



EUROPEAN DATA PROTECTION SUPERVISOR

# Note to the attention of the Supervisor

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For Guidance

21 September 2023

## 1. Scope

The note presents the project to develop a Memorandum of Understanding (MoU) with the Information Commissioner's Office (ICO) in the United Kingdom.

## 2. Context Description

### ➤ *State of play of the cooperation with the ICO*

The ICO is undoubtedly one of the most experienced and active data protection authority in the world. The ICO used to play a strategic role within the Article 29 Working Party and within the EDPB until the Brexit came into effect.

Since then, and even though the UK is now recognised as offering an adequate level of protection, the cooperation between the ICO and the EDPB as a group remains very limited if not inexistent.

This being said, there are still frequent and important exchanges at a bilateral level between the ICO and national DPAs from the EU as well as with the EDPS.

Cooperation between the ICO and the EDPS is also continuing on a regular basis in multilateral fora, such as in particular the Global Privacy Assembly, the Consultative Committee of Convention 108 (T-PD), the Spring Conference of European DPAs, the OECD, the IPEN workshops, the Berlin group and more recently but notably the G7 DPAs Roundtable.



➤ *Overall objective of the initiative*

As the EDPS is structuring its partnerships and cooperation with some key DPAs and institutions (e.g. Spanish DPA, ENISA, FRA, etc), we see potential benefits to consider the conclusion of a MoU with the ICO to better structure and reinforce our cooperation with this key partner.

Among the non-EU partners, the ICO is certainly the DPA we cooperate the most closely with. A MoU with the ICO could be a first step towards the establishment of MoUs with additional third countries partners.

This initiative from the EDPS might also encourage other EU DPAs and eventually the EDPB to reinforce its cooperation with the ICO in particular, and DPAs of other third countries in general.

➤ *Legal basis*

The legal basis for the conclusion of such MoU would be Article 51 of the EUDPR on “International cooperation for the protection of personal data”.

➤ *Existing examples and resources*

We should use existing MoUs concluded by the EDPS as a source of inspiration.

In addition, one might consider the example of MoUs already concluded by the ICO with other partners and DPAs (see [ICO's dedicated webpage](#)). We could in particular draw inspiration from the MoUs concluded between the ICO and the [Irish DPA](#), the [Maltese DPA](#), the [DPA of Philippines](#), the [DPA of New-Zealand](#), the [DPA of South-Korea](#), the [DPA of Australia](#), the [Federal DPA of Canada](#), etc).

We also learnt that the ICO has started discussions with a view to concluding an MoU with the NL DPA.

A confluence page was also created on the EDPB website to list MoUs concluded by EU DPAs with third countries DPAs. This list does not seem exhaustive but still may provide some useful examples:

- [MoU between the United States Federal Trade Commission and the Dutch Data Protection Authority](#)
- [MoU between the Privacy Commissioner of Canada and the Dutch Data Protection Authority](#)
- [Mou between the Data Protection Authority of Kosovo and the Italian Data Protection Authority](#)
- [Mou between the Data Protection Authority of Moldova and the Italian Data Protection Authority](#)

- [Mou between the Data Protection Authority of Albania and the Italian Data Protection Authority](#)
- [Mou between the Data Protection Authority of FYROM and the Polish Data Protection Authority](#)
- [Mou between the Data Protection Authority of Georgia and the Polish Data Protection Authority](#)
- [Mou between the Data Protection Authority of Kosovo and the Polish Data Protection Authority](#)
- [Mou between the United States Federal Trade Commission and the Data Protection Commissioner of Ireland](#)
- [Mou between the Privacy Commissioner of Canada and the Data Protection Commissioner of Ireland](#)
- [Mou between the Australian Information Commissioner and the Data Protection Commissioner of Ireland](#)
- [MoU between the Data Protection Authority of Moldova and the Office of the Information and Data Protection Commissioner of Malta](#)
- [MoU between the Data Protection Authority of Albania and the Office of the Information and Data Protection Commissioner of Malta](#)
- [MoU between the Gibraltar Regulatory Authority and the Office of the Information and Data Protection Commissioner of Malta](#)

➤ *Possible scope of an MoU between the EDPS and the ICO*

The scope and exact content of the MoU would deserve further discussion internally (in particular with colleagues from Cabinet, Sec Gen, S&E, T&P and HRBA) to identify needs and opportunities.

Additional discussion at staff level should also take place with the ICO before seeking validation from the Supervisor and Secretary General.

P&C (ABu + [REDACTED]) had a first explanatory call with the ICO on 13 September 2023 and the first feedback was very positive. ICO is apparently willing to conclude such MoU with the EDPS. This has already been discussed with John Edward's cabinet and the reaction was positive.

At his stage, we consider that the MoU could touch upon the following aspects:

- at a more general level:
  - recall some of the principles, values and objectives the two institutions share in common;
  - recall the respective roles and responsibilities of each institution;
  - recall confidentiality rules and that the MoU is not meant to imply the sharing of personal data and should it be the case the safeguards for such sharing should be dealt with separately;

- designate contact points within each institution.
- at a more practical level, define the scope of the cooperation around:
  - regulatory and policy cooperation at staff and commissioner's levels at bilateral level and in multilateral fora with privileged and regular exchange of information;
  - sharing of experiences and exchange of best practices on data protection policies, education and training programmes;
  - implementation of joint research projects or joint publications between the two institutions;
  - sharing of information on the monitoring of new technologies
  - enforcement cooperation, including on procedure for mutual assistance, concrete enforcement cases with a view to launch possible joint investigations should the need arise and in any case to facilitate information sharing between the investigation teams of the two institutions;
  - specific cooperation on JHA matters;
  - staff exchanges and secondment programmes between the two institutions;
  - convening bilateral meetings annually or as mutually decided between the parties
  - any other areas of cooperation as mutually decided by the Participants.

### 3. Division of tasks (and possible timeline)

- **P&C** (ABu + [REDACTED]) to lead the project and seek input from the different teams involved or impacted on the needs and the scope of the MoU (Cabinet, Sec Gen, S&E, T&P, HRBA);
- **P&C** to set up another call or even an in-person meeting with the ICO to discuss the details of a possible MoU;
- if possible, **Supervisor** to have a bilateral meeting with John Edwards, ICO Commissioner, in margin of the next GPA to further agree at Commissioner's level on the principle of the MoU;
- P&C to draft and negotiate the MoU with the ICO; information will also need to be shared before publication by P&C with EDPB colleagues and with COM.
- **Supervisor** to validate and sign the MoU - timeline to be agreed depending on call with ICO.
- Specific communication and arrangement for the signature of the MoU (specific mission to the UK?) to be dealt with **by I&C and Cab.**

### 4. For discussion

- Discuss the proposal above;

- Agree on the principle of the initiative and the proposed division of tasks.