

FROM THE OLD ROP TO THE NEW ROP (VERSION 11 MAR)

Issue (Person in charge)	Provisions	New Provision	Policy doc
<p>Preamble (policy + legal issue)</p> <p>1.1 ■ (done)</p>	<p>THE EUROPEAN DATA PROTECTION SUPERVISOR, Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data (1), and in particular Article 46(k) thereof,</p> <p>Whereas:</p> <p>(1) Article 8 of the Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the European Union provide that compliance with the rules relating to the protection of individuals with regard to the processing of personal data concerning them by Union institutions, bodies, offices and agencies shall be subject to control by an independent authority.</p> <p>(2) Regulation (EC) No 45/2001 provides for the establishment of an independent authority, referred to as the European Data Protection Supervisor, responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data, are respected by the Union institutions and bodies.</p> <p>(3) Regulation (EC) No 45/2001 also provides for the duties and powers of the European Data Protection Supervisor, as well as for the appointment of the European Data Protection Supervisor and an Assistant Supervisor.</p> <p>(4) Regulation (EC) No 45/2001 further provides that the European Data Protection Supervisor shall be assisted by a Secretariat and lays down a number of provisions concerning staff and budgetary matters.</p>	<p>THE EUROPEAN DATA PROTECTION SUPERVISOR, Having regard to 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 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 [...], and in particular Article 57(1)(g) thereof,</p> <p>Whereas:</p> <p>(1) Article 8 of the Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the European Union provide that compliance with the rules relating to the protection of individuals with regard to the processing of personal data concerning them by Union institutions, bodies, offices and agencies shall be subject to control by an independent authority.</p> <p>(2) Regulation (EU) 2018/1725 provides for the establishment of an independent authority, referred to as the European Data Protection Supervisor, responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data, are respected by the Union institutions and bodies.</p> <p>(3) Regulation (EU) 2018/1725 also provides for the duties and powers of the European Data Protection Supervisor, as well as for the appointment of the European Data Protection Supervisor.</p> <p>(4) Regulation (EU) 2018/1725 further provides that the European Data Protection Supervisor shall be assisted by a Secretariat and lays down a number of provisions concerning staff and budgetary matters.</p>	<p><i>please add ref to any relevant policy doc or other relevant doc concerning the issue</i></p>

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	<p>(5) Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission of 1 July 2002 on the regulations and general conditions governing the performance of the European Data Protection Supervisor's duties (2), lays down a number of additional provisions on this subject.</p> <p>(6) Other provisions of Union law provide for additional duties and powers for the European Data Protection Supervisor.</p>	<p><i>deleted</i></p> <p>(5) Other provisions of Union law provide for additional duties and powers for the European Data Protection Supervisor, <u>namely Regulation (EU) 2016/794 on Europol, Regulation 2018/1727 on Eurojust and Regulation 2017/1939 on the establishment of the European Public Prosecutor's Office.</u></p> <p>(6) These Rules of Procedure provide the rules implementing and integrating the provisions of the Regulation (UE) 2018/1725 in accordance with the latter.</p> <p>At the same time, these Rules of Procedure are implemented and integrated by the EDPS acts listed under Annex I to these Rules of Procedure, including policy papers, case manuals, guidelines, internal codes.</p> <p><u>This Annex shall be reviewed by the European Data Protection Supervisor on a regular basis. Any deletion, modification or addition to this Annex will not in itself require an amendment to these Rules of Procedure.</u></p> <p><u>*to be checked: technical-legal issue of publication of the list under Annex I in the OJ: issue of changing the list without amending the decision; access to docs listed therein.</u></p>	
<p>1.1 legal</p> <p>■ (done)</p>	<p><i>Article 1</i></p> <p>Execution of duties and powers</p> <p>The European Data Protection Supervisor shall execute the duties and powers imposed by Regulation (EC) No 45/2001 and other provisions of Union law.</p>	<p><i>Article 1</i></p> <p>Tasks and powers of the European Data Protection Supervisor</p> <p>1. The European Data Protection Supervisor shall perform the tasks set out and exercise the powers granted in the Regulation (EU) 2018/1725 and other provisions of Union law.</p> <p>2. These Rules of Procedure provide for the necessary and relevant specifications on the performance of these tasks and the exercise of these</p>	

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The moment you publicly announce the existence of a category of acts, we will start getting access requests. So this will need to be understood (and agreed) by everyone to mean that our case manuals and internal codes *de facto* become public documents (?)

Commented [A3R2]: I understood from the minutes of the MB 16/1/2019 that the idea was that an article of the ROP or an extra-preamble mentions [so for me, it was a mere cross reference to] the list of documents "to avoid any republication in the OJ when updated", the list being validated by the MB. The minutes do not refer to my understanding to the publication of the content of the list in annex to the decision, which then obliges to republish an updated list in the OJ each time a new manual is issued.

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		powers in accordance with the applicable provisions of Union law.	
1.1 legal ■ (done)	<p><i>Article 2</i> Definitions In these Rules:</p> <p>(a) 'the Regulation' means Regulation (EC) No 45/2001;</p> <p>(b) 'the institution' means a Union institution, body, office or agency subject to Regulation (EC) No 45/2001;</p> <p>(c) 'the EDPS' means the European Data Protection Supervisor as an institution;</p> <p>(d) 'the Supervisor' means, unless otherwise specified, the persons holding the office of European Data Protection Supervisor and Assistant Supervisor;</p> <p>(e) 'administrative measure' means a decision or any other act of the Union administration of general application relating to the processing of personal data carried out by the institution.</p>	<p><i>Article 2</i> Definitions In these Rules:</p> <p>(a) 'the Regulation' means Regulation (EU) 2018/1725;</p> <p>(b) 'the GDPR' means Regulation (EU) 2016/679;</p> <p>(c) 'the institution' means a Union institution, body, office or agency subject to Regulation (EU) 2018/1725;</p> <p>(d) 'the EDPS' means the European Data Protection Supervisor as an institution;</p> <p>(e) 'the Supervisor' means, unless otherwise specified, the person holding the office of European Data Protection Supervisor;</p> <p>(f) 'administrative measure' means an act of the institution relating to the processing of personal data carried out by the institution.</p> <p>(g) an 'act of the EDPS' means:</p> <p>(i) a legally binding measure of the EDPS in the context of monitoring and enforcement of data protection rules as specified under recital 73 and Article 58 of Regulation (EU) 2018/1725 and powers referred to in other relevant provisions of EU law;</p> <p>(ii) any other act of the EDPS for the performance of its tasks.</p> <p>(h) a 'legislative opinion of the EDPS' means the advice provided by the EDPS on legislative proposals pursuant to Article 42, as specified under recital 60, of the Regulation (EU) 2018/1725.</p> <p>(*) taxonomy to be reflected under Section 3.2, The legal regime of procedures at EDPS, of the nRoP.</p>	


Commented [A5]: Comment by ■ We suggest to refer to Article 58 of the Regulation and powers referred to in other relevant provisions of EU law (i.e. Art. 43 of Europol Regulation; Art. 85 EPPO Regulation).

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Commented [A7]: I was thinking of deleting the terms "legislative opinion" as for the legislative and policy consultation the opinion may concern a legal act which is not a legislative act - rather I would specify "administrative opinion" in the administrative consultation as there it concerns only administrative measures as far as I know.

Commented [A8]: *only* if concerns *legislative* proposals
We need to distinguish draft IA/DA and international agreements (if only because regime for publications would need to be more flexible for those two categories; addressees may also be different).

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<p>1.1 Principles</p> <p>* linked to 1.1 at page 7</p> <p> (done)</p>	<p><i>Article 3</i> Independence, good governance and good administrative behaviour</p> <p>1. In accordance with Article 44 of the Regulation, the Supervisor shall act in complete independence in the performance of his or her duties.</p> <p>2. The EDPS will follow the European Code of Good Administrative Behaviour and will act in the public interest on the basis of expertise and pragmatism. Supervisor shall ensure the proper functioning of the services available for the performance of the tasks referred to in Article 1, taking into account the principles of good governance, good administrative behaviour and good management.</p>	<p><i>Article 3</i> <u>Independence and good administrative behaviour</u></p> <p><u>1. In accordance with Article 44 of the Regulation, the Supervisor will act in complete independence in the performance of his or her duties.</u></p> <p>2. The EDPS will follow the European Code of Good Administrative Behaviour and will act in the public interest on the basis of expertise and pragmatism.</p> <p>3. The EDPS will be accountable by documenting and publishing strategies and other policy statements setting out its short and medium term aims, priorities and way of working. It will be open, transparent and accessible to the views of all stakeholders including civil society, industry and academia.</p> <p>4. The EDPS, as a data controller, will lead by example in respecting the spirit of, as well as complying with the letter of, applicable laws.</p> <p>5. The EDPS will continually review its internal policies and practices to ensure an <i>ethos</i> which respects people – whether employees, individuals subject to its supervision, or stakeholders - in their full diversity, including racial or ethnic origin, age, gender and gender identity, religion, physical abilities, socio economic background, sexual orientation and physical and mental health.</p> <p>6. The EDPS in its internal policies and practices will aim to promote sustainability including minimising waste and energy consumption.</p>	

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<p>1.2 Organizational</p> <p>■ (done)</p>	<p><i>Article 4</i> Roles of the Supervisor and Assistant Supervisor</p> <p>1. The Supervisor and the Assistant Supervisor shall be, as members of the institution, responsible for the adoption of strategies, policies and decisions, and shall work together in the performance of the tasks referred to in Article 1. The Assistant Supervisor shall carry out those tasks, in case of the absence or inability to act of the Supervisor and vice versa.</p> <p>2. The Supervisor and the Assistant Supervisor shall aim to reach a consensus on general strategies and policies and other important matters, including those related to the Secretariat. The Supervisor shall decide where a consensus cannot be reached and the matter is urgent.</p> <p>3. The Supervisor, acting in close cooperation with the Assistant Supervisor, shall determine a division of work between them, including which of them is to have prime responsibility for the preparation, adoption and follow up of decisions and the delegation of tasks to the Assistant Supervisor, where appropriate.</p>	<p><i>Article 4</i> Role of Supervisor</p> <p>The Supervisor shall be responsible for the adoption of strategies, policies and decisions in the performance of the tasks referred to in Article 1.</p>	
<p>1.2 Organizational</p> <p>■ (done)</p>	<p><i>Article 5</i> Secretariat</p> <p>1. In accordance with Article 4354(4) of the Regulation, the Supervisor shall be assisted by a Secretariat, the tasks and working methods of which shall be defined by the Supervisor.</p> <p>2. The Supervisor may delegate certain tasks to individual members of staff, with the possibility of replacement by other staff members.</p> <p>3. The Supervisor shall establish a number of Units and Sectors forming the Secretariat to assist in the preparation and performance of the tasks referred to in Article 1. Each Unit or Sector shall be headed by a Head of Unit or Sector.</p>	<p><i>Article 5</i> Secretariat</p> <p>1. In accordance with Article 54(4) of the Regulation, the Supervisor shall be assisted by a Secretariat, the tasks and working methods of which shall be defined by the Supervisor.</p> <p>2. The Supervisor may delegate certain tasks to individual members of staff, with the possibility of replacement by other staff members.</p> <p>3. The Supervisor shall establish a number of Units and Sectors forming the Secretariat to assist in the preparation and performance of the tasks referred to in Article 1. Each Unit or Sector shall be headed by a Head of Unit or Sector.</p> <p>4. In accordance with Article 75(1) of the GDPR, and under the terms of the Memorandum of Understanding of 25 May 2018 signed between the EDPS and the European Data Protection Board (EDPB) established and published pursuant to Article 75(4) of</p>	

