from the wellbeing initiatives that are held in the EC Building of Science 11 and

Montoyer 34. We have furthermore organised a body composition measuring exercise for all staff in 2019 with the support of the EC medical service. Last but not least, the EDPS offers the possibility for coaching sessions with our internal coach.

43. How many cases of burnout at the EDPS have been reported in 2019?

The EDPS has no access to the medical files of staff, therefore we cannot know the reasons behind the (long) sick leaves. We only know that these absences have been validated by the Medical Service of the Commission, which is our service provider in this field.

We can report that there have been eight cases of sick leave longer than three months (within the year) at the EDPS in 2019. On the basis of the information made public by colleagues, we think that 7 cases had no relation with burnout and we believe that 1 case may have been burnout.

44. How many requests for promotions were submitted in 2019? How many promotions between function groups were postponed or denied in 2019? Were any of these a consequence of the 2014 staff reform?

In 2019, 22 staff member (officials) were eligible for promotion; 11 officials were promoted. The EDPS does not organise promotions between function groups. Our declared policy is to maximise promotion possibilities always within the limits of the Staff Regulations. We are not aware that the 2014 staff reform may have affected our policy.

45. What were the most important actions taken by the institution in 2019 in order to have a more diverse workforce?

All staff has been invited to undergo training on unconscious bias, which was also organised in-house already in 2017 and 2018. Members of selection panels have been asked to attend unconscious bias training with the aim of raising awareness and avoiding discrimination in the selection process.

46. Were there any changes made to the organisation of workspaces in 2019? Could you please provide a table of the current workspaces and their capacity?

Only marginal works were done in 2019 as concerns offices. One office was split in two and one of the kitchenettes was improved. In the second half of 2019 the ground floor meeting room was redone to host 100 persons to cater for the growing needs of our institution. Current workspaces and their capacity can be found in Annex 1.

47. What flexible working arrangements does your institution offer? Were there any changes made following the outbreak of the COVID-19? What type of support is provided for teleworking?

The EDPS offers its staff members the possibility to recuperate hours (flexitime) and to telework either under a structural telework contract (1 day per week or 2 half days per week) and/or via the use of occasional telework.

The pandemic drastically changed the use of flexible work as since the first Belgian lockdown, the EDPS work mode has been to telework. Staff members have recently been allowed to return to the EDPS premises on a voluntary basis while respecting specific sanitary measures such as a maximum amount of persons per floor, social distancing, etc.

As to which support has been given to EDPS staff members, the EDPS ensured that all staff members were equipped with a windows surface (better access to EDPS network, better access to video conferencing tools).

In addition to this, internal guidelines on telework for managers and staff were disseminated and the EDPS internal coach organised several sessions based on voluntary participation to allow staff members to voice out the difficulties they experienced while working in the new full time work configuration and also while dealing with other private issues linked to or aggravated by the COVID-19 pandemic. The Supervisor and the Director engaged in direct communication with the teams, attending regularly unit and sector meetings in addition to the regular all-staff meetings.

48. Flexible working arrangements:

a) What flexible working arrangements does your institution offer?

Our organisation culture is marked by the concepts of autonomy and flexibility. We manage by objectives and build on a mature and responsible workforce. Accordingly, we encourage our staff to benefit from telework, flexitime, parental leave, time credit and part-time work arrangements.

b) How often are they used? Was there been a development in the frequency of use in 2019?

All EDPS staff (excluding staff members who receive a management allowance) benefit from flexitime.

Telework overview:



Teleworking Analysis Overview - Teleworkers - EDPS

This document is marked as
Personal data

	2018			2019			2020		
	F	M	Total	F	M	Total	F	M	Total
By Type									
OCC	76.2%	23.8%	63	70.1%	29.9%	77	62.9%	37.1%	105
STRUCT	76.5%	23.5%	17	70.8%	29.2%	24	69.6%	30.4%	23
Total	73.8%	26.2%	65	67.5%	32.5%	80	62.0%	38.0%	108
By Category									
AD	58.6%	41.4%	29	64.9%	35.1%	37	61.1%	38.9%	54
AST	72.7%	27.3%	11	66.7%	33.3%	12	66.7%	33.3%	12
AST-SC	100.0%		2	50.0%	50.0%	2	25.0%	75.0%	4
GFIV	100.0%		11	77.8%	22.2%	18	66.7%	33.3%	18
GF-OTH	84.6%	15.4%	13	71.4%	28.6%	14	66.7%	33.3%	21
Total	73.8%	26.2%	65	67.5%	32.5%	80	62.0%	38.0%	108
By Employment Type									
CTR	91.7%	8.3%	24	75.0%	25.0%	32	66.7%	33.3%	39
FONCT	63.4%	36.6%	41	64.0%	36.0%	50	58.8%	41.2%	68
TEMP				100.0%		2	100.0%		2
Total	73.8%	26.2%	65	67.5%	32.5%	80	62.0%	38.0%	108
By Range Age									
<30	75.0%	25.0%	4	85.7%	14.3%	7	80.0%	20.0%	5
[30-34]	83.3%	16.7%	6	42.9%	57.1%	7	50.0%	50.0%	10
[35-39]	66.7%	33.3%	9	70.0%	30.0%	10	58.3%	41.7%	24
[40-44]	73.9%	26.1%	23	68.2%	31.8%	22	61.3%	38.7%	31
[45-49]	75.0%	25.0%	12	63.2%	36.8%	19	56.3%	43.8%	16
[50-54]	80.0%	20.0%	5	80.0%	20.0%	5	54.5%	45.5%	11
[55-59]	75.0%	25.0%	4	83.3%	16.7%	6	100.0%		7
>60	50.0%	50.0%	2	50.0%	50.0%	4	75.0%	25.0%	4
Total	73.8%	26.2%	65	67.5%	32.5%	80	62.0%	38.0%	108
By Day of the week									
Monday	82.6%	17.4%	46	78.6%	21.4%	42	63.1%	36.9%	103
Tuesday	93.9%	6.1%	33	66.7%	33.3%	27	63.1%	36.9%	103
Wednesday	77.8%	22.2%	45	68.9%	31.1%	61	61.9%	38.1%	105
Thursday	63.6%	36.4%	22	70.5%	29.5%	44	63.1%	36.9%	103
Friday	75.5%	24.5%	53	70.0%	30.0%	60	62.7%	37.3%	102
Total	73.8%	26.2%	65	67.5%	32.5%	80	62.0%	38.0%	108

