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**EUROPEAN
DATA
PROTECTION
SUPERVISOR**

The EU's independent data
protection authority

**Contribution in the context of the
Commission initiative to further specify
procedural rules relating to the
enforcement of the General Data
Protection Regulation**

1. Introduction

1. On 24 February, the European Commission launched a public consultation entitled “*Further specifying procedural rules relating to the enforcement of the General Data Protection Regulation*”¹. The aim of this initiative is to streamline cooperation between national Data Protection Authorities (DPAs) when enforcing the GDPR² in cross-border cases by harmonising some aspects of the administrative procedure applied by national DPAs in such cases.
2. The European Data Protection Supervisor (EDPS) strongly supports the objective of the Commission to further streamline cooperation among data protection authorities. The EDPS believes that it is crucially important to ensure that all data protection authorities can cooperate effectively and efficiently in protecting the rights and freedoms of data subjects. With this contribution, the EDPS outlines possible ways to improve the cooperation among data protection authorities, including the functioning of the GDPR’s cooperation and consistency mechanism, building on lessons learned from the work of the European Data Protection Board (EDPB) so far as well as the discussions at the EDPS conference held in June 2022³.
3. The EDPS wishes to stress that the **need for effective and efficient cooperation is not limited to cross-border cases involving multiple national DPAs**. The same need exists in cases where personal data flows from Union institutions, bodies, offices and agencies (EUIs) to public bodies or private entities within the European Economic Area (EEA), and vice-versa. For example, a need for effective and efficient cooperation between the EDPS national DPAs also arises in cases where:
 - an EUI enlists the processing services of a private entity, who is subject to the GDPR, but acting on behalf of the EUI (i.e. acting as a processor for the EUI);
 - an EUI provides and manages an information system that supports cooperation of public authorities in EU Member States;
 - Member States and EUIs share, together with private entities, responsibilities in areas of particular importance, such as pharmacovigilance; or
 - an EUI carries out its tasks together with Member States’ public authorities (e.g. in matters concerning the Area of Freedom, Security and Justice (AFSJ)).

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13745-Further-specifying-procedural-rules-relating-to-the-enforcement-of-the-General-Data-Protection-Regulation_en

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1.

³ EDPS conference 2022, ‘The future of data protection - Effective enforcement in the digital world’, 16 and 17 June 2022, <https://www.edpsconference2022.eu>.

4. Article 61 of Regulation (EU) 2018/1725 (EUDPR)⁴ provides that *'the EDPS shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA to the extent that is necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each other to exercise their powers and responding to each other's requests'*.
5. In his contribution to the Report on the application of the EUDPR⁵, the EDPS considered that Article 61 EUDPR in principle provides a sufficient legal basis to enable efficient cooperation between the EDPS and national supervisory authorities. At that time, the EDPS signalled that early experience showed that concrete problems may arise, and that the suitability and the functioning of the provisions on the cooperation between the EDPS and national DPAs should be closely monitored, reassessed and recalibrated, if necessary. Since that contribution, **practical experience has confirmed that certain obstacles persist and the EDPS now considers that legislative intervention is warranted**.
6. While acknowledging that the European Commission's current initiative focuses primarily on harmonising some aspects of the administrative procedure applied by national DPAs in cross-border cases under the GDPR, the EDPS considers that this initiative is an opportunity to also streamline cooperation between the EDPS and national DPAs, each acting within their own spheres of competence, when enforcing the EUDPR or specific Regulations⁶ and the GDPR or the Law Enforcement Directive⁷ ('LED') respectively.
7. After presenting a number of the practical obstacles to efficient cooperation between national DPAs and the EDPS (section 2), this contribution identifies possible ways to address and remove these obstacles (section 3), followed by a discussion of measures to improve the functioning of the GDPR's cooperation and consistency mechanism. The EDPS wishes to underline from the outset, however, that he **fully supports the intention of the Commission to put forward a Proposal for a Regulation based on Article 16 TFEU which would complement - and not 'reopen' - the GDPR**. The recommendations included in this contribution should be understood against this background. The recommendations included in this contribution are without prejudice to any further contributions that the EDPS may provide at a later stage, and in particular to the formal consultation pursuant to Article 42 EUDPR.

⁴ Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

⁵ European Data Protection Supervisor, "Contribution by the European Data Protection Supervisor to the Report on the application of Regulation (EU) 2018/1725, the EUDPR", 21 December 2021, https://edps.europa.eu/system/files/2022-04/20-12-21-contribution_edps_report_eudpr_en_0.pdf.

⁶ See further section 2.

⁷ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

2. Practical obstacles to efficient cooperation between the EDPS and national DPAs

8. The GDPR, together with the LED, provide the legal framework for processing of personal data in EU Member States, with national supervisory authorities monitoring the application of these rules in their territories. The EUDPR is the legal framework applicable to the processing of personal data by all EUIs⁸. The competent supervisory authority for processing activities falling within the scope of the EUDPR is the EDPS.
9. Chapter VII EUDPR provides a general legal basis for cooperation between the EDPS and national DPAs, in addition to the involvement of the EDPS as full member of the European Data Protection Board under the GDPR. This general legal framework is supplemented by specific Regulations that apply to the processing of personal data by Europol⁹, Eurojust¹⁰, the EPPO¹¹, Frontex¹² and eu-LISA¹³.
10. Since the entry into application of the EUDPR, the EDPS has gained valuable experience in cooperating with the national DPAs of Member States. Such cooperation often took the form of exchanging information where necessary in the context of ongoing investigations, complaints handling or consultations with EUIs. Such exchanges were e.g. necessary in the course of the EDPS investigations concerning the EUIs' use of cloud-based services and inquiries concerning operational data processed by Justice and Home Affairs (JHA) agencies. Exchanges were also necessary in the context of EDPS' participation within specific taskforces of the EDPB, including the EDPB's 2022 Coordinated Enforcement Action which was initiated by the EDPS¹⁴. In each of these cases, the initiative to exchange information came from either the EDPS or the national DPA, or both.
11. **While cooperation with national DPAs has often proved successful, the EDPS has also encountered several obstacles to efficient cooperation.** In short, these obstacles are attributable to the fact that:

⁸ Articles 1(1) and 2(1) EUDPR.

⁹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53–11, as amended.

¹⁰ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138–18, as amended.

¹¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1–71, as amended.

¹² Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, p. 1–131.

¹³ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, OJ L 295, 21.11.2018, p. 99–13.