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		<p>the GDPR, the EDPS provides the Secretariat of the EDPB.</p> <p><u>5. The Secretariat is established as a separate Unit or a Sector within the EDPS organigram.</u></p> <p><u>6. The Ssecretariat of the EDPB provides analytical, administrative and logistical support to the EDPB under the exclusive instructions of the Chair of the EDPB and is not subject to the paragraphs 1-3 of this Article of the Rules of Procedure.</u></p>	
<p>1.2 Organizati on</p> <p>██████ (done by █████ on behalf of)</p>	<p><u>Article 6</u> <u>Director Secretary General</u></p> <p>1. The Secretariat shall be headed by a Director, who shall take all measures necessary to ensure the proper functioning of the Secretariat and the efficient use of resources, including replacement of the Directorhis/her in case of absence or inability to act.</p> <p>2. The DirectorSecretary General shall be responsible for:</p> <p>(a) the preparation and implementation of strategies and policies;</p> <p>(b) contributing to their evaluation and development;</p> <p>(c) the coordination and planning of activities, the measurement of performance and the representation of the institution in relations with other institutions and bodies, where appropriate.</p>	<p><u>Article 6</u> <u>Secretary General</u></p> <p><u>1. The Secretariat shall be headed by a Secretary General, who shall take all measures necessary to ensure the proper functioning of the Secretariat and the efficient use of resources, including his/her replacement in case of absence or inability to act.</u></p> <p><u>2. The Secretary General shall be responsible for:</u></p> <p><u>(a) the preparation and implementation of strategies and policies;</u></p> <p><u>(b) contributing to their evaluation and development;</u></p> <p><u>(c) developing cooperation with the National Supervisory Authorities in the- EDPB, coordinated supervision bodies and in international fora and networks;</u></p> <p><u>(d) the coordination and planning of activities, the measurement of performance and the representation of the institution in relations with other institutions and bodies, where appropriate.</u></p> <p><u>3. The Secretary General may carry out the tasks referred in Article 4-1, in case of the absence or inability to act of the Supervisor.</u></p> <p><u>4. The Secretary General shall delegate his/her tasks to the Director in case of absence or inability to act.</u></p>	

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		<p><u>Article [...] Director</u></p> <p>1. Upon sub-delegation by the Secretary General, the Director will represent the institution as Head of Administration in inter-institutional meetings, he/she will be responsible for the tasks referred to in Articles 9 and 10, and for budget, HR and administration matters in general and will carry out other tasks and responsibilities delegated to him by the Secretary General, such as the coordination of the management team or decision-making or representation of the institution in its supervisory or policy capacity.</p> <p>The Secretary General, acting in close cooperation with the Director, shall determine the delegation of powers and tasks to the Directorate in a document that will be published on the Intranet and will be updated regularly.</p>	
<p>1.2 Organization</p> <p>■ (done)</p>	<p><u>Article 7 Management Board</u></p> <p>1. The Management Board shall comprise the Supervisor, the Assistant Supervisor the Secretary General and the Director. The Board shall meet at regular intervals, normally once a week, to discuss general strategies and policies and other important matters and contribute to a good coordination of relevant activities.</p> <p><u>The Extended Management Board, comprised of the Supervisor, the Secretary General, the Director and the middle managers (Heads of Units/Sectors) shall meet upon request of the Management Board to discuss specific strategies and policies or any other matters of specific importance for the EDPS.</u></p> <p>23.2. The Director shall ensure the proper functioning of the secretariat of the Management Board and of the Extended Management Board.</p>	<p><u>Article 7 Management Board</u></p> <p>1. The Management Board shall comprise the Supervisor, the Secretary General and the Director. The Board shall meet at regular intervals, normally once a week, to discuss general strategies and policies and other important matters and contribute to a good coordination of relevant activities.</p> <p>2. The Extended Management Board, comprised of the Supervisor, the Secretary General, the Director and the middle managers (Heads of Units/Sectors) shall meet upon request of the Management Board to discuss specific strategies and policies or any other matters of specific importance for the EDPS.</p> <p>3. The Director shall ensure the proper functioning of the secretariat of the Management Board and of the Extended Management Board.</p>	
1.2 Organization	<p><u>Article 49 IT Steering Committee</u></p>	[deleted]	<p><u>Link to Article 38, Monitoring</u></p>

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<p>■ (done)</p>	<p>A Steering Committee on Information Technologies shall be established to advise the Management Board on the implications of information technology for the security and internal development of the EDPS.</p>	<p><i>(Suggestion to delete and to transfer the task to ITPU, see below Art. 38)</i></p>	<p>Technology under 2.2.5</p>
<p>1.2 Organizational</p> <p>■ informing ■ (done)</p>	<p>Article 8 Director's Meeting The Director shall meet at regular intervals, normally once a week, with all the Heads of Unit and Sector to ensure coordination and planning of activities and the preparation and implementation of strategies and policies. The Director shall ensure the proper functioning of the secretariat of the Director's Meeting.</p>	<p>Article 8 Director's Meeting The Director shall meet at regular intervals with all the Heads of Unit and Sector to ensure coordination and planning of activities and the preparation and implementation of strategies and policies. The Director shall ensure the proper functioning of the secretariat of the Director's Meeting.</p>	
<p>1.2 Organizational</p> <p>■ (done)</p>	<p>Article 9 Appointing authority 1. The 1. Upon delegation by the Secretary General, The Director shall exercise the powers vested in the appointing authority within the meaning of Article 2 of the Staff Regulations of officials of the European Union and the powers vested in the authority authorised to conclude contracts of employment within the meaning of Article 6 of the Conditions of Employment of other servants of the European Union and any other related powers resulting from other administrative decisions both internal to the EDPS or of an inter-institutional nature, insofar as the decision of the Supervisor on the exercise of the powers vested in the appointing authority and in the authority authorised to conclude contracts of employment does not provide otherwise.</p> <p>2. The Director may delegate the exercise of the powers referred to in paragraph 1 to the official responsible for the management of human resources.</p>	<p>Article 9 Appointing authority 1. Upon delegation by the Secretary General, the Director shall exercise the powers vested in the appointing authority within the meaning of Article 2 of the Staff Regulations of officials of the European Union and the powers vested in the authority authorised to conclude contracts of employment within the meaning of Article 6 of the Conditions of Employment of other servants of the European Union and any other related powers resulting from other administrative decisions both internal to the EDPS or of an inter-institutional nature, insofar as the decision of the Supervisor on the exercise of the powers vested in the appointing authority and in the authority authorised to conclude contracts of employment does not provide otherwise.</p> <p>2. The Director may delegate the exercise of the powers referred to in paragraph 1 to the official responsible for the management of human resources.</p>	

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<p>1.2 Organizational</p> <p>on behalf of (done)</p>	<p><i>Article 10</i> Authorising officer and accounting officer 1. The powers of authorising officer shall be exercised by the Supervisor. The powers of authorising officer by delegation and authorising officer by sub-delegation shall be exercised by those appointed by the Supervisor in accordance with the charter of tasks and responsibilities of authorising officers by delegation and the charter of tasks and responsibilities of authorising officers by sub-delegation. 2. The accounting officer of the European Commission shall be the accounting officer of the EDPS.</p>	<p><i>Article 10</i> Authorising officer and accounting officer <u>1. The powers of authorising officer shall be exercised by the Supervisor. The powers of authorising officer by delegation and authorising officer by sub-delegation shall be exercised by those appointed by the Supervisor in accordance with the charter of tasks and responsibilities of authorising officers by delegation and the charter of tasks and responsibilities of authorising officers by sub-delegation.</u> <u>2. The accounting officer of the European Commission shall be the accounting officer of the EDPS.</u></p>	
<p>1.3 Delegation of powers</p> <p>(done)</p>	<p><i>Article 11</i> Delegations 1. The Supervisor may <i>delegate</i> to the Director the power to adopt and sign the definitive text of any decision or opinion, the substance of which has already been determined. 2. Where powers have been delegated to the Director pursuant to paragraph 1, the Director may <i>sub-delegate</i> power to exercise those powers in his or her absence to the Head of Unit or Sector concerned. 3. Paragraphs 1 and 2 shall be without prejudice to the rules concerning delegation in respect of the powers conferred on the appointing authority or of those concerning financial matters as provided for in Articles 9 and 10.</p>	<p><i>Article 11</i> Delegation of tasks and powers of the Supervisor [overlap with art 4?] <u>1. The Supervisor may delegate to the Director the authority to perform certain of his or her tasks under Article 57 of the Regulation. [overlap with art 4?]</u> <u>2. Where authority has been delegated pursuant to paragraph 1, the Director will allocate responsibility to an appropriate senior official [head of unit or sector?] in the Secretariat. That official may in turn further delegate.</u> <u>3. The senior official will be accountable to the Director for the manner in which they have performed the delegated authority, either directly or through further delegation.</u> <u>4. Delegations of authority under paragraph 1 may be on an <i>ad hoc</i> basis or set out in the Annual Management Plan or otherwise in writing.</u> <u>5. The final decision or opinion in the exercise of his or her tasks or powers under Article 57 and Article 58 of the Regulation, where approved by the Supervisor, may be signed by the Director or another official on behalf of the Supervisor.</u></p>	

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<p>1.3 Delegation of powers</p> <p>■ (done)</p>	<p><i>Article 12</i> Deputising</p> <p>1. In the absence of the Supervisor and the Assistant Supervisor or where they are prevented from exercising their functions, the Director shall where appropriate act as a replacement for matters requiring urgent attention during such absence or inability to act.</p> <p>2. Where the Director is prevented from exercising his or her functions or the post is vacant and no official has been designated by the Supervisor, the Director's functions shall be exercised by the Head of Unit or Sector present with the highest grade or, in the event of equal grade, by the Head of Unit or Sector with the greatest seniority within the grade or, in the event of equal seniority, by the eldest.</p> <p>3. If there is no Head of Unit or Sector present and no official has been designated, the official present within that Unit or Sector with the highest grade or, in the event of equal grade, the official with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest, shall deputise.</p> <p>4. Where any other hierarchical superior is prevented from exercising his or her duties, or where the post is vacant, the Director shall designate an official in agreement with the Supervisor. If no replacement has been designated, the official present in the Unit or Sector concerned with the highest grade, or in the event of equal grade, the subordinate official with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest, shall deputise.</p> <p>5. Paragraphs 1 to 4 shall be without prejudice to the rules concerning delegation in respect of the powers conferred on the appointing authority or of those concerning financial matters as provided for in Articles 9 and 10.</p>	<p><i>Article 12</i> Deputising</p> <p>1. Where urgently required, in the absence of the Supervisor or where they are prevented from exercising their functions, the Director shall perform the tasks and exercise of the powers of the Supervisor.</p> <p>2. Further to paragraph 1, in the absence of the Director, tasks and powers shall be exercised by a senior official in accordance with the delegations made under Article 11, or, in the absence of that senior official, by the official present with the highest grade and the highest seniority in that grade.</p>	
<p>1.4.1 Planning and Accountability</p> <p>■ (and) ■</p>	<p>Annual Management Plan</p> <p>1. In accordance with the principles of good administration and good financial management, 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. Performance indicators and targets shall be defined and measured twice a year to monitor and track achievements.</p>		