In 2019, the following flexible modalities were used at the EDPS:

- Parental Leaves - used by 10 staff members
- Time credit - used by 3 staff members

Part time - used by 9 staff members

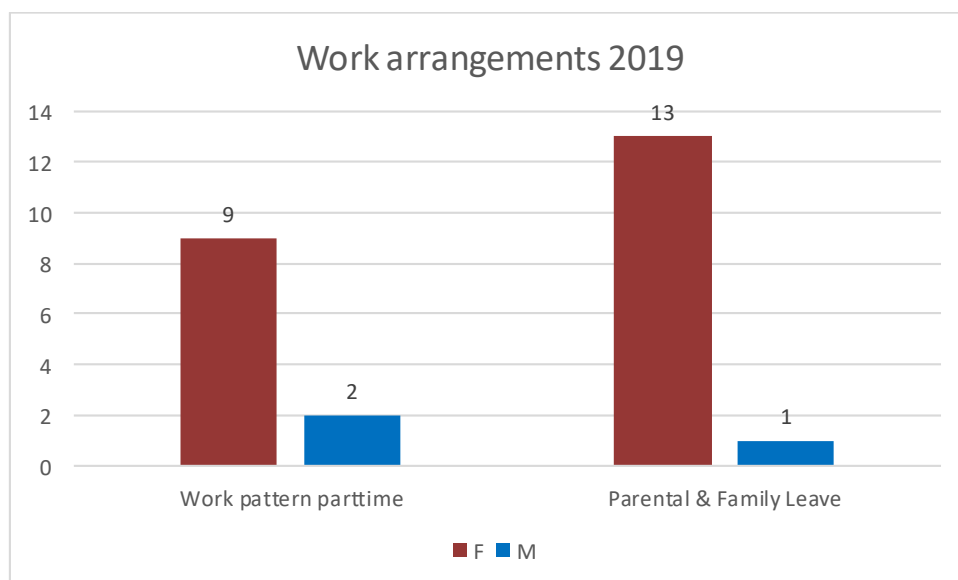
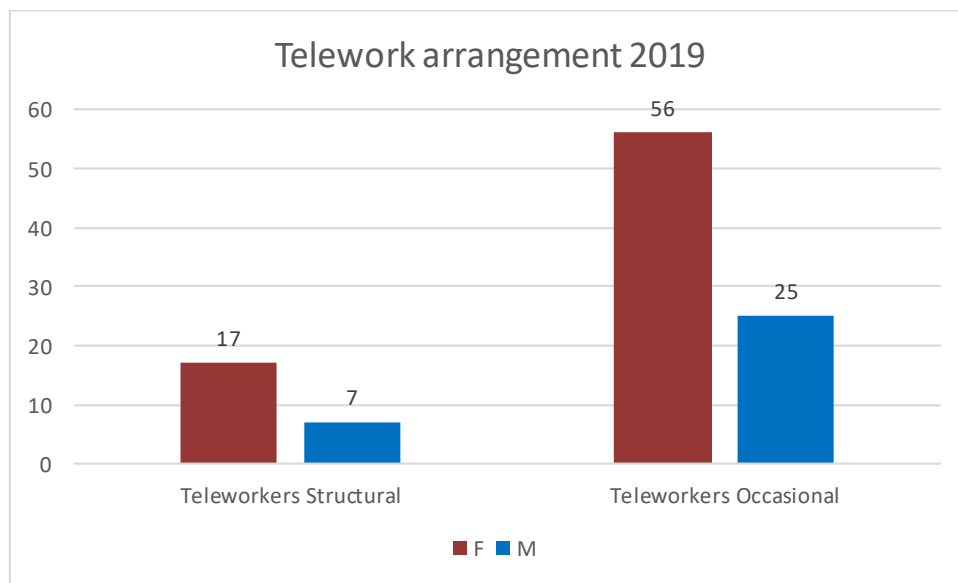
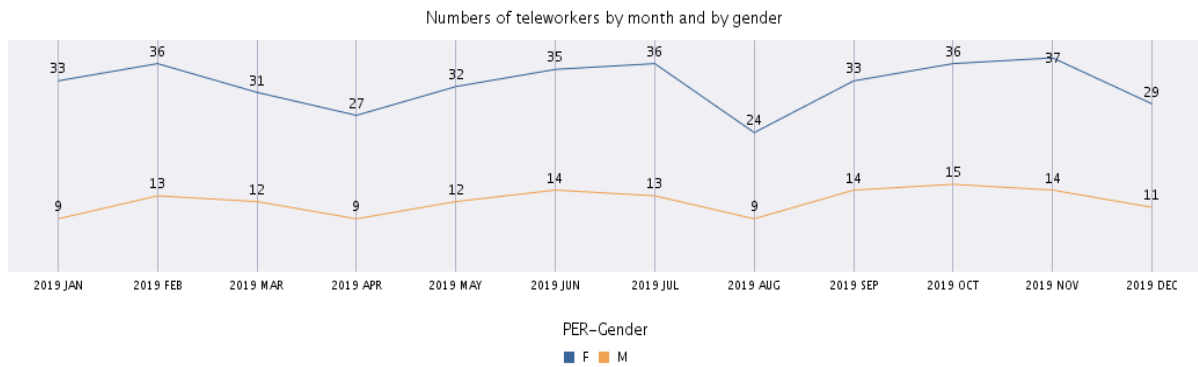
c) What is the share of men and women respectively using these working arrangements?

