

From: [REDACTED]
To: [REDACTED]
Subject: RE: Request: check the line to take for few provisions of nRoP Project - Update - Feedback from the Supervisor - tentative DDL tomorrow (14th) cob
Date: 14 June 2019 16:33:10
Attachments: [For P&C.docx](#)
[List of important PC points to keep in the ROP - TC OM \(002\).docx](#)

so thank you again.

Please, find attached some replies to the list of points and the wording suggestions.

We'll have still time to change something, look at them until Thursday.

I'm sending the version to the task force, providing them the same time limit.

Sorry for this rush

Yours,

[REDACTED]

From: [REDACTED]
Sent: 14 June 2019 10:16
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request: check the line to take for few provisions of nRoP Project - Update - Feedback from the Supervisor - tentative DDL tomorrow (14th) cob

Dear [REDACTED]

Many thanks for keeping me in the loop and consulting me.

I was not involved in the discussions previously and I am not sure what are the expectations of GB, so it is not easy to jump in at this stage without the background information and discussion. But your proposals seem fine to me.

See my comments enclosed, on the joint consultation EDPS / EDPB and on the art on international cooperation.

Best,

[REDACTED]

From: [REDACTED]
Sent: 13 June 2019 17:47
To: [REDACTED]
[REDACTED]
Cc: [REDACTED]
[REDACTED]

Subject: Request: check the line to take for few provisions of nRoP Project - Update - Feedback from the Supervisor - tentative DDL tomorrow (14th) cob

Dear [REDACTED] and [REDACTED]

We have to prioritise what we want to keep in the ROP (attached).

I have prepared a list (attached) with all the provisions that were attributed to P&C wholly or partly with a comment.

Could you please check whether you agree with my comment for the provisions on which you worked, **amend the list directly and send it to [REDACTED]** who has to prepare a new version, if possible by tomorrow (14th)? – if I am not mistaken?:

- Two prov for [REDACTED]

- One left for [REDACTED]

(see in bubbles)

Best regards

[REDACTED]

From: [REDACTED]

Sent: 07 June 2019 09:22

To: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cc: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: nRoP Project - Update - Feedback from the Supervisor

Dear all

Many thanks to [REDACTED] for passing on the main messages. Just one important correction – as far as [REDACTED] is concerned, [REDACTED] remains in the lead. He's asked me to assist [REDACTED] as indicated in the rest of his message below.

Enjoy the long weekend

[REDACTED]

From: [REDACTED]

Sent: 06 June 2019 12:45

To: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: nRoP Project - Update - Feedback from the Supervisor

Yes, of course,

for the moment being I have not even started.

As I just told [REDACTED] I start the redrafting on Tuesday 11 pm.

If you all already have redrafting suggestions, for instance on EDPS cooperation with DPAs, please don't hesitate.

However we must close this before the end of next week.

A+

Thank you again,

[REDACTED]

From: [REDACTED]

Sent: 06 June 2019 12:34

To: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cc: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: nRoP Project - Update - Feedback from the Supervisor

Dear [REDACTED]

Thank you very much for the information.

Could you please circulate the updated version once it is ready?

Many thanks!

Kind regards,

[REDACTED]

From: [REDACTED]

[REDACTED]

Sent: 06 June 2019 12:28

To: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cc: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

- (vii) administrative fines: further highlight EDPS not obliged to impose them

From:

Sent: 06 June 2019 12:24

To:

Cc:

Subject: nRoP Project - Update - Feedback from the Supervisor

Importance: High

Dear colleagues,

This is to inform you that last Tuesday 4 June pm

██████████ and me received a **first feedback from the Supervisor** on the version on the nRoP we submitted on 5 April.

The novelties are:

- The **Private Office** (██████████) from now on

takes the lead on this.

- On timing, temptatively **by Friday 14 June** a new version will be submitted to [REDACTED]
- On **substance**: changes to be implemented are as follows (I indicate the main ones, a 'top 10'):
 - (i) reduce the number of pages of about the half (from 20 to 10);
 - (ii) delete redundancies, delete re to articles of regulation 1725;
 - (iii) merge articles 3 and 15 (article on principles) and redraft looking at EDPS EDPS MoU principles;
 - (iv) new article 3 bis on organization, organizational principles (to be drafted)
 - (v) clearer demarcation of roles of Supervisor, Secretary General, Director; shorten article 7;
 - (vi) rename and de-institutionalise MB and DM ([REDACTED] is in charge in particular of these articles, including finding new names: 'jour fix'/'special jour fix', for instance)
 - (vii) simplify, shorten, redraft Title II
 - (vii) administrative fines: further highlight EDPS not obliged not impose them
 - (ix) simplify, shorten, redraft Title II (only added value specifications; no list of EDPS tasks and competences)
 - (x) add article on EDPS as privacy ambassador ([REDACTED] in charge).