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	2. A risk analysis of EDPS planned activities shall be incorporated in the Annual Management Plan, which shall include identified risks and risk mitigation planning.		
1.4.1 Planning and Accountability ■ (done)	<p><i>Article 14</i> Annual Report</p> <p>1. In accordance with Article 60 48 of the Regulation, the EDPS shall submit an annual activities report ('Annual Report') to the European Parliament, the Council and the Commission and forward it to the other institutions.</p> <p>2. The Annual Report shall be submitted and published on the EDPS website no later than 1 July of the following year.</p> <p>3. The EDPS shall consider the comments which are submitted by the other institutions and bodies referred to in paragraph 1 under Article 48(2)-60(2) of the Regulation with a view to subsequent possible examination of the report by the European Parliament.</p>	<p><i>Article 14</i> Annual Report</p> <p><u>1. In accordance with Article 60 of the Regulation, the EDPS shall submit an annual activities report ('Annual Report') to the European Parliament, the Council and the Commission and forward it to the other institutions.</u></p> <p><u>2. The Annual Report shall be submitted and published on the EDPS website no later than 1 July of the following year.</u></p> <p><u>3. The EDPS shall consider the comments which are submitted by other institutions and bodies referred to under Article 60(2) of the Regulation with a view to subsequent possible examination of the report by the European Parliament.</u></p>	
1.1 Principles* linked to 1.1 at page 2 ■ (done)	<p><i>Article 15</i> Guiding principles and core values</p> <p>1. The EDPS shall act in the public interest as an expert, independent, reliable and authoritative body in the field of data protection, at the level of the Union. The interventions of the EDPS shall be based on impartiality, integrity, transparency and pragmatism.</p> <p>2. The EDPS shall engage constructively with stakeholders in order to ensure a fair balance between data protection and privacy and other interests and policies.</p> <p>3. Supervision of the institutions shall be based on the principle that accountability for compliance lies primarily with the controllers themselves.</p>	<p><i>Article 15</i> Guiding principles and core values</p> <p>1. The EDPS shall act in the public interest as an expert, independent, <u>ethical, reliable, proactive</u> and authoritative body in the field of data protection, at the level of the Union. The interventions of the EDPS shall be based on impartiality, integrity, transparency and pragmatism.</p> <p>2. The EDPS shall engage constructively with stakeholders in order to <u>reinforce cooperation and balance data protection and other interests while encouraging harmonised data protection practices on highest standards and generating a shared understanding of data protection and privacy as core values central to protecting human dignity, autonomy and the democratic functioning of societies.</u></p> <p>3. Supervision of the institutions shall <u>be based on the principle that accountability for compliance lies primarily with the controllers themselves.</u></p>	

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		<p><u>The EDPS shall promote public awareness and understanding of the risks to people's rights and freedoms as well as to society at Union level. The EDPS shall ensure effective protection of peoples' fundamental rights and freedoms considering also the evolution of technologies, when personal data is processed by Union institutions and bodies.</u></p> <p><u>4. The EDPS shall engage in deliberations on new ethical questions concerning digital technologies, data protection and privacy and encourage future-oriented, long-term and proactive thinking among stakeholders to generate a culture of ethical behaviour beyond legal compliance.</u></p>	
<p>2.1 Principle of 'policy-based action' *linked to 1.1 Principles [REDACTED] (done)</p>	<p><i>Article 16</i> Policy on activities The EDPS shall adopt policy papers in order to set out the main elements of EDPS policy concerning specific activities, where this is relevant for giving guidance on the positioning of the EDPS in relation to a specific activity. Policy papers shall be regularly updated.</p>	<p>Deleted? Please [REDACTED] confirm</p>	
<p>2.2.1 Legislative and Policy Consultation [REDACTED]</p>	<p>Legislative and policy consultation <i>Article 26</i> Scope of consultation 1. In accordance with Article 41 and 28(2) of the Regulation, the EDPS shall advise on legislative proposals based on the Treaties and on other acts and documents, such as: (a) decisions under the common foreign and security policy; (b) implementing and delegated acts; (c) documents relating to agreements with third countries and international organisations; (d) legislative initiatives of the Member States under the Treaties; (e) initiatives for enhanced cooperation; (f) non-binding acts such as recommendations and communications relating to the protection of individuals' rights and freedoms with regard to the processing of personal data. The EDPS shall provide such advice following a consultation of the Commission under Article 28(2) of the Regulation, following any other request of an institution, or on own initiative.</p>	<p>Legislative and policy consultation <i>Suggestion by CAM to delete that provision as the scope of the consultation is not the same depending on provisions on which the consultation is based.</i></p>	

Commented [A13]: Slightly different S&E wording: "3. Supervision of the institutions shall be based on effective protection of people's fundamental rights and freedoms. The EDPS shall promote public awareness and understanding of the risks to people's rights and freedoms as well as to society at Union level. The EDPS shall exercise its supervisory powers considering also the evolution of technologies, and the principle that accountability for compliance lies primarily with the controllers themselves."

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	2. The EDPS shall be available for consultation by the institutions involved during all stages of the legislative process.		
2.2.1 Legislative and Policy Consultation	<p>Article 27 Informal consultation</p> <p>1. As agreed with the Commission, the EDPS should be consulted before the College of Commissioners takes a final decision to adopt a measure or a legislative proposal or policy document. In response to such consultation, the EDPS shall provide the responsible service of the Commission with informal comments on the draft of a proposal or related document.</p> <p>2. The informal comments provided pursuant to paragraph 1 shall respect the confidentiality of the internal decision-making process of the Commission, subject to applicable rules under the Treaties and secondary legislation. The EDPS shall endeavour to respect the deadlines proposed by the Commission services, so far as is reasonable and practicable.</p>	<p>Article 27 Mandatory consultation</p> <p>1 In accordance with Article 42(1) of the Regulation, where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS shall be consulted on:</p> <ul style="list-style-type: none"> - a Commission legislative proposals or recommendations or proposals for an international agreement following their adoption; - on implementing acts and delegated acts before the College of Commissioners takes a final decision to adopt them. [This consultation is however not mandatory where the Commission is required, pursuant to Regulation (EU) 2016/679, to consult the European Data Protection Board.] <p>2. Such proposals, recommendations, implementing and delegated acts shall be deemed as having an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data where they imply the processing of personal data.</p>	

Commented [A14]: We could also structure the RoP between mandatory and optional consultations instead of formal/informal.

Commented [A15]: Art 42(4) combined with Art 58 (3)(c) Regulation-

- point to be discussed with EDPB: the Regulation could be read as not prohibiting the Commission to consult the EDPS in such cases, on a voluntary and not mandatory basis, (or the EDPS may issue on his own initiative an opinion on the same basis. In such cases where opinions on the same topic are issued by the two bodies, the EDPS should design its Opinion so as to be complementary to the EDPB and to offer an analysis from different angles.
- this provision raises further interpretation issues which we might want to explore with the EDPB for the revision of manual/MoU/policy paper:

1) Recital 60 by mentioning "for example" seems to indicate that the list of exclusions for EDPS consultation is not limited to the 3 cases it refers to (i.e. Art 70 (1) q.r.s). However if we can make a distinction between the "advisory" mission and the mandatory "consultation" mission of the EDPB: then the exclusion of the EDPS consultation seems limited to the three areas so only some implementing and delegated acts and not to encompass cases where the EDPB has to advise the Commission under the GDPR (cf Article 70 (1) b) and (c) "on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation" and "on the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules").

2) It does not mention the mandatory consultation of the EDPB under the LED for COM implementing adequacy decision (cf Art 51(1)g)) + same question as for GDPR with Art 51(1)a)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.119.01.0089.01.ENG

Commented [A16]: Should we add a provision similar to the ROP of the Committee of the Regions ?" Failure to carry out obligatory consultation of the Committee

"When the Committee has not been consulted in cases provided for by the Treaty on the Functioning of the European Union, the President of the Committee or a commission may propose to the Plenary Assembly, in accordance with Rule 13(g), or to the Bureau in the cases referred to in Rule 37(j), that an action or an application to intervene be brought before the Court of Justice of the European Union."

Commented [A17]: This criterion is taken from the policy paper but might be too broad.

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		<p><i>Article [...] Other Consultations</i></p> <p>1. In line with Recital 60 of the Regulation, when the Commission is preparing proposals or recommendations having an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS should be consulted before the College of Commissioners takes a final decision to adopt such proposal or recommendation, including on any preparatory documents such as consultation papers and communication.</p> <p>2. The EDPS may be consulted:</p> <ul style="list-style-type: none"> - in accordance with Article 57 (1)(g) of the Regulation on request, by all institutions on legislative measures based on the EU Treaties, relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data; - in accordance with Article 58(3)(c) of the Regulation, on request on any issue related to the protection of personal data. 	
		<p><i>Article [...] Request and time limit for consultation</i></p> <p>1. Request for consultation shall be addressed to the Supervisor/ Policy and consultation.</p> <p>2. After receiving the formal request for consultation by letter or by email, the EDPS shall provide the advice in writing within 8 weeks.</p> <p>3. For consultation referred to in Article [...] paragraphs 1 and 2, the Commission may shorten this time period in urgent cases or if otherwise appropriate. In such cases, the request should contain all the necessary information justifying the shorter time.</p> <p>4. In any event, sufficient time shall be given so as to allow for an in-depth analysis of the submitted document.</p> <p>5. The EDPS shall endeavour to respect the deadlines proposed by the consulting institutions, so far as is reasonable and practicable.</p>	

Commented [A18]: 1) Wording of Recital 60 - however, it is probably limited to legislative proposals and recommendations Art 218 as in the Article. We can clarify it here

2) + "proposals or recommendations" seems to reduce the cases where the EDPS should be consulted compared to the previous ROP.

Commented [A19]: From the 2006 Agreement on what consultation on legislative proposal means

Commented [A20]: I am assuming that Article 58 will only trigger formal comment or opinion but if it is not the case, we should add it here also.

Commented [A21]: I separated ex-officio opinions in a separate article assuming that in cases where we advise on our own initiative, we don't issue informal comments but issue opinions or formal comments?

Another wording possible to show the difference between mandatory consultation and optional consultation could be to replace "shall advise on request" by "may be consulted".

Commented [A22]: See Art 57 Regulation combined with Article 289 TFUE 4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Commented [A23]: I understand it can be from anyone - it might generate a lot of consultations

Commented [A24]: Attempts to make the request formal - for the moment it covers all consultation but we can limit to the mandatory consultation requests.

Commented [A25]: 1) I apply the same time limit for an Article 42 or 57/58 consultations as it seems to have been the deadline until now. However if we want to be able to comply under Art 42, we could maybe provide for a longer time limit when the consultation is based on Art 57/58?

2) starting point of the 8 weeks, should we have the same interpretation as EDPB? the EDPB has interpreted it under the GDPR as starting from the first working day after the Chair and the competent supervisory authority have decided that the file is complete (see the EDPB rules of procedure). However under the EDPS ROP, Art 25, the point of departure for the 2 months deadline is the receipt of the consultation. 3) contrary to articles 304 and 307 TFUE on the consultation of the Economic and Social Committee and the Committee of the Regions, the Regulation does not specify the effect of not replying within the deadline (see "Upon expiry of the time limit, the absence of an opinion shall not prevent further action").

Commented [A26]: Attempts to make the request formal - for the moment it covers all consultation but we can limit to the mandatory consultation requests.

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		<p><i>Article [...]</i> Joint opinion EDPS and EDPB Where the EDPB is consulted in accordance with Article 42(2) of the Regulation, the joint opinion of the EDPS and the EDPB may take the form of documents and follow the publicity regime as provided for under their Memorandum of Understanding published in their website.</p>	
<p>2.2.1 Legislative and Policy Consultation</p>	<p><i>Article 28</i> Legislative opinions and formal comments 1. The advice of the EDPS on a legislative proposal or related document may take the form of an opinion, formal comments or any other instrument deemed appropriate. 2. An opinion of the EDPS shall analyse the data protection aspects of a proposal or related document. In principle, it shall be issued within three months of the adoption of the proposal or related document. 3. A summary of the opinion shall be published in the <i>Official Journal of the European Union</i> (C Series), while the full version shall be published on the EDPS website. 4. Formal comments of the EDPS shall focus on specific aspects of a proposal or related document. In principle, they shall be issued within two months after the adoption of the document. They shall be published on the EDPS website.</p>	<p><i>Article [...]</i> Ex-officio opinion or comments In accordance with Articles 57(1) g) and 58(3)(c) of the Regulation, the EDPS may on its own initiative issue opinions or comments on legislative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data or on any other issue related to the protection of personal data.</p>	
		<p><i>Article [...]</i> Content and publicity of EDPS opinions and comments 1. In response to consultations under Articles, the EDPS shall provide the responsible service of the consulting institutions Commission with an opinion or informal comments on the draft of a proposal or related document. The Policy and Consultation Unit shall determine the order of priority of opinions allocating them among categories. 2. An opinion shall analyse the data protection aspects of the document in relation to which it is issued. 3. In principle, a summary of the opinion shall be published in the <i>Official Journal of the European Union</i> (C Series), while the full version shall be published on the EDPS website.</p>	

Commented [A27]: I am not aware of any other type of documents in formal consultation but we might want to keep the flexibility?