Telework: used by 80 staff members (67,5% women and 32,5% men)

Parental Leaves - used by 10 women

Time credit - used by 3 women

Part time - used by 1 man and 8 women



- d) To what extent does your institution encourage parents to make use of flexible working arrangements to better combine family life with their career?

EDPS encourages its staff members to use the flexible working arrangements available at the EDPS. EDPS decisions/modalities related to such arrangements are visible on EDPS intranet. In addition, staff members are regularly reminded that HR colleagues

are at their disposal to provide information/clarification on available working arrangements. To this effect, appointments may be booked on predefined days of the week.

e) Can all categories of staff apply for these working arrangements?

Yes. As regards SNEs, flexitime is permitted and part-time is only allowed subject to compatibility with the interest of the EDPS. The EDPS may authorise the use of part-time working by an SNE after agreement by his employer. In this case, the amount of annual leave shall be reduced accordingly.

49. What was the cost of outsourcing translation in 2019? What would have been the cost if the translations had been carried out by in-house services? Can you please explain the increase of 69,70% in translation and interpretation costs in 2019 compared to 2018?

Please also explain the variation of the translation and interpretation costs between 2018 and 2019.

The amount spent on translations was 325.618,40 EUR for the EDPS and 984.556,80 EUR for EDPB activities. An additional amount of 544.812,00 EUR was spent by EDPB for the interpretation costs.

The EDPB benefits from a quota of free translations performed by DG Translation of the European Commission. Above this quota, translations are done by the CDT.

The need of frequent translations in all official languages of the EU in addition to the very small size of the Institution makes the internalisation of translation impossible from a cost-benefit perspective.

Cost evolution in 2018 and 2019:

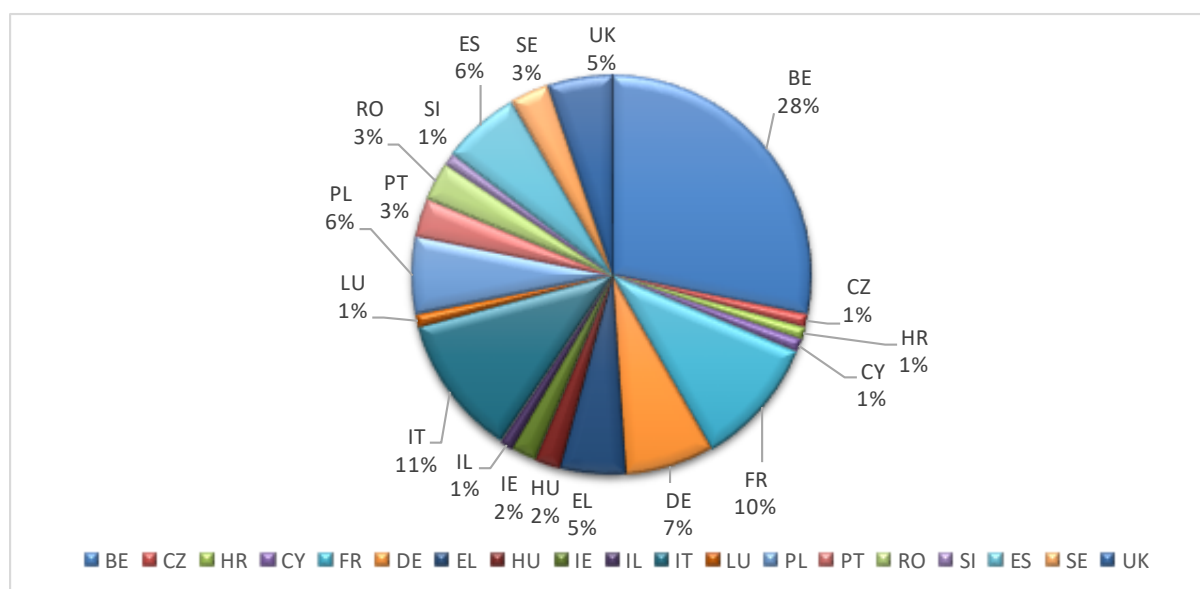
- For the EDPS activities the translation costs are similar, there was a slight decrease of 4%.
- Concerning the EDPB activities, the translation and interpretation costs are mainly related to the organisation of plenary meetings with the whole Data Protection National Authorities of the EU. Twelve meetings were organised in 2019 instead of four in 2018. This explains the huge difference between 2018 and 2019.

50. What were the results of the new launched open competition to create a pool of highly qualified data protection experts?

Thanks to the extraordinary commitment of EPSO staff and of the selection board members from the EDPS and other institutions, it was possible to complete the exercise in short time. The reserve list included 33 laureates with high levels of relevant data protection experience from diverse backgrounds and ensured that there is a pool of experts the EDPS could recruit from in 2019 and 2020. Due to the high demand of EDPB and EDPS secretariat, however, the list is nearly exploited one year after its publication (23 laureates have been recruited so far, and several vacancies need still to be filled).

