



PETER HUSTINX
SUPERVISOR

Mr José Manuel BARROSO
President of the European Commission
B-1049 Brussels

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Subject: Opinion of the European Data Protection Supervisor on three legislative proposals concerning certain restrictive measures, namely with regard to Mr Milosevic and persons associated with him, in support of the mandate of the International Tribunal for the Former Yugoslavia, and in respect of Eritrea.

Dear Mr President,

I refer to the letters of 6 May, 12 May and 2 June 2010, in which the Commission, pursuant to Article 28(2) of Regulation (EC) No. 45/2001, consulted the EDPS on three legislative proposals concerning certain restrictive measures, namely with regard to Mr Milosevic and persons associated with him, in support of the mandate of the International Tribunal for the Former Yugoslavia, and in respect of Eritrea.

The EDPS welcomes this consultation but regrets that, contrary to previous proposals, a reference to the consultation of the EDPS is not made in the preamble of the proposal. The EDPS has already issued two opinions with regard to restrictive measures, on 28 July 2009 with regard to the proposal to amend Regulation (EC) No. 881/2002 on Usama bin Laden, the Al-Qaida network and the Taliban, and on 16 December 2009 on various legislative proposals in respect of Somalia, Zimbabwe, the Democratic Republic of Korea and Guinea. In particular, the latter opinion addresses in general the application of data protection principles in the area of restrictive measures and contains several recommendations for improvements. It also states that the EDPS will issue further opinions on proposals for legislation in this area only when those new proposals substantially diverge from the provisions of the proposals on which the EDPS has already issued an opinion.

After a careful analysis of the current proposals, it appears that, insofar as provisions relating to data protection are concerned, they mirror the legislative proposals that have already been object of an EDPS opinion. Therefore, the EDPS has decided in this case not to issue a new formal opinion and to refer instead to the previous above mentioned opinions in this area, that have been published both in the Official Journal¹ and on the EDPS website.

¹ Respectively, OJ C 276, 17.11.2009, p. 1 and OJ C 73, 23.03.2010, p.1.

Nonetheless, the EDPS takes this opportunity to recall the main points of those opinions.

While renewing his support for the fight to terrorism and its prevention, the EDPS reaffirms that fighting those who undermine the respect of fundamental rights must be done through the respect of fundamental rights. This includes also the respect for the fundamental right to the protection of personal data, especially in the light of the entry into force of the Lisbon Treaty, which reaffirms the need to lay down comprehensive and consistent rules for the protection of personal data also in the area of restrictive measures (Articles 16 TFEU and 39 TEU).

Against this background, the EDPS highly recommends the EU legislator to abandon the current piecemeal approach - with specific rules for each country or organisation - and to develop a general and consistent framework for all restrictive measures, ensuring the respect of fundamental rights, and in particular of the fundamental right to the protection of personal data.

Proposals in this area, including the current ones, should in particular ensure:

- the right of information of the listed persons, as well as the conditions and the modalities of the restrictions which may be necessary;
- the right of listed individuals to have access to the personal data concerning them contained in classified documents, subject to the proportionate restrictions that may be necessary in certain circumstances;
- adequate mechanisms and safeguards to ensure adequate protection when data are exchanged with third countries and international organisations;
- that necessary restrictions to data protection principles are clearly defined, with a view to making restrictions foreseeable and proportionate;
- that existing judicial remedies and independent supervision by data protection supervisory authorities are fully applicable and that their effectiveness is not prejudiced by the conditions imposed on the access to classified documents.

We believe that - one year after the first EDPS opinion in this area and several months after the entry into force of the Lisbon Treaty - it is now the right time for the EU legislator to address in a detailed, comprehensive and consistent way the issue of data protection in relation to restrictive measures, developing a policy that would enhance not only the protection of fundamental rights, but also the legal certainty and the effectiveness of the measures taken.

In this perspective, I look forward to significant developments in this area. In particular, I would invite the Commission to develop ideas for such a comprehensive approach and, in any event, react to this invitation.

In the meantime, I remain available to put at your disposal the EDPS expertise and to provide any further advice you may need.

I have sent this opinion to the President of the European Parliament and the President of the Council as well.

Yours sincerely,

(signed)

Peter HUSTINX

Cc: Ms Ashton, Vice-President, High Representative of the Union for Foreign Affairs and Security Policy
Ms Viviane Reding, Vice-President
Ms Françoise Le Bail
Mr Karel Kovanda
Ms Genoveva Ruiz Calavera
Mr Aurel Ciobanu-Dordea
Ms Marie-Helene Boulanger
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