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From: Encarna Gimenez, Data Protection Officer (DPO)

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DPO ANNUAL WORK REPORT 2021

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Introduction

Article 2 of eu-LISA Regulation¹ states the objectives of the Agency. Explicitly, the Agency shall ensure a high level of data protection, in accordance with Union data protection law, including specific provisions for each EU Large-Scale IT System.

eu-LISA Data Protection Officer (DPO) is required to advise controllers and processors on fulfilling their obligations. Application of the provisions of Regulation (EU) 2018/1725² (Regulation) is firstly ensured by the DPO of eu-LISA and, ultimately, by the supervisory role of the European Data Protection Supervisor (EDPS).

During 2021, eu-LISA DPO has dedicated efforts to ensure that the Agency closes the gap between the previous Regulation (EU) No 45/2001³ and current Regulation including adoption of Internal Rules in line with Article 25 of the Regulation, conversion of old notifications into records, maintaining a record of all categories of processing activities carried out on behalf of controllers, and the update of the existing Policy on Personal Data Breach.

Moreover, the DPO also supported the Agency in its biggest data protection challenges, in particular, those deriving from the use of biometric matching technologies and measures to mitigate identified risks.

The DPO of eu-LISA worked closely with the data controllers, data processors and EDPS to find both effective and compliant solutions that ensure the respect for privacy and personal data.



¹ **Regulation (EU) 2018/1726** of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA).

² **Regulation (EU) 2018/1725** of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

³ **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 the Community institutions and bodies and on the free movement of such data.

1. Scope

Under Article 7(4) of the eu-LISA DPO Implementing Rules⁴, the DPO shall submit to the Agency's Management Board an annual report on her activities and on the state of play as regards the data protection activities and compliance of the Agency.

This report presents the status of the data protection activities within the Agency and compiles the work performed by the DPO during the year 2021.

2. DPO Activities and Actions

The following sections detail by topic the state of play as regards the data protection activities and compliance of the Agency with the Regulation.

2.1. Awareness

In order to raise awareness on data protection, the DPO of eu-LISA makes use of different tools including general awareness sessions, one-on-one coaching sessions, weekly newsletters and the dedicated Data Protection Officer intranet.

On 28 January 2021, an awareness session was organized in order to celebrate the European Data Protection Day. This session included the highlights and key concepts related to data breaches such as their definition, identification, assessment, management and the notification procedure. The interactive presentation, delivered by eu-LISA's Data Protection Office - based in Tallinn and Strasbourg -, was attended by more than 130 participants. The attendees were actively involved in the discussion and provided positive feedback at the end of the session. The results showed that the majority of the attendees that provided feedback were satisfied with the presentation and all the suggestions to improve the format of upcoming sessions were fully taken into account by the DPO.

Moreover, three Data Protection Awareness sessions for newcomers were held on 18 February, 2 July, and 15 October 2021 with the aim of offering an overall outlook on the basic concepts and principles of data protection and the Regulation. Although these trainings mainly targeted eu-LISA newcomers, the session was also open to the rest of eu-LISA personnel. Attendance varied between ten and thirty participants depending on the session. As a result, most of the participants provided positive feedback and their suggestions will be used to optimize upcoming sessions.

On 26 May 2021, in light of the collaboration framework on data protection between eu-LISA and the European Union Agency for Cybersecurity (ENISA), the DPOs of both Agencies jointly organised a webinar on "Privacy and Data Protection by Design". The webinar was led by experts and academics in privacy with experience in data protection, IT governance and cryptography from EDPS, Spanish Data Protection Authority and Katholieke Universiteit Leuven.

⁴ eu-LISA Management Board Decision No 2019-185 REV 1 on implementing rules concerning the Data Protection Officer pursuant to Article 45(3) of Regulation (EU) No 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC.

Ninety-three participants from both Agencies attended the session, fifty-two of them were eu-LISA's personnel. Topics covered during the webinar included:

- Data protection by design & IT governance
- Data protection by design in websites and mobile apps
- Cryptographic techniques and privacy by design
- Data anonymisation and pseudonymisation

The webinar had a positive outcome and provided an insightful opportunity to exchange experiences on data protection issues, discuss common challenges and best practices among both EUIs.