51. In the 2018 Discharge Questionnaire from 12.11, the EDPS stated that it has “relatively good geographical balance (17 different nationalities are represented).” Does the EDPS consider to have a relatively good geographical balance when 10 member states out of 27 - more than a third of all member states countries - are not represented at all?

The EDPS is a very small organisation with a need for highly specialised staff. In the light of this and 19 EU nationalities in 2019 (20 EU nationalities in 2020), the EDPS believes that it has a satisfactory geographical balance and that we are making steps into the right direction. In any case, as we are so small it is clear that the results obtained cannot be considered representative and may result in important changes (for the better or the worse) in future exercises.



52. Was any staff member placed on leave in the interest of the service according to Article 50 of the staff regulations? If yes, what were the reasons?

The EDPS did not place any staff member on leave in the interest of the service according to Article 50 of the staff regulations.

HARASSMENT

53. Have the anti-harassment rules been revised as announced during last year's discharge procedure? If so, what are the new measures taken?

The decision on anti-harassment has been reviewed but not revised. The decision on the selection and appointment of the confidential counsellors will be approved before the end of 2020. The rules framing the proper appointment and selection of confidential counsellors is a requirement of the Staff Regulations.

54. Has the EDPS implemented a revised version of the Code of Conduct in 2019 in line with the ethics framework? **SP**

The Ethics framework has been revised on 12 November 2019 in order to update all legal references. The new code of conduct for staff was adopted on 6 December 2019 in order to:

- update all legal references (due to new Regulation 2018/1725 where necessary)
- include the reference to the EDPB secretariat
- aligning the code with the requirements of the revised outside activities decision adopted recently (within the same lines than the European Commission's one)
- insert more substantive references and inputs regarding whistleblowing issues

Both documents are fully aligned with new EDPS decisions addressing these matters.

55. How many cases of harassment were reported in your institution in 2019? What measures did your institution take in 2019 in order to prevent harassment cases? What actions did your institution take in order to increase staff awareness about harassment situations?

There were no cases of harassment reported at the EDPS in 2019. The drafting of the decision on the selection and appointment of confidential counsellors aims, in addition of being a requirement, to allow staff members to be better informed with regard to how to deal with harassment at the place of work. Therefore, awareness campaigns may be put in place after the decision becomes effective. The Director, who welcomes personally every newcomer, addresses this issue specifically and ask staff members to report any aggressive or disrespectful behaviour.

56. How many mediation cases were filed and processed in 2019?

In 2019, no mediation case was filed and processed at the EDPS.

WHISTLEBLOWING

57. Have the internal rules concerning whistleblowing been updated in 2019 as announced during last year's discharge procedure? If so, what are the new measures taken?

Indeed the EDPS has adopted a revised decision on Whistleblowing rules on 12 November 2019. The major objectives were the following:

1 / update the legal references related to the EDPS (regulation 1725/2018) and introduce the reference to the EDPS decision on possible deferral or restrictions of data subjects rights (Article 25 of regulation 1725/2018)

2 / appropriate reference to the EDPB , and

3 / the strengthening of the rights of whistleblowers and alleged wrongdoers

An annex "Simplified risk assessment for Whistleblowing decision" has also been added. The EDPS commits to assess relevant risks and put in place adequate technical and organizational countermeasures to protect the confidentiality of the identity of the involved staff and the security of relevant information.

58. Were there any whistleblower cases coming out of the EDPS and in such a case how did you follow-up on them? Were whistle-blowers guaranteed protection from any possible reprisals?

There has been no whistleblower case in 2019 or since the creation of the EDPS.

59. How many cases of whistleblowing were reported in your institution in 2019? Did your institution conduct surveys concerning the awareness of staff regarding whistleblowing procedures? What are the safe channels that your institution provides for potential whistle-blowers?

There has been no whistleblower case in 2019 or since the creation of the EDPS.

We did not consider it necessary to include a question on this matter in the last staff satisfaction survey of 2020. The EDPS remains very attentive to this important issue and the code of good conduct for the staff, which was revised on 6 December 2019, underlined this issue.

COMMUNICATION

60. What was the EDPS budget for communication activities in 2019 and how was it used?

In 2019, the budget devoted to communication activities was 158,000 EUR. The budget was mainly used for EDPS publications ([annual report](#), [strategy report](#)); video production; promotional items; events organisation; communication campaigns; and media monitoring.

61. What has been done to improve digital communication to the public and the use of free open-source self-hosted social network platforms?

In 2019, we introduced user-friendly HTML versions of important publications, ensuring that they could be easily read on any type of electronic device, in an effort to make it more appealing and accessible to a wider audience. In an effort to respond to increased public interest in data protection, we also started producing [podcasts](#), all of which are available on the EDPS website. These offer important in-depth information about current data protection and privacy issues, framed in a more relaxed and conversational format. It also gives listeners the chance to get to grips with the kind of work EDPS staff do on a daily basis, as well as to listen to the opinions of external experts. The EDPS is also present on [GitHub](#) that provides hosting for software development. On GitHub we host our inspection software, the [Web Evidence Collector](#).

62. What progress has been made in EDPS outreach on social media? What are the most efficient social media channels?

Social media has become indispensable as a communications tool for the EDPS. Therefore, the EDPS has a well-established presence on three social media channels, which we are able to use to quickly and easily reach a global audience. [LinkedIn](#) has now overtaken [Twitter](#) as our most influential social media tool, but our presence on both platforms continues to grow steadily. Though we published fewer videos in 2019 than we did in 2018, the number of followers on the [EDPS YouTube](#) channel has also increased. Our growing global influence, along with our efforts to implement an effective social media strategy, have helped us to continue expanding our influence and reach online. Through these tools, we are able to reach an increasingly diverse and global audience. Our latest tweets are always available to view on the [EDPS homepage](#).

