



EUROPEAN DATA  
PROTECTION SUPERVISOR

# Annual Activity Report

2013

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# 1. Introduction

The Financial Regulation (Article 66(9)<sup>1</sup>) provides that each **authorising officer by delegation** (AOD) shall send an [annual activity report](#) to their institution, together with financial and management information. This report shall present the achievements of their unit in relation to the resources used. It shall also be a management report on performance in the context of their task as AOD. This requirement is the logical consequence of paragraph 2<sup>2</sup> of this same article, which gives the AOD responsibility for internal controls.

In the annual activity report of the AOD, this latter must include a statement of assurance ("Statement") based on their own judgment and on the information available in which the AOD:

- states that the information contained in his/her report gives a true and fair view;
- declares that s/he has reasonable assurance that the resources allocated to the activities described in the report have been used for their intended purposes and in accordance with principles of sound financial management, and that the control procedures put in place give the necessary guarantees as to the legality and regularity of the underlying transactions;
- confirms that the AOD is not aware of any matter not reported which could harm the interests of the institution.

<sup>1</sup> Financial Regulation, Article 66(9): The authorising officer by delegation shall report to his or her institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

No later than 15 June each year, the Commission shall send to the European Parliament and the Council a summary of the annual activity reports for the preceding year. The annual activity report of each authorising officer by delegation shall also be made available to the European Parliament and the Council.

<sup>2</sup> Financial Regulation, Article 66(2): For the purposes of paragraph 1, the authorising officer by delegation shall, in accordance with Article 32 and the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost effectiveness.

## 2. Operational achievements

Each year, the EDPS publishes an 'Annual Report' giving an overview of the objectives and achievements of the institution's work. Information on operational achievements can be found in the annual report<sup>3</sup>.

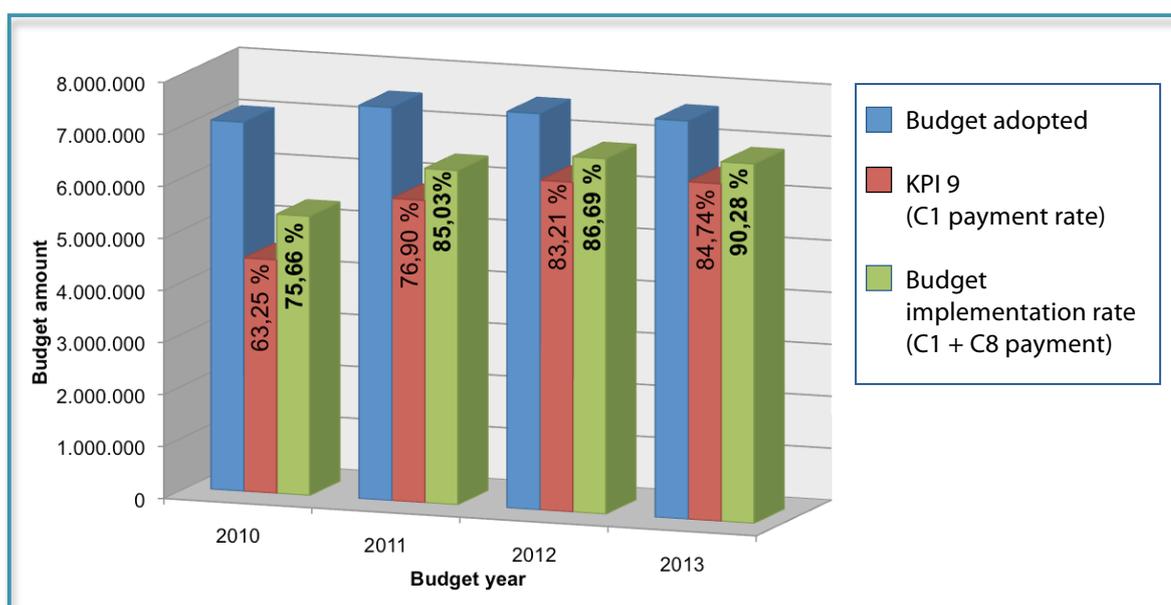
## 3. Resource management

The budget for 2013 adopted by the budgetary authority was EUR 7 661 409.00 (see Annex 2). This represented a 0.49% increase compared to the 2012 budget.

As set in our KPI 9 (see table in page 12), the implementation rate in payment appropriations for 2013 was 84,7% as opposed to 83,2% for 2012.

The overall budget implementation rate for 2013 is expected to be of 90.28%.

### EVOLUTION OF BUDGET IMPLEMENTATION 2010 - 2013



The EDPS applies the European Commission's internal regulations as regards budget implementation, insofar as these rules are applicable to the structure and size of the institution and provided that the EDPS has not adopted specific rules.

On the basis of the inter-institutional cooperation agreement, the Accounting Officer of the Commission has been appointed the Accounting Officer of the EDPS and the Internal Auditor of the Commission has been appointed the Internal Auditor of the EDPS.

<sup>3</sup> <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/lang/en/AR>

## 4. Management and internal control systems

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### 4.1. Characteristics and nature of activities and risks

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#### 4.1.1. THE MISSION OF THE EDPS

##### ***4.1.1.1. The EDPS is the European guardian of data protection***

The EDPS is the European Union's independent data protection authority. It monitors and oversees the protection of personal data and privacy when EU institutions and bodies process the personal information of individuals.

The EDPS advises EU institutions and bodies on all matters relating to the processing of personal information. It is consulted by the EU legislator on proposals for legislation and new policy development. It also monitors new technology that may affect the protection of personal information. It intervenes before the EU Court of Justice to provide expert advice on interpreting data protection law. Finally, it cooperates with national supervisory authorities and other supervisory bodies to improve consistency in protecting personal data.

##### ***4.1.1.2. Data protection is crucial for society***

The protection of personal data is vital for citizens of the information society. As people become increasingly dependent on the use of information technology (for example, online payments, social networks, search engines) and as personal information is collected or generated on an ever increasing scale, it is more important than ever that individual liberties are adequately protected.

Data protection rules exist to protect individuals and facilitate the lawful processing of their personal information. They are closely related to the right that individuals have to private life, and must for instance ensure that individuals are not monitored in an abusive or uncontrolled manner. The purpose is to enable individuals to exercise their rights and protect their legitimate interests.

The fundamental right to data protection and privacy can only be made a reality if data protection rules are effectively complied with in practice.