¹⁴ European Data Protection Supervisor (EDPS), Data protection and use of cloud by public sector: the EDPS initiates and participates in the 2022 Coordinated Enforcement Action of the EDPB, 18 February 2022, https://edps.europa.eu/press-publications/press-news/press-releases/2022/data-protection-and-use-cloud-public-sector-edps_en.

- relevant provisions of the GDPR (in particular Articles 61 and 62 GDPR) that govern cooperation between national DPAs are considered not to apply to cooperation between national SAs and the EDPS on the basis of Chapter VII EUDPR;
 - when seeking to cooperate on the basis of Chapter VII EUDPR, the EDPS and national DPAs cannot make use of the same IT tools that enable secure exchange of information and facilitate the initiation of requests for mutual assistance or joint operations;
 - other provisions governing cooperation between national DPAs and EDPS typically only provide for a general duty of cooperation, without a clearly defined procedure and/or deadlines;
 - there is no formal mechanism to resolve possible issues of cooperation or differing opinions on matters of general application (similar to the mechanisms provided by Article 64(2) and Article 66(3) GDPR).
12. For example, in the context of handling a complaint, the EDPS used his investigative and corrective powers against an EUI as the controller, but not against the non-EUI processor. After the EDPS had issued a decision in the complaint, the EDPS sent that decision to the national DPA of the Member State where the processor's main establishment in the EU was located, for its assessment and potential enforcement actions. The national DPA took the view that it was not competent to take any measure against this processor and that it was up to the EDPS to use his powers under the EUDPR. Chapter VII of the EUDPR does not provide a mechanism to formally resolve differing opinions on matters of general application, such as the extent, which national DPAs are competent to take measures against private entities that offer processing services to EUIs.
13. In another case, a non-EUI processor refused to return certain personal data to the EUI as the controller. The EDPS requested assistance from the national DPA of the Member State where the processor is established to facilitate the return of those data to the EUI. The national DPA replied that it was not able to provide assistance because of lack of competence vis-a-vis the processor contracted by the EUI. More specifically, it indicated that it was charged (only) with the supervision of compliance of processing with the GDPR and other legislative provisions, and that in this case there was no apparent violation of the GDPR or other laws within the remit of its competence. Again, Chapter VII of the EUDPR does not provide a mechanism to formally resolve such issues.
14. Another example concerns the need to conduct joint supervisory activities over Frontex, in particular for the conduct of joint operations. As the European Borders and Coast Guard Regulation (i.e. the 'Frontex regulation') does not refer to Article 62 EUDPR, the Coordinated Supervision Committee¹⁵ established within the framework of the EDPB is not

¹⁵ The Coordinated Supervision Committee (CSC) is a group of national supervisory authorities and the European Data Protection Supervisor (EDPS) to ensure coordinated supervision of large scale IT systems and of EU bodies, offices and agencies, in accordance with Article 62 of Regulation (EU) 2018/1725 or with the EU legal act establishing the large scale IT system or the EU body, office or agency. The CSC is established within the framework of the European Data Protection Board (EDPB) and composed of

competent. Coordinated supervision thus relies on the general provision of Article 61 EUDPR. However, in attempting to establish a more structural cooperation with one national DPA, the latter indicated it could not rely on an explicit provision in their national law or in the GDPR to allow them to cooperate with the EDPS, as the EDPS is not a national DPA within the meaning of the GDPR.

15. The aforementioned examples are by no means exhaustive. In addition, **similar issues also arise in the context of data protection supervision and enforcement in the Area of Freedom, Security and Justice** when applying the specific provisions of Chapter IX of EUDPR and specific EU legislation such as the Europol, Eurojust and EPPO Regulations. The provisions governing cooperation between the EDPS and national DPAs in the Area of Freedom, Security and Justice are moreover **dispersed among different instruments**¹⁶, which provide for varying degrees of detail, thereby leading to **fragmentation**¹⁷.

3. Proposed way forward

16. The previous section provided a number of examples of cases where efficient and effective cooperation between the EDPS and national DPAs was curtailed. The underlying reason, in many cases, was linked to an interpretation given to the wording of certain provisions of Chapter VII of the GDPR, which refer to “supervisory authorities” as defined by Article 4(21) GDPR¹⁸.
17. Before identifying possible ways to address this issue, it is important to recall that the Union legislator intended for the EUDPR and GDPR to be interpreted homogeneously whenever the provisions of the EUDPR follow the same principles as the provisions of the GDPR. Indeed, Recital (4) EUDPR confirms the overall intention of the Union legislator to provide for a **strong and coherent data protection framework in the Union** and to allow its application in parallel with the GDPR. Recital (5) EUDPR confirms that it is in the interest of a coherent approach to personal data protection throughout the Union, and of the free movement of personal data within the Union, to align as far as possible the data protection rules for Union institutions, bodies, offices and agencies with the data protection rules adopted for the public sector in the Member States. As result, whenever the provisions of the EUDPR follow the same principles as the provisions of the GDPR, those two sets of

representatives of the national data protection authorities of each EU Member State and the EDPS, as well as of national data protection authorities of non-EU Members of the Schengen Area when foreseen under EU law.

¹⁶ Annex II to this contribution provides an overview of provisions governing cooperation procedures between data protection authorities other than the GDPR.

¹⁷ The EDPS has had several examples of joint supervisory activities in the field of AFSJ. The need for cooperation between the EDPS and national DPAs stems from the fact that the data processed by EUIs are collected and shared by national competent authorities to these EUIs, which ultimately share the outcome of their data-driven analysis with them. Close cooperation is thus necessary to ensure a comprehensive supervision of the whole data flow, from collection to deletion. Cooperation takes place under Article 61 or 62 EUDPR. There is however no clearly defined procedure, as for example the one established under Article 44(4) of the Europol Regulation, that would contribute to a more streamlined cooperation between the EDPS and national DPA; or, in the case of cooperation under Article 61, not even an institutional framework such as the EDPB, under which it can be organised (it takes place through bilateral agreements or requests).

¹⁸ Article 4(21) GDPR defines a ‘supervisory authority’ as an independent public authority which is established by a Member State pursuant to Article 51 GDPR. Similarly, Article 3(15) LED defines a ‘supervisory authority’ as an independent public authority which is established by a Member State pursuant to Article 41.

provisions should be interpreted homogeneously, “*in particular because the scheme of [the EUDPR] should be understood as equivalent to the scheme of [the GDPR]*”¹⁹.