Furthermore, the DPO has provided one-on-one coaching sessions to specific staff members seeking for advice and guidance to comply with their obligations as data controllers and/or processors under the Regulation.

Likewise, in order to ease and optimize support for the data controllers and processors, the DPO Intranet was updated on a regular basis including news items, templates, and step-by-step instructions. In particular, two new sections were created in the DPO intranet; the first one on "Restriction of data subjects' rights" - which explains in detail steps and actions to follow in case of a potential restriction of data subject's rights under Article 25 of the Regulation -, and the second one, on "Documenting Data Processing Activities as a Processor" when data processing activities are carried out by the Agency on behalf of one or more controllers.

In addition, other efforts to raise awareness across the Agency go to the internal weekly eu-LISA Newsletter, which is sent over to all eu-LISA staff members. This weekly newsletter includes a dedicated section on data protection that the DPO prepares. The purpose of this section is to update staff on the latest guidelines, available trainings, and recent developments in the field.

2.2. Records of Processing Activities as Controller

In compliance with Article 31(1) of the Regulation, eu-LISA shall maintain records of processing activities under its responsibility. According to Article 4(3) of the eu-LISA DPO Implementing Rules, the DPO will keep a central register of records of their processing activities as a controller.

Therefore, when delegated data controllers in eu-LISA want to start a new processing activity in eu-LISA, they document this processing activity as a new record and notify this new record to the DPO so the central register can be updated accordingly. In addition, when an existing processing activity changes in some way, the data controller needs to update the documentation associated to that record and notify the change to the DPO.

Step-by-step instructions and templates on how to document records of processing activities have been prepared by the DPO to facilitate the tasks and obligations of the data controller.

By the end of December 2021, the eu-LISA register of data processing activities included 142 records. Twenty-six of them were registered during 2021. This register is public, constantly updated and available from the eu-LISA website.

2.2.1. Old Notifications converted into Records

The DPO launched a project to support the delegated controllers with converting personal data processing notifications issued under Article 25 of Regulation (EU) No 45/2001 into Records under Article 31(1) of the Regulation. The project started in January and ended in May. As an outcome, 98 old notifications were converted into records. Throughout this activity, 17 coaching and supporting sessions were provided to 71 staff members.

2.3. Records of Processing Activities as Processor

Under Article 31(2) of the Regulation, eu-LISA is required to maintain a record of all categories of processing activities carried out on behalf of one or more controllers.

In order to support the Agency to comply with its obligations as processor, eu-LISA's DPO launched a project in July 2021 aiming to be completed in March 2022. Coaching sessions and workshops are part of the project activities as well as drafting of records and building the register that will be centrally managed by the DPO.

2.4. Adoption of the Revised Policy on Personal Data Breach

Under Article 34(1) of the Regulation, all EU institutions and bodies (EUIs) have a duty to report personal data breaches to the EDPS, unless the risk for individuals is unlikely. Every EUI must do this immediately, and at the latest within 72 hours of becoming aware of the breach, where feasible. If the incident is likely to pose a high risk of adversely affecting individuals' rights and freedoms, the EUI must also inform the concerned individuals without unnecessary delay. Moreover, Article 9 of the DPO Implementing Rules sets out specific steps in the reporting chain as regards to personal data breach handling.

Following the entry into force of the Regulation, the eu-LISA's "Policy on Personal Data Breach" has been reviewed and aligned to its principles. The revised version embeds the Opinion delivered by the EDPS on 2 June 2021 after consultation, and the remarks from the Management Committee, which reviewed the policy in August and endorsed it on 13 September. The revised Policy was formally adopted by Decision of the Executive Director on 4 October and further communicated to eu-LISA personnel on 6 October 2021.

The eu-LISA Policy on Personal Data Breach applies to eu-LISA personnel and also concerns the current and future Large-Scale IT Systems under the technical management of eu-LISA. The section of the DPO intranet on how to handle data breaches has been updated with the new version of the policy.