Commented [A28]: I did not repeat in our RoP Art 42(2) as in fact it is related to an EDPB consultation in addition to ours and it would not add anything. If we manage to agree during the RoP drafting on specific details, we might be able to directly specify it here instead of referring to the MoU.

Commented [A29]: If it is important, we should repeat "to the public" for Art 58 type of advise.

Commented [A30]: Not to confuse with the joint EDPB/EDPS

Commented [A31]: This is to have some flexibility in case the document on which we are consulted in not public.

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		<p>4. Comments shall focus on specific aspects of the document in relation to which they are issued. They shall in principle be published on the EDPS website.</p> <p>5. In any event, the opinion or the comments shall respect as the case may be the confidentiality of the internal decision-making process of the consulting institution, subject to applicable rules under the Treaties and secondary legislation.</p>	
		<p>Article [..] Decision not to draw up an opinion</p> <p>1. Where the Policy and Consultation Unit considers that a consultation referred to it under Article [..] has no linked with data protection, or is not of political importance, it may decide not to draw up an opinion. The Policy and Consultation Unit informs the relevant institutions about this decision.</p> <p>2. Where the Policy and Consultation Unit considers that a consultation referred to it under Article [..] is important, but, for reasons of priority and/or because relevant opinions have already been adopted in the recent past, a new opinion is not considered necessary, the Policy and Consultation Unit may decide not to issue an opinion. In this case, the EDPS may decide to respond to the institutions by means of a motivated renunciation in the form of a letter signed by the Supervisor. The letter shall be prepared by the Policy and Consultation Unit.</p>	
<p>2.2.1 Legislative and Policy Consultation on *link to AMP? ■</p>	<p><i>Article 29</i> Annual priorities and inventory: 1. The EDPS shall publish annual priorities on the EDPS website. 2. The EDPS shall publish on the website three times a year an inventory with proposals for legislation and related documents in respect of which it intends to provide advice. The inventory shall classify those documents according to their priority. 3. The inventory shall be based on the Annual Work Programme of the Commission and its updated annexes, and any other pertinent information available.</p>	<p>deleted</p>	

Commented [A32]: Inspired by provision on the Committee of the regions

Commented [A33]: Maybe after the meeting with Giovanni we could say "We would favour deleting it - to be discussed"

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<p>2.2.1 Legislative and Policy Consultation</p> <p>■</p>	<p>Article 30 Follow up of legislative opinions and formal comments 1. <u>The EDPS shall be available for consultation by the institutions involved during all stages of the legislative process.</u></p> <p>2.1- The EDPS shall actively follow the developments in the European Parliament, the Council and the Commission after providing advice.</p> <p>3.2- The Supervisor shall be available to orally present and discuss the EDPS' advice in a meeting with the legislator or to provide any other requested contribution.</p> <p>4.3- Where substantial changes are made to a legislative measure under discussion, the EDPS may consider submitting a further opinion, further comments or any other instrument deemed appropriate.</p>	<p>Article 30 Follow up of opinions and formal comments 1. The EDPS shall be available for consultation by the institutions involved during all stages of the legislative process.</p> <p>2. The EDPS shall actively follow the developments in the European Parliament, the Council and the Commission after providing advice.</p> <p>3. The Supervisor shall be available to orally present and discuss the EDPS' advice in a meeting with the legislator or to provide any other requested contribution.</p> <p>4. Where substantial changes are made to a legislative measure under discussion, the EDPS may consider submitting a further opinion, further comments or any other instrument deemed appropriate.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p>Article 17 Monitoring compliance with the Regulation The EDPS shall carry out regular monitoring exercises in order to ensure an adequate overview of data protection compliance within institutions. Those exercises may be general or more targeted, based on the knowledge and evidence gathered in the performance of supervisory activities.</p>	<p>Article 17 Monitoring data protection compliance The EDPS shall carry out regular monitoring exercises in order to ensure an adequate overview of data protection compliance within institutions or bodies, including within the EDPS itself.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p>Article 18 Enforcement The EDPS shall <i>enforce</i> data protection obligations using the powers granted in Article 47 of the Regulation. Those powers shall be used to their fullest extent in cases of serious, deliberate or repeated instances of non-compliance.</p>	<p>Article 18 Enforcement 1. The EDPS shall <i>enforce</i> data protection obligations using the powers granted in Article 58 of the Regulation as well as in other applicable provisions of Union law. Those powers shall be used to their fullest extent in cases of serious, deliberate or repeated instances of non-compliance.</p>	

Commented [A34]: Taken from previous Article 26 ROP

Commented [A35]: Comment by S&E, ■ same wording as in Article 1 ROP. This is to cover the duties listed in Europol Regulation (Art. 43) and EPPO Regulation (Art. 85).

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		<p><u>2. Powers of the EDPS shall be used in an effective manner, considering necessity and proportionality in ensuring compliance with the Regulation and other applicable provisions of Union law. The EDPS shall take into account the circumstances of each individual case, the gravity of the infringement, the risk to the rights and freedoms of the data subject, the impact on other private or public interests concerned and respect the right to be heard before any individual measure is taken</u></p>	
<p>2.2.2 Supervision ■ (done)</p>	<p><i>Article 19</i> Request for a prior check 1. In accordance with Article 27 of the Regulation, processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the CAME DPS upon notification from the Data Protection Officer of an institution. 2. In case of doubt as to the need for prior checking, the EDPS shall determine upon the request of the Data Protection Officer whether or not the processing operation presents specific risks and, if so, invite the Data Protection Officer to notify the case accordingly. 3. If the processing operation does not present specific risks, the EDPS may nevertheless address certain recommendations to the institution. 4. Notifications for prior checking shall be sent to the EDPS secretariat by email using the standard EDPS form. 5. Any relevant additional information relating to the notified processing operation may be annexed to the notification form.</p>	<p><i>deleted</i></p>	
<p>2.2.2 Supervision ■ (done)</p>	<p><i>Article 20</i> Prior check opinions 1. The EDPS shall adopt an opinion in which the relevant grounds and conclusions of the prior check are presented. 2. If the notified processing involves a possible breach of a provision of the Regulation, the EDPS shall where appropriate make proposals to avoid such breach.</p>	<p><i>deleted</i></p>	

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<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p><i>Article 21</i> Deadlines and suspensions for adopting the prior check opinion</p> <p>1. In accordance with Article 27(4) of the Regulation, the EDPS shall deliver the prior check opinion within two months following receipt of the notification. The EDPS may request any further information considered necessary. The period of two months may be suspended until the EDPS has obtained the information that has been requested. When the complexity of the matter so requires, the two months period may be extended once for a further two months.</p> <p>2. If the opinion has not been delivered by the end of the period of two months, or any extension thereof, it shall be deemed to be favourable.</p> <p>3. The starting date for calculating the deadline shall be the day following the date on which the notification form was received.</p> <p>4. If the final date is a public holiday or another day on which the EDPS' services are closed, the next working day shall be considered as the final date for delivering the opinion.</p>	<p><i>deleted</i></p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p><i>Article 22</i> Deadlines and suspensions</p> <p>1. Prior to the adoption of an opinion, the EDPS shall send a draft of the opinion to the institution for feedback on practical aspects and factual inaccuracies. The institution shall submit its feedback within 10 days of receipt of the draft. This period may be extended upon reasoned request from the controller. The request for feedback shall suspend the period referred to in Article 21(1). If no feedback is received by the deadline, the EDPS shall proceed with the adoption of the opinion.</p> <p>2. The EDPS shall give the institution three months from the date of adoption of the opinion to provide information on implementation of the recommendations made in the opinion. The information shall be subject to follow up by the EDPS.</p>	<p><i>deleted</i></p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p><i>Article 23</i> Prior check register</p> <p>1. In accordance with Article 27(5) of the Regulation, the EDPS shall keep a register of all processing operations that have been notified pursuant to Article 27 of the Regulation.</p>	<p><i>deleted</i></p>	

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	2. The register shall exclude any reference to security measures. It shall contain a link to the EDPS opinion and information on the deadline for the provision of information by the institution pursuant to Article 22(2). The register shall be available on the EDPS website.		
2.2.2 Supervision ■ (done)	<p>Article 24 Administrative consultation</p> <p>1. In accordance with Article 28(1) of the Regulation, the EDPS shall be informed by the institutions when they draw up administrative measures which relate to the processing of personal data.</p> <p>2. In accordance with Article 46(d) of the Regulation, the EDPS shall advise institutions, in response to a consultation, on all matters concerning the processing of personal data, in particular before they draw up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data.</p> <p>3. In principle, the EDPS shall only take into consideration consultations which have been submitted for consultation to the Data Protection Officer of the institution concerned first.</p>	<p>Article 24 Consultations by Union institutions and bodies regarding their own processing of personal data</p> <p>1. The EDPS shall advise institutions, in response to a consultation, on all matters concerning the processing of personal data. In principle, the EDPS shall only take into consideration consultations which have been submitted to the Data Protection Officer of the institution concerned. The EDPS may reply also to consultations submitted directly.</p> <p>2. Consultations, in principle, shall be submitted before the processing operation is launched. Prior consultations based on Article 40(2) of and 90 of the Regulation, Article 39 of Regulation 2016/794 and Article 72 of Regulation 2017/1939 have to be submitted at least eight weeks before the processing starts or otherwise defined by other Union law.</p> <p>3. The EDPS provides advice to consultation based a clear question and accompanied by the relevant supporting documentation. The EDPS may establish forms for submitting requests.</p> <p>4. The opinion of the EDPS provides the necessary recommendations and may require the Union institution or body to inform the EDPS on the follow-up within a set deadline.</p>	
2.2.2 Supervision ■ (done)	<p>Article 25 Opinions</p> <p>1. The EDPS shall in principle deliver an opinion within two months following receipt of the consultation. The EDPS may request any further information considered necessary. The period of two months may be suspended until the EDPS has obtained the information that has been requested.</p>	<p>Article 25 (new item) Decisions from the EDPS authorising transfers of personal data to a third country or an international organization pursuant to Article 48(3) of the Regulation</p> <p>1. Authorisation requests shall be submitted by Union institutions and bodies through their DPO in due time before the signing by the concerned</p>	

Commented [A36]: Draft public policy paper: [18-12-17 policy on consultations](#)
Draft internal case manual: [18-11-30 consultations first draft](#)

Commented [A37]: ■ This is for general consultations, Art 25 IRs, prior consultations, anything specific under the Europol regulation and other lex specialis.

QUESTION FOR THE TASK FORCE:
Do you see a need to have "informal" consultations in this Article as well? We did not include as it may take away their informal character... FYI, they are clearly mentioned in the policy paper, and nothing in this article precludes them.

Commented [A38]: 'Absorbed' under proposed Article 24?

Commented [A39]: ■ See 48(3)(b) of the new Regulation

Commented [A40]: We should also refer somewhere to cases where the institution 'only' has to inform the EDPS about the transfer with appropriate safeguards, i.e.:
- Eurojust: Art. 58 of Regulation 2018/1727
- EPPO: Art. 82 of Regulation 2017/1939.

Moreover, Europol must also inform the EDPS when using derogations (see Art. 25(7) of Reg. 2016/794).

Added value: mention that such information must be made through the DPO as well and we could include a deadline (there is no deadline in the respective legal frameworks).