18. Chapter VII EUDPR provides a legal basis for cooperation between the EDPS and national DPAs. A comparison with Chapter VII of the GDPR confirms that and Chapter VII EUDPR follows the same principles as the provisions of the GDPR insofar as the main principles and modalities of cooperation are concerned²⁰. While Chapter VII EUDPR is less detailed than Chapter VII of the GDPR, both the EUDPR and GDPR contain:

- (1) a general duty of cooperation;
- (2) a duty to exchange relevant information;
- (3) the possibility to ask each other to exercise their powers; and
- (4) a general duty to respond to each other’s requests.

19. This also explains why the EDPS, in its Rules of Procedure²¹, has further elaborated on the modalities of cooperation with national DPAs in a manner that is fully consistent with Chapter VII GDPR²², making reference to both mutual assistance and joint operations as possible modalities of cooperation.

20. Nevertheless, the fact that Chapter VII GDPR expressly refers only to national DPAs (by virtue of its definition ‘supervisory authority’) impedes efficient and effective cooperation in practice. To address this issue, two straightforward measures might be envisaged in context of the Commission’s current initiative:

3.1. Clarifying the modalities of cooperation between EDPS and national DPAs

21. In order to ensure that national DPAs and the EDPS cooperate according to the same modalities as provided by the GDPR, the Commission’s proposal should specify that the

¹⁹ Recital (5) EUDPR.

²⁰ A notable exception to this general rule concerns the distinction made in Chapter VII GDPR between the “lead” and “concerned” supervisory authorities. The exception is logical, as the GDPR provides that Article 56, which describes the competence of the lead supervisory authority, does not apply where the processing is carried out by public authorities or private bodies acting on the basis of point (c) or (e) of Article 6(1) GDPR (Article 55(2) GDPR). As the competence of the EDPS pursuant to the EUDPR concerns processing carried out by Union institutions and bodies (i.e. ‘public bodies’), Chapter VII EUDPR does not distinguish between the “lead” and “concerned” supervisory authorities.

²¹ Decision of the European Data Protection Supervisor of 15 May 2020 adopting the Rules of Procedure of the EDPS, O.J. L 204, 26.6.2020, p. 49, as amended by Decision of the European Data Protection Supervisor (EDPS) of 14 October 2022 amending the Rules of Procedure of the EDPS of 15 May 2020, O.J. L 274, 24.10.2022, p. 78.

²² Article 26 of the EDPS Rules of Procedure provides that “[t]he EDPS shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA(10) with a view to, in particular: (a) exchanging all relevant information, including best practices, as well as information in relation to requests to exercise monitoring, investigative and enforcement powers by competent national supervisory authorities; (b) developing and maintaining contact with relevant members and staff of the national supervisory authorities. 2. Where relevant, the EDPS shall engage in mutual assistance and take part in joint operations with national supervisory authorities, each acting within the scope of their respective competences as set out in the Regulation, the GDPR and other relevant acts of Union law. 3. The EDPS may take part upon invitation in an investigation by a supervisory authority or invite a supervisory authority to take part in an investigation in accordance with the legal and procedural rules applicable to the inviting party”. Article 6 of the EDPS Rules of Procedure also confirms that the EDPS shall promote cooperation among data protection supervisory authorities as well as with any other public authority whose activities may have an impact on privacy and personal data protection.

EDPS shall, for purpose of cooperation with national DPAs in accordance with Chapter VII EUDPR, cooperate under the same modalities as Articles 61, Article 62, Article 64(2) and 66(3) GDPR. In addition, the proposal should specify that, for the purposes of such cooperation, the EDPS shall be considered a ‘supervisory authority’ within the meaning of those provisions.

22. Such clarification would effectively confirm that Chapter VII of the EUDPR follows the same principles as Chapter VII of the GDPR and should therefore be interpreted homogenously, as envisaged by the Union legislator. It would also remove any doubt as to the possibility for national supervisory authorities and the EDPS to cooperate under the same modalities as national data protection authorities might cooperate with each other in cases where one of the supervised entities is a public authority or a private body processing personal data on the basis of point (c) or (e) of Article 6(1) GDPR. Such cooperation could then take the form of providing each other mutual assistance in accordance with the modalities defined in Article 61 GDPR or by conducting joint operations in accordance with Article 62 GDPR²³.
23. A provision confirming that the EDPS shall be considered as a “supervisory authority” within the meaning of Article 64(2) GDPR would enable the EDPS to request an Opinion of the EDPB on any matter of general application or where here a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 61 or for joint operations in accordance with Article 62²⁴.
24. As previously indicated, practical obstacles to effective cooperation also arise in the context of data protection supervision and enforcement in the Area of Freedom, Security and Justice when applying the specific provisions of Chapter IX of EUDPR and specific EU legislation such as the Europol, Eurojust and EPPO Regulations.
25. **In order to ensure that national DPAs and the EDPS can cooperate effectively in all supervision and enforcement cases** where personal data flows from EU’s to public bodies or private entities within the European Economic Area (EEA), and vice-versa, **the Commission’s forthcoming proposal should specify that:**
 - all data protection authorities²⁵ should cooperate actively to ensure effective supervision and consistent enforcement of all the Union’s data protection rules²⁶;

²³ Such a provision would also allow the EDPS to use relevant GDPR workflows in IMI, namely Article 61 Mutual Assistance, Article 61 Voluntary Mutual Assistance, Article 62 Joint Operations and to seek an Opinion of the EDPB pursuant to Article 64(2) GDPR - see further section 3.2.

²⁴ As already indicated in its contribution to the evaluation of the GDPR, the EDPS may also have an interest in obtaining an opinion of the EDPB pursuant to Article 64(2) GDPR on a matter of general application of the GDPR relevant to a case it is investigating. Given that one of the main objectives of the Union legislator was to provide for a coherent approach to personal data protection throughout the Union and to align the EUDPR and the GDPR as much as possible, it would be logical to provide the EDPS with the same possibility of seeking an Opinion of the EDPB concerning any matter of general application or producing effects in more than one Member State with a view of ensuring a consistent interpretation of provisions of the EUDPR that follow the same principles as provisions of the GDPR.

²⁵ I.e. the supervisory authorities established under the GDPR, the supervisory authorities established under the LED , the EDPS as well as the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA.

²⁶ In particular, the GDPR, the LED, the EUDPR, of the large-scale IT systems, and of any other Union and Member State act relating to the protection of the individual’s rights and freedoms with regard to privacy and the processing of personal data.