2.5. Personal Data Breach Register

Following obligations stemming from article 34(6) of the Regulation (EU) 2018/1725, "*data controller shall document any personal data breaches*". According to Article 4(3) of the eu-LISA DPO Implementing Rules, the DPO will keep a central register of records of data breaches.

During the reference period for this report, five data breaches were reported and documented by the data controller. The central register of data breaches is updated accordingly by DPO. The DPO also supported data controllers with the assessment in accordance with the EDPS guidelines on data breaches. Regard was also given to conditions set out in Articles 34 and 35 of the Regulation on notification to EDPS and communication to affected data subjects.

Reports of the data breaches were submitted to Executive Director and to EDPS when applicable.

2.6. Internal Rules on Restrictions of Certain Rights of Data Subjects

As a general rule, restrictions to data subject's rights should be the exception and, as such, should be applied only in limited circumstances. If any are applied, then it should be strictly necessary and always based on a legal act or on internal rules adopted by the highest level of management and published in the Official Journal of the European Union.

In line with Article 25 of the Regulation and the EDPS guidance from June 2020⁵, last quarter of 2020, eu-LISA's DPO drafted the "Internal Rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of the functioning of the European Union Agency for the Operational Management of the Large-Scale IT Systems in the Area of Freedom, Security and Justice".

The Executive Director of eu-LISA validated the final draft of the rules of procedure in January 2021. Then, the DPO submitted the internal rules to the Staff Committee of eu-LISA for consultation, which issued a positive opinion on 4 February 2021. According to Article 35(2) of the eu-LISA Regulation, the EDPS was consulted on 21 February 2021. The EDPS provided an opinion with minor comments on 11 March that were incorporated to the final version submitted to the Management Board. The Management Board of eu-LISA adopted these internal rules in its **Decision No 2021-096** on the 16 April 2021. This decision has then been translated into all EU official languages and published in **the Official Journal of the EU on 7 May 2021**.

The internal rules, related templates and step-by-step guidance on this matter are available from the dedicated section of the DPO intranet.

2.7. Data Protection Impact Assessments (DPIAs)

Following its establishing regulation, eu-LISA is mandated to ensure a high level of data protection. Moreover, eu-LISA shall follow the principles of privacy by design and by default during the entire lifecycle of the development of the new large-scale IT systems.

DPIAs should not only be seen as an obligation for data controllers where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons, but also a decision made by eu-LISA to achieve the above-mentioned objectives. The Agency may well decide to carry out DPIAs as a tool to generate knowledge and data protection culture, analyse or audit data processing activities, improve the global process management or control the level of risk accepted in each data processing activity in a systematic, methodical and documented way.

DPIAs shall be considered a 'live' document subject to regular review or re-assessment should the nature, scope, context or purpose of the processing change for any reason. Therefore, DPIAs will become a continuous practice in the activities of eu-LISA and therefore, it shall be adequately embedded in its processes.

In line with the EDPS guidance⁶ and WP29/EDPB guidelines on DPIAs⁷, the DPO has been supporting eu-LISA staff in Operation Department and its contractors with carrying out DPIAs, providing relevant advice and guidance.

⁵ EDPS, **Guidance on Article 25 of the Regulation (EU) 2018/1725 and internal rules restricting data subjects' rights** (update 24 June 2020).

⁶ EDPS, **Accountability on the ground: Guidance on documenting processing operations for EU institutions, bodies and agencies**

⁷ Working Party Art. 29, **Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679, wp248rev.01**

In June 2021, eu-LISA consulted relevant stakeholders and the EDPS on the DPIA carried out by the Agency on the European Travel Information and Authorisation System (ETIAS)⁸. On 13 September, the Opinion of EDPS on the ETIAS DPIA - conducted by eu-LISA - was received. All his recommendations were very much relevant and welcome by the Agency. The ETIAS team is in charge of the implementation of EDPS recommendations and feedback received from other stakeholders with the support of the DPO when required.

