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DATA STATE INSPECTION

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Activity 2.2

**Preparation of manual to support the day-to-day work of
the DSI regarding internal information flow**

written by

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DATU VALSTS INSPEKCIJA

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1. AIM

Based on the experience concerning the implementation of data protection in Austria and Germany, the MS experts will analyse the internal procedures of the DSI regarding the internal information flow, the management of claims and complaints and the keeping of a register of notifications.

On the base of these analyses the MS experts will develop in close co-operation with the Latvian experts manuals on the above subjects, with the aim to streamline the internal procedures of the DSI and to increase efficiency. These manuals will be translated into Latvian. The project Leader CC will approve the manuals as general working and organization tools for the DSI day-to-day work.

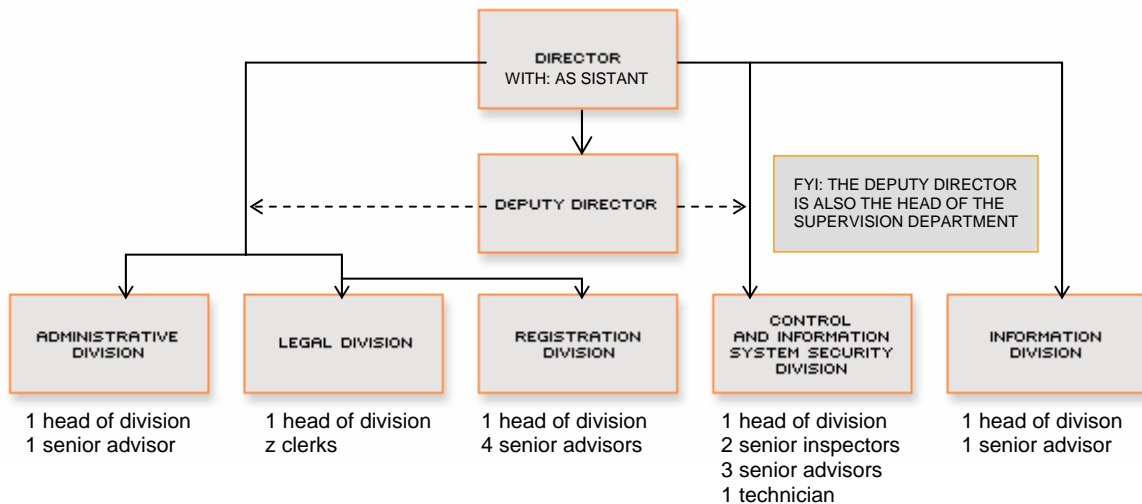
2. GENERAL PRINCIPLES

- The internal information flow should enable the authority to handle effectively day-to-day work and to solve problems with expense as small as possible.
- Information is the basis of cooperation, it requires confidence and it forms confidence. The superior must know what the staffs do; the staff should know the reasons or the whole background of the superior's decisions. Information exchange within the authority creates a "team spirit" and is compelling for a motivated staff.
- Information has to be shared; there should be no place for inner circle knowledge.
- Information is important to connect the different organisational units and affords coordination.
- The recipient of information is to be determined by a clear allocation of tasks and competences. Every recipient has to prove and to decide in his own responsibility, when the information is to be given to whom, in which order, in which amount and which notes are necessary.
- The information should flow in all directions and integrate every staff in an open net of information relations. Of course the main direction of information is the official channel up or down. Beside this way up or down a communication between different divisions or organisational units is conceivable. In these cases the information should be passed on into neighbour ranges in principle in the same level.
- Difficult cases or cases of political or public concern are to be discussed in meetings. The expert knowledge of the responsible staff member is to be implied as well as the knowledge of other colleagues whose opinions according to experience enrich the discussion with arguments and impulses. Nevertheless, the director bears the responsibility.
- Beside the factual information that is compulsory for the day to day work and the fulfilling of legal tasks other information is significant for the social structure and the "team spirit" of the staff. The latter deals with results of work, success and also all failures of the organisational unit, the general development of the authority, personal changes and the general strategy and all important issues of the authority. There is no "redundant" information. All members of staff should participate in the process of information exchange. Within the authority there is no place for professional or official secrets only in exceptional cases.

3. PRESENT

3.1. Current State in the DSI

3.1.1. Organisation chart



Origin: Annual Report of the DSI

3.1.2. Description of information flow

The DSI in practice is dealing with two different kinds of submissions: On the one hand it handles formal complaints based on the Administrative Procedure Law (APL), on the other hand there are applications based on the law "Iesniegumu, sudzibu un priekslikumu izskatisanas kartiba valsts un pasvaldibu institucijas" (annotation: no English version available; content: provisions about handling of applications; time periods for answering applications). Claims and complaints have to be handled based on the APL.