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	<p>2. The EDPS shall give the institution three months from the date of adoption of the opinion to provide information on implementation of the recommendations made in the opinion. The information shall be subject to follow up by the EDPS.</p>	<p>Union institution or body of the administrative arrangement or ad hoc contract clauses referred to under Article 48(3) of the Regulation and Article 25(6) of Regulation 2016/794.</p> <p>2. The authorisation decision by the EDPS in reply to these authorisation requests may contain conditions for their applicability, such as the implementation of recommendations or reference to other opinions of the EDPS setting out conditions for the processing of personal data.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>		<p>Article [...] Transparency</p> <p>1. The EDPS publishes replies to consultations to ensure compliance with the Regulation for other institutions as well. In this case, the EDPS will inform the Union institution or body that submitted the consultation beforehand and provide the text to be published. The EDPS may use the general content of consultations in public materials.</p> <p>2. The EDPS publishes replies to prior consultations to the extent possible. The EDPS may notably redact parts related to information security, public interest or security of Union institutions, and where publication would endanger the protection of personal data. The EDPS will inform the Union institution or body that submitted the prior consultation beforehand and provide the text of the reply as edited for publication.</p> <p>3. The EDPS will publishes the decisions authorising transfers of personal data to a third country or an international organization pursuant to Article 48(3) of the Regulation.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>		<p>Article [...] Deadlines and suspensions</p> <p>1. Save where different deadlines are already established by Union legislation, the EDPS aims to provide replies to consultations and authorisation requests within 2 months.</p>	

Commented [A41]: This is basis for proactive transparency in line with the recommendation of the Ombudsman to EUIs. The EDPS shall adopt detailed rules for applying Regulation 1049/2001 in line with Article 52(4). As the adoption of those will take time, these provisions should be included in the RoP.

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		<p>2. Deadlines start from the first working day following receipt of the consultation or authorisation request referred to, respectively, under Article [...] and Article [...] of these Rules of Procedure.</p> <p>3. Without prejudice to the Regulation and other applicable provisions of Union law, the EDPS may request all further information needed to reply to the request, suspending the deadline. The suspension takes effect the day following the request and ceases the day following the receipt of all requested information.</p> <p>4. If the deadline falls on a public holiday or another EDPS office closing day, the deadline will be the next working day.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p><i>Article 37</i> Visits</p> <p>1. Visits shall be carried out by the EDPS with the purpose of engaging commitment from senior management of an institution to fostering compliance with the Regulation.</p> <p>2. The launch of a visit shall in principle be based on a lack of commitment to comply with the Regulation, a lack of communication or to raise awareness.</p> <p>3. Where appropriate, a visit shall be concluded with an agreement on a schedule ('roadmap') committing the management of the institution to respect specific obligations under the Regulation within a set deadline. The agreed schedule shall be subject to follow-up by the EDPS.</p>	<p><i>Article 18</i> Visits</p> <p>1. Visits shall be carried out by the EDPS to engage commitment from senior management of an institution to fostering compliance with the Regulation.</p> <p>2. Compliance visits shall be based on a lack of commitment to comply with the Regulation, or on a lack of communication or to raise awareness.</p> <p>3. Consultancy visits may take place to advise the institutions on how to protect rights and freedoms of individuals and ensure compliance with the Regulation and other applicable provisions of Union law.</p>	
		<p><i>Article 20</i> Investigative powers</p> <p>The EDPS shall exercise its investigative powers in line with the principles set out in Article 19.</p>	
<p>2.2.2 Supervision</p> <p>■ (done)</p>	<p><i>Article 36</i> Inspections</p> <p>1. The EDPS shall decide to carry out an inspection, whenever on the spot verification is considered necessary for the performance of supervisory tasks or for compliance with a legal obligation.</p>	<p><i>Article 21</i> Audits</p> <p>1. The EDPS shall decide to carry out an audit, whenever on-the-spot verification is considered necessary for the performance of supervisory tasks or for compliance with a legal obligation. Regular audits are carried out on the basis of an annual risk-assessment exercise.</p>	

Commented [A42]: Comment by S&E, ■ This is because under Art. 39 of the Europol Regulation for example, the EDPS may suspend the deadline but not more than two months in total.

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	<p>2. The performance of an inspection shall be announced in writing to the institution concerned four weeks prior to the planned inspection date. The communication shall describe the purpose and scope of the inspection, establish the date of the inspection and set a deadline for the institution to request a revision of the date and to provide the EDPS with any requested information.</p> <p>3. The EDPS shall then issue a decision on an inspection, establishing the purpose, scope, date(s) and time and place(s) of the inspection and setting forth the legal basis for the inspection activities. The decision shall be accompanied by the mandates for any members of staff participating in the inspection.</p> <p>4. The members of staff performing an inspection shall collect any documentary evidence in a selective and proportionate manner. All documentary evidence shall be appropriately secured.</p> <p>5. Interviews and information obtained during an inspection and the procedure followed shall be recorded in minutes sent to the institution for comments. Should comments not be received within a set period, the minutes shall be deemed to have been approved. A list of evidence collected during the inspection shall be annexed to the minutes.</p> <p>6. The EDPS shall set forth in an inspection report the findings made during an inspection. The report shall include any actions to be undertaken by the institution inspected and shall be subject to follow-up by the EDPS.</p>	<p>2. The performance of an audit shall be announced in writing to the institution concerned four weeks prior to the planned audit date. The communication shall contain the decision on the purpose, scope, date(s) and time and place(s) of the audit, the mandates for any members of staff participating in the audit and set forth the legal basis for the audit activities. It shall also set a deadline for the institution to request a revision of the date and to provide the EDPS with any requested information.</p> <p>3. The members of staff performing an audit shall collect any documentary evidence in a selective and proportionate manner. All documentary evidence shall be appropriately secured.</p> <p>4. Interviews and information obtained during an audit and the procedure followed shall be recorded in minutes sent to the institution for comments. Should comments not be received within a set period, the minutes shall be deemed to have been approved. A list of evidence collected during the audit shall be annexed to the minutes.</p> <p>6. The EDPS shall set forth in an audit report the findings made during an audit. The report shall include any actions to be undertaken by the institution audited and shall be subject to follow-up by the EDPS.</p> <p>7. Audit reports shall not be published. The EDPS publishes an annual report, containing general information relating to inspections and follow-up exercises carried out during reporting period.</p>	
		<p>Article 22 Corrective powers</p> <p>1. The EDPS shall exercise its corrective powers in line with the principles set out in Article 18.</p> <p>2. The EDPS should make use of its corrective powers progressively. For minor infringements of the Regulation or other applicable provisions of Union law, the EDPS shall first use warnings and reprimands, followed by an order to bring into compliance the processing operation with the</p>	

Commented [A43]: During the TFTP inspection in February 2019, due to EUCI rules (EU secret, i.e. obligation to type everything in the Faraday cage) and time constraints, we drafted the minutes while interviewing people and draft the (short) inspection report right after. We double-checked with the interviewees what they said while typing but did not ask for Europol's formal comments on the minutes. Therefore, we should probably leave us some margin of manoeuvre in this respect (or we should change our practice for the next TFTP inspection). Another possibility could be to refer to the need to deviate to our standard practices because of EUCI rules in Art. 48 RoP on security (see below).

The case manual might have to be adapted too. TDB with

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		<p>applicable data protection rules within a set deadline.</p> <p>In case of non-compliance with the order the EDPS may issue fines.</p> <p>3. For grave infringements of the Regulation, the EDPS shall issue orders and in case of non-compliance, the EDPS may issue a fine.</p> <p>4. The EDPS may also order suspension of data flows to recipients, or impose a temporary or definitive limitation including a ban on processing without prejudice to other corrective measures.</p>	
<p><u>2.2.2</u></p> <p><u>Supervision</u></p> <p><u>Fines</u></p> <p>██████████ proposal to ██████████ (done)</p>		<p><u>Article [...] Administrative fines</u></p> <p>1. In accordance with Article 66, as specified by recital 81, of the Regulation the EDPS may by decision of the Supervisor impose administrative fines on Union institutions and bodies, depending on the circumstances of each individual case and as sanction of last resort, where any such institution and body fails to comply with an order by the EDPS pursuant to points (d) to (h) and (j) of Article 58(2) of the Regulation.</p> <p>2. The EDPS further details its policy on administrative fines under the EDPS Guidelines on administrative fines, ensuring in particular that the rights of defence of the parties concerned, including the right to access to the EDPS' file as set out under Article 66(6) of the Regulation, are fully respected in the proceedings.</p> <p>3. The powers conferred to the EDPS by Article 58(1)(j) and Article 66 shall be subject to the limitation period of five years. Time shall begin to run on the day on which the infringement is committed. However, in the cases of continued or repeated infringements, time shall begin to run on the day on which the infringement ceases.</p> <p>4. Pursuant to Article 66(7) of the Regulation funds collected by imposition of the administrative fines are the income of the general budget of the Union. For this purpose, the EDPS will enter into the necessary agreement with the European Commission.</p> <p><i>* NB. The 'EDPS orientation paper on administrative fines pursuant to Regulation (EU) 2018/1725' was sent to the DPOs for information on 12.12.</i></p>	

Commented [A44]: Neither the Europol Regulation, nor the EPPO Regulation refer to the possibility for the EDPS to issue a fine. And Article 66 of Regulation 2018/1725 on fines refers to infringements to and EDPS powers under 2018/1725 and not under other legal frameworks.

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		<i>2018, but it has not been formally adopted yet. My suggestion is to rename it (as Guidelines) and formally adopt it at the latest before end of June together with nRoP.</i>	
2.2.2 Supervision ■ (done)	Article 42 Cooperation with Data Protection Officers 1. The EDPS shall cooperate with Data Protection Officers, both on a bilateral basis and by participating in the meetings organised by the network of Data Protection Officers. 2. The EDPS shall provide support and guidance to Data Protection Officers, where necessary for the performance of their duties.	Article 42 Cooperation with Data Protection Officers 1. The EDPS shall cooperate with Data Protection Officers, both on a bilateral basis and by regularly participating in the meetings organised by the network of Data Protection Officers. 2. The EDPS shall provide support and guidance to Data Protection Officers, where necessary for the performance of their duties.	
2.2.2 Supervision ■ (done)	Article 43 Register of appointed Data Protection Officers In accordance with Article 44(9)24(5) of the Regulation, the EDPS shall keep a register of the appointments of Data Protection Officers notified to the EDPS. The register shall include, in particular, information on the duration of the mandate of each Data Protection Officer.	Article 43 Register of appointed Data Protection Officers 1. In accordance with Article 44(9) of the Regulation, the EDPS shall keep a register of the appointments of Data Protection Officers notified to the EDPS. The register shall include, in particular, information on the duration of the mandate of each Data Protection Officer. 2. The EDPS publishes a list of all DPOs on its website indicating only their name and surname, office contact details and their respective Union institution or body. 3. Union institutions and bodies shall inform the EDPS of any new appointment so that the EDPS can update the register and the list on the website, referred to, respectively, under paragraph 1 and 2 of this Article.	
2.2.2 Supervision ■ (done)	Complaints Article 31 Complaints 1. In accordance with Article 46(a) of the Regulation, the EDPS shall hear complaints and investigate them to the extent appropriate, and shall inform the data subject of the outcome within a reasonable period. 2. Complaints submitted to the EDPS shall not affect time limits for appeals	On complaints (but also on consultations...), check compatibility with provisions Europol, Eurojust, EPPO Regulation. <u>Article 31</u> <u>Complaints</u> <u>Removed</u>	

Commented [A46]: Please note that S&E is still discussing how we could cut this part or which parts of the text could be included in a policy document.

Commented [A47]: no incompatibility with Europol Regulation, Article 47

Commented [A48]: Repetition of the Regulation?

