



European Data Protection Supervisor

NEWSLETTER

Nr. 0 - 13 July 2005

With this issue numbered 0, the EDPS is launching its quarterly electronic Newsletter.
Subscribing to the newsletter will be possible in autumn on our website :

<http://www.edps.eu.int>

Content:

1. [Transparency and data protection](#): two conflicting fundamental rights?
2. News on EDPS [prior checking](#) of processing of personal data
3. Passenger Name Record [PNR](#) / Advance Passenger Information (API)
4. Visa Information System [VIS](#)
5. [Speech](#) : "Data Protection and Security in the European Union"
6. Upcoming [event](#) : workshop in Geneva, 13 September 2005
7. [Colofon](#)

1. Transparency and data protection: two conflicting fundamental rights?

Transparency and data protection are both essential elements of democratic life in the EU. Citizens have a right of access to documents of the European institutions. They also enjoy protection of their personal data. But how should one deal with requests for public documents containing personal data? Peter Hustinx, the European Data Protection Supervisor, has just issued a paper providing guidelines for dealing with such requests. Hustinx said:

"The protection of the privacy of an individual is an important ground for exception to the right to information. However, this does not mean that public access should be automatically refused if a document contains personal data. Transparency and privacy are both fundamental rights and one does not prevail over the other. A careful consideration of both principles is the key to an appropriate solution."

When dealing with public access to documents containing personal data, it is imperative that the responsible officials make a concrete and individual examination of the specific document. Firstly, disclosure can only be refused if the privacy of an individual is at stake. Secondly, the negative effect of disclosure of someone's

personal data must be substantial if disclosure shall be refused. Thirdly, it has to be examined if data protection legislation allows disclosure.

The paper highlights the background and importance of both rights, guiding the reader through the process of consideration. Examples from the EU institutions and a checklist are provided, so as to facilitate concrete and individual examinations.

The paper is the first in an EDPS-series of background papers.

[Click [here](#) to read more]

2. News on EDPS prior checking of processing of personal data

Certain processing operations of the EU institutions and bodies which are likely to present specific risks with respect to the rights and freedoms of the data subjects are subject to prior checking by the EDPS. The prior check serves to establish whether or not the processing is in compliance with Regulation 45/2001. Currently, the EDPS receives some five to ten such requests per month. In general, [opinions](#) of the EDPS are published on the website.

A recent example of such a prior check concerns ASSMAL, which is the application relating to the sickness insurance and the reimbursement of medical expenses at the Council. The recommendations of the EDPS underline the importance of vigilance during the process, in order to prevent transmission of medical data to non-authorised people, and to ensure the confidential treatment of those files. The recommendations also emphasised the importance that officials (the data subjects) are properly informed about the relevant data protection aspects, such as the storage period and the right to have recourse at any time to the EDPS. The full text version of the opinion can be found [here](#) (in French, English translation will be available within short).

3. Passenger Name Record - PNR / Advance Passenger Information (API