Currently the DSI is placed in two buildings, each with a member of staff responsible for incoming information. Incoming information (complaints, applications for registration) are conveyed in electronic form and sent by e-mail to the Director. Mrs. Director decides by a "resolution" if the case is to be handled on her own or by an officer. In the latter case the Director sends the electronic information to the officer. After the handling the officer sends his result (in most cases the draft of a reply) to the Head of division. The Head of division checks the draft and adds annotations if required. The result of the case is brought up to the Director again. If she confirms it, the writing or reply is sent to the addressee. In times of absence of Mrs. Director her tasks and competences are fulfilled and executed by the deputy director.

There is an advisor on public relation matters who handles questions of journalists. If a journalist calls the DSI, the assistant of the director turns over the call to the advisor. Later the advisor informs the director, who decides the further handling.

Most of the written information the DSI receives in paper form; the documents are conveyed in electronic form upon receipt. For telephone calls there exists the possibility of recording in the control and registration division. Insofar as to be clarified the legal basis for a record of telephone calls.

The computers of the staff members are linked by a LAN-connection. For the interchange of documents and information a Latvian company developed special software, the DSI information system. Since every single document either from the involved parties or from the DSI itself is registered, the system allows having a look on the already taken procedural steps in a certain open case and a look on the time period in which the complaint should be terminated. Each case (complaint) is registered under a certain number under which it can be found. The system also provides a statistical function, which enables an overview from a per-year up to a per-day period.

All staff members have access to the DSI information system, but not every officer is authorised to see everything. The access to the system is created in a way that allows the notice of documents and stored information which refers to the work scope the officer is responsible for. Usually the possibility of notice for an officer is limited by the work scope of the division he is integrated in. Of course some staff members get access to documents and information of all divisions, for instance the assistant of the director. Twice a day every member of staff is obliged to have a look into the system to prove a possible incoming of information.

3.1.3. Example

The information flow for example with a complaint:

Complaints can be submitted orally or in writing. The institution shall immediately formalise an oral submission in writing and the submitter shall sign it (Section 56 (1) APL). In practise therefore a complaint should be submitted in a written form or orally personal by the applicant. After registration of the receipt by the Directors Assistant or by an official of the Supervision Department (see 4.4.1.) the Director views and forwards the complaint to the head of the Supervision Department and then to the Control Division, where one of its members deals with the complaint in substance.

The officer observes whether there exists a violation of data protection or not. Therefore a statement of the potential violator about the relevant facts of the case, which also has to be approved by the Head of the Control Division, the Head of the Supervision Department *and* the Director itself, has to be requested. After obtaining the written statement from the potential violator, the officer has to write a record about the relevant facts of the case, which has to be signed by the potential violator. As a result of the refusal signing the record the officer has to collect more facts (call in a technician, necessity of controls on the spot – order by the Head of the Supervision Department, exercised by at least two staff members, a technician and a jurist). Result of the complaint handling at this stage is a decision of the Head of the Supervision Department, prepared by the responsible officer, whether a violation has taken place (continuing the procedure) or not (stopping the procedure).

At that time the process needs a meeting arranged by the Head of the Supervision Department, where he, the Head of the Control Division (not verified), the Head of the Legal Division and the responsible officer himself participate. The submitter (appellant), the addressee of the complaint (potential violator) and other involved persons or entities (by representation) are allowed to attend this meeting. The responsible officer should make sure that the parties and other involved persons are invited to the meeting. He also has to write the protocol of the meeting. As its result the Head of the Supervision Department takes the decision if the addressee of the complaint should be admonished or fined (inclusive amount according to the Latvia Administrative Violations Code [LAV Code]). The signed decision is sent to the violator, the appellant and to third parties (if they gave requested statements). If corresponding to the APL a time period of four month is over, no fine can be imposed, but a violation of data protection law by the controller has to be stated.

As an example the complaints proceedings seem to be very formal and laboured. There must be flexibility to the DSI especially in dealing with complaints, bearing in mind not to violate the appellant rights given by the APL or the Personal Data Protection Law (PDP Law). See chapter 4.1.2.

3.2. Analysis

The director is heavily involved in the current internal information flow. Every single case passes the director's desk. This activity ties up much of the work time of the director. It is not required that the director takes notice of every single case.