#### **4.1.1.3. Ensuring the protection of the fundamental right to privacy**

The EDPS is an independent authority with expertise in the field of EU data protection and the broader national and international arena. Its aim is to work strategically to promote 'a data protection culture' in EU institutions and bodies, thus contributing to improvements in good administration and effective risk management. It works to integrate respect for data protection principles in EU legislation and policies and seeks to improve the quality of EU policies whenever effective data protection is a basic condition for their success.

It is successful when it communicates the data protection message and involves all the stakeholders concerned. If necessary, it also uses its powers of investigation and enforcement to ensure there is compliance.

#### **4.1.1.4. Communicating data protection: a key condition for making it more effective**

The EDPS aims to raise awareness of data protection and inform individuals on the existence and content of their rights. To gain public confidence, understanding and support, it is essential to have increased transparency of processing of personal information at EU level and more information on EU data protection. This is why the EDPS communicates in ways that are easy for the public to understand.

### **4.1.2. THE DEVELOPING ROLE OF THE EDPS**

As a **regulator** and a supervisory and enforcement body, the EDPS is putting more pressure on the EU administration to increase its compliance with data protection rules. To do this the EDPS is intensifying its supervision and follow-up activities by carrying out prior checks, inquiries, visits and inspections. It has developed external tools to help data controllers achieve compliance, providing better support to Data Protection Officers (DPOs) and Data Protection Coordinators (DPCs) such as training, guidelines and monitoring surveys. After the political announcement in the EDPS paper on compliance and enforcement of December 2010, it has increasingly applied its enforcement powers where necessary.

As an **advisor**, the EDPS is receiving more requests for formal and informal opinions both on administrative measures and legislative initiatives. Data protection is clearly expanding in all areas of EU policy as new instruments are created using IT tools to aid the exchange of information. It is now also an integral partner for the EU institutions, which regularly consult it when developing policy and legislation. Furthermore, it increasingly provides expert advice on interpreting data protection law in court cases, whether on its own initiative or at the request of the courts.

**Cooperation** with other supervisory authorities is also increasing as a result of playing a more active role in the work of the fora of the EU's data protection authorities (e.g. the Article 29 Working Party), as well as through the consolidation and expansion of the so-called **coordinated supervision** method. This is a model of supervision for large scale European IT systems involving both the EDPS and the national data protection authorities (DPAs), where the EDPS acts as the Secretariat.

In a hyper-connected world with constantly changing technologies and increasing exchanges of personal information, the protection of personal data requires global, **coordinated and cross-border approaches**. As a result, innovative initiatives to promote data protection have also been pursued by the EDPS in the International Conference of Data Protection and Privacy Commissioners, in the European Data Protection Conference, and in the context of the OECD, the Council of Europe and the Berlin group (international expert group on data protection and communications), as well as in a series of workshops on data protection as part of 'good governance' in international organisations.

As awareness of data protection issues within the EU administration has increased over the years, the **visibility** of the EDPS has also steadily increased. This has naturally given rise to greater interaction with EU and national institutions, citizens and media, with stakeholders referring more frequently to the EDPS on a broader range of issues.

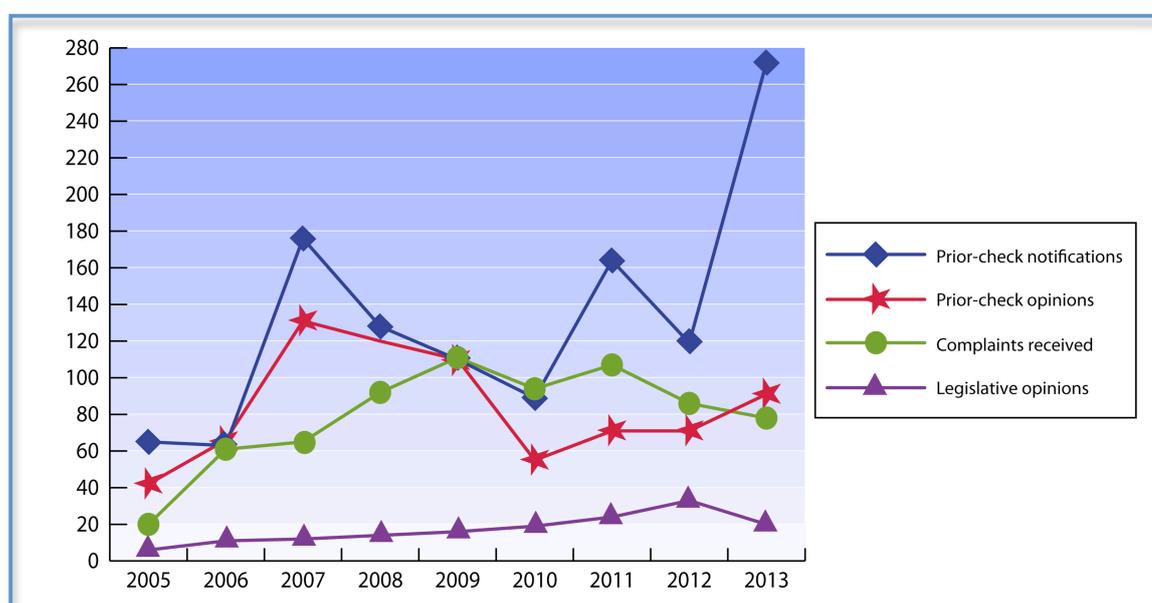
### **Adapting to new challenges**

In addition to the increase in its activities, the EDPS also faces several key developments:

- the accelerating use of the internet and new technologies, such as cloud computing and big data;
- the growing awareness of the risks of massive surveillance, and the need for appropriate responses, as accelerated by the Snowden revelations;
- the growing role of fundamental rights in EU policies, as also underlined by the case law of the Court of Justice;
- the adoption and continuing implementation of multiannual programmes for the area of freedom, security and justice and the crucial importance of data protection in this area, in particular where the balancing of the needs of law enforcement with fundamental rights is at stake;
- the adoption, revision and continuing implementation of the Commission strategy to generate growth and confidence in the internet (the Digital Agenda) and its impact on data protection, and
- the ongoing review process of the EU data protection legal framework, including the sensitive issue of governance and its implications for cooperation between data protection authorities, which is supposed to be adopted by the end of 2014/beginning 2015.

The Lisbon Treaty introduced a strong legal basis for comprehensive data protection in all areas of EU policy, which has put considerable pressure on the limited resources of the EDPS. The end of the traditional separation of EU policy ‘pillars’ (European Communities and police and judicial cooperation in criminal matters) has led to a greater number of ‘law enforcement’ processing activities falling under the scope of EU law and thus becoming subject to the supervision of the EDPS.

