

Brainstorming meeting on the EDPS new Rules of Procedure (nRoP)

[Extended MB 16/1/2019]

■ presented the content of a first outline and roadmap relating the nRoP.

■ gave his views on this key project. In sum, the following points should be analysed in order to ascertain whether to include them or not in the final text of the nRoP.

First overview

- nRoP to be seen against Reg 2018/1725, which is the legal basis for this exercise;
- we have to check whether we can and should take advantage of this exercise to have rules in the RoP that can solve ‘legal gaps’ left by the legislator; nRoP should be oriented to the future; and drafted to equip the institution with a legal tool that could also help addressing unpredictable future/circumstances and risks;
- to stabilise the institution while preserving its ‘DNA’;
- to be published not later than July.

Principles that should inspire this exercise:

1. PRECAUTION/CONTINUITY (What do you we need for stabilizing the institution?)

- to fix fundamental rules to preserve the EDPS by adopting a precautionary approach;
- to fix the identity of the institution;
- solid, future-oriented.

2. FLEXIBILITY

- nRoP More detailed or not?
- Many things are regulated in manuals, what should be left to manuals and what incorporated in the nRoP?
- By July, all rules of the house should be updated/adopted (and collected into a ‘compilation’); For the ‘policies/manuals update exercise’ a different deadline (from the one for the nRoP) can nonetheless be envisaged, end of October. Not to overstate;
- do not allow that via manuals we circumvent the rules (compliance with ‘hierarchy of rules’).

Things to be analysed:

3. Relationships nRoP & Reg 1725 and review procedure

- To verify what is needed;
- margin of manoeuvre to allow flexibility in the daily operations/when needed;
- is there any crucial points not solved in Reg 2018/1725 that we want to solve? Any conflict of interest if we do that?
- nRoP to be considered as “Founding legislation”, to be a bit more difficult to be changed. Reinforced procedure for its review.

4. Changes to RoP (more specific issues)

- Regarding the MB, what do we do without the Assistant Supervisor? Not a decision making body and too much micromanagement (contrary to the RoP).

- More globally, the architecture and working methods to be envisaged: a SG or DG to be foreseen? More than one Director? Organigramme modern enough? Supervision Unit's name still ok? Only one S&E Unit (or 2)? ITP the most important point to discuss now. Other sectors still appropriate? HoA? Private office in? Units/sectors: not to detail too much in the nRoP. The structure has to be stabilised in parallel to the nRoP;
- Time also for clarification for staff: job satisfaction, more delegations, e-signature, some investments in terms of training or exchange programmes, mentorship? Solve the clarification between deputising and delegation. On 'budget', bank account and credits cards?

5. What is relevant by a 'third party' point of view?

- nRoP will be the occasion to introduce some elements which are not foreseen or fixed by the legislation (on complaints, for example);
- Independence of the EPDS as DP authority: how far can its decisions be challenged?
- Fines;
- Court matters;
- Former third pillar;
- All questions of independence as other DPAs, including on services provided to EDPS by other EUIs.

6. Principle of good administration (as further laid down by the European Ombudsman)

- codes of conduct to be revised;
- Issue of confidentiality; sharing information? (including issue: confidentiality vs cooperation with other DPAs);
- Whistleblowing aspects/procedures in?
- No discrimination, equal opportunity.

7. Security of data and systems

- Key principles in terms of security to be strengthened (security room);
- Rules for data breaches in the nRoP?

Other points:

- Points above to be analysed and not mandatorily introduced in the nRoP;
- Look at the principles already laid down under the EDPS-EDPB MoU;
- To lead by example;
- Simplification may lead to shorter rules; simplification may also relate to the 'update of manuals and policies' exercise (see below);
- All implementing manuals and decision should be inspired by the same principles;
- List of documents (inventory of all applicable decisions and manuals) to be set up (can start from the inventory we sent to the auditors last year as they have asked the same thing) should be ready for July (as a list). All other decisions should be abolished. Time for simplification;
- An article (or an extra preamble) of the nRoP will mention this list to avoid any republication in the OJ when updated. This list will be validated by the MB;
- The need for updates to such list will be periodically checked / updated Manuals and decisions should be compiled in a "Big Book" Mid October at the latest;
- MG to report to MB in a one-page report after the TF meetings in particular.