The heads of the divisions are highly qualified and equipped officers, who are able to decide if the case should be handled by one of their division officers or if it should be brought before the

director. The current workflow establishes an involvement of the head of a division after the officer's handling of the case. That means that the head of division has to familiarise with the case anyway. Beside that the head of division is closer to the officers and might know better than the director, which officer of his division is competent for the single case. Such a system presumes a schedule of responsibilities, that enables the member of staff, who receives incoming information (currently it is the assistant of the director), to transfer the information and cases to the responsible division.

The way of information without an involvement of the director does not mean as may be assumed a weakening of the director. The director is disburdened from the notice of day-to-day cases and able to focus on other more important tasks. Confidence in the work of the heads of divisions is required as an assumption. Communication between the director and the heads of division ensures confidence and is provided by meetings at regular intervals (at least twice a week) and by the obligation of the head of division to inform the director about important and remarkable cases.

Another important part of internal information flow is the interchange of information between the different divisions and within the DSI as an authority. This information does not concern the official channel of documents but is a compelling assumption for a motivated staff. Meetings concerning the whole staff or special members of staff (especially concerning the handling of single cases) are a proved mean to avoid the formation of groups and single persons who restrain information and try to keep the others uninformed. Beside that they might increase the probability of an ideal solution of a problem. Meetings of the whole staff and reviews should be established in the DSI as a usual part of the internal information flow as it is a matter of course in data protection authorities in EU member states.

4. FUTURE

4.1. Future organisation

4.1.1. Legal requirements (abstract)

Section 29

- (1) Supervision of personal data protection shall be carried out by the Data Supervisor. ...
- (2) The President of the Constitutional Court nominates and the Saeima, by a majority of no less than 51 votes, elects the Data Supervisor for a term of ten years¹. He may not be re-elected. The Data Supervisor shall cease to hold his office subject to the same conditions as a Judge of the Constitutional Court.
- (3) The Data Supervisor fulfils his duties pursuant only subject to the law, in complete independence in exercising the functions entrusted to him. He is subject only to the law. ...
- ...
- (5) ... The Data Supervisor is entitled to his own budget position which is planned, defended and administered by himself. He is superior to his staff in all material and disciplinary matters. He may delegate his duties and the related rights to his staff.
- ...
- (8) The Data Supervisor and his staff must respect State secrets, human rights and business secrets, also upon termination of their work.
- ...

Section 30 (1)

- (1) Every person, also every public official, may directly contact the Data Supervisor or his staff. ...
- (2) The Data Supervisor advises and controls all administrative bodies, as well as all private parties in matters of personal data protection, with regard to all forms and all stages of a data processing operation. He acts on his own accord, or on the basis of complaints. ...
- ...
- (5) The Data Supervisor registers personal data processing systems and cancels a certificate of personal data processing registration, if violations of law are established.
- ...

Section 30 (2)

- (2) ... The Data Supervisor is free in his choice and application of the above methods of intervention; he is bound only by the principle of proportionality.

Section 30 (3)

- (1) The Data Supervisor may order private persons to process, block, erase or destroy data, impose a temporary or definitive ban on processing, or impose fines on private persons for violations of personal data protection rules according to the penal code.
- (2) The Data Supervisor may certify data processing systems or withdraw a certification; he may also certify individuals to issue seals of data protection compliance to other private persons or withdraw such certifications.
- ...

¹ If a shorter term would be foreseen, then re-election should be possible. In any case, the Data Supervisor's term should exceed the term of the Saeima. Yet, it should be kept in mind that a short office term inevitably weakens the independence of the Data Supervisor. He would then be prompted to try to win the support of the governing majority for his re-election. This would be highly problematic in view of the fact that one of his main tasks is to control the Government. Institutions, whose tasks it is to control the Government, should in principle not be put in a position to depend on the governing majority's courtesy.

4.1.2. Description

The above draft amendment to the Latvian PDP Law was developed by the project team and preliminary accorded in detail with the Ministry of Justice. Although the amendment has not become effective yet, it seems to give the new legal figure Data Supervisor (replacing the existing State Data Inspection) more flexibility by providing a range of powers in pursuing data protection violations by public administration. The Data Supervisor is free in his choice and application of the methods and instruments of intervention mentioned in the PDP Law; he is bound only by the principle of proportionality (Section 30 (2) (2)²). Concerning data protection violations by private persons or institutions the draft amendment provides the Data Supervisor competences different from those implemented for “public violations” (Section 30 (3) (1)³).

Naturally all the above mentioned new legal instruments also have impact on the future internal information flow between the Data Supervisor and his staff. Therefore it is important to bear in mind, that the Data Supervisor, who is elected for a term of ten years (Section 29 (2)), as a completely independent body is entitled to his own budget position which is planned, defended and administered by himself. He is superior to his staff in all material and disciplinary matters (Section 29 (5)).