- all data protection authorities should carry out such cooperation in accordance with Articles 61, 62, 64(2), and 66(3) GDPR, Article 50 LED as well as Articles 61 and 62 EUDPR; and
 - the EDPS shall, for purposes of cooperation with national DPAs in accordance with Chapter VII EUDPR, be considered as a “supervisory authority” within the meaning of Chapter VII of the GDPR and Chapter VII of the LED.
26. A concrete and targeted suggestion on how to introduce the proposed clarifications is provided in **Annex I** to this contribution.
27. The proposed clarification is best made in the context of the current Commission’s initiative, for mainly two reasons:
28. First, the EUDPR is a chronologically and logically subsequent act to the GDPR. The EUDPR essentially reproduces the provisions of the GDPR but with a specific scope of application, and with the adaptations required to cater for the specificities of EUIs, stemming in particular from the need to ensure that EUIs are not subject to any *national* supervision in line with the supranational character of the EUIs. Against this background, the regime on cooperation between all data protection authorities of the Union should be addressed in the broader context of the GDPR and LED: even if the Commission’s proposal would not amend the text of either the GDPR, EUDPR or the LED, it would be complementary to each of these instruments and will be based on Article 16 TFEU.
29. Second, and from a more practical perspective, the issues highlighted by the EDPS in his contribution to the Report on the application of the EUDPR²⁷, and further confirmed here constitute a real hurdle to effective implementation of the GDPR, the EUDPR, the LED, as well as other specific instruments of Union law requiring cooperation between national data protection authorities and the EDPS. This ultimately goes to the detriment of effective enforcement of the fundamental right to data protection. The timeline for adoption of the current Commission initiative would thus allow providing for a comprehensive solution to a rather **urgent** problem within a relatively short timeframe.

3.2. Amending the Annex of the IMI Regulation

30. A second measure that the EDPS would invite the Commission to consider, in addition to the one outlined in the previous subsection, is to amend the Annex of the IMI Regulation by adding a reference to the EUDPR²⁸. Such an amendment would allow to create, within the existing IMI module, dedicated workflows to cover Article 61 and Article 62 of the

²⁷ European Data Protection Supervisor (EDPS), “Contribution by the European Data Protection Supervisor to the Report on the application of Regulation (EU) 2018/1725, the EUDPR”, 21 December 2021, https://edps.europa.eu/system/files/2022-04/20-12-21-contribution_edps_report_eudpr_en_0.pdf.

²⁸ See Article 11 of Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’). The EDPS takes this opportunity to note that there is a material error in the IMI Annex. Regulation **2018/1725** is listed, while in fact it refers to Regulation **2018/1724** establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services.

EUDPR and to have one system to exchange of information and to strengthen the cooperation between the EDPB Members.

31. While the EDPS, as member of the EDPB, has access to the Internal Market Information (IMI) system, it currently does not have access to all functionalities that are necessary to support the efficient and secure exchange of information with DPAs in specific cases. Having one system to exchange information between national supervisory authorities and another channel to exchange the same information on the same cases between EDPS and national DPAs is not very efficient for either the EDPS or for the national DPAs involved.
32. **In the EDPS' experience, national DPAs would like to use the same communication tools they use to cooperate with other DPAs, to cooperate also with the EDPS.** Unfortunately, the EDPS has no access to IMI workflows used to give effect to Article 61, 62 or 64(2) or 66(3) GDPR²⁹. In practice, this means that each time a workable solution had to be defined case-by-case, and in each individual case, taking into account the technical and procedural constraints of both parties. Amending the Annex of the IMI Regulation by adding a reference to the EUDPR would resolve this issue, as it would make it possible to extend the existing IMI GDPR related module to further support cooperation between the EDPS and national DPAs.
33. The EDPS notes that there is currently no common tool equivalent to IMI to exchange information between national DPAs and the EDPS in the framework of AFSJ cooperation. Taking into account the requirements of data security and confidentiality, the amount of personal data processed in the large scale IT systems and by the AFSJ agencies, their sensitivity (e.g. criminal offences, biometric data, etc.) and the complex system of supervision, an appropriate secure common electronic information and communication system should be provided for, and implemented by the EDPB for the benefit of all data protection authorities.

4. Streamlining cooperation and consistency under the GDPR

34. The ability for national data protection authorities to effectively enforce the GDPR in a cross-border context is dependent on the efficiency of the cooperation and consistency procedures as set out in Chapter VII GDPR. With its letter of 10 October 2022, the EDPB provided a list of procedural aspects that could benefit from further harmonisation at EU level³⁰. This list addressed inter alia:

- the status and rights of the parties to the administrative procedures;

²⁹ National DPAs can start, view and comment in each of the IMI GDPR related workflows, while the EDPS has only access to Article 60 final decision, Article 64, 65 and 66 workflows. The EDPS cannot start these procedures, but can view them and comment in Article 64, 65 and 66 workflows.

³⁰ European Data Protection Board (EDPB), Letter to Mr. Didier Reynders of 10 October 2022, available at https://edpb.europa.eu/system/files/2022-10/edpb_letter_out2022-0069_to_the_eu_commission_on_procedural_aspects_en_0.pdf.

- procedural deadlines;
- requirements for admissibility or dismissal of complaints;
- investigative powers of Supervisory Authorities;
- the practical implementation of the cooperation procedure.

35. The EDPS does not intend to repeat all the suggestions included in the EDPB’s letter, but would like to highlight a number of elements, which he believes to be of particular importance to improve the functioning of the GDPR’s cooperation and consistency mechanism.

4.1. Recognising the role of the EDPB

36. The EDPB plays an essential role in making the cooperation and consistency mechanism of the GDPR operational. Over the past years, significant advances have been made in clarifying how the cooperation and consistency procedures should be applied in practice, building on almost five years of experience. For the EDPS, one particularly important lesson is that in certain cases earlier involvement of the EDPB could be beneficial to enhance the efficiency of the GDPR’s cooperation and consistency mechanism.

37. For example, EDPB Guidelines indicate that the Lead Supervisory Authority (LSA) and Concerned Supervisory Authority (CSA) should reach a consensus on the scope of an investigation at an early stage³¹. As mentioned by the EDPB in its letter of 10 October 2022, however, the extent to which the LSA should involve the CSA in identifying the scope of an investigation, be it in complaint-based or own volition inquiries, can cause difficulties in practice.

38. The absence of early involvement and consensus regarding the scope of the investigation entails a risk of disagreement at later point in time (e.g. at the time when draft decisions are made available to the CSAs). At that stage, it may be too late or very challenging to adjust the scope of the investigation. The EDPB has acknowledged the possibility for relevant and reasoned objections to be raised on this point, but this as a “*last resort to remedy an allegedly insufficient involvement of the CSA(s) in the preceding stages of the process*”³².

