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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*“EDPS Conference on the supervision in
the criminal justice area”*

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Why is the EDPS organizing this conference? Some would think one big conference is already enough for a year!

We think that with the Law Enforcement Directive on one hand, and the EPPO, Eurojust and EU DPR Regulations on the other - **data protection and the criminal justice “got married”**. And that what historically was not very closely linked as field of law, is now co-existing very closely, impacting one another.

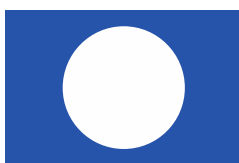
This process calls for attention, for **careful observation and scrutiny**. It is also an opportunity to evaluate the impact of the laws. Do they work? Do they make sense? Are those tasked with their implementation and enforcement are delivering? **Is it bringing tangible results for the citizens?**

It has been **3 years now since the EDPS is supervising** Eurojust; EPPO is fully operational now as well, and data protection authorities in Member States are starting to work closely together to coordinate their supervision activities. I think it is a perfect moment for first summaries, first lessons learned and new homework we will all come back with after today.

Opening this conference, I would like to avoid presenting my conclusions before the actual debate starts. I would rather share **my more personal reflections** from the last years, hoping I will have an opportunity to verify them listening to today's discussions.

First reflection, and a quite obvious one, although not always for data protection experts is that criminal justice and law enforcement are not the same areas. They work closely together, there is no one without another, but they should be looked at independently. We all know very well the historical similarities and differences. Justice on one hand and Home Affairs are structurally separate in probably every Member State, yet they go to the same Council meetings 6 times a year. From the data protection perspective, the **judicial dimension of the criminal justice area does make a difference**, compared to traditional area of law enforcement, understood as the field of police authorities. And these differences have a direct impact on the supervisory activities in practice.

The involvement of prosecutor's, and especially the courts, occur in principle only after the law enforcement authorities. The data is on average more reliable, more “filtered”, has undergone the scrutiny of applicable procedural regime. On one hand, it could mean that as a data protection authority we could be more relaxed. But, it also means that, given the stakes of criminal proceedings, the sensitivity and vulnerability it might bring on individuals, an extra attention is



necessary. We will hear later today about specific processing operation conducted in this field and challenges they bring from the data protection perspective.

Second reflection, a bit similar in its paradoxical nature, is that **criminal justice is a field governed by... very good lawyers**. Magistrates (prosecutors, judges, attorneys) are all qualified lawyers with years of education and practice. You could think it means that the respect for law, the level of compliance, is naturally higher. That there is less risks of infringement of fundamental rights, that the system in itself aims at achieving fairness. And, so from a data protection perspective things should be fine!

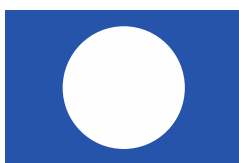
Again, it is true, but with this comes another possible trap. The thing with good lawyers is that they have their views - and if they don't - that are very good at proving you are wrong. A data protection authority needs to really be at its best to indeed maintain the status of "authority" in the field. I am proud of the EDPS team for its ability to convincingly engage in this field. I myself have no doubts in their expertise but it did not have to be the case that the interaction between the EDPS and EPPO or Eurojust were done in the spirit of mutual respect for each other expertise.

It is not always the case for the EDPS in its supervisory practice. But I am glad this is the case here, I am satisfied with how **data protection grows in criminal justice**, how criminal justice grows (EPPO as an impressive example!) with data protection.

Third, and last reflection, is there is one thing without which neither data protection authorities, nor courts or prosecutor's offices can operate. One that sadly we all need to still fight for. **Independence of judicial authorities and data protection authorities is a key foundation of the rule of law**. Political pressure on the authorities, institutional threats to their independence, is a poison, which at the end of the day has one victim - individual citizens.

Dear all. **Data protection entered the criminal justice and is here to stay**. The EDPS is here to stay. Supervision in the field of criminal justice reinforces the EDPS position as full-fledged data protection authority. It also bridges the distances between fields for many reasons (sometimes good, sometimes not necessarily) were considered as separate, as requiring no interaction.

The specific regime for EPPO and Eurojust, the somewhat patchwork system of the Chapter IX are something that will be debated today. But irrespectively of the development of this debate



and potential legislative changes in years to come, I would like to stress the **EDPS commitment to ensuring a coherent application** of the laws leading to strong respect to the fundamental right to data protection, stemming onto the entirety of the EU secondary law from the EU Charter.

CHECK AGAINST DELIVERY