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	in parallel administrative or judicial proceedings.		
2.2.2 Supervision ■ (done)	<p>Article 32 Lodging a complaint</p> <p>1. A complaint shall identify the person making the complaint.</p> <p>2. A complaint shall be submitted in writing in any official language of the Union and provide all information necessary to understand its subject matter.</p> <p>3. A complaint shall in principle be lodged within two years of the date on which the complainant had knowledge of the facts on which it is based.</p> <p>4. If a complaint relating to the same facts has been lodged with the European Ombudsman, the EDPS shall examine its admissibility in the light of the provisions of the Memorandum of Understanding concluded between the EDPS and the European Ombudsman.</p>	<p>Article 32 Lodging a complaint</p> <p>1. A complaint shall identify the person making the complaint.</p> <p>2. A complaint shall be submitted in writing in any official language of the Union and provide all information necessary to understand its subject matter.</p> <p>3. A complaint shall in principle be lodged within two years of the date on which the complainant had knowledge of the facts on which it is based.</p> <p>4. If a complaint relating to the same facts has been lodged with the European Ombudsman, the EDPS shall examine its admissibility in the light of the provisions of the Memorandum of Understanding concluded between the EDPS and the European Ombudsman.</p> <p>5. Complaints submitted to the EDPS shall not suspend time-limits for actions in parallel administrative or judicial proceedings.</p>	
2.2.2 Supervision ■ (done)	<p>Article 33 Handling of complaints</p> <p>1. The EDPS shall decide on the most appropriate form and means to handle a complaint taking into account:</p> <p>(a) the nature and gravity of the alleged breach of data protection rules;</p> <p>(b) the importance of the prejudice that one or more data subjects have or may have suffered as result of the breach;</p> <p>(c) the potential overall importance of the case, also in relation to the other public and/or private interests involved;</p> <p>(d) the likelihood of establishing that the breach has occurred;</p> <p>(e) the exact date when events happened, any conduct which is no longer yielding effects, the removal of those effects or an appropriate guarantee of such a removal.</p> <p>2. EDPS actions may consist, in particular of written requests to provide information, interviews with relevant persons, on the spot inspections or forensic examination of the relevant devices.</p> <p>3</p>	<p>Article 33 Handling of complaints</p> <p>1. The EDPS shall decide on the most appropriate form and means to handle a complaint taking into account:</p> <p>(a) the nature and gravity of the alleged breach of data protection rules;</p> <p>(b) the importance of the prejudice that one or more data subjects have or may have suffered as result of the breach;</p> <p>(c) the potential overall importance of the case, also in relation to other public and/or private interests involved;</p> <p>(d) the likelihood of establishing that the breach has occurred;</p> <p>(e) the exact date when: the underlying events occurred, the conduct in question stopped yielding effects, the effects were removed or an appropriate guarantee of such a removal was provided.</p> <p>2. EDPS complaint handling may consist, in particular of written requests to provide information, interviews with relevant persons, on the spot inspections or forensic examination of the relevant devices. Where appropriate the EDPS shall</p>	

Commented [A45]: Incorporated under new 32(5) below.

Commented [A49]: Need to include the general presumption of non-disclosure for complaint files (including closed ones) under Reg 1049

Commented [A50]: Proposed first draft of this paragraph, to be aligned with CJEU RoP.

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		<p><u>facilitate an amicable settlement of the complaint.</u></p> <p><u>3. The EDPS may decide to suspend the investigation of a complaint pending a ruling by a court or a decision of another body on the same matter.</u></p> <p>34. The EDPS shall disclose the content of a complaint and the identity of the complainant only to the extent necessary for the proper conduct of the inquiry. During and after the inquiry, no documents related to the complaint, including the final decision, shall be disclosed by the EDPS to third parties, unless the persons concerned consent to such disclosure or if the EDPS is under a legal obligation to do so.</p> <p>4.5 Information about the complaint shall be published by the EDPS only in a form which does not allow the complainant or other data subjects involved to be identified.</p> <p>4. The EDPS shall disclose the identity of the complainant only to the extent necessary for the proper conduct of the investigation. The EDPS shall not disclose any documents related to the complaint, excluding anonymised excerpts or summaries of the final decision, to third parties, unless the persons concerned consents to such disclosure or if the EDPS is under a legal obligation to do so.</p> <p>5. Information about the complaint shall be published by the EDPS only in a form which does not allow the complainant or other data subjects involved to be identified.</p> <p>6. In line with Article 61, 62 as well as Article 51(b) of the Regulation and other applicable provisions providing for the involvement of national supervisory authorities, the EDPS may cooperate with national supervisory authorities and similar bodies in the Member States to the extent necessary for their respective duties, including through the European Data Protection Board.</p> <p>7. Where the EDPS considers that a submitted complaint amounts to an abuse of communication or process, it may decide to refuse to act on the request.</p>	
2.2.2 Supervision ■ (done)	<p><i>Article 34</i></p> <p>Outcome of complaints</p> <p>1. The EDPS shall inform the complainant as soon as possible of the outcome of a complaint and the action taken.</p> <p>2. Where a complaint is found to be inadmissible or its consideration is</p>	<p><i>Article 34</i></p> <p><u>Outcome of complaints</u></p> <p><u>1. The EDPS shall inform the complainant as soon as possible of the outcome of a complaint and the action taken.</u></p> <p><u>2. Where a complaint is found to be inadmissible or its consideration is</u></p>	

Commented [A51]: Possibly to be developed further.

Commented [A52]: Comment by S&E, ■: cf. Art. 47 of Regulation 2016/794 for Europol.

Commented [A53]: Proposed addition to the RoP complaints section, based on the Art 57(4) of the Regulation, Code of good administration and practice of the Ombudsman. Whether or not this addition is kept is to be decided by the RoP task force.

Commented [A54R53]: Maybe this para should be moved up, inserted soon after para 1.

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	<p>terminated, the EDPS shall, where appropriate, advise the complainant to refer to another authority.</p> <p>3. In accordance with Article 32(2) of the Regulation, in the absence of a response by the EDPS within six months, the complaint shall be deemed to have been rejected.</p>	<p>terminated, the EDPS shall, where appropriate, advise the complainant to refer to another authority.</p> <p>3. The EDPS may decide to discontinue an investigation at the request of the complainant. This shall not prevent the EDPS from investigating the subject matter of the complaint further.</p> <p>4. The EDPS may close an investigation where the complainant has failed to provide any requested information or any requested comments.</p>	
<p>2.2.2 Supervision</p> <p>*link to Article 40, under 2.2.3</p> <p>■ (done)</p>	<p>Article 35 Review and judicial remedies</p> <p>1. The complainant and the institution concerned may request the EDPS in writing to review the decision on a complaint.</p> <p>2. A request for review shall be lodged within one month of the date of receipt of the decision and shall be limited to new elements or legal arguments which have not been taken into account by the EDPS.</p> <p>3. Independently of the possibility to request the EDPS to review the decision on a complaint, the decision may be challenged before the Court of Justice of the European Union in accordance with the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.</p>	<p>Article 35 Review and judicial remedies</p> <p><u>1. The complainant and the institution concerned may request the EDPS in writing to review the decision on a complaint.</u></p> <p><u>2. A request for review shall be lodged within one month of the date of receipt of the decision and shall be limited to new elements or legal arguments which have not been taken into account by the EDPS.</u></p> <p><u>3. Independently of the possibility to request the EDPS to review the decision on a complaint, the decision may be challenged before the Court of Justice of the European Union in accordance with the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.</u></p> <p><u>4. Where the EDPS, following a request for review, issues a revised decision which relies on substantial new elements, this new decision, that is, a not merely confirmatory decision, such revised decision shall be subject to the same possibilities of judicial remedy as specified in paragraph 3 of this Article of these Rules of Procedure.</u></p>	

Commented [A55]: ■ you decided to remove this? please confirm.

Commented [A56]: maybe more clarity: what triggers the complaint; what makes it inadmissible; what can discontinue the handling; things relating to the outcome. if I may suggest.

Commented [A57]: Proposed additions to the RoP complaints section, based on the Art. 57(1)(e) of the Regulation, Code of Good Administration and the practice of the Ombudsman. Whether or not this addition is kept is to be decided by the RoP task force.

Commented [A58]: I.e. a decision which is not merely confirmatory. Possibly to be clarified later.

2.2.3 ████ (consulting) ████	<p>COOPERATION WITH DATA PROTECTION AUTHORITIES</p> <p><i>Article 44</i></p> <p>Cooperation with Data Protection Authorities</p> <p>1. In accordance with Article 46(f)(i) of the Regulation, the EDPS shall cooperate with national data protection authorities and other supervisory bodies to the extent necessary for the performance of their respective duties.</p> <p>2. Cooperation shall include:</p> <p>(a) the exchange of all relevant information, such as information relating to best practices, as well as requests to the relevant authority to exercise its powers and responses to a request by such authority;</p> <p>(b) developing and maintaining contacts with relevant members and staff of the authorities;</p> <p>(c) cooperation with Joint Supervisory Authorities and Bodies set up under Union law, including where relevant participation in the meetings of such authorities and bodies, with the aim of ensuring a consistent practice.</p>	<p>COOPERATION WITH NATIONAL SUPERVISORY AUTHORITIES</p> <p><i>Article [...]]</i></p> <p>Cooperation with national supervisory Authorities</p> <p>The cooperation of the EDPS with national supervisory authorities and the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA, under Article 61 of the Regulation, shall include:</p> <p>(a) the exchange of all relevant information, such as information relating to best practices, as well as requests to the relevant authority to exercise its powers and responses to a request by such authority;</p> <p>(b) developing and maintaining contacts with relevant members and staff of the authorities;</p> <p>(c) where relevant participation in the meetings of Joint Supervisory Authorities, with the aim of ensuring a consistent practice.</p>	
2.2.3 ████ (consulting) ████	<p><i>Article 45</i></p> <p>Article 29 Working Party</p> <p>1. In accordance with Article 46(g) of the Regulation, the EDPS shall participate in the activities of the Working Party set up by Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. (1)</p> <p>2. The EDPS shall contribute actively to the discussions and drafting of documents published by the Working Party which aim at providing a common interpretation of data protection legislation and giving expert advice to the European Commission. In such cases, the EDPS shall put forward the Union perspective, where appropriate.</p> <p>3. The EDPS shall participate on a regular basis in the plenary and subgroup meetings of the Working Party.</p> <p>4. The EDPS shall promote regular discussions, if possible at least once a year, with the Chairman of the Working Party on their respective priorities, with a view to good cooperation in practice.</p>	<p><i>Article</i></p> <p>European Data Protection Board</p> <p>1. In accordance with Article 57(1) of the Regulation, the EDPS shall provide the secretariat of the European Data Protection Board (EDPB) set up by Regulation (EU) n° 2016/679. Its role as secretariat is further detailed in the Memorandum of Understanding between them.</p> <p>2. Irrespective of its role as providing the Secretariat of the EDPB, the EDPS shall be a full member of the EDPB and contribute actively to the discussions and drafting of documents published by the EDPB which aim at providing a common interpretation of data protection legislation and giving expert advice to the European Commission. In such cases, the EDPS shall put forward the Union perspective, where appropriate.</p> <p>3. The EDPS shall participate on a regular basis in the plenary and subgroup meetings of the EDPB.</p> <p>4. The EDPS shall promote regular discussions, if possible at least once a year, with the Chair of the EDPB on their respective priorities, with a view to good cooperation in practice.</p>	

Commented [A59]: For █████ I took the view not to repeat the Article but we might want to specify it further?

Commented [A60]: For █████ see if you want to make some link with the next provision on coordinated supervision.