63. What has the EDPS done to improve the communication with Union citizens?

The [EDPS blog](#) is a platform through which the Supervisor and the Director are able to communicate on a more personal level about their thoughts, opinions and activities, as well as the work of the institution in general. It has now been active for over three years and has established itself as an essential EDPS communication tool. In 2019 we published 17 blogposts on a range of different subjects. These included EDPS meetings with Data Protection Officers (DPOs), workshops with external organisations and insights into new technologies. All of our blogposts were promoted through our social media channels and many of them also received media attention.

December 2019 marked the end of one EDPS mandate and the beginning of a new one, with former Assistant Supervisor Wojciech Wiewiórowski taking over as EDPS. To demonstrate the progress made towards achieving the goals we set in the EDPS Strategy 2015- 2019, the EDPS published a [comprehensive review of our work during the mandate](#), outlining our achievements, alongside those of the data protection community in general, and highlighting areas in which work must continue.

Every year, the EU institutions celebrate Europe Day by opening their doors to all members of the public. [EU Open Day took place on 4 May 2019](#), providing the EU institutions with an opportunity to increase the transparency of their work and to educate people on the EU's activities. The EDPS participates every year, in an effort to increase general public awareness of our role and data protection in general.

In 2019, we published ten editions of the [EDPS Newsletter](#). These included our January special edition, in which we highlighted some of our less high-profile activities from 2018. Other popular topics we covered during the year included data protection in the European Parliament elections, the EDPS investigation into IT contracts held by the EU institutions, and the appointment of Wojciech Wiewiórowski as the new European Data Protection Supervisor.

Please find below an infographic created for the EDPS Annual Report 2019, in which we also include other important recurrent actions towards EU citizens, like press releases, press requests, citizens' requests, and study visits:



TRANSPARENCY

64. What activities has the EDPS started and what policies implemented in the area of transparency in 2019?

The EDPS has not undertaken any new specific action when it comes to transparency in 2019. We continued to publish on line every week the updated Supervisor's agenda: https://edps.europa.eu/about-edps/members-mission/agenda_en.

All other transparency and communication actions are available on our website, including access to the EDPS accounts on Twitter, LinkedIn, YouTube and the EDPS RSS feed.

Also, as an EU institution and according to our Rules of Procedure, the EDPS is subject to Regulation 1049/2001, on public access to documents. Within the EDPS, the person responsible for handling these requests is a designated legal officer. In their role as Transparency Officer, they collaborate with the relevant staff members in order to respond appropriately to the request. After a decrease in the number of public access requests received for documents held by the EDPS in 2018, the number increased again in 2019, rising from 9 requests in 2018 to 20 requests in 2019. In 5 of these cases, we also received confirmatory applications. In all cases where documents could be identified, the requested documents were either fully or partially disclosed. We remain fully committed to increasing the transparency and accountability of our work and aim to update our website, and our public register in particular, with relevant documents and information on a regular basis.

65. Did the Ombudsman issue any recommendations to the EDPS in 2019 and how did you follow-up on them?

In 2019, EDPS did not receive any recommendations by the European Ombudsman. There were no outstanding issues from previous years either.

During the period, we have received six decisions where the EDPS was the subject of the complaint to the European Ombudsman. In all decisions, no instances of maladministration were found.

FRAUD & CORRUPTION (INCLUDING CO-OPERATION WITH OLAF)

66. How many OLAF investigations were carried out in 2019 with regard to the EDPS? How many of them led to a sentence?

There has been no OLAF investigations case in 2019 with regard to the EDPS.

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

Fortunately, we have not had any cases as far as OLAF is concerned but the EDPS has updated its decision on reporting improprieties (anti-fraud strategy) in 2019 with all legal references to the new EDPS regulation and to the new OLAF regulation. It also trigger attention on the rights protection of the person concerned. The reference to the EDPS decision of 2 April 2019 on internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of activities carried out by the European Data Protection Supervisor has set up the legal framework for any restriction based on Article 2.1.a of this decision.

Regarding the Court of Auditors, the Internal Control Coordinator (ICC) cooperates closely with the Court, notably in the context of the Statement of Assurance and any audit of the Court. The ICC ensures the full implementation of any potential recommendations from the Court.

CONFLICT OF INTERESTS (RULES AND CONTROL MECHANISM)

68. What measures does the EDPS have to prevent and fight conflict of interests? How did those rules change until today? Were there any cases of possible “Conflict of Interest” you dealt with in 2019?

The following rules are applicable at the EDPS:

For the Supervisor, the Cabinet actively manages his diary and requests for meetings. It advises on meetings or activities that may raise conflicts of interests. Meetings with external individuals and organisations are disclosed on the ‘agenda’ on the EDPS website. Gifts are declared in line with the ethics policy. CVs and declarations of interests are reviewed regularly and at least once per year and published on the EDPS website. The legality and regularity of Supervisor transactions are examined in two occasions: the Statement of assurance (SoA), and the Annual Activity Report. For the time being, none of those exercises has triggered conclusions or observations from the Court of Auditors.

For the staff, the code of conduct (revised on 6 December 2019) underlines in section 3.1 the principles of non-conflict of interests and integrity. The annexes added to the Code that staff need to fill in allow the Ethics Officer and the Director to get a clear picture in all outside activities that may lead to possible conflicts of interests. It has not been the case for the time being. The Ethics Officer, who acts with full independence and is administratively attached to the Director, personally checks any publication or outside activities requests making it possible to ensure a high level of compliance with the requirements of the code of conduct for staff and the rules of the Staff Regulation.