The following graph shows a marked increase over the years in all areas of EDPS activities, requiring a considerable investment of resources, and yet staffing has not increased at a commensurate rate. The developments outlined above also indicate that the increased workload is likely to continue in most areas. To address this continual increase effectively and efficiently, the EDPS will need ‘to do more with less’, within present staffing constraints.



The EDPS only has annual appropriations of a relatively small amount with which to perform its tasks. It has adopted the specific internal control procedures that it considers best adapted to its needs, in line with the size of the institution and its activities. The aim is to provide management with reasonable assurance that the institution’s objectives, and the risk management related to its activities, are being achieved. The EDPS has made progress in identifying the risks related to its increased activities, particularly through the adoption of a decision on risk management in July 2012. This facilitated a more structured approach towards risk management, as demonstrated by the adoption of the final table of risks (see *Annex 4*) following the workshops held in 2012 and in 2013, as provided for in that decision. A revised decision on internal controls has been adopted in 2013.

The EDPS has no operational activities in the sense of activity-based budgeting, as in the Commission, but does have (limited) administrative expenditure. All financial and contractual commitments are submitted for the agreement of the authorising officer by delegation or sub-delegation and verified in advance by a member of his team. The introduction of a new internal financial verification system, the appointment of an Accounting Correspondent and the adoption of an ex post verification system have led to a considerable strengthening of the organisation’s internal controls.

## 4.2. Strategy 2013-2014

### Strategy

#### 2013-2014

In the **Strategy 2013-2014**, adopted in December 2012, the EDPS identified a number of strategic objectives to help increase the impact of his core activities on data protection at European level. To assess the progress towards these objectives, EDPS identified the activities which play a key role in achieving his goals. The related key performance indicators (KPIs) will help the institution to monitor and adjust, if needed, the impact of his work and the efficiency of the use of resources.

This chapter reports on the performance of EDPS activities in 2013, in accordance with the objectives and action plans defined in the Strategy 2013-2014.

Overall, the results show a positive trend in the performance of the activities. The implementation of the strategy is broadly on track and no corrective measures are needed at this stage.

The strategy will be further developed and strengthened to respond effectively to the challenge of achieving excellence in European data protection beyond 2014.

### 4.2.1. EDPS STRATEGIC OBJECTIVES

The achievement of the **strategic objectives** will improve the effectiveness and impact of the core activities and thus maximise the impact of data protection at European level.

1. **Promote a ‘data protection culture’ within the EU institutions and bodies so that they are aware of their obligations and accountable for compliance with data protection requirements.**
2. **Ensure that the EU legislator (Commission, Parliament and Council) is aware of data protection requirements and integrates data protection in new legislation.**
3. **Improve the good cooperation with data protection authorities, in particular the Article 29 Working Party, to ensure greater consistency of data protection in the EU.**
4. **Develop an effective communication strategy.**
5. **Improve the use of human, financial, technical and organisational resources.**

## 4.2.2. ACTION PLAN

To meet those objectives, the EDPS has assessed and prioritised its activities to reflect the review's internal and external results. The institution has identified the following priorities for each strategic objective set out in part 4.2.1 above.

### OBJECTIVE 1

*Promote a 'data protection culture' within the EU institutions and bodies so that they are aware of their obligations and accountable for compliance with data protection requirements.*

- Provide guidance and training for data controllers, DPOs and DPCs.
- Increase awareness-raising initiatives within EU institutions and bodies through workshops, meetings, seminars, training and conferences.
- Raise awareness of data protection at all managerial levels and in various fora.
- Promote dialogue with data controllers, DPOs and DPCs.
- Increase the number of its visits and inspections as an element of its compliance and enforcement policy.
- Promote and provide guidance on the application of the principles of 'Privacy by Design' and 'Privacy by Default'.

### OBJECTIVE 2

*Ensure that the EU legislator (Commission, Parliament and Council) is aware of data protection requirements and integrates data protection in new legislation.*

- Extend timely and authoritative advice to the EU legislator on all matters to do with processing personal information during all stages of legislation and policy development.
- Increase its use of the policy initiatives inventory, being more selective in identifying those initiatives in which respect for data protection is essential.
- Issue guidelines with advice to the legislator and policy makers on horizontal issues.
- Improve contacts with the EU legislative institutions at all levels. This includes regular informal contacts to provide early policy input and to remain influential until the end of the legislative process.
- Assess the privacy risks of new technologies by collecting and analysing information as appropriate.

### OBJECTIVE 3

*Improve the good cooperation with data protection authorities, in particular the Article 29 Working Party, to ensure greater consistency of data protection in the EU.*

- Contribute actively to the Article 29 Working Party by participating in its subgroups, drafting opinions and other texts, and looking for greater synergy with its activities.
- Cooperate with other DPAs on technology-related policy and enforcement issues and exchange experience and best practice with their technology experts.
- Further develop the methods of, and issue guidelines for, the coordinated supervision of the increasing number of large-scale IT systems.

### OBJECTIVE 4

*Develop an effective communication strategy.*

- Update and develop the EDPS website.
- Develop new communication tools to make EDPS core activities more visible.
- Raise awareness of data protection through workshops, meetings and seminars.
- Use straightforward language to make technical issues more accessible.

### OBJECTIVE 5

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

- Further develop business planning and monitoring.
- Implement an effective training policy to develop professional skills.
- Better plan, perform and monitor the spending of financial resources.
- Develop a more strategic management of human resources.
- Strengthen administrative cooperation with other EU institutions.
- Develop and implement a total quality management system.
- Modernise case and knowledge management.
- Develop the internal IT strategy of the EDPS.

### 4.2.3. MEASURING PERFORMANCE

The KPI scoreboard contains a brief description of the KPIs and the methods of calculation.

The indicators are measured against initial targets in most cases. For three indicators, the results of 2013 will set the benchmark for coming years.

The EDPS included the first set of results in its Annual Report 2013.