It has to be pointed out, that the Data Supervisor as a unitary authority is responsible for every single decision which leaves his “house”. As a consequence of this normally every paper must run through the Data Supervisors hands. To avoid overwork the new draft amendment contains the possibility to delegate the Data Supervisors duties and the related rights to his staff (Section 29 (5)). So it is possible that a staff member (officer) on his own is responsible for a decision. To understand the internal activity we have to have a look on the future organisational structure of the data protection body.

² For example the Data Supervisor is allowed to interrogate public institutions and summon them to comment on the matter; to make recommendations and/or admonish them; to lodge a formal complaint with the heads of the public institutions concerned; to submit a copy of the formal complaint to the relevant minister who is in charge of the public institution concerned; to request the Cabinet of Ministers to comment on the matter; to submit the matter to the Saeima or any of its bodies for discussion and resolution, as the case may be; to inform the public about the matter; to bring an action in a court of law or with the Prosecutor’s Office, in his own name or on behalf of others.

³ For example the Data Supervisor may order private persons to process, block, erase or destroy data; impose a temporary or definitive ban on processing; or impose fines on private persons for violations of personal data protection rules according to the LAV Code.

4.3. Instruction for the day-to-day work

Since the Data Supervisor is outgoing from the draft amendment to the PDP law free of limitations concerning his staff, following up also the free internal information flow, the only limit concerning the flow is the law itself – namely the APL (Section 41 to 101). Above all the time periods have to be taken into consideration (Section 64 – one month, extension up to three month). Because of liberty in constructing the organisational body to the Data Supervisor it is difficult to give rules concerning the internal information flow for every single (possible) document or information. Therefore it seems much more practical and effective to have an amount of general guidelines for the flow, which should instruct the staff and should be considered during the implementation also with the DSI information system. This system as a assumption should be in use further on.

The following instructions concentrate on the types of acts where possibly information flow processes are involved. Since these are instructions for the day-to-day work it should be possible in certain cases to make exceptions (concerning for instance the mail-handling or direct information flow between the Data Supervisor and a responsible staff member with subsequent information to the competent head of division).

4.3.1. Registration for incoming information

Information (for instance complaints, application for appointment of a Data Protection Official – Section 22 (1), notification of Automatic Personal Data Processing Operation – Section 21; Manuals and attached suggested forms see Activity 2.2.) received by the authority must be registered at first. In accordance with Article 6 Paragraph 2 of the Electronic Documents Law and Section III of the referring Cabinet of Ministers Regulation No. 473 (28 June 2005) upon receipt of an electronic document the staff member responsible for registration of receipts notes the fact of the receipt of the document as well as its contents, regardless via which media it has been submitted; further the officer notes the data and time of receipt of the electronic document as well as its consignee. In accordance with the mentioned regulations upon receipt of an electronic document by e-mail the staff member responsible for registration of incoming information notes the date, time, submitter and submitter's e-mail address and within one workday confirms the receipt of the electronic document via e-mail. Comparing to the present situation (see 3.1.2.) incoming information should be registered only by one person and not by several persons with different functions and in different places. Since the registration is an administrative work the responsible staff member should be an office secretary.

4.3.2. Transfer of information to the responsible staff member (officer)

As mentioned above (see 4.1.2.) the responsibility of a staff member (officer) is possible because of the regulation in the draft amendment, that the normally responsible Data Supervisor may delegate his duties and the related rights to his staff (Section 29 (5)). Day-to-day information is to be sent to the responsible head of division as fast as possible. This principle doesn't depend on the used media for the information; it applies to written, spoken or to electronic information sent to the Data Supervisor. The transfer of information to the competent staff member is to be executed via the internal DSI information system. After notice and forwarding executed by the head of division every case should be handled by the responsible officer. Basis for an effective spreading of information is a schedule of responsibilities. Such a schedule may base for example on responsibilities depending on alphabetical order (surname of the applicant) or on equal distribution of incoming information (cases, complaints) to the officers. It is important, that such a schedule exists, on what principle the schedule bases is of subsidiary relevance.

4.3.3. Information to the Data Supervisor

The integration of the Data Supervisor in the information channel as well as the handling of cases should be an exception and subject only to important remarkable information. The usual way of information that requires a treatment starts at the registration (written or electronic information with official reference sent directly to a staff member [an officer] must be transferred immediately to the staff member responsible for registration) and leads via the head of a division to the responsible officer. The (preliminary) decision about the relevant division is to be made by the registration. The head of a division decides, if the case must be brought before the Data Supervisor or not. As mentioned the latter should be the exception and should concern only important remarkable cases and information (political relevance, public or media interests, fundamental questions of law et cetera).