69. What measures have been taken to avoid revolving doors between the public and private sector? How many staff members did notify their intention to leave the institution to join a private company in 2019? In those cases, what has been done to avoid conflicts of interests?

There were no cases of staff leaving the institution for the private sector in 2019. The Assistant Supervisor was appointed Supervisor and the late Supervisor unfortunately passed away.

70. What measures / rules were introduced in 2019 by EDPS to prevent conflict of interests?

There has been no new rules or measures to prevent and fight conflict of interests in 2019 but the revised code of conduct for staff of December 2019 has significantly underlined this issue.

ACTIVITIES TO LOWER THE ENVIRONMENTAL FOOTPRINT

71. Has the EDPS developed an environmental management system, which includes a concrete action plan aimed at lowering its environmental footprint in headquarters and delegations?

Aligned with the practice in the EP, the EDPS has installed water fountains on each floor and provided each floor with glass carafes. For environmental and efficiency reasons, we have taken the first steps towards becoming a paperless institution. Our first project concerns the payment of invoices. The decision to implement a paperless tool was taken in November 2018 and implementation was finalised at the end of 2019. The tool is called Speedwell and was created by the European Research Council Executive Agency (ERCEA). It involves less printing and archiving and makes it easier to verify transactions, leading to increased productivity, better quality work processes and an eco-friendly approach to the payment of invoices.

Over the course of 2019 we also carried out various trial staff selection procedures with reduced paper consumption. Testing is already underway on how to share documents with selection panel members electronically, yet securely, as well as on paperless interviews, with the use of surfaces.

In 2020, the EDPS works towards a fully electronic appraisal exercise.

72. What results have been achieved compared to 2018 and 2017 in lowering the carbon footprint and plastic, food and paper waste?

Aligned with the practice in the EP, the EDPS has installed water fountains on each floor and provided each floor with glass carafes in order to reduce the use of plastic bottles. Additionally, selection procedures as well as financial circuits have been made paperless.

DIGITALISATION AND CYBERSECURITY

73. What steps has the EDPS taken towards improving digitalisation and cybersecurity of the institution in 2019?

The EDPS has undertaken several actions towards improving digitalisation and cybersecurity of the institution in 2019:

- The EDPS developed for its **website inspection of EU institutions (EUI) web services, including its own website**, a specific digital tool to gather evidence and generate automatically pre-filled minutes and reports to cope with the large number of EUI websites inspected. The evidence gathered included the use of cookies, web beacons, page elements loaded from third parties and the security of encrypted connections (HTTPS). The inspection revealed that several of the websites were not compliant with the EUDPR or with the ePrivacy Directive and did not follow the EDPS Guidelines on web services. **As a consequence of the EDPS' inspection findings, all inspected EU institutions now provide secure HTTPS connections and have significantly reduced the number of third-party trackers** they use. The inspection's summary findings were presented by the EDPS and discussed with the network of Data Protection Officers in the EU institutions.²⁹
- The EDPS started to pilot the **GitLab open source software** for the management of code written for the EUI website inspection. The platform was configured to generate inspection minutes and reports semi-automatically that are 'ready to sign'.³⁰
- At the end of 2019 the EDPS initiated a project to complete and strengthen its **Information Security Management System (ISMS)**. The project was developed by an external consultancy firm under the leadership of the EDPS Local Information Security Officer (LISO). The project encompassed the following actions: the review of the existing policies in the EDPS ISMS the development of some missing security policies and the review of its risk management strategy and risk assessment tool according to current best practices. The project was completed successfully in June 2020.
- In agreement with the EDPS, the European Parliament conducted **security assessments** (blackbox penetration test) on the EDPS website development, testing and production environments. The Parliament provided the EDPS the assessment results, which the EDPS used to mitigate the risks identified.

²⁹ https://edps.europa.eu/press-publications/press-news/press-releases/2019/press-release-edps-flags-data-protection-issues-eu_en

³⁰ <https://github.com/EU-EDPS/website-evidence-collector>

74. Has EDPS considered the use of open-source technology, using software and hardware in order to prevent vendor lock-in, retain control over its own technical systems, provide stronger safeguards for user's privacy and data protection, increase security and transparency for the public? What measures have been taken in this regard?

- The EDPS built its **"Website Evidence Collector" (WEC)** inspection software on top of existing open source projects and released the WEC using the European Union Publiclicense.³¹ Since then, the EDPS continues to integrate own and community improvements in the code. Other Data protection authorities (DPAs), privacy professionals, data controllers and web developers can use the WEC to carry out their own website inspections. Among other things, it allows them to collect evidence relating to cookies, the secure transfer of data and requests to third-party components, employing a method that is reproducible, reliable and fast. For the WEC, the EDPS received the 2019 **Global Privacy and Data Protection Award for innovation** by the International Conference of Data Protection and Privacy Commissioners (ICDPPC).³²
- The **EDPS lab for technical inspections** is entirely built on open source. An extension planned in 2019 to increase the lab capacity for mobile app inspections was delivered in 2020 and employs again only open source tools in anticipation of sharing code and expertise with other Data Protection Authorities.
- In April 2019, the EDPS launched an **investigation into the compliance of contractual arrangements concluded between the EUIs and Microsoft**.³³ The EDPS as well as the other EUIs rely on Microsoft services and products to carry out their daily activities and this includes the processing of large amounts of personal data. Considering the nature, scope, context and purposes of this data processing, it is vitally important that appropriate contractual safeguards and risk-mitigating measures are in place to ensure compliance with the new Regulation. The EDPS investigation aimed at assessing which Microsoft products and services are being used by the EUIs, and whether the contractual arrangements in place were fully compliant with data protection rules. The EDPS issued its findings and recommendations upon the closure of its investigation in March this year. The purpose of the EDPS' report was to **provide EUIs with forward-looking assistance in bringing their arrangements into compliance with data protection law**. In particular, the EDPS' findings and recommendations were oriented towards supporting the renegotiation of the Inter-Institutional Licensing Agreement (signed by the EUIs and Microsoft in 2018) and EUIs' contract and implementation of robust technical and organisational measures that should accompany the contract. The objective is to **achieve digital sovereignty** for EUIs, to avoid vendor lock-in and lack of control and to ensure the protection of the personal data processed by them.