39. The GDPR already requires LSA and CSAs to cooperate and exchange relevant information prior to the adoption of a draft decision³³. The LSA has the duty to cooperate and share relevant information as early as possible, including information on the envisaged scope of an investigation. A provision in the future procedural regulation explicitly clarifying in more

³¹ European Data Protection Board (EDPB), Guidelines on relevant and reasoned objections under Regulation 2016/679, Version 2.0, 9 March 2021, paragraph 28 and European Data Protection Board (EDPB), Guidelines on the application of Article 60 GDPR, Version 1.0, 14 March 2022, paragraph 122.

³² European Data Protection Board (EDPB), Guidelines on relevant and reasoned objections, paragraph 28. The possible consequences of objections raised by CSAs on this point are specified in the EDPB Guidelines 03/2021 on Article 65(1)(a) GDPR, adopted on 13 April 2021 (in particular at paragraphs 77-81).

³³ See also European Data Protection Board (EDPB), Guidelines on the application of Article 60 GDPR, 14 March 2022, paragraphs 36 and following.

details the precise modalities for the implementation of such duty could enhance the efficiency of the cooperation procedure.

40. The EDPS would like to underline the crucial role that the EDPB should play in this context so that the future proposal should not limit itself to a further formalisation of the cooperation duties of the lead and concerned supervisory authorities. Should disagreements regarding the scope of the investigation emerge, the role of the EDPB in ensuring cooperation and consistency should be given full effect. The EDPS therefore calls on the Commission to clarify in its future proposal, the procedure to be applied to bring such issue onto the level of common decision making process in the EDPB, to ensure cooperation and consistency.
41. It should be underlined that the EDPB's role in remedying potential disagreements regarding the scope of an investigation at an early stage would not constitute an undue interference with the independence of the supervisory authorities. According to the Court's settled case law, the independence of supervisory authorities (SAs) is 'intended to ensure the effectiveness and reliability of the supervision of compliance with the provisions on protection of individuals with regard to the processing of personal data and must be interpreted in the light of that aim'. Moreover, the independence of SAs was established not to grant a 'special status' to those authorities, but in order to strengthen the protection of individuals and bodies affected by their decisions³⁴. Finally, both the GDPR itself and the Court's case law make clear that the EDPB has a key role to play in ensuring the correct and consistent application of the GDPR³⁵.
42. The EDPS would also recommend the Commission to acknowledge in its proposal the commitment made by the EDPB members in their Statement on Enforcement cooperation adopted on 28 April 2022 to collectively identify cross border cases of strategic importance in different Member States on a regular basis, for which cooperation will be prioritised and supported by EDPB. In addition to important initiatives already launched by the EDPB such as the Support Pool of Experts (SPE) or the Coordinated Enforcement Actions (CEF), such enhanced cooperation on strategic cases should indeed contribute to a more consistent enforcement of the GDPR.

4.2. Harmonising procedural rights

43. The EDPS welcomes the Commission initiative to adopt a Proposal aiming at harmonising certain procedural aspects at national level in cross-border cases, including the procedural

³⁴ See Judgment of the Court of 9 March 2010, *Commission v Germany*, C-518/07, ECLI:EU:C:2010:125, paragraph 25 (emphasis added), See also Judgment of the Court of 6 October 2015, *Maximilian Schrems v Data Protection Commissioner*, C-362/14, ECLI:EU:C:2015:650, paragraph 41. See also European Data Protection Board, Guidelines 02/2022 on the application of Article 60 GDPR, paragraphs 25-28. As the independence of the LSA, the independence of the CSAs and the EDPB must be interpreted in light of the same aim of ensuring the effectiveness and reliability of the supervision of compliance with the provisions on protection of individuals with regard to the processing of personal data, it would be incorrect to qualify EDPB involvement as an 'interference' with the independence of the LSA.

³⁵ Under Article 64(2) of the GDPR, a supervisory authority may request that any matter that is of general application or that produces effects in more than one Member State be examined by the European Data Protection Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance imposed on it by Article 61 of that regulation. See also Judgment of the Court of Justice of 15 June 2021, *Facebook Ireland Ltd and Others*, C-645/19, ECLI:EU:C:2021:483, at paragraphs 68 and 71.

rights of the parties. The EDPS shares the views that leaving the procedural laws fully to the domain of EU Member States is causing critical problems for the cooperation between data protection authorities, which leaves individuals without the protection that the GDPR promises to deliver.

44. Increased harmonisation of the procedural rights of the parties at national level is likely to be beneficial in situations where the case also needs to be dealt with at EU level, including cases that require dispute resolution in accordance with Article 65(1)(a) GDPR³⁶.
45. The EDPS deems important to recall in this connection that the EDPB has already comprehensively addressed the right to be heard as part of its Rules of Procedure³⁷ and in the context of its Guidelines on Article 65(1)(a) GDPR³⁸.
46. The right to be heard before an administration takes a measure that would adversely affect a person is enshrined in Article 41 of the Charter of Fundamental Rights and has long been recognised as a general principle of EU law³⁹. The EDPB fully recognises that it also applies in the context of ‘composite administrative procedures’, where the administration of EU law is divided or shared between EU and the Member States⁴⁰, as is the case when a case dealt with in the one-stop-shop cooperation procedure is brought before the EDPB pursuant to Article 65(1)(a) GDPR.
47. The right to be heard is described by the Court as guaranteeing ‘*every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely*’ (emphasis added)⁴¹. The purpose of the rule is to put the competent authority in a position effectively to take all relevant information into account. In order to ensure that the person concerned is in fact protected, that rule enables the concerned person to correct an error or submit such information relating to his or her personal circumstances that argue in favour of the adoption or non-adoption of the decision, or in favour of it having a specific content⁴².
48. When a LSA submits a matter to the EDPB with a view of obtaining a binding decision under Article 65(1) (a) GDPR, the latter will make an assessment as to whether every person that would possibly be adversely affected by its decision was offered the opportunity to

³⁶ European Data Protection Board (EDPB), Letter to Mr. Didier Reynders of 10 October 2022, p. 2.

³⁷ European Data Protection Board’s Rules of Procedure, available at https://edpb.europa.eu/our-work-tools/our-documents/publication-type/rules-procedure_en.

³⁸ See European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, 13 April 2021, in particular at paragraphs 94 and following.