In parallel, at the end of July, eu-LISA launched a Prior Consultation with EDPS concerning the high risks stemming from the use of biometric matching technologies in the Entry/Exit System (EES)⁹ i.e. the shared Biometric Matching System (sBMS)¹⁰, and the related mitigation measures. The package included DPIAs carried out by eu-LISA on EES, sBMS and the Accuracy Measures procedure. The EDPS Opinion - including his recommendations - was received on 4 November 2021. eu-LISA is expected to implement EDPS recommendations within three months of the date of the Opinion. The DPO has been supporting EES and sBMS teams on these tasks.

Additionally, the DPO organised meetings with product owners of other Large-Scale IT Systems that are potentially impacted by this EDPS Opinion when biometric data from their systems are added to sBMS, in order to implement the above recommendations in their respective DPIAs.

Furthermore, the DPO team has been regularly contributing with relevant comments to the ECRIS-TCN¹¹ DPIA, the Eurodac¹² Redesign DPIA and other DPIAs concerning interoperability.

In addition, upcoming DPIAs for 2022 will include those for Visa Information System¹³ (VIS) and for Schengen Information System¹⁴ (SIS II). In this sense, DPO has been consulted by product owners with their requests for external support. Up to now, lessons learnt show the high importance of counting with specialised support. In this respect, contracted organisations shall offer and demonstrate sufficient guarantees to carry out DPIAs, for instance, by means of certified data protection professionals with appropriate knowledge and extensive expertise in this area.

⁸ **Regulation (EU) 2018/1240** of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

⁹ **Regulation (EU) 2017/2226** of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

¹⁰ **Regulation (EU) 2019/817** of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA and **Regulation (EU) 2019/818** of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.

¹¹ **Regulation (EU) 2019/816** of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726.

¹² **Regulation (EU) No 603/2013** of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

¹³ **Regulation (EC) No 767/2008** of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).

¹⁴ **Regulation (EC) No 1987/2006** of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

2.8. Change Management Process

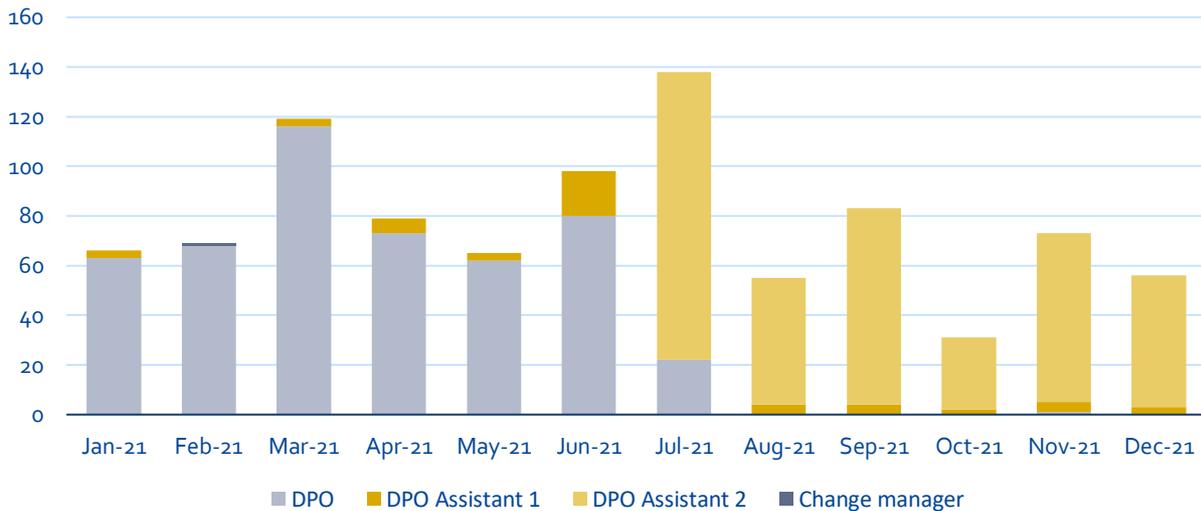
The DPO of eu-LISA is involved in the approval process of the Change Management procedure since the Management Board requested. Although this measure is very positive, the unbearable number of changes results in a disproportionate effort and makes this measure ineffective.