Please note, on the positive side, that the overall architecture of the nRoP has been kept, in particular the 'bridge idea' of EDPS enabling data processing from the moment the legislative proposal is tabled until it becomes operational and later on.

And that it is easier and faster to delete than to add.

Let me kindly ask you to **come and 'visit' and/or call me [REDACTED] to have a look at what your text is becoming** (I cannot go to each of you, as I would wish to, given the short timeframe).

As always, this exercise is and will be done in full transparency.

And thanks to your help.

At your service,

[REDACTED]

From: [REDACTED]

Sent: 05 April 2019 15:04

To: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] o

[Redacted]

Cc: [Redacted]

[Redacted]

Subject: RE: last version of the nRoP - time extension for contribution and redrafting

Dear colleagues, turned into members of the nRoP Task Force,

This is to:

Thank you (a lot) for your fantastic work on this project. Send you the last version after this morning's cut-off date. This version (with few suggestions from Director, in TCs in the text) has been sent today for discussion **to the MB of 8 April**. We'll have time and occasions for further work on this, including **next DM** but, for now...

Enjoy your week end and let's enjoy the well-deserved holidays!! :-))

With the best regards,

Yours,

[Redacted]

From: [Redacted]

Sent: 03 April 2019 16:19

To: [Redacted]

[REDACTED]
Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: last version of the nRoP - time extension for contribution and redrafting

Dear colleagues,

If fine with [REDACTED]

I would extend **to next Friday at noon** the deadline for sending your further edits and comments.

Please find the last 'state of play' doc.

Please, make changes only into the *'last version' doc in the shared drive (unless you have comments ready to share already on a previous version).

As usual, I'll try to incorporate and accommodate everything and asap, please double check if nothing from your suggestions so far went lost.

Thank you,
[REDACTED]

For P&C:

TITLE II - LEGISLATIVE AND POLICY CONSULTATION

Article 16

EDPS as advisor of institutions on legislative and policy consultations

1. The EDPS shall ordinarily reply to legislative and policy consultations issuing an opinion.

A summary of the opinion shall be published in the Official Journal of the European Union (C Series) and the unabridged version of the opinion shall be published on the website of the EDPS.

2. The EDPS may however reply issuing formal comments, informal comments, position papers, depending on the nature of the consultation, the article of the Regulation on the basis of which the consultation request is made, and all other relevant circumstances of the consultation.

Formal comments shall be published on the website of the EDPS. Informal comments shall not be published. When deciding on the publication of opinions or comments, the EDPS shall fully respect the confidentiality of the decision-making process, in accordance with the applicable primary and secondary law of the European Union.

Article 17

Request and time-limits for consultation

1. As a rule, the EDPS shall provide its reply to the requests for legislative consultation under Article 42(1) of the Regulation within eight weeks starting from receipt of the request for consultation by the EDPS.

2. The EDPS, in accordance with the principle of mutual sincere cooperation, shall handle on a best-effort basis the requests for legislative consultation for which the Commission has indicated to the EDPS a shorter deadline.

3. When consulted pursuant to a legal basis other than Article 42 of the Regulation, the EDPS shall also provide its advice on a best-efforts basis within the deadline proposed by the institution consulting the EDPS.

Article 18

Follow up to opinions and comments

The EDPS may advise the institutions during all stages of the legislative decision-making process.

Article 19

Joint opinion of the EDPS and the EDPB

In case a joint opinion of the EDPB and the EDPS cannot be issued within the set deadline, the EDPS, where appropriate, may issue an opinion on the same subject matter.

Article 20

EDPS own-initiative policy documents

1. The EDPS may, on its own initiative, issue opinions, position papers or other documents on any issue, also not directly linked to a legislative initiative, relating to the protection of natural persons with regard to the processing of personal data.

2. The EDPS, where appropriate, may submit its policy guidance documents to public consultation before its final adoption by the Supervisor.

TITLE IV - COOPERATION WITH NATIONAL SUPERVISORY AUTHORITIES

Article 37

European Data Protection Board

1. Irrespective of its role as providing the Secretariat of the EDPB, the EDPS is a full member of the EDPB and as such shall actively contribute to its work activities, in particular to the drafting of documents aiming at providing a common interpretation of data protection law and expert advice to the institutions, notably the Commission, the European Parliament and the Council, on legislative initiatives having an impact on privacy and on the protection of personal data.
2. The EDPS shall participate on a regular basis in the plenary and in the expert subgroup meetings of the EDPB.