Seldom a member of staff (officer) might realise the importance of a case during the handling; then he should inform the head of the division, who then decides if the case must be brought before the Data Supervisor or not.

4.3.4. Difficult and/or important cases; Cases of public concern

Problems concerning the handling of an important and extraordinary case should be discussed not only by the Data Supervisor and the concerned head of division. The responsible officer (who handles the case and prepares drafts of writings and decisions) should also be involved in these meetings. Beside a general communication between the

Data Supervisor, the deputy director, advisors and the divisions (mentioned below, see 4.3.7.), there will be necessary an information exchange on the level of officers or heads of divisions during the handling of a case. Sometime cases affect not only the work scope of one division; the responsible officer for instance might need help of an expert from the IT division. In these cases the handling officer is entitled to contact the officer of the other division without former information of his head of division (because the authority is small, one can afford a non-bureaucratic but always open-minded and thereby collegial behaviour); the communication should be passed on in the same level (according to the organisation chart). Usually the head of division should be able to assess the necessity of involving other divisions before he hands on the case to the competent officer. In case support or information of another division is required the head of division should note this in his orders to the officer. If a head of division – what sometimes might be helpful – wants to consult a well informed but incompetent staff member (only the consultation of a external person [related to the authority] is prohibited as a breach of the official secret) he or she is only allowed to do so in presence of the responsible staff member (officer).

4.3.5. Workflow after handling

After handling the case the responsible officer submits the draft of a writing or decision to the head of division, who checks the draft and confirms it or makes orders to alter the draft. Upon check the writing or decision has to be sent to the staff member who is responsible for the sending of documents, writings and decisions. This member of staff should be identical to the staff member who is responsible for the registration of incoming information, because in accordance with Article 6 Paragraph 2 of the Electronic Documents Law and the referring Cabinet of Ministers Regulation No. 473 outgoing electronic documents require a registration too. Beside that all outgoing documents should be registered in the same way like incoming information regardless of the used media.

4.3.6. Publication of decisions

It is suggested (see Activity 2.2., Analysis of current practise of the DSI, and Activity 4.2.) to publicise at least important (from a legal or public interest point of view) decisions in an anonymous way. For the fulfilment of the latter task the responsible officer would be the most adequate person. Then the DSI information system should been applied to transfer the anonymous decision after handling to the relevant person for publication.

4.3.7. Meetings

Another part of information flow concerns meetings of the whole staff. These meetings are not appropriate to discuss single cases, but they advance the sense of togetherness and

the social structure. Subjects discussed in these meetings may be developments and results of cases of public interest, developments concerning the Data Supervision in general (budget, political developments and comments of politicians referring to data protection), personal changes in the staff, important measurements in changing the organisational structure.

These meetings should ideally take place once a week (at least once a month), the whole staff should participate. Beside a basic structure there should neither be a strict procedure regarding the run of a meeting nor a fixed time frame. There will be periods full of events, decisions and changes, which require longer meetings, and periods less hectic, in which the staff meeting can be held in some minutes or cancelled at all (therefore it is important not to prescribe a fixed time schedule for the meetings). A possible pattern of a meeting is an introduction of the Data Supervisor followed by statements of every head of division regarding the work in his division.

In addition meetings of the Data Supervisor and the heads of divisions are useful and should ideally take place twice a week (at least once every two weeks). They are of importance for the information of the Data Supervisor. Although not informed about every single case, especially about ordinary day to day cases, the Data Supervisor must not be isolated regarding the work in the authority. On the other hand a single head of a division shall not build up a monopoly of data and information that he deprives the Data Supervisor of.

In special and difficult cases it can be necessary to hold a meeting that brings together the Data Supervisor, the head of the division and the responsible officer. Politically important cases or cases of public concern as well as fundamental problems in the field of data protection must be discussed jointly by the Data Supervisor, his deputy, all other heads of division and the case handling officers.

The remarks above are made from the bottom of the three levels: Data Supervisor, head of division, officer. Staff members who naturally are in contact with the Data Supervisor and the heads of division as well as the officers (assistant of the Data Supervisor, deputy director, advisors) are not regarded, but of course they are to be integrated if their work scope is affected or in their role as members of staff in general (staff meetings).

As it could be important in the future it is recommended to take minutes during every meeting except those with informal character.

4.3.8. Organizational

It is for reason of organisation also important that during period of service the Data Supervisor knows (or at least has the possibility to know) where all the staff members sojourn. This concerns not only the cases of illness or vacation but also the cases for instance of lunch, visit at a doctor or participation in an off-house meeting.