³¹ <https://joinup.ec.europa.eu/collection/eupl/eupl-text-eupl-12>

³² https://edps.europa.eu/press-publications/press-news/press-releases/2019/edps-software-receives-global-privacy-and-data_en

³³ https://edps.europa.eu/press-publications/press-news/press-releases/2019/edps-investigation-it-contracts-stronger_en

- Together with the Dutch Ministry of Justice and Security, the EDPS organised the first EU software and cloud suppliers customer council in The Hague in August 2019. **The Hague Forum**, a cooperation platform for EUIs, EU public administrations and international organisations, which aims to discuss both how to take back control over the IT services and products offered by the big IT service providers and the need to collectively create standard contracts instead of accepting the terms and conditions as they are written by these providers. The EDPS encourages all concerned parties to join the Forum and help set fair contractual terms for public administration, working in synergy and exchanging best practices in outsourcing services, to **achieve digital sovereignty for the EUIs**.

75. What steps have been taken in 2019 to enhance digitalization in your institutions? How much was invested in IT projects and equipment in comparison with 2018?

- The EDPS created with effect of 1.1.2019 a new unit “Information Technology policy” (IT Policy unit) (since 5/2020: “Technology and Privacy” (TP) unit), replacing the previously existing sector. The IT Policy unit whose main task is monitoring the impact of new technologies on privacy and data protection, provided some advice on implementation and on development and changes to align IT with the EDPS's business needs, where necessary.
- The IT needs of the institution are currently under review on the basis of a gap analysis that will be outsourced to identify the needs of the EDPS, in particular after the changes brought by the Covid-19 pandemic. The results of these gap analysis will be ready in Spring 2021.
- The EDPS spent 168.191,02 Euro during the year 2018 for IT equipment needed in the EDPB meeting room, in 2019 only 29.834,80 Euro was spent by the EDPS to purchase microphones for the new ground floor meeting room, the rest of IT equipment was provided by the EP.

76. How has the EDPS fought against the potential misuse of digital data, especially in the context of numerous contact tracing and warning apps being developed to counter the COVID-19 outbreak? Did the EDPS work together with the Commission to ensure the data protection of the EU interoperability solution for contact tracing and warning apps?

- In 2019, the EDPS carried out an investigation into the European Parliament's use of NationBuilder, a US-based political campaigning company, to process personal data as part of its activities relating to the 2019 EU parliamentary election.³⁴ The website thistimeimvoting.eu collected data from over 329.000 people interested in the election campaign activities. The **threat posed by online manipulation** led the EDPS to act proactively and decisively in the interest of all EU citizens to **help to foster trust in our institutions and the democratic process**, through promoting the responsible use of personal data and respect for individual rights. The investigation into the European Parliament's use of NationBuilder resulted in the first ever EDPS reprimand issued to an EU institution following the selection and approval of sub-processors used by NationBuilder. A second reprimand was

³⁴ https://edps.europa.eu/sites/edp/files/edpsweb_press_releases/edps-2019-10_ep_investigation_en_0.pdf

subsequently after the Parliament failed to publish a compliant Privacy Policy for the thistimeinvoting website within the deadline set by the EDPS. In both instances, **the European Parliament acted in line with EDPS recommendations.**

- Since the outbreak of the **COVID19 pandemic in Europe in spring 2020**, the EDPS internal TaskForce on Covid19 and the “Technology and Privacy” unit produced a number of orientation papers and technology primers to help decision makers and developers to improve data protection compliance.³⁵ Comments were provided to the European Commission (DG JUST) on its plan to use mobility data.³⁶ The **EDPS Task Force on Covid19** has provided feedback to the EC on their interoperability solution. This Task Force has also been heavily involved in the work of the **European Data Protection Board (EDPB)** work to fight the potential misuse of digital data in the context of the pandemic³⁷.

The EDPS **Internet Privacy Engineering Network (IPEN)** held in 2019 (and 2020) regular events to discuss how technology affects privacy. The last event from October 2020 addressed specifically covid-19 tracing apps.³⁸

77. What are the effects of Brexit on EU data protection? What guidance did the EDPS provide concerning the data transfer from UK built software after Brexit?

By virtue of the EU-UK Withdrawal Agreement, the consequences of Brexit in terms of data protection would only materialise after the end of the transition period, when the UK would become a third country, within the meaning of EU data protection law. Depending on the outcome of the pending assessment of adequacy by the European Commission³⁹, Brexit could have a significant impact on data transfers, both in the commercial and law enforcement sector.

In the absence of an adequacy decision adopted by the European Commission and applicable by the end of the transition period, the transfers of personal data to the UK would need to be based on one of the following instruments:

- Standard or ad hoc Data Protection Clauses
- Binding Corporate Rules
- Codes of Conduct and Certification Mechanisms
- Derogations (where applicable)

If no suitable transfer tools can be found, transfers can no longer take place.