Article 38

Coordinated supervision of institutions including the monitoring of large scale IT systems

1. The EDPS, as authority responsible for the supervision of compliance with data protection rules and principles by the institutions, shall monitor in particular compliance by the ones in charge of the central units of large scale IT systems, cooperating with the national supervisory authorities supervising the national authorities using the large scale IT systems.
2. The EDPS shall cooperate with national supervisory authorities on all matters that require a coordinated response, in particular when a data protection issue can more effectively be addressed by a joint action of the EDPS and of the national supervisory authorities.
3. The EDPS shall organise and provide the secretariat of the meetings with the national supervisory authorities to ensure coordinated supervision.

TITLE V - INTERNATIONAL COOPERATION

Article 39

International cooperation

1. The EDPS shall operate for the development of common grounds and synergies on the protection of personal data in relation to third countries and organizations. Accordingly, the international activity shall be a strategic priority of the EDPS and specific actions shall be implemented in this regard, in particular promoting cooperation and dialogue at the international level with all relevant stakeholders.
2. The EDPS shall participate in relevant regional and international privacy networks and conferences.
3. The EDPS shall contribute to the organisation of workshops with representatives of international organisations with a view to sharing best practices and developing a high level of data protection.
4. Where appropriate, the EDPS shall cooperate with supervisory authorities of third countries or international organisations to provide international mutual assistance in the enforcement of data protection law.

TITLE VI - COURT PROCEEDINGS

Article 40

Action against institutions for breach of the Regulation

In case of non-compliance by an institution with the Regulation, in particular where the EDPS has not been consulted in cases provided for by Article 42(1) of the Regulation and in case of failure to effectively respond to enforcement action taken by the EDPS under Article 58 of the Regulation, the EDPS shall make use of the power to refer the matter to the Court of Justice.

Article 41

EDPS intervention in actions brought before the Court of Justice of the European Union

1. The EDPS may intervene in actions brought before the Court of Justice of the European Union in accordance with Article 58(4) of the Regulation, Article 85(2)(g) of Regulation (EU) 2017/1939 and Article 43(3)(i) of Regulation (EU) 2016/794.
2. The EDPS may apply for leave to intervene in proceedings if the case is of particular data protection importance or if formally invited to do so by the Court of Justice of the European Union.
3. The decision by the EDPS to request leave to intervene before the Court of Justice of the European Union shall take into account in particular:
 - (a) whether the EDPS has been directly involved in the facts of the case in the performance of supervisory tasks;
 - (b) whether the data protection issue constitutes a substantial part of the case; and
 - (c) whether an intervention by the EDPS is likely to provide added value to the proceedings relating to the case *sub judice*.

List of important points to keep in the ROP for the provisions wholly or partly attributed to P&C

Preliminary remarks:

In general, contrary to manuals which are not published in the OJ, the ROP will be published in the OJ. Hence they require more procedural steps to be taken to be modified and a certain level of formalism. In that sense, they are in a way more binding than mere manuals.

Against this background, our point of departure is that the ROP are an opportunity to set in stones points of controversy and pave the way for more stability in the future.

TITLE II - LEGISLATIVE AND POLICY CONSULTATION

Article 17

Mandatory consultation

Para 1 is important from a political point of view but it is true that it is otherwise a repetition of Art 42(1) - It also makes sense in the overall architecture to present clearly our role with the different types of consultation.
Para 2 added value is to clarify the scope of this consultation.

Article 18

Informal consultation

This provision's added value is to clarify the scope of the informal consultation including also preparatory documents etc...

Article 19

Other consultations and own initiative documents

Like Para 1 of Art 17, it is a repetition of the Regulation but helps in understanding.

Para 2's added value is to insist on the various formats of our advise but could be deleted as there is Art 22 (1) last sentence.

Article 20

Request and time-limit for consultation

It is a consequence of a new provision imposing a strict time limit in the Regulation. It is our interest to clarify for the Commission's services how the 8 weeks will be counted and facilitate the cooperation with them by clarifying the procedure for sending consultation request:

- clarification on the mailbox (para 1)
- starting point of the deadline (para 2)
- conditions to deal with an urgent cases properly (para 3)
- automatic transmission= request= 8 weeks time limit(para 4)

Article 21

Joint opinion of the EDPB and the EDPS

Para 2 is the most important as it clarifies what happens in case no joint opinion can be reached with the EDPB.