Change Management procedure shall ensure that the data protection risks associated to any proposed changes are detected at an early stage. Therefore, the DPO strongly recommended that the Change Management procedure is revised with the view to introduce a new efficient and effective approach. This new approach should integrate checks and tool to detect, for instance, if the change is substantial enough to trigger the need to carry out or to revisit an existing DPIA. The owner of the Change Management procedure shall seek the advice of the DPO when addressing this task.

In 2021, the owner of the Change Management procedure sought the advice of the DPO to address this task, and both are collaborating at this point.

During 2021, the number of changes assigned to DPO role reached 936, including changes not only for the development and operational management of the EU Large-Scale IT Systems but also those changes related to the regular functioning and administration of eu-LISA. In 2021, there has been an increase of 105% compared to the requests for change (RFC) that the DPO team dealt with during 2020. The DPO of eu-LISA mainly took care of these changes on the first half of the year and, then, this task was taken over by the new Data Protection Assistant who joined the Agency in July.

Figure 1 — 2021 - Number of changes assigned to DPO



2.9. EDPS Supervision and Collaboration

2.9.1. Follow-up on the EDPS inspections and recommendations

Ensuring a high level of data protection is one of the main objectives of the Agency. External audits on data protection compliance contribute to facilitate this goal and add value to the Agency's activities. Including audit recommendations as part of the eu-LISA continuous improvement plan for the operational management of the EU Large-Scale IT Systems makes this process much more effective.

2.9.1.1. *SISII and VIS*

In November 2018, the EDPS conducted an audit for the SIS II and for the VIS in accordance with relevant international auditing standards. The purpose of the EDPS inspection was to check that the personal data processing activities of eu-LISA, as the Management Authority for both systems, are in accordance with the applicable data protection regulation.

The final EDPS report was received in April 2020 and contained 43 recommendations. eu-LISA has transposed all of EDPS recommendations into an action plan. The DPO monitors the progress of its implementation and, to this extent, organises quarterly follow-ups with responsible staff. In 2021, internal follow-up meetings took place in February, April, July and October.

On behalf of eu-LISA, the DPO liaises with EDPS every quarter to proactively update on the progress and status of the recommendations. EDPS provided his feedback on 22 November 2021 to eu-LISA. This feedback is taken into account by the Agency in order to continue implementing EDPS recommendations.

2.9.1.2. *Eurodac*

At the beginning of December 2019, EDPS carried out an inspection on Eurodac system. The Draft EDPS Report on this inspection was received on 18 November 2020. In accordance with Article 19(1)(hh) of eu-LISA's Establishing Regulation, the Management Board of eu-LISA shall adopt formal comments on this audit report before its final version was sent to the European Parliament, the Council, the Commission, the Agency, and the national supervisory authorities - following Article 31(2) of the Eurodac Regulation (EU) 603/2013.

On 18 January 2021, the Management Board of eu-LISA adopted formal comments on the audit report that were sent to the EDPS office within the given deadline. The EDPS took into consideration most of the comments raised by eu-LISA.

The final report of the EDPS was received in March 2021 and contained 29 recommendations. eu-LISA has transposed all of EDPS recommendations into an action plan. The DPO monitors the progress of its implementation and, to this extent, organises quarterly follow-ups with responsible staff. In 2021, internal follow-up meetings took place in April, July and October.

On behalf of eu-LISA, the DPO liaises with EDPS every quarter to proactively update on the progress and status of the recommendations. EDPS provided his feedback on 22 November 2021 to eu-LISA. This feedback is taken into account by the Agency in order to continue implementing EDPS recommendations.

2.9.2. Supervision Coordination Groups for Eurodac, SISII and VIS

Following the legal requirement of Article 5(1)(f) of the eu-LISA DPO Implementing Rules, by invitation of the Supervision Coordination Group (SCG) of Eurodac, SIS II, and VIS, the DPO represented eu-LISA at these meetings. The groups, composed by representatives of the National Data Protection Authorities along with the EDPS, requested updated information regarding the three EU Large-Scale IT Systems on operational matters.