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<p>2.2.3</p> <p>and</p>	<p><i>Article 46</i></p> <p>Coordinated supervision of large scale IT systems</p> <p>1. The EDPS shall take part with national supervisory authorities in the coordinated supervision of large scale IT systems, as provided under Union law.</p> <p>2. The EDPS shall organise coordination meetings and provide the secretariat of the coordination groups.</p> <p>3. The EDPS shall cooperate with individual national supervisory authorities to the extent necessary and according to their priorities, with a view to ensuring coordinated supervision of the national and central parts of large scale IT systems.</p>	<p><i>Article 46</i></p> <p>Coordinated supervision by the EDPS and national supervisory authorities of large scale IT systems and of Union bodies, offices and agencies</p> <p>1. The EDPS shall take part with national supervisory authorities in the coordinated supervision of large scale IT systems and of Union bodies, offices and agencies, as provided under Union law, including Article 62 of the Regulation where applicable.</p> <p>2. Where Article 62 of the Regulation does not apply, the EDPS shall organise coordination meetings and provide the secretariat of the coordination groups. The EDPS shall cooperate with individual national supervisory authorities to the extent necessary and according to their priorities, with a view to ensuring coordinated supervision of the national and central parts of large scale IT systems and of Union bodies, offices and agencies.</p>	
<p></p>	<p><i>Article 47</i></p> <p>International cooperation</p> <p>1. The EDPS shall take part in the annual Spring Conference of European Data Protection Commissioners, the annual International Conference of Data Protection and Privacy Commissioners, and the International Working Group on Data Protection and Telecommunications.</p> <p>2. The EDPS shall participate in relevant international privacy enforcement networks.</p> <p>3. The EDPS shall organise regular workshops with representatives of international organisations with a view to sharing best practices and developing a strong data protection culture in those organisations.</p>	<p><i>Article 47</i></p> <p>International cooperation</p> <p>1. <u>In accordance with its obligations under Article 51 of the Regulation, the EDPS shall take part in the annual Spring Conference of European Data Protection Commissioners, the annual International Conference of Data Protection and Privacy Commissioners, and the International Working Group on Data Protection and Telecommunications.</u></p> <p>2. The EDPS shall participate in relevant regional and international privacy enforcement networks. <u>such as the Consultative Committee of the Convention 108 of the Council of Europe.</u></p> <p>3. The EDPS shall <u>contribute to the organisation of</u> regular workshops with <u>representatives of international organisations various stakeholders</u> with a view to sharing best practices and developing a <u>strong data protection culture in those organisations.</u></p>	

Commented [A61]: - Article 62 Regulation + IMI + EUROPOL?

I tried to make it future proof - but see if we can be more specific.

Commented [A62]: Comment by S&E. P&C is working on an adapted wording taking into account coordinated supervision under Article 62 (coordinated supervision of Large scale It systems + EUIs as Eurojust and EPPO), Owe and I made comments on a first draft prepared by

Commented [A63]: Comments in red are contributions from S&E in relation to ethics

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	4. The EDPS shall promote cooperation and dialogue at international level with other stakeholders from third countries.	4. The EDPS shall promote cooperation and dialogue at international level with <u>other stakeholders from third countries in order to promote EU data protection standards, the European culture of fundamental rights and values and the European understanding of privacy and data protection as central to safeguarding human dignity, autonomy and the democratic functioning of societies.</u>	
2.2.4 Court proceedings ■ (done)	Court proceedings Article 39 Actions against institutions In accordance with Article 47(1)(h) of the Regulation, the EDPS may refer a matter to the Court of Justice of the European Union, under the conditions provided for in the Treaty. The EDPS shall make use of that power, where necessary, in case of non-compliance by an institution with the Regulation, and in case of failure to effectively respond to subsequent enforcement action taken by the EDPS under Article 47 of the Regulation.	deleted. Covered by Article 58(4) of the Regulation.	
*linked to Article 35, under 2.2.2 ■ (done)	Article 40 Actions against EDPS decisions In accordance with Article 32(3) of the Regulation, actions against decisions of the EDPS shall be brought before the Court of Justice of the European Union.	deleted. Covered by Article 64(2) of the Regulation.	
■ (done)	Article 41 Interventions 1. In accordance with Article 47(1)(i) of the Regulation, the EDPS may intervene in actions brought before the Court of Justice of the European Union. 2. The EDPS shall apply for leave to intervene in proceedings if the case is of general data protection importance or if the EDPS has been directly involved in the facts of the case in the performance of supervisory tasks. 3. Other elements which may influence the decision to request leave to intervene are whether the data protection issue constitutes a substantial part of the case	Article Interventions 1. In accordance with Article 58 (4) of the Regulation, the EDPS may intervene in actions brought before the Court of Justice of the European Union. The EDPS shall apply for leave to intervene in proceedings if the case is of general data protection importance. Unless there are strong reasons not to intervene, the EDPS shall apply for leave to intervene if formally invited to do so by the Court. In all other cases, elements which may influence the decision to request leave	

Commented [A64]: We have consistently *not* applied this part; either to be deleted or to make it more flexible ("may") for both criteria. Perhaps add other, merging paras. 2 and 3?

Commented [A65R64]: Done - merged 2 & 3

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	<p>and whether an intervention by the EDPS is likely to add value to the proceedings.</p> <p>4. Unless there are strong reasons not to intervene, the EDPS shall apply for leave to intervene if formally invited to do so by the Court.</p>	<p>to intervene are inter alia whether the EDPS has been directly involved in the facts of the case in the performance of supervisory tasks, the data protection issue constitutes a substantial part of the case and whether an intervention by the EDPS is likely to add value to the proceedings.</p>	
<p>2.2.5 Monitoring Technology (done)</p>	<p><i>Monitoring Technology</i> <i>Article 38</i> Technology monitoring and research 1. In accordance with Article 46(e)57(1) h) of the Regulation, the EDPS shall monitor the development of information and communication technologies insofar as they have an impact on the protection of personal data. In carrying out that task, the EDPS shall aim at identifying emerging trends with a potential impact on data protection, establishing contacts with relevant stakeholders, raising awareness of possible data protection aspects and providing advice on how to include data protection concerns in relevant projects, promoting in particular the principles of privacy-data protection by design and data protection privacy-by default, and where necessary adapting supervision methodologies to technological evolution.</p> <p>3. The EDPS unit in charge of monitoring the development of information and communication technologies shall advise the Management Board on the implications of technological developments for the exercise of the tasks of the EDPS.</p>	<p><i>Article 38</i> Technology monitoring 1. In accordance with Article 57(1)(h) of the Regulation, the EDPS shall monitor the development of information and communication technologies insofar as they have an impact on the protection of personal data. In carrying out this task, the EDPS shall aim at identifying emerging trends, establishing contacts with relevant stakeholders, raising awareness of possible data protection aspects and providing advice on how to include data protection concerns in relevant projects, promoting in particular the principles of data protection by design and data protection by default and also responsible development based on ethical standards and a precautionary approach, including</p> <p>The EDPS shall warn about developments that are not in line with data protection law, fundamental rights, values and principles. The EDPS shall take part in international deliberations on the ethics of the digital, promoting a strong ethics culture in and beyond the technology sector.</p> <p>3. The EDPS Unit in charge of monitoring the development of information and communication technologies shall advise the Management Board on the implications of technological developments for the exercise of the tasks of the EDPS.</p> <p><i>Article [...] (new)</i> Research</p>	<p>*linked to Article 49, under 1.2, Organization.</p> <p>Decision of 2012 on IT steering Committee to be modified/up dated.</p>

Commented [A66]: Taken from para 2 of current Art 41

Commented [A67]: S&E contribution related to ethics

Commented [A68]: S&E contribution on ethics

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	<p>12. The EDPS shall contribute to the Union's Framework Programmes, by participating in advisory committees in research, assisting the Commission in the evaluation process of proposals or any other means, where appropriate.</p> <p>23. The EDPS may decide to contribute to individual EU funded research, technological development and demonstration activities by adopting an opinion on the activity, upon request or on own initiative.</p>	<p>1. The EDPS shall contribute to the Union's Framework Programmes, by participating in advisory committees in research, assisting the Commission in the evaluation process of proposals or any other means, where appropriate.</p> <p>2. Organization. The EDPS may decide to contribute to individual EU funded research, technological development and demonstration activities by adopting an opinion on the activity, upon request or on own initiative.</p>	
<p>2.2.6 As EDPS 'Outreach' (IC)</p> <p>■ (done)</p>	<p><i>Article 52</i> Information and Communication to the public to the public 1. The EDPS shall raise awareness of data protection and inform the public individuals on the existence and content of their rights related to data protection and privacy. To this end, the EDPS shall use a number of communication tools (e.g. website, newsletter, social media and awareness-raising events), liaise with interested parties (e.g. study visits to the EDPS office, replies to information requests) and participate in public events, meetings and conferences.</p> <p>2. The EDPS shall inform the media about major events related to data protection and important opinions or publications, through press releases, interviews and press conferences.</p>	<p><i>Article 52</i> Information and Communication to the public 1. The EDPS shall raise awareness of data protection and inform the public on their rights related to data protection and privacy. To this end, the EDPS shall use a number of communication tools (e.g. website, newsletter, social media and awareness-raising events), liaise with interested parties (e.g. study visits to the EDPS office, replies to information requests) and participate in public events, meetings and conferences.</p> <p>2. The EDPS shall inform the media about major events related to data protection and important opinions or publications, through press releases, interviews and press conferences.</p> <p>3. The EDPS Unit/Sector in charge of information and communication shall advise and support the Supervisor, the Secretary General, the Management Board and all Units and Sectors on matters related to the promotion of the activities and outreach of the EDPS.</p> <p>4. Internal communication shall be ensured through regular staff meetings, announcements as well as via the use of the dedicated Intranet website.</p>	
3.1	ADMINISTRATION * Horizontal supporting services and horizontally applicable law (to all activities)		
3.1.1	<i>Article 50</i> Quality management	<i>Article 50</i> Quality management	

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<p>*linked to 1.4.1 Planning and Accountability</p> <p>■ (done)</p>	<p>The EDPS shall put in place appropriate mechanisms to ensure adequate quality management, such as Internal Control Standards, risk management and an annual Activity Report, and risk management.</p> <p>The Internal Control Coordinator reports to the Management Board on any audit issues or quality management.</p>	<p><u>1. The EDPS shall put in place appropriate mechanisms to ensure adequate quality management, such as Internal Control Standards, risk management and an annual Activity Report.</u></p> <p><u>2. The Internal Control Coordinator reports to the Management Board on any audit issues or quality management.</u></p>	
<p>3.1.2</p> <p>■</p> <p>Consult/together with ■ (consulted) (done)</p>	<p><i>Article 48</i> Security</p> <p>1. In accordance with Article 45 of the Regulation, the Supervisor and members of staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.</p> <p>2. The EDPS shall appoint one or more staff members with specific responsibility for security issues, concerning the various fields of activities. They shall be responsible in particular for staff related security issues, physical security and IT security.</p> <p>When they consider it necessary to avoid security risks for the EDPS, the staff members so appointed shall report directly to the Director.</p>	<p><i>Article 48</i> Security</p> <p><u>1. In accordance with Article 56 of the Regulation, the Supervisor and members of staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.</u></p> <p><u>2. The EDPS, in accordance with its Decision 429 of 18 February 2014 on the protection of EUCI, appoints one or more staff members with specific responsibility for security issues, concerning the various fields of activities: namely, the Local Security Officer (LSO), responsible in particular for staff related security issues and physical security; the Local Information Security Officer (LISO), in charge of information security.</u></p> <p><u>When they consider it necessary to avoid security risks for the EDPS, the staff members so appointed shall report directly to the Director.</u> <u>The Security Committee established pursuant to Section 4.2. of the Annex I to the EDPS Decision 429 of 18 February 2014 will decide on EDPS EUCI security matters and may be consulted on other security related issues.</u></p> <p><u>3. The EDPS, due to the small size of the institution, shall may sign service level and cooperation agreements with major EU institutions to provide for</u></p>	

Commented [A69]: my suggestions

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		<p>ordinary and extraordinary security needs.</p> <p>4. The security rules of the EDPS shall be continuously adapted to reflect the evolution of security needs and shall be consistent with the standards set in the security rules of the Council of the European Union, of the European Commission and of the European Parliament.</p>	
<p>3.1.3 DPO</p> <p>■ (together with ■ (done))</p>	<p><i>Article 51</i> Data Protection Officer In accordance with Article 24 of the Regulation, the EDPS shall appoint a Data Protection Officer who shall report directly to the Director.</p>	<p><i>Article 51</i> Data Protection Officer 1. In accordance with Article 43 of the Regulation, the EDPS shall appoint a Data Protection Officer (DPO) who shall report directly to the Director. 2. Pursuant to Art. 44(5) of the Regulation, referring to the DPO and his or her staff, the EDPS may establish a DPO Office composed, in addition to the DPO, by an Assistant DPO and administrative assistants where appropriate. 3. In accordance with Article 45(3) of the Regulation, the EDPS has shall adopted further implementing rules concerning in particular the tasks, duties and powers of the DPO.</p>	
<p>New item: Ethics Framework</p> <p>■ (done)</p>		<p><i>Article [...]</i> Ethics Framework 1. The EDPS shall put in place an Ethics Framework which ensures the proper functioning of the services of the EDPS for the performance of the tasks of the institution, taking into account the principles of good governance, good administrative behaviour and good management. 2. The Ethics Officer of the EDPS shall ensure the institution's internal control on ethics and shall report directly to the Management Board on the implementation of the Ethics Framework.</p>	
<p>3.1.4 Staff</p> <p>■ in agreement</p>	<p><i>Article 59</i> Staff 1. The Members of staff of the EDPS shall be recruited in accordance with and subject to the Staff Regulations and the</p>	Deleted	