KPIs	Description	Results 2013	Target 2013
<b>KPI 1</b>	Number of inspections/visits carried out. <u>Measurement</u> : compared to target	3 visits 8 inspections	8 minimum
<b>KPI 2</b>	Number of awareness-raising and training initiatives within EU institutions and bodies which we have organised or co-organised (workshops, meetings, conferences, training and seminars). <u>Measurement</u> : compared to target	4 trainings  4 workshop (3 in cooperation with ITP)	8 workshops + trainings
<b>KPI 3</b>	Level of satisfaction of DPOs/DPCs on training and guidance. <u>Measurement</u> : DPOs/DPCs satisfaction survey to be launched every time a training is organised or a guidance is issued	DPO basic training: 70% positive feedback EDA staff training: 92% positive feedback	60% positive feedback
<b>KPI 4</b>	Number of EDPS formal and informal opinions provided to the legislator. <u>Measurement</u> : compared to previous year	Opinions: 20 Formal comments: 13 Informal comments: 33	<u>2013 as benchmark</u>
<b>KPI 5</b>	Rate of implementation of cases in our policy inventory which we have identified for action. <u>Measurement</u> : percentage of "Red" initiatives (where the deadline for comments has expired) implemented as planned in the Inventory 2013	90% (18/20)	90%
<b>KPI 6</b>	Number of cases dealt with by the Article 29 Working Party for which the EDPS has provided a substantial written contribution. <u>Measurement</u> : compared to previous year	13	<u>2013 as benchmark</u>
<b>KPI 7</b>	Number of cases in which guidance is provided on technological developments. <u>Measurement</u> : compared to target	21	20
<b>KPI 8</b>	Number of visits to the EDPS website. <u>Measurement</u> : compared to previous year	293 029 (+63% in comparison to 2012)	90%
<b>KPI 9</b>	Rate of budget implementation. <u>Measurement</u> : amount of payments processed during the year divided by the budget of the year	84.7%	85%
<b>KPI 10</b>	Rate of training implementation for EDPS staff. <u>Measurement</u> : number of actual training days divided by the number of estimated training days	85%	80%

The KPIs implement the strategic objectives as follows:

- 1. Promote a 'data protection culture' within the EU institutions and bodies so that they are aware of their obligations and accountable for compliance with data protection requirements.**

KPIs numbers 1, 2 and 3. All targets have been achieved.

- 2. Ensure that the EU legislator (Commission, Parliament and Council) is aware of data protection requirements and integrates data protection in new legislation.**

KPIs numbers 4 and 5. The target for KPI number 5 has been achieved. The results of 2013 will determine the target for KPI numbers 4.

- 3. Improve the good cooperation with data protection authorities, in particular the Article 29 Working Party, to ensure greater consistency of data protection in the EU.**

The results of 2013 will determine the target for KPI number 6.

KPI number 7 refers to strategic objectives 1, 2 and 3. The target has been achieved.

- 4. Develop an effective communication strategy.**

The results of 2013 will determine the target for KPI number 8.

- 5. Improve the use of the EDPS human, financial, technical and organisational resources**

KPIs numbers 9 and 10. The target for KPI number 10 has been achieved.

We did not achieve the target for KPI number 9. In this respect, whilst we increased our budget implementation rate the final result fell short of the target, following the decision by the Court of Justice on the adjustment of salaries of EU staff. If the Court had approved the Commission's proposed approach, our final implementation rate (84.7%) would have been higher (87.2%) and would have achieved our target.

## 4.2.4. CORE VALUES AND GUIDING PRINCIPLES

The EDPS took account of the stakeholders' feedback when preparing its core values, guiding principles and action plan in the Strategy 2013-2014. The following main principles set out how to approach tasks and how to work with stakeholders.

### 4.2.4.1. The core values

The EDPS is guided by the following core values in all its work:

- **Impartiality** – working within the legislative and policy framework given to it, being independent and objective, finding the right balance between the interests at stake.
- **Integrity** – upholding the highest standards of behaviour and doing what is right even if it is unpopular.
- **Transparency** – explaining what it is doing and why, in clear language that is accessible to all.
- **Pragmatism** – understanding its stakeholders' needs and seeking solutions that work in practice.

### 4.2.4.2. General principles

1. The EDPS serves the public interest to ensure that EU institutions comply with data protection policy and practice. It contributes to wider policy as far as it affects European data protection.
2. Using its expertise, authority and formal powers it aims to build awareness of data protection as a fundamental right and as a vital part of good public policy and administration for EU institutions.
3. It focuses its attention and efforts on areas of policy or administration that present the highest risk of non-compliance or impact on privacy. It acts selectively and proportionately.

### 4.3. Inter-institutional cooperation

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The EDPS has a general inter-institutional cooperation agreement by virtue of the agreement signed in 2004 with the Secretaries-General of the Commission, the Parliament and the Council, which was extended in 2006 (for a three year period) and in 2010 (for a two-year period) without further participation from the Council. A further extension of the agreement was signed by the Secretary General of the Parliament and EDPS in December 2011 for a further two year period (with no further participation by the Commission, as all the services provided by the Commission were covered by dedicated SLAs) and on the fifteen of July 2013, a final cooperation agreement with the Parliament was signed for indefinite duration. This cooperation is crucial for the EDPS as it enables increased efficiency as well as economies of scale.

As the EDPS moved to a new European Parliament building in October 2012, the annexes to this inter-institutional agreement relating to the European Parliament were renegotiated. This relates in particular to aspects of IT, security and mail. These annexes were signed on the seventeenth of April 2013.

Furthermore, this inter-institutional cooperation continued in 2013, primarily with the Internal Audit Service of the European Commission.

The IAS and the EDPS have a common interest in audits. A Memorandum of Understanding (MoU) has therefore been signed to enable the two organisations to fulfil their roles in the most effective way. This was signed in full observance of their respective rights, obligations and independence, as stated in their incorporation documents.

Since September 2004, when the IAS was appointed internal auditor for the EDPS, this department has provided audit services in the context of the inter-institutional agreement between the European Parliament, the European Commission and the EDPS. In view of the termination of the cooperation agreement with the Commission which occurred end of 2013, the EDPS and IAS have concluded an SLA in 2012 in order to preserve the continuation of the audit function beyond the end of the administrative cooperation agreement. This gives the mandate for the IAS to carry out its audit engagement in the EDPS.

Finally, an IAS mission charter was also signed. This charter sets out the mission, objectives, reports and working methods that are essential to the successful fulfilment of the role of the IAS in relation to the EDPS.

To conclude, the institution is a member of various inter-institutional committees and working parties, including the College of Heads of Administration, the Sickness Insurance Management Committee, the Preparatory Committee for matters relating to the Staff Regulations, the Staff Regulations Committee, the EUSA inter-institutional working group<sup>4</sup>, the EPSO/EUSA Management Board<sup>4</sup>, the EPSO working group<sup>4</sup>, the Common Joint Committee and the Preparatory Committee on Social Affairs.