During the meetings that were held in June and November 2021, the members of the SCGs were informed about the latest developments and issues of the systems that may impact the processing of personal data. The SCG members were interested in how the systems were performing, related incidents and the quality of the data.

Colleagues from different areas of eu-LISA are key to provide the most accurate information. Therefore, the DPO would like to remark the excellent collaboration and support from all of them.

2.9.3. EDPS Collaboration

Following the creation in the EDPS office of the new Sector, within the Supervision and Enforcement (S&E) Unit, dedicated to the supervision of the European Agencies and bodies active in the Area of Freedom, Security and Justice (AFSJ) - namely Europol, Eurojust, EPPO, Frontex, eu-LISA, and EASO -, effective and active collaboration has been established between the AFSJ and eu-LISA. A dedicated Single Point of Contact (SPoC) for eu-LISA within the AFSJ Sector has been appointed to ease interactions. Bilateral meetings were organised in April, June and October to introduce this new sector and discuss topics of interest at that time including consultation on the revised Policy on Personal Data Breach or state of play of DPIAs.

2.10. JHAA DPO Network Meetings

In 2021, meetings of the network of DPOs of the Justice and Home Affairs Agencies (JHAA) were chaired by the European Border and Coast Guard Agency (Frontex). The DPO of eu-LISA attended two of the online meetings in March and May, and the Data Protection Assistant represented the DPO of eu-LISA in the third online meeting that was held in September. During these meetings, the Implementing rules of the DPO, cloud services or COVID-19 measures were some of the topics addressed. Group discussions also centred on privacy international cases and e-signature.

2.11. EUI DPO Network Meetings

In June 2021, the DPO took part in the 49th DPO Network meeting that, once more, was hosted online due to COVID-19 pandemic. It covered various topics under the data protection domain including follow-up to *Schrems II* or cloud-based services. During this meeting, the different working groups of DPOs reported on the state of play of their activities. Furthermore, parallel workshops between members of the EDPS office and DPOs were organised in parallel where topics such as data breaches, cloud services or DPIAs were addressed.

In December 2021, the DPO office of eu-LISA was virtually represented by the Data Protection Assistant in the 50th DPO Network meeting. The meeting covered various topics on data protection such as artificial intelligence, international transfers or the updates provided by the ICTAC/DPO working group that the DPO of eu-LISA is part of.

2.12. Europol Working Group – EU Interoperability

On 7 May 2021, the eu-LISA DPO together with the DPO of Europol participated in Europol WGIM ‘Focus’ Discussion on EU Interoperability. The main goal of this second WGIM Focus discussion was to raise law enforcement authorities’ awareness of the key features of EU Interoperability, its added value for law enforcement officers in their every-day work, as well as its contribution to build the area of freedom, security and justice. It also aimed to provide delegations with an opportunity to debate and share experiences about the implementation of EU Interoperability and to go through the role of the Commission, Europol, eu-LISA and the other involved JHA agencies.

In particular, DPOs of eu-LISA and Europol presented EU Interoperability from a data protection standpoint including the principle of data protection by design and by default, data protection training, data protection impact assessments or audits.

2.13. Annual Survey

Although this activity was part of the eu-LISA Programming Document 2021, the use of available resources has been allocated to provide data protection guidance and support to the Agency in regards to its highest priorities, mainly, the new and existing EU Large-Scale IT Systems. Therefore, this activity was put on hold.

3. DPO Function

Article 44 of the Regulation (EU) 2018/1725 and Article 6 of the eu-LISA DPO Implementing Rules address the need to provide the DPO with the necessary resources to carry out his or her tasks and duties.

In this sense, a selection process to select an additional Data Protection Assistant was opened during the second half of 2020. This second Data Protection Assistant joined eu-LISA in Q3-2021 and is based in Strasbourg operational site.