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with  and  (done)	<p>conditions of employment of other servants of the European Union.</p> <p>2. In order to increase cooperation with national authorities, in particular national data protection authorities, a programme for the secondment of staff shall be put in place at the EDPS.</p> <p>3. A traineeship program shall be put in place, to enable recent university graduates to acquire practical experience on the workings of the EDPS and of the Union in general.</p> <p>4. Interim staff and other external assistance may be hired to cover temporary needs.</p>		
 (agreed by  done)	<p>Article 60 Staff Committee</p> <p>1. A Staff Committee representing the staff of the EDPS shall be consulted in good time on draft decisions relating to the implementation of the Staff Regulations of officials of the European Union and may be consulted on any other question of general interest concerning the staff. The Staff Committee shall be informed of any question related to the execution of its tasks. It shall issue its opinions within 15 days of being consulted.</p> <p>2. The Staff Committee shall contribute to the good functioning of the EDPS by making proposals on organisational matters and working conditions.</p> <p>3. The Staff Committee shall be composed of three to five members and three to five deputies, and elected for a period of two years by the General Assembly.</p>	<p>Article 60 Staff Committee</p> <p><u>1. A Staff Committee representing the staff of the EDPS shall be consulted in good time on draft decisions relating to the implementation of the Staff Regulations of officials of the European Union and on any other question of general interest concerning the staff. The Staff Committee shall be informed of any question related to the execution of its tasks. It shall issue its opinions within 15 days of being consulted.</u></p> <p><u>2. The Staff Committee shall contribute to the good functioning of the EDPS by making proposals on organisational matters and working conditions.</u></p> <p><u>3. The EDPS The Staff Committee shall be composed of three to five members and three to five deputies, and elected for a period of two years by the General Assembly.</u></p> <p><u>4. At least one member and one deputy shall be working within the EDPB Secretariat.</u></p>	
 (done)	<p>Article 61 (Staff and budget-related administrative cooperation with other institutions)</p> <p>1. The Director, as Head of the Secretariat, shall represent the EDPS in the various inter-institutional fora, and may delegate this representation to the officials in charge of human resources, budget and administration.</p>	<p>Article 61 Staff and budget-related administrative cooperation with other institutions</p> <p><u>1. Upon sub-delegation by the Secretary-General, and without prejudice to the Memorandum of Understanding signed between the EDPS and the EDPB, the Director, as Head of the Secretariat, shall represent the EDPS in the various inter-institutional fora, and may delegate</u></p>	

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	<p>2. Given the size of the EDPS in comparison with the other institutions, and with a view to good management and budgetary economy, the EDPS shall actively pursue cooperation agreements, memoranda of understanding and service level agreements with other institutions.</p>	<p><u>this representation to the officials in charge of human resources, budget and administration.</u></p> <p><u>2. Given the size of the EDPS in comparison with the other institutions, and with a view to good management and budgetary economy, the EDPS shall actively pursue cooperation agreements, memoranda of understanding and service level agreements as well as the participation to framework contracts with other institutions.</u></p>	
3.2	The legal regime of procedures at EDPS		
■ (done)	<p>Article 58 Languages and working languages 1. The language of proceedings conducted by the EDPS shall be one of the languages mentioned in Article 55(1) of the Treaty on European Union. In the case of a complaint, this shall be the language in which it is written. 2. Reports, opinions, papers and other documents, also designed for publication on the EDPS website, shall be drawn up at least in English, French and German.</p>	<p>Article 58 Languages and working languages 1. The language of proceedings conducted by the EDPS shall be one of the languages mentioned in Article 55(1) of the Treaty on European Union. 2. The EDPS may decide to make recourse to the use of the English language as internal working language arrangement. 3. Any person may write to the EDPS in any Treaty language, on any matter falling within the EDPS's competence. The EDPS shall draft the response in that Treaty language. 4. A complaint may be submitted to the EDPS in any Treaty language. The EDPS shall communicate with the complainant in that language. 5. The legislative opinions and the most important acts of the EDPS shall be published on the EDPS website at least in English, French and German.</p>	
■	<p>Article 57 Authentication of decisions 1. Decisions shall be authenticated by the apposition of the Supervisor's signature on the original language version. 2. Such signature may be written or in electronic form.</p>	<p><u>Work in progress</u> Authentication of legally binding measure of the EDPS in the context of monitoring and enforcement of data protection rules</p> <p><i>See recital 73 of the Regulation (EU) 1725/2018 for all necessary elements to be contained in the measure</i></p> <p>Authentication of acts</p>	

Commented [A70]: to be checked against EPSO interpretation of the current case law (see also EDPB RoP and related discussions, we should IMO avoid a situation when *another* EDPS decision is required to settle the matter. it should be clarified directly in the RoP.

Commented [A71]: S&E comment: This article should be changed and linked to the article on delegations/deputizing. For the sake of business continuity we need to have an efficient system, to ensure that after 4 December the EDPS as an institution can take legally binding decisions even in the absence of the EDPS himself.

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		<p>Authentication of legislative opinion of the EDPS</p> <p>...</p> <p>Suggestion by S&E:</p> <p><i>Article 57</i></p> <p>Authentication of decisions</p> <p>1. Decisions shall be authenticated by the apposition of the Supervisor's signature on the original language version.</p> <p>2. Such signature may be written or in electronic form.</p> <p>3. All decision taken according to Article x and xx shall be deemed to be authentic.</p>	
<p>■ + ■</p>	<p><i>Article 55</i></p> <p>Publication in the Official Journal</p> <p>The following documents shall be published in the <i>Official Journal of the European Union</i>:</p> <p>(a) summaries of legislative opinions as referred to in Article 28(3);</p> <p>(b) decisions and opinions of the EDPS, or summaries thereof, referred to in Article 9(7), in Article 10(2)(b), 10(4), 10(5) and 10(6), in Article 12(2), in Article 19, and in Article 37(2) of the Regulation;</p> <p>(c) other documents considered relevant by the EDPS.</p>	<p>Check budgetary implications with HR Finance</p>	
<p>■ (54.1)</p> <p>■ (54.2)</p>	<p><i>Article 54</i></p> <p>Active disclosure of documents</p> <p>1. In principle, all key policy documents, thematic guidelines, legislative opinions, formal comments, pleading notes of Court hearings and prior check opinions shall be made public on the EDPS website.</p> <p>2. Opinions following an administrative consultation shall be made public on the EDPS website if they have broader relevance, contain a new interpretation or application of the law or concern the impact of new technologies on data subjects' rights.</p>	<p><i>Article 54</i></p> <p>Active disclosure of documents</p> <p>In principle, all key policy documents, thematic guidelines, and prior check opinions shall be made public on the EDPS website. Pleading notes of Court in case of general data protection importance may also be made public on the EDPS website.</p>	
<p>■ and ■</p>	<p><i>Article 56</i></p> <p>Public access to documents</p> <p>The public shall have access to documents held by the EDPS in accordance with the principles laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the</p>	<p><i>Article 56</i></p> <p><u>Public access to documents</u></p> <p><u>Propose to remove, covered by Article 52(4).</u></p> <p><i>NB closed complaints!</i></p>	

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Commented [A72]: Refer to articles on delegation and deputizing. These articles could also refer to another separate document setting out, what decisions are delegated to whom, to make sure that the decisions taken by the Secretary General, Director, HoUs are authentic.

Commented [A73]: As discussed, ok on the condition that:

- "legislative opinion" is only a subset of those covered under 42
- formal comments: exceptions needed if e.g. we decide to issue them on a draft mandate (?); IMO it might be more useful to work with circumstances that would justify exceptions rather than by type of document;
- pleading notes: obviously not when concern staff matters (did happen in the past!) or cases where EDPS is a defendant?

Commented [A74R73]: 1) I wonder if this Article should not focus only on documents other than comments and opinion as the publicity regime of those is already explained in the respective articles above or we should delete the respective paragraphs on the publicity in the website.
2) see my comments above about "legislative opinions".

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	Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.		
3.3 Document ation and its manageme nt <div style="background-color: black; width: 10px; height: 10px; display: inline-block; vertical-align: middle;"></div> (done)	<p>Article 53 DocumentationRecords management</p> <p>1. AccurateThe EDPS shall keep Accurate and authentic records shall be kept of all EDPS its activities ensuring, as a reliable and legally verifiable source of evidence of decisions and actions.</p> <p>2. Records and dDocuments related to specific activities shall be <u>organised grouped together in case files.</u> The EDPS shall establish and maintain <u>Case files shall be logically accessible according to type of activity in a filing plan where case files shall be logically accessible per type of activity established by the EDPS.</u></p> <p>2.</p> <p>3. The EDPS shall establish and maintain Different types of case files shall be preserved for a specific period according to a retention schedule, detailing for how long the different types of case files shall be preserved, to comply with legal obligations and administrative rules established by the EDPS. After expiration of the retention period, <u>the case files shall be assessed and archived or eliminated, in accordance with the provisions on according to the archiving policy adopted by the EDPS.</u></p>	<p>Article 53 Records management</p> <p>1. The EDPS shall keep accurate and authentic records of its activities, as reliable and legally verifiable source of evidence of decisions and actions.</p> <p>2. Records and documents related to specific activities shall be organised in case files. The EDPS shall establish and maintain a filing plan where case files shall be <u>logically accessible per type of activity.</u></p> <p>3. The EDPS shall establish and maintain a retention schedule, detailing for how long the different types of case files shall be preserved, to comply with legal obligations and administrative rules. After expiration of the retention period, the case files shall be appraised and archived or eliminated, in accordance with the provisions on archiving adopted by the EDPS.</p>	
4 Final provisions <div style="background-color: black; width: 10px; height: 10px; display: inline-block; vertical-align: middle;"></div> (done)		<p>Article [..] Repeal of EDPS Decision of 17 December 2012 on the adoption of Rules of Procedure (2013/504/EU) and transitional measures</p> <p>1. These Rules of Procedure shall repeal the EDPS Decision of 17 December 2012 on the adoption of Rules of Procedure with effect as from the date of entry into force of these Rules of Procedure.</p> <p>2. However, these Rules of Procedure will not affect in any way the provisions on transitional measures under Article 100, further specified under recital 87, of the Regulation (EU) 2018/1725, in particular having regard to the position and tasks of the</p>	

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		current Assistant Supervisor until the end of his term of Office. 3. Accordingly, Articles [...] and [...] of these Rules of Procedure shall not apply and Articles [...] and [...] of the EDPS Decision of 17 December 2012 shall continue to apply until the end of the term of Office of the Assistant Supervisor.	
4 Final provisions ■ (done)	<i>Article 62</i> Entry into force These Rules of Procedure shall enter into force on the day following their signature and shall be published in the <i>Official Journal of the European Union</i> .	<i>Article 62</i> Entry into force These Rules of Procedure shall enter into force on the day following their signature and shall be published in the <i>Official Journal of the European Union</i> .	

To be added:

- Reference to the list of policies to the Preamble (■ done. ✓)

- Data breaches (■ and ■ work in progress)

- Fines (■ on behalf of ■ done. ✓)

- Ethics Framework (■ done. ✓)