³⁹ See e.g. Judgment of the Court of 14 February 1990, *France v. Commission*, C-301/87, paragraph 29. The right to be heard is also included in Article 16 of the European Code of Good Administrative Behaviour and reflected in Article 11 of the EDPB Rules of Procedure. See also European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, 13 April 2021, at paragraph 94.

⁴⁰ See also European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, 13 April 2021, available at paragraph 96.

⁴¹ See e.g. Judgment of the General Court of 22 November 2012, *M. M. v Minister for Justice, Equality and Law Reform and Others*, C-277/11, ECLI:EU:C:2012:744, paragraph 87; Judgment of the Court of 5 November 2014, *Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis*, C-166/13, ECLI:EU:C:2014:2336, paragraph 46; Judgment of the Court of 16 October 2019, *Glencore Agriculture Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, C-189/18, ECLI:EU:C:2019:861, paragraph 39 and the case law cited therein. See also European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, 13 April 2021, paragraph 100.

⁴² Judgment of the Court of 16 October 2019, *Glencore Agriculture Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, C-189/18, ECLI:EU:C:2019:861, paragraph 41 and 52.

exercise its right to be heard. Such an assessment is performed in accordance with the EDPB's Rules on procedure⁴³ and the EDPB's Guidelines on Article 65(1)(a)⁴⁴. In this regard, the EDPB considers that '*[i]t is not sufficient that the LSA has heard the persons who might be adversely affected in the course of the national procedure prior to the adoption of its draft decision within the meaning of Article 60(3) GDPR. Before the EDPB will be in a position to resolve the dispute, the right to be heard must also be afforded in relation to any objections raised in relation to the draft decision, in particular where the LSA chooses not to follow the objection (or considers it as not being relevant reasoned)*'⁴⁵. The EDPB has also stressed that '*[t]he accommodation of the right to be heard is an essential element of the procedure, in the absence of which the subject matter of the dispute cannot be settled by the EDPB*'⁴⁶.

49. Given the role under Article 56(6) GDPR of the LSA as 'sole interlocutor' towards a controller responsible for cross-border processing the EDPB's Rules of Procedure⁴⁷ and the Guidelines on Article 65(1)(a) GDPR task the LSA with ensuring that the right to be heard is properly administered in relation to the subject matter which is brought before the EDPB. If the LSA fails or refuses to do so, the Chair of the EDPB will instruct the Secretariat to take measures to directly ensure the right to be heard at the EDPB level. In both instances, the persons who would be adversely affected are to be invited to exercise the right to be heard on the relevant documents or information within a specific timeframe, taking into account the complexity of the subject matter⁴⁸.
50. The approach chosen by the EDPB, whereby the right to be heard is administered by the LSA and additional actions are taken by EDPB if necessary, is fully consistent with the decentralised nature of the GDPR's 'one-stop-shop' mechanism, as well as the Court's case law. By analogy, the case law of the CJEU in composite procedures involving the Commission allows the right to be heard to be observed '*either directly in its dealings with the Commission or indirectly through the [national] authorities, or through the combination of those two administrative channels*'⁴⁹. From the case law it appears that the Commission may, if it so chooses, offer a hearing *indirectly*. *Mutatis mutandis*, the same possibilities to offer indirect hearings apply when the duty to hear falls to the EDPB. What is critical is that, over the course of the procedure, the adversely affected individual will have had the opportunity to state her views on the facts and points of law that the Board will actually rely upon in making its binding decision⁵⁰.
51. The EDPS further recalls that while the right to be heard requires the possibility to comment on the points of law and fact relevant for the EDPB's decision, there is no right

⁴³ See Article 11 of European Data Protection Board's Rules of Procedure.

⁴⁴ European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, in particular at paragraphs 99 and following.

⁴⁵ *Ibid*, paragraph 105.

⁴⁶ *Ibid*, paragraph 107.

⁴⁷ Article 11(2) of the European Data Protection Board's Rules of Procedure.

⁴⁸ European Data Protection Board, Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, paragraph 108.

⁴⁹ See Judgment of the Court of First Instance of 19 June 1997, *TAT European Airlines v Air Inter*, T-260/94, ECLI:EU:T:1997:89, paragraph 65.

⁵⁰ Judgment of the Court of 26 October 2017, *Global Steel Wire, SA and Others v European Commission*, Joined Cases C-454/16 P to C-456/16 P and C-458/16 P, ECLI:EU:C:2017:818, paragraph 66.

under EU law to be provided the draft decision, as such, of a Union authority⁵¹. The right to be heard also does not require oral hearings in the absence of specific provisions in that sense⁵².

52. Against this background, the EDPS considers that it may also be useful for the Commission to clarify in its future Proposal the relationship between the procedural obligations incumbent upon national DPAs in cross-border cases and those of the EDPB in the context of the consistency mechanism, in a manner that confirms the approach described in the preceding paragraphs (e.g. by explicitly requiring the LSA to invite the relevant controller or processor to exercise its right to be heard in relation to the material that will be put before the EDPB and to include the relevant submissions in the file when submitting the matter for dispute resolution to the EDPB).

4.3. Looking ahead

53. As indicated in the introduction, the EDPS fully supports the aim of streamlining cooperation among data protection authorities by way further specifying procedural rules relating to the enforcement of the GDPR. At the same time, the EDPS is of the view that harmonisation of procedural aspects would be a step in the right direction, but it is by no means a silver bullet. It will not solve all structural issues related to the GDPR's one stop shop mechanism, in particular those related to unequal burden sharing between supervisory authorities. In its current form, the 'one stop shop' benefits primarily larger companies, who thanks to their resources, can benefit from the lack of strong enforcement and further expand their advantage over small competitors. The EDPS therefore remains of the view that at a certain moment a pan-European data protection enforcement model is going to be a necessary step to ensure real and consistent high-level protection of fundamental rights to data protection and privacy across the European Union⁵³.

5. Conclusion

54. The EDPS welcomes the aim of the Commission to further streamline cooperation among national DPAs when enforcing the GDPR. The forthcoming proposal provides an opportunity to also streamline cooperation between national DPAs and the EDPS, each acting within their own sphere of competence. In order to ensure a strong and coherent data protection framework in the Union, the Commission's proposal should ensure that national DPAs and the EDPS can cooperate effectively in all supervision and enforcement

⁵¹ See, for instance, Judgment of the Court of First Instance of 15 March 2006, *BASF AG v Commission of the European Communities*, T-15/02, ECLI:EU:T:2006:74, paragraph 94.