Article 22

Content and publicity of EDPS opinions and comments

Important provision as it explains our various possible deliverables when advising, their regime in terms of publicity.

Article 23

Decision *not to draw up an opinion or comments*

Important as it would be difficult to have this power (which is not mentioned as such in the Regulation) if not included in ROP.

Article 24

Follow up to opinions and formal comments

If we have to make trades-off, maybe that one could be deleted and mentioned in the manual.

Commented [A1]: wording by GB: as ordinary tool to reply to consultations we have opinions.
In other cases, EDPS may issue formal comments, informal comments, positions papers.

Commented [A2]: GB: delete

Commented [A3]: can we deal with this in the Manual, agreement with COM?

Commented [A4]: I agree. Moreover the reference to the MoU in para 1 seems to me "out of context". The reference to the cooperation spirit was not meant to refer to Art 42(2) of 1725 which was not in force at the time of the signature of the MoU.

Moreover the text of Para 1 departs slightly from the text of Art 42(2) and I see no reason or added value for such difference.

On para 2, I am not sure that we should tie our hands with this 10 days deadline. Imagine that there is a decision taken at the beginning of the process not to issue a joint opinion. We would then impose ourselves a 10 days deadline instead of 8 weeks...

Commented [A5]: kept, agree with [REDACTED] deleted para 1.

Commented [A6]: kept but moved to the first article.

Commented [A7]: tricky issue. could be contra legem. Plus maybe better to have it in Manuals, agreement with COM?

Commented [A8]: kept, to show EDPS possibility to intervene later on too.

TITLE IV - COOPERATION WITH NATIONAL SUPERVISORY AUTHORITIES IN THE EU AND IN THE EEA

Article 42 Cooperation with national supervisory authorities under Article 61 of the Regulation

Article 43

European Data Protection Board

I am not sure that this is really key to be maintained as we are a member of the EDPB under the GDPR. I would think that manual would suffice

Art 44 and 45 which are now only Art 45:

Coordinated supervision by the EDPS and national supervisory authorities of large scale IT systems and of Union bodies, offices and agencies
Cooperation with Union bodies, offices and agencies

If we really need to maintain other provisions, nothing is key to be mentioned in the RoP (seen with Priscilla).

TITLE V - INTERNATIONAL COOPERATION

Para 1-3 are the most important to me as they set in stone our participation to these fora.

To me, the other paras are more developments of what already Article 51 provides.

TITLE VI - COURT PROCEEDINGS

Article 48

Court Interventions

Para 2 and 3 are the most important as they set up the criteria for EDPS intervention before the ECJ.

Commented [A9]: To be checked by [REDACTED]

Article 42

Cooperation with national supervisory authorities under Article 61 of the Regulation

In accordance with Article 61 of the Regulation, the EDPS will cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA¹ in particular to:

(a) exchange all relevant information, such as information relating to best practices, as well as in relation to requests to exercise monitoring, investigative and enforcement powers by competent national supervisory authorities;
(b) develop and maintain contacts with relevant members and staff of the national supervisory authorities;
(c) where relevant, participate in meetings of joint supervisory authorities, with the aim of ensuring a consistent practice.

2. Where relevant, the EDPS may take part in joint operations with national supervisory authorities. Each authority will act in joint operations within the scope of their respective competences and to the extent necessary for the performance of their respective duties and will supervise compliance according to the data protection rules applicable to the processing operation or to the investigated entity (the Regulation, the GDPR, Directive (EU) 2018/680 or a specific data protection regime, such as Regulation (EU) 2016/794. The EDPS may take part upon invitation in investigation by a supervisory authority (e.g. as expert in an investigation team). The EDPS may invite a supervisory authority to take part in EDPS' investigation.

In case of the EDPS taking part in investigation by a supervisory authority or a supervisory authority taking part in EDPS' investigation, the invitee will follow the procedural rules applicable to the investigating authority and apply the applicable data protection rules.

Commented [A10]: I took [REDACTED] wording. Merci bcp Priscilla

Commented [A11]:

Commented [A12]: kept, would seem weird without any re.

Commented [A13]: to be checked with [REDACTED]

Commented [A14R13]: This looks fine with me. I just want also to draw attention to the risks to use the word shall in parag 1 to 3. If we do not attend one of the meetings (for instance Sprinc conference or Brling group), we will violate our RoP. Moreover, the ICDPPC will most likely change its name before the end of the year. So the RoP will soon appear as outdated.

Commented [A15R13]: ok, just GB does not like naming the conferences.

Commented [A16]: kept.