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<sup>4</sup> As an observer

## 4.4. Events during the year that affected reputation

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There were no events during 2013 that might have had a negative impact on the institution's reputation.

## 4.5. Internal control management system

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The internal control management system, in place since 2006, manages the risk of failing to achieve the institution's objectives. In 2012, the list of implementing measures was extended to provide effective internal control of the processes in place. By way of example, measures taken to implement the internal controls standards (ICS) include: a revised version of all job descriptions; internal rules of procedure adopted in December 2012 (based on Article 46(k) of Regulation (EC) No 45/2001); the presentation of unit activities to all staff; a guide to accessing documents; and a record of new risks.

A revised decision on the ICS has been adopted in January 2013 to simplify the approach, increase ownership and reinforce effectiveness.

The three-level system of activities planning (strategic, annual and weekly) forms the basis on which the EDPS manages its workload. This planning was implemented in detail in 2013.

According to Art.13 of the EDPS Rules of Procedure, the EDPS shall establish each year an Annual Management Plan. That plan shall translate the long term strategy of the EDPS into general and specific objectives. Indeed it sets out the activities to be undertaken, by specific objective. Given the nature of the regulatory and advisory work of the EDPS, not everything can be anticipated in advance. Constrained by limited resources, it must therefore be capable of adapting its work plan. In line with the Art.13 the annual management plan also includes the key performance indicators, defined in the Strategy 2013-2014, which will be measured regularly to monitor progress achieved during the coming years.

Following the adoption of the decision on risk management in July 2012 – modern tools that help to identify the risks and possible plans of action - the EDPS has thus included risk management as an essential element of its global strategy. Risk management goes beyond assessing the risks; it also involves putting controls and measures in place that then need to be monitored (*see Annex 4*).

These controls put in place by the EDPS, along with the procedural channels, are intended to correct any financial or procedural error that might arise. They are an integral part of the management of the EDPS, as are any corrections to which they give rise. The AOD is thus aware of any corrections. Neither the nature nor the frequency of the identified risks has been significantly relevant.

## 4.6. Internal evaluation of the internal control system and indicators underpinning the statement of assurance

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In June 2013 the IAS carried out a follow up audit, with the result of closing most of the follow up actions stemming from IAS recommendations made in previous audits on administrative processes. There were no critical recommendations on 31/12/2013.

The implementation of the recommendation related to the securing of the data contained in complaints was still open at the date of the visit, due to the delayed set-up of the Case Management System (CMS). This recommendation is likely to be closed during the course of 2014, as the CMS has been operational since October 2013.

In October 2013 the IAS performed a risk assessment covering EDPS' major processes, both operational (related to his mission) and administrative (supporting the operational tasks).

The results of this exercise enabled the IAS to prepare the strategic internal audit plan for the period 2014-2016 with regard to the EDPS. In this report the IAS identified processes of high inherent risk where the EDPS need to improve the existing controls or put in place additional ones. The EDPS has submitted an action plan aimed at addressing these weaknesses. The actions undertaken will be followed up by the IAS.

At this stage, the AOD estimates that the level of management and control put in place is appropriate, and improving. Such improvements are not likely to have a 'material' impact within the meaning of paragraph 5.1. No reservations are necessary with regard to the improvements underway.

At the time of writing this annual activity report, no significant errors have occurred and no reservations are necessary as regards preventive controls.

No recommendations that are currently being implemented are therefore likely to have a material impact<sup>5</sup>.

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<sup>5</sup> The materiality criteria used for this judgment are given in Chapter 5.1 of this report.

## 4.7. Results of independent audit during the year

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There are two kinds of independent audit applicable to the EDPS. The first is the work of the European Court of Auditors and the second is that of the institution's Internal Auditor.

### 4.7.1. COURT OF AUDITORS

The report of the Court of Auditors for 2013 has been received but is still confidential and provisional. As regard the legality and regularity of underlying transactions no payments were selected for 2013. The audit focused only on the follow-up of previous years' work and no findings appear to be reported.

### 4.7.2. INTERNAL AUDIT SERVICE (IAS)

The Commission's Internal Audit Service is the internal auditor of the EDPS. To make sure that EDPS resources are effectively managed, the internal auditor conducts regular checks on EDPS internal control systems and on its financial transactions.

In June 2013 the IAS carried out a follow up audit on the implementation of its earlier recommendations stemming from the limited review on Internal Control Standards (2006) and the audit on Operational activity "Supervision and Enforcement" (2011), with the result of closing most of the follow up actions.

In October 2013 the IAS performed a risk assessment covering EDPS' major processes, both operational (related to his mission) and administrative (supporting the operational tasks). The results of this exercise enabled the IAS to prepare the strategic internal audit plan for the period 2014-2016 with regard to the EDPS, which was submitted to the EDPS in January 2014.

In May 2014, the IAS adopted the Annual Internal Audit Report 2013 - ARIA 2013, which summarises EDPS internal audit activity carried out in 2013 (Article 99(3) of the Financial Regulation).

Relations between the EDPS and the IAS were also maintained by virtue of three key documents: a service-level agreement (SLA), an IAS mission charter and a Memorandum of Understanding (*see point 4.3 Inter-institutional cooperation above*).

### 4.7.3. FOLLOW-UP TO THE EUROPEAN PARLIAMENT'S DISCHARGE RESOLUTION

In the context of the European Parliament's budgetary discharge for the 2012 financial year, no questions were raised with regard to the EDPS. The note prepared for our rapporteur summarises the actions taken by the EDPS in response to the observations accompanying the discharge decision for the previous year.

- With regard to the electronic case management system (CMS), the negotiations on minimum data protection and security safeguards were concluded before the summer – very interesting for other institutions thinking of outsourcing their IT services. The migration and implementation phase were performed during the second half of 2013 as foreseen. The system is fully operational and running successfully since October 2013.
- The EDPS Strategy for 2013-2014 contained a set of objectives, actions and KPIs to help us to monitor the impact of our work and the efficiency of our use of resources. The system of quarterly reporting is fully operational since January 2013. Overall, the results show a positive trend in the performance of our activities. The first set of results has been assessed in detail in the Annual Report 2013.
- As recommended in the European Parliament's discharge decision for the 2010 financial year, the Annual Activity Report for 2012 included a chapter on the action taken in response to the discharge resolution as well as an exhaustive table of all the human resources at the EDPS' disposal.
- As to the Statement of Assurance concerning the financial year 2012 (DAS 2012), no observations resulted from the audit work carried out by the Court of Auditors with respect to the reliability of the annual accounts and the annual activity report of the EDPS.