⁵² Among many, see Judgment of the General Court of 27 September 2005, *Common Market Fertilizers v Commission*, T-135/03, ECLI:EU:T:2005:339, para 108; also Judgment of 20 September 2016, *Alsharghawi v. Council*, T-485/15, ECLI:EU:T:2016:520, para 120 and judgment of 7 November 2019, *ADDE v. European Parliament*, T-48/17, ECLI:EU:T:2019:780, para. 35.

⁵³ See European Data Protection Supervisor (EDPS), Speech at the "Future of Data Protection: Effective Enforcement in the Digital World" conference, 16 & 17 June 2022, available at https://edps.europa.eu/system/files/2022-06/2022-06-17-edps-conference-speech_en.pdf.

cases where personal data flows from EUI's to public bodies or private entities within the European Economic Area (EEA), and vice-versa.

55. The EDPS proposes two specific measures to help achieve this goal in the short term, namely:

(1) To include in the COM's forthcoming initiative a specific provision confirming that:

- all data protection authorities must cooperate actively to ensure effective supervision and consistent enforcement of all the Union's data protection rules;
- all data protection authorities must carry out such cooperation in accordance with Articles 61, 62, 64(2), and 66(3) GDPR, Article 50 LED as well as Articles 61 and 62 EUDPR; and
- the EDPS shall, for purpose of cooperation with national DPAs in accordance with Chapter VII EUDPR, be considered as a "supervisory authority" within the meaning of Chapter VII of the GDPR and Chapter VII of the LED.

(2) To amend, in accordance with Article 11 of Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), the Annex of the IMI Regulation.

56. As regards the cooperation and consistency mechanism under the GDPR, the EDPS considers that the Commission's Proposal should not limit itself to a further formalisation of the cooperation duties of the lead and concerned supervisory authorities. It should leverage the essential role of the EDPB in promoting cooperation and consistency and clarify the procedures to be applied to bring relevant issues onto the level of common decision making process in the EDPB at an early stage when necessary. The EDPS also considers that the future Proposal should clarify the relationship between the procedural obligations incumbent upon national DPAs in cross-border cases and those of the EDPB in the context of the consistency mechanism in a manner that is consistent with the EDPB's current approach to ensuring compliance with the right to good administration.

57. While EDPS remains of the view that procedural harmonisation will not be able to resolve all structural issues related to the GDPR's one stop shop mechanism, the EDPS fully supports the current initiative as being an important step in the right direction.

Annex I - Draft Article to clarify the modalities of cooperation between EDPS and national DPAs

Article X

Cooperation between supervisory authorities [for the protection of the individual's rights and freedoms with regard to privacy and the processing of personal data]

1. The supervisory authorities established under Regulation (EU) 2016/679⁽¹⁾, the supervisory authorities established under Directive (EU) 2016/680⁽²⁾, the supervisory authority established under Regulation (EU) 2018/1725⁽³⁾ ('European Data Protection Supervisor'), as well as the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA⁽⁴⁾, shall cooperate actively and to the extent necessary for the performance of their respective duties to ensure effective supervision and consistent enforcement of Regulation (EU) 2016/679, Directive (EU) 2016/680, Regulation (EU) 2018/1725, of the large-scale IT systems, [and of any other Union and Member State act relating to the protection of the individual's rights and freedoms with regard to privacy and the processing of personal data].
2. The supervisory authorities referred to in paragraph 1 shall carry out such cooperation in accordance with Articles 61, 62, 64(2), and 66(3) of Regulation (EU) 2016/679, Article 50 of Directive (EU) 2016/680, Articles 61 and 62 of Regulation (EU) 2018/1725, and any other relevant provisions of Union law.
3. For the purposes of cooperation mentioned in paragraph 2, the European Data Protection Supervisor shall be considered a supervisory authority within the meaning of Chapter VII of Regulation (EU) 2016/679 and within the meaning of Chapter VII of Directive (EU) 2016/680.
4. For the purposes laid down in paragraphs 1 to 3, the supervisory authorities under Regulation (EU) 2016/679, the supervisory authorities under Directive (EU) 2016/680 and the European Data Protection Supervisor shall exchange information through secure electronic means using a common information and communication systems. The European Data Protection Board shall be responsible for the implementation of such systems.

Corresponding recitals

- (1) The supervisory authorities established under Regulation (EU) 2016/679⁽¹⁾, the supervisory authorities established under Directive (EU) 2016/680⁽²⁾, the supervisory authority established under Regulation (EU) 2018/1725⁽³⁾ ('European Data Protection Supervisor'), as well as the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA⁽⁴⁾, often need to cooperate actively and to the extent necessary for the performance of their respective duties to ensure effective supervision and consistent enforcement of Regulation (EU) 2016/679, Directive (EU) 2016/680, Regulation (EU) 2018/1725, of the large-scale IT systems notably in the area of freedom, security and justice, and any other Union and Member State act relating to the protection of the individual's rights and freedoms with regard to privacy and the processing of personal data. While such cooperation already takes place to a certain extent, it has been prevented from deploying its full potential by the segmentation of the provisions governing the competences of such authorities. Therefore, a provision should be added clarifying the duty to cooperate for such authorities to ensure effective supervision and enforcement of their respective legal frameworks.
- (2) The scope of such cooperation should be clearly defined. Supervisory authorities referred to in paragraph 1 should therefore carry out such cooperation in accordance with Articles 61, 62, 64(2), and 66(3) of Regulation (EU) 2016/679, Article 50 of Directive (EU) 2016/680, Articles 61 and 62 of Regulation (EU) 2018/1725, and any other relevant provisions of Union law.
- (3) For the purposes of such cooperation, the European Data Protection Supervisor should be considered a supervisory authority within the meaning of Chapter VII of Regulation (EU) 2016/679 and within the meaning of Chapter VII of Directive (EU) 2016/680.
- (4) All supervisory authorities should cooperate and exchange information by using a common electronic information and communication system, ensuring data security and confidentiality. The European Data Protection Board should implement this system, such as for example the Internal Market Information System established under Regulation (EU) No 1024/2012⁽⁵⁾.

References:

- (1) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.
- (2) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).
- (3) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).
- (4) Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).
- (5) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), OJ L 316, 14.11.2012, p. 1–11.

Annex II - Overview of procedures for cooperation between data protection authorities other than the GDPR

EUDPR	LED	Europol	Eurojust	EPPO
<p><i>Article 61</i></p> <p>Cooperation between the European Data Protection Supervisor and national supervisory authorities</p>	<p><i>Article 50</i></p> <p>Mutual assistance</p>	<p><i>Article 44</i></p> <p>Cooperation between the EDPS and national supervisory authorities</p>	<p><i>Article 42</i></p> <p>Cooperation between the EDPS and national supervisory authorities</p>	<p><i>Article 87</i></p> <p>Cooperation between the European Data Protection Supervisor and national supervisory authorities</p>
<p>The European Data Protection Supervisor shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA ⁽¹⁹⁾ to the extent necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each</p>	<p>1. Each Member State shall provide for their supervisory authorities to provide each other with relevant information and mutual assistance in order to implement and apply this Directive in a consistent manner, and to put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as</p>	<p>1. The EDPS shall act in close cooperation with the national supervisory authorities on issues requiring national involvement, in particular if the EDPS or a national supervisory authority finds major discrepancies between the practices of Member States or potentially unlawful transfers in the use of Europol's channels for exchanges of information, or in the</p>	<p>1. The EDPS shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the EDPS or a national supervisory authority finds major discrepancies between practices of the Member States or potentially unlawful transfers using Eurojust's communication channels, or in the context of</p>	<p>1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of Member States of the European Union or finds potentially</p>

EUDPR	LED	Europol	Eurojust	EPPO
<p>other to exercise their powers and responding to each other's requests.</p>	<p>requests to carry out consultations, inspections and investigations.</p>	<p>context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.</p>	<p>questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.</p>	<p>unlawful transfers using the communication channels of the EPPO, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.</p>
<p><i>Article 62</i></p> <p>Coordinated supervision by the European Data Protection Supervisor and national supervisory authorities</p> <p>1. Where a Union act refers to this Article, the European Data Protection Supervisor and the national supervisory authorities, each acting within the scope of their respective competences, shall cooperate actively within</p>	<p>2. Each Member States shall provide for each supervisory authority to take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.</p>	<p>2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725. The EDPS shall use the expertise and experience of the national supervisory authorities in carrying out his or her duties as set out in Article 43(2) of this Regulation.</p> <p>In carrying out joint inspections together with the EDPS, members and staff of national</p>	<p>2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725.</p>	<p>2. In the cases referred to in paragraph 1, the European Data Protection Supervisor and the national supervisory authorities competent for data protection supervision may, each acting within the scope of their respective competences, exchange relevant information, and assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study</p>

EUDPR	LED	Europol	Eurojust	EPPO
<p>the framework of their responsibilities to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies.</p>		<p>supervisory authorities shall, taking due account of the principles of subsidiarity and proportionality, have powers equivalent to those laid down in Article 43(4) of this Regulation and be bound by an obligation equivalent to that laid down in Article 43(6) of this Regulation.</p>		<p>problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems, and promote awareness of data protection rights, as necessary.</p>
<p>2. They shall, as necessary, each acting within the scope of their respective competences and within the framework of their responsibilities, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation and other</p>	<p>3. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.</p>	<p>3. The EDPS shall keep national supervisory authorities fully informed of all issues directly affecting or otherwise relevant to them. Upon the request of one or more national supervisory authorities, the EDPS shall inform them of specific issues.</p>	<p>3. The EDPS shall keep national supervisory authorities fully informed of all issues that directly affect them or are otherwise relevant to them. Upon a request from one or more national supervisory authorities, the EDPS shall inform them on specific issues.</p>	<p>3. The European Data Protection Board established by Regulation (EU) 2016/679 shall also carry out the tasks laid down in Article 51 of Directive (EU) 2016/680 with regard to matters covered by this Regulation, in particular those referred to in paragraphs 1 and 2 of this Article.</p>

EUDPR	LED	Europol	Eurojust	EPPO
<p>applicable Union acts, study problems with the exercise of independent supervision or with the exercise of the rights of data subjects, draw up harmonised proposals for solutions to any problems and promote awareness of data protection rights.</p>				
<p>3. For the purposes laid down in paragraph 2, the European Data Protection Supervisor and the national supervisory authorities shall meet at least twice a year within the framework of the European Data Protection Board. For these purposes, the European Data Protection Board may develop further working methods as necessary.</p>	<p>4. The requested supervisory authority shall not refuse to comply with the request unless:</p> <p>(a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or</p>	<p>4. In cases relating to data originating from one or more Member States, including the cases referred to in Article 47(2), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their opinion, within a deadline specified by him or her which shall not be</p>	<p>4. In cases relating to data originating from one or several Member States, including cases referred to in Article 43(3), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their position, within a deadline specified by the EDPS. That deadline shall</p>	

EUDPR	LED	Europol	Eurojust	EPPO
	<p>(b) compliance with the request would infringe this Directive or Union or Member State law to which the supervisory authority receiving the request is subject.</p>	<p>shorter than one month and not longer than three months from when the EDPS consults the national supervisory authorities concerned. The EDPS shall take the utmost account of the respective positions of the national supervisory authorities concerned. Where the EDPS intends not to follow the position of a national supervisory authority, he or she shall inform that authority, provide a justification and submit the matter to the European Data Protection Board.</p>	<p>not be shorter than one month or longer than three months. The EDPS shall take utmost account of the position of the national supervisory authorities concerned. In cases where the EDPS intends not to follow their position, he or she shall inform them, provide a justification, and submit the matter to the European Data Protection Board.</p> <p>In cases which the EDPS considers to be extremely urgent, he or she may decide to take immediate action. In such cases, the EDPS shall immediately inform the national supervisory authorities concerned and substantiate the urgent nature of the situation and justify the action he or she has taken.</p>	

EUDPR	LED	Europol	Eurojust	EPPO
<p>4. The European Data Protection Board shall submit a joint report of coordinated supervision activities to the European Parliament, to the Council, and to the Commission every two years.</p>	<p>5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.</p>		<p>5. National supervisory authorities shall keep the EDPS informed of any actions they take with respect to the transfer, retrieval, or any other communication of operational personal data under this Regulation by the Member States.</p>	
	<p>6. Requested supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.</p>			
	<p>7. Requested supervisory authorities shall not charge a fee for</p>			

EUDPR	LED	Europol	Eurojust	EPPO
	<p>any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.</p>			
	<p>8. The Commission may, by means of implementing acts, specify the format and procedures for mutual assistance referred to in this Article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board. Those implementing acts shall be adopted in accordance with the examination</p>			

EUDPR	LED	Europol	Eurojust	EPPO
	procedure referred to in Article 58(2).			