³⁵ Such as the EDPS TechDispatch on contact tracing with mobile applications, available at https://edps.europa.eu/sites/edp/files/publication/20-05-08_techdispatch-tracing_en.pdf

³⁶ [Monitoring Spread of COVID-19](#)

³⁷ See in particular EDPB Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak and EDPB Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak, available at <https://edpb.europa.eu/node/28>

³⁸ https://edps.europa.eu/data-protection/our-work/ipen/ipen-2020-contact-tracing-apps-webinar_en

³⁹ On 24 February 2020, the EDPS issued an Opinion on the opening of negotiations for a new partnership with the UK, available at https://edps.europa.eu/sites/edp/files/publication/20-02-24_opinion-eu-uk-partnership_en.pdf.

On 12 February 2019, the EDPB published an information note on data transfers under the GDPR in the event of a no-deal Brexit. It also published an information note on BCRs for companies which have ICO as BCR Lead Supervisory Authority.⁴⁰ On 22 July 2020, the EDPB published an additional information note on BCRs for Groups of undertakings / enterprises which have ICO as BCR Lead SA.⁴¹

On 16 July 2019, the EDPS published an Information note on international data transfers after Brexit, aimed specifically at Union institutions, bodies and agencies.⁴²

78. Has the EDPS verified all EU bodies for compliance with data protection rules? What is its assessment on which bodies are lacking behind and why?

As already outlined under question 1, the supervisory activities the EDPS are guided by the accountability principle and follow a risk-based approach, divided into the following steps: **mapping - guiding - enforcing**. The focus is therefore not to undertake a complete screening of all processing operations that are carried out by the EUIs. This would not only prove practically impossible, but would also not be particularly efficient. By focusing on **processing operations that present more risks** to the rights and freedoms of individuals (cf. risk based approach explained above under question 1), we can target our supervisory activities and carry out selective enforcement actions where they will have a real impact.

As explained above (question 1), the risk-based approach translates into targeted guidance (thematic guidelines, training) and enforcement (audits and investigations).

In particular, the EDPS has put specific emphasis on the **supervision of EUIs active in the field of Police and Justice**:

- In May 2017, the EDPS became the supervisor of Europol. Europol is the EU's law enforcement agency. They support the 27 EU Member States in their fight against terrorism, cybercrime and other serious and organised forms of crime. Criminal analysis, and thus the processing of personal data, is at the core of their activities.

- In December 2019, the EDPS became the supervisor of Eurojust. Eurojust is responsible for supporting and improving coordination and cooperation between the competent judicial authorities in the EU Member States on matters relating to serious organised crime.

- Recently the EDPS has taken on a similar role at the **European Public Prosecutor's Office (EPPO)**

This is a domain where data subjects' rights are restricted, justifying derogative regimes. **The impact of such data processing activities on individuals' rights and freedom is high**: not only do they run risk of being wrongly suspected, of being discriminated, of being denied asylum, etc., but many of the data subjects concerned are also vulnerable groups of people (minors, migrants, refugees, missing persons, but also suspects). In addition, data

⁴⁰ Available at https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexit_en.pdf

⁴¹ Available at https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_informationnoteforgroupswithicoasbcrleadsa_20200722.pdf

⁴² Available at https://edps.europa.eu/sites/edp/files/publication/19-07-16_for_translation_note_on_personal_data_transfers_post-brexit_en.pdf

processing activities in the field of police and justice are opaque to individuals. It is difficult for them to know who is processing their data and for what purposes. The supervision of Europol's data processing activities is finally particularly challenging as Europol IT systems are complex and they process a large volume of personal data.

The role of the EDPS in this context is to **ensure that data subjects' rights are effectively protected**, as individuals do not have the power to exercise this control to the same extent as in other areas.

To achieve an effective supervision of this area, the EDPS has **dedicated specific staff members to the supervision of Europol and the preparation of the supervision of Eurojust and EPPO**. These EUIs have been assigned a **dedicated contact point amongst EDPS staff members**, ensuring close and continuous collaboration with the DPOs of these EUIs. The EDPS holds regular meetings with them in order to anticipate consultations and other issues on data processing and define/plan for future activities, such as inspections or inquiries.

In 2019, for Europol only, this meant two meetings between Europol's Executive Director and the EDPS, three meetings between EDPS staff and the DPO, four inquiries launched, nine consultations (three of which were prior notifications of new processing activities under Article 39 of the Europol Regulation for which the authorisation of the EDPS is required), three complaints received, and two inspections.

The EDPS also appeared twice before the Joint Parliamentary Scrutiny Group on Europol (JPSG). The JPSG is a unique form of political scrutiny on the functioning of EUROPOL by the European Parliament, together with national Parliaments. The scope of the scrutiny also covers the impact of Europol's activities on the fundamental rights and freedoms of natural persons. On 25 February and 23 September 2019, the Supervisor presented the EDPS supervisory activities over Europol to the members of national parliaments and European Parliament.

The EDPS has also presented his annual report covering the year 2019 on 18 March 2020, and published a press release at this specific occasion: https://edps.europa.eu/press-publications/press-news/press-releases/2020/edps-annual-report-2019-new-eu-data-protection_en. In his annual report, the EDPS pays specific attention to his actions in relation with the supervision of EU institutions, bodies and agencies in the section 3.2 in the annual report pp 22-44 "On the ground":

https://edps.europa.eu/sites/edp/files/publication/2020-03-17_annual_report_2020_en_0.pdf.