## 4.8. Follow-up to reservations from previous years

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The EDPS issued no particular reservations at the end of previous years.

## 4.9. Conclusions on the effectiveness of internal control

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In light of the information above, the authorising officer by delegation considers that the internal control system is operating appropriately; bearing in mind the level of expenditure and budget handled by the institution, and thus gives the necessary assurance to his annual statement.

## 5. Reservations and impact on the statement

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### 5.1. Materiality criteria

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In order to establish the Statement of Assurance the AOD applies the materiality criteria adopted by the Court of Auditors.

#### 5.1.1. OBJECTIVES OF MATERIALITY CRITERIA

The materiality threshold gives the AOD a basis on which to establish the significant weaknesses that require a formal<sup>6</sup> reservation to his statement. The assessment of a weakness falls to the qualitative and quantitative judgment of the authorising officer by delegation, who remains responsible for the statement of assurance, including the reservations made.

The purpose of this chapter is to define the qualitative and quantitative criteria for determining the level of materiality.

#### 5.1.2. QUALITATIVE CRITERIA

The following parameters were used to establish significant weaknesses:

- significant/repeated errors without mitigation
- weakness in the internal control system
- insufficient supporting documents
- material problems identified by the Court of Auditors or the Internal Audit Service
- problem of reputation.

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<sup>6</sup> The Commission (COM(2003)28 of 21 January 2003) considers that only 'material' reservations can be used to qualify the annual statement.

### **5.1.3. QUANTITATIVE CRITERIA**

Once a significant weakness has been identified, quantitative criteria must be applied to determine the level of materiality. This level will be used to determine whether the weakness 'merits' being reported.

- Margin of error
- maximum amount of risk

The Court of Auditors uses a 2% materiality threshold. Should the residual risk of an error be higher, the institution must explain the reasons for this.

The EDPS has decided on 2% of annual appropriations as the materiality threshold in this regard, namely: EUR 153 228,18.

### **5.1.4. CRITERIA OF THE INTERNAL AUDIT SERVICE**

A 'table of significance' is added to the internal auditors' report.

In this table, a distinction is made between recommendations and observations on the one hand, and levels of importance on the other: critical, very important, important and desirable.

According to the internal auditors, only 'critical' level observations may result in a reservation in the statement given in the annual activity report. For the EDPS, there are no observations at this level.

## **5.2. Reservations**

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No reservations.

## **5.3. Conclusion**

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Based on the above, the Director of the EDPS Secretariat has issued the annual statement with no reservations.

## 6. Statement of assurance from the authorising officer by delegation

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*I, the undersigned, Christopher DOCKSEY,*

*Director of the EDPS Secretariat,*

*as Authorising Officer by Delegation*

*hereby declare that the information contained in this report is true and faithful.*

*I state that I have had reasonable assurance that the resources allocated to the activities described in this report have been used for the purposes anticipated and in accordance with the principle of sound financial management, and that the control procedures established provide the necessary guarantees as to the legality and regularity of the underlying operations.*

*This reasonable assurance is based on my own judgment and on the information available to me, such as the results of the self-evaluation and the report of the Internal Audit Service.*

*I confirm that I am not aware of any matter not reported that might be harmful to the institution's interests.*

Signed at Brussels on 5 May 2014.



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# Annexes

# Annex 1 :

## Summary of annual activity report

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The Financial Regulation (Article 66(9))<sup>7</sup> provides that the ***institution*** shall submit to the budgetary authority (European Parliament and Council), no later than 15 June each year, a summary of the annual activity report for the previous year.

Alongside this, Article 48 of Regulation (EC) No 45/2001 provides that the EDPS shall submit an annual activity report to the European Parliament, the Council and the Commission.

The proposal is thus to summarise the authorising officer by delegation's annual activity report and include this summary in the activity report that is provided for in Article 48 of Regulation (EC) No 45/2001:

**Overall, the European Data Protection Supervisor considers that the internal control systems in place provide reasonable assurance as to the legality and regularity of the operations for which the institution is responsible.**

**The European Data Protection Supervisor shall ensure that its authorising officer by delegation continues his efforts to guarantee that the reasonable assurance given in the statement attached to his activities report is effectively backed up by appropriate internal control systems.**

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<sup>7</sup> Financial Regulation, Article 66(9): The authorising officer by delegation shall report to his or her institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

No later than 15 June each year, the Commission shall send to the European Parliament and the Council a summary of the annual activity reports for the preceding year. The annual activity report of each authorising officer by delegation shall also be made available to the European Parliament and the Council.

# Annex 2 :

## Budget 2013

TITLE 1 - EXPENDITURE RELATING TO PERSONS WORKING WITH THE INSTITUTION		2012	2013	2012 vs 2013	2012 vs 2013 (%)
<b>CHAPTER 10 MEMBERS OF THE INSTITUTION</b>					
<b>Article 100</b>	<b>Remuneration, allowances and other entitlements of Members</b>				
	Item 1000 Remuneration and allowances	659.635,00	644.322,00	-15.313,00	-2,32%
	Item 1001 Entitlements on entering and leaving the service				
	Item 1002 Temporary allowances	12.122,00	0,00	-12.122,00	-100,00%
	Item 1003 Pensions		32.000,00	32.000,00	
	Item 1004 Provisional appropriation	16.885,00	0,00	-16.885,00	-100,00%
	<b>TOTAL Article 100</b>	<b>688.642,00</b>	<b>676.322,00</b>	<b>-12.320,00</b>	<b>-1,79%</b>
<b>Article 101</b>	<b>Other expenditure in connection with Members</b>				
	Item 1010 Further training	4.732,00	4.732,00	0,00	0,00%
	Item 1011 Mission expenses, travel expenses and other ancillary expenditure	59.394,00	59.394,00	0,00	0,00%
	<b>TOTAL Article 101</b>	<b>64.126,00</b>	<b>64.126,00</b>	<b>0,00</b>	<b>0,00%</b>
	<b>TOTAL CHAPTER 10</b>	<b>752.768,00</b>	<b>740.448,00</b>	<b>-12.320,00</b>	<b>-1,64%</b>
<b>CHAPTER 11 STAFF OF THE INSTITUTION</b>					
<b>Article 110</b>	<b>Remuneration, allowances and other entitlements of officials and temporary staff</b>				
	Item 1100 Remuneration and allowances	3.755.970,00	3.872.366,00	116.396,00	3,10%
	Item 1101 Entitlements on entering, leaving the service and on transfer	70.564,00	70.564,00	0,00	0,00%
	Item 1102 Overtime				
	Item 1103 Special assistance grants	5.070,00	0,00	-5.070,00	-100,00%
	Item 1104 Allowances and miscellaneous contributions in connection with early termination of service				
	Item 1105 Provisional appropriation	88.198,00	0,00	-88.198,00	-100,00%
	<b>TOTAL Article 110</b>	<b>3.919.802,00</b>	<b>3.942.930,00</b>	<b>23.128,00</b>	<b>0,59%</b>
<b>Article 111</b>	<b>Other staff</b>				
	Item 1110 Contract staff	147.186,00	158.917,00	11.731,00	7,97%
	Item 1111 Cost of traineeships and staff exchanges	179.428,00	179.428,00	0,00	0,00%
	Item 1112 Services and work to be contracted out	51.202,00	51.202,00	0,00	0,00%
	<b>TOTAL Article 111</b>	<b>377.816,00</b>	<b>389.547,00</b>	<b>11.731,00</b>	<b>3,10%</b>
<b>Article 112</b>	<b>Other expenditure in connection with staff</b>				
	Item 1120 Mission expenses, travel expenses and other ancillary expenditure	112.686,00	112.686,00	0,00	0,00%
	Item 1121 Recruitment costs	6.789,00	6.789,00	0,00	0,00%
	Item 1122 Further training	84.874,00	84.874,00	0,00	0,00%
	Item 1123 Social service				
	Item 1124 Medical service	14.844,00	14.844,00	0,00	0,00%
	Item 1125 Union nursery centre and other day nurseries and after-school centres	87.938,00	80.000,00	-7.938,00	-9,03%
	Item 1126 Relations between staff and other welfare expenditure	3.865,00	3.865,00	0,00	0,00%
	<b>TOTAL Article 112</b>	<b>310.996,00</b>	<b>303.058,00</b>	<b>-7.938,00</b>	<b>-2,55%</b>
	<b>TOTAL CHAPTER 11</b>	<b>4.608.614,00</b>	<b>4.635.535,00</b>	<b>26.921,00</b>	<b>0,58%</b>
	<b>TOTAL TITLE 1</b>	<b>5.361.382,00</b>	<b>5.375.983,00</b>	<b>14.601,00</b>	<b>0,27%</b>

TITLE 2 - BUILDINGS, EQUIPMENT AND EXPENDITURE IN CONNECTION WITH THE OPERATION OF THE INSTITUTION		2012	2013	2012 vs 2013	2012 vs 2013 (%)
<b>CHAPTER 20</b>	<b>BUILDINGS, EQUIPMENT AND EXPENDITURE IN CONNECTION WITH THE OPERATION OF THE INSTITUTION</b>				
<b>Article 200</b>	<b>Rents, charges and buildings expenditure</b>	728.067,00	798.516,00	70.449,00	9,68%
	<b>TOTAL Article 200</b>	<b>728.067,00</b>	<b>798.516,00</b>	<b>70.449,00</b>	<b>9,68%</b>
<b>Article 201</b>	<b>Expenditure in connection with the operation and activities of the institution</b>				
	Item 2010 Equipment	155.497,00	229.086,00	73.589,00	47,33%
	Item 2011 Supplies	19.524,00	19.524,00	0,00	0,00%
	Item 2012 Other operating expenditure	98.368,00	98.368,00	0,00	0,00%
	Item 2013 Translation and interpretation costs	980.000,00	875.000,00	-105.000,00	-10,71%
	Item 2014 Expenditure on publishing and information	166.320,00	150.000,00	-16.320,00	-9,81%
	Item 2015 Expenditure in connection with the activities of the institution	114.932,00	114.932,00	0,00	0,00%
	<b>TOTAL Article 201</b>	<b>1.534.641,00</b>	<b>1.486.910,00</b>	<b>-47.731,00</b>	<b>-3,11%</b>
	<b>TOTAL CHAPTER 20</b>	<b>2.262.708,00</b>	<b>2.285.426,00</b>	<b>22.718,00</b>	<b>1,00%</b>
	<b>TOTAL TITLE 2</b>	<b>2.262.708,00</b>	<b>2.285.426,00</b>	<b>22.718,00</b>	<b>1,00%</b>
	<b>TOTAL BUDGET</b>	<b>7.624.090,00</b>	<b>7.661.409,00</b>	<b>37.319,00</b>	<b>0,49%</b>

## Annex 3 :

# Negotiated procedure in 2012



Brussels, 01/09/2013

### REPORT ON NEGOTIATED PROCEDURES IN 2012

#### Introduction

Pursuant to article 53 of the rules of application of Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council, I am required, in my capacity as Authorising Officer by Delegation, to draw up the present report, which is aimed at explaining the situation concerning negotiated procedures.

EDPS launched one negotiated procedure in 2012, which resulted in a new service contract of 52.200 Euro signed on 21/12/2012. The details of the procedure are explained in the following paragraph.

#### EDPS/2012/S/02 - Fabasoft Folio consulting services

In order to improve its operation, the EDPS Secretariat has decided to replace its current file-based system for the management of case-related documents by a state-of-the-art case management system. A competitive evaluation of available tools for that purpose resulted in the selection of Fabasoft Folio as the solution being by far best adapted to the requirements of the EDPS. The process of preparing the EDPS installation of this tool was started in 2011 and is currently ongoing. It comprises in particular customization of the tool to the specifics of the EDPS and its working methods.

In order to facilitate processing of EDPS case files, a limited number of customization steps has to be developed. These customization steps for Fabasoft are developed using the "scrum" agile consulting methodology. The new customization steps have to be compatible with those already developed for EDPS.

At the present stage of the market development, only a very limited number of companies could provide consulting services for Fabasoft Folio products; this included Fabasoft Distribution GmbH itself and a limited number of Fabasoft product partners. Only Fabasoft has experience with the tool variant used at the EDPS and the requirements of public service organisations, while others have only limited experience restricted to the private sector variant of tool in private sector applications. Fabasoft also has the infrastructure and organisation in place to apply the "scrum" methodology effectively.

Due to these circumstances, Fabasoft Distribution GmbH was the only provider having the technical capacity for the consulting services required to complete the Fabasoft Folio environment for the EDPS at the current stage. For this reason, it was strictly unavoidable to negotiate with Fabasoft for the current requirements and the procurement of Fabasoft Folio consulting services had to be performed as a negotiated procedure without prior publication of a contract notice (Art. 134 1 e) RAP).

The objective of the negotiated procedure was to ensure the continuity of the services until the SACHA2 framework contracts (resulting from an open call for tenders) are in place.

The legal basis of the negotiated procedure is Article 134.1 e) of the RAP of the Financial Regulation. All the conditions set out in this Article are fully met.



Christopher Docksey

Director



# Annex 4 : Final table of risk management

Risk title & description (cause and effect)	Policy area & Activity / objective affected	Gross risk score			Controls	Person responsible & supervisor	Net (residual) risk score			Risk response	Monitoring		Control effectiveness	Further action		
		Likelihood	Impact	Overall score (L x I)			Likelihood	Impact	Overall score (L x I)		Frequency	Monitor		Action	Owner	Deadline
Turnover of staff (establishment plan)	HRBA Action point affected: Ensure good management of human resources Action point affected: Ensure sound financial management	Likelihood	3	4	Revision of the selection process Statistics on turn over + proposals HR planning Applications ready with AMI (appel à manifestation d'intérêts)		Likelihood	3	3	Accept		Monitor	Good = 1 OK but so/so = 2 Pretty dreadful = 3	Revision of the recruitment manual HR Forward Planning AMI to be launched	AFR SP LBA	06/2014 12/2014 03/2014
		Impact	4	12			3	9								
		Overall score (L x I)														
Ineffective implementation of training policy	HRBA Action point affected: Ensure good management of human resources	Likelihood	4	3	Development of a new policy New training impetus Save time for the COFO		Likelihood	3	3	Accept				Revision of the training policy	AFR	01/2014
		Impact	3	12			3	9								
		Overall score (L x I)														
Service providers do not provide services as agreed or do not respond on time (or not at all) to demands.	Action point 5 Improve the use of the EDPS human, financial, technical and organisational resources	Likelihood	5	3	Establish clear agreements with service providers and proper monitoring at the EDPS + establish escalation path for problems		Likelihood	3	3	Accept				Establish monitoring procedure for CMS operations	MA	10/2014
		Impact	3	15			3	9								
		Overall score (L x I)														
Compromise of service providers infrastructures		Likelihood	5	5	Implement dialogues with service providers on risks and security measures + establish escalation path for problems + adopt security policy + raise staff awareness + apply effective technical security measures		Likelihood	5	3	Accept				Encrypted email project Information security policy Monthly on IT security	FS AG AK	11/2014 10/2014 10/2014
		Impact	5	25			3	15								
		Overall score (L x I)														
Compromise of private equipment used by EDPS staff for professional purposes		Likelihood	5	5	Adopt relevant security policies + raise staff awareness + implement effective technical security measures		Likelihood	4	3	Accept				Information security policy	AG	10/2014
		Impact	5	25			3	12								
		Overall score (L x I)														

Risk title & description (cause and effect)	Policy area & Activity / objective affected	Gross risk score			Controls	Person responsible & supervisor	Net (residual) risk score			Risk response	Monitoring		Control effectiveness	Further action					
		Likelihood	Impact	Overall score (L x I)			Likelihood	Impact	Overall score (L x I)		Frequency	Monitor		Action	Owner	Deadline			
Ineffective cooperation with EU institutions	POLICY Action point 2 Cooperation with WP29, the Institutions and other Stakeholders 2.b Cooperation with Commission, Council & EP	Likelihood	4	5	Encourage personal contacts + initiatives Organize workshops Raising awareness		Likelihood	2	4	Accept	Frequency	Monitor	Good = 1 Ok but so/so = 2 Pretty dreadful = 3	Action	Organise workshops on policy cooperation (Policy Paper) Regular meetings with DG Just	Owner	ABu IC	Deadline	12/2014 05/2014
		Overall score (L x I)	20	8			Impact	4	8										
Missing a legal deadline	POLICY Court deadlines Access to documents deadlines	Likelihood	1	5	Full application of the CMS and efficiency of the registry documents		Likelihood	2	5	Accept				Action	Full implementation of CMS	Owner	EJT	Deadline	12/2014
Overall score (L x I)	5	10																	
Lack of selectiveness	POLICY	Likelihood	4	4	Better planning Apply negative priorities		Likelihood	3	4	Accept				Action	Implement Policy Paper Better use of inventory	Owner	IC AJ IC AJ	Deadline	12/2014 12/2014
Overall score (L x I)	16	12																	
Missing legal deadlines	Supervision Action point affected: Perform supervisory activities with excellence	Likelihood	4	5	Manual of PC adopted but monitoring of compliance with deadlines to be completed through CMS (to be developed) Controls HoA+HoU		Likelihood	2	5	Accept				Action	Adoption of PC manual Implementation of procedures and use of the tool	Owner	DH SLX	Deadline	Done 12/2014
Overall score (L x I)	20	10																	

Risk title & description (cause and effect)	Policy area & Activity / objective affected	Gross risk score			Person responsible & supervisor	Controls	Net (residual) risk score			Risk response	Monitoring		Control effectiveness	Further action			
		Likelihood	Impact	Overall score (L x I)			Likelihood	Impact	Overall score (L x I)		Frequency	Monitor		Action	Owner	Deadline	
Inconsistent position of the EDPS	Supervision Action point affected: Perform supervisory activities with excellence	Likelihood	5	4	20	Introduction of tagging in CMS Coaching of case officers relating to encoding data Internal communication in team meetings on substance issues (to be continued) Annotated version of Regulation	Likelihood	3	4	12	Accept	Frequency		Good = 1 Ok but so/so = 2 Pretty dreadful = 3	Tagging system in place Envisage training sessions to clarify issues Case officers to implement tagging Regular team meetings Adoption of annotated version of Regulation	LP LP SLX SLX SLX DH	Done 12/2014 12/2014 Done 12/2014
		Impact	4		4												
		Overall score (L x I)															
Non effective follow up	Supervision	Likelihood	5	4	20	Tools to monitor follow up Pragmatic recommendations	Likelihood	3	3	9	Accept	Frequency			Use of existing tools in CMS Revision by HoA Develop selective approach	SLX DH SLX DH	12/2014 On-going On-going
		Impact	4		3												
		Overall score (L x I)															
Lack of Human resources in the Comm <sup>e</sup> team	COMMUNICATION	Likelihood	3	5	15	More resources	Likelihood	2	5	10	Accept	Frequency			Recruitment procedure for Contract Agent to be launched	OR	03/2014
		Impact	5		5												
		Overall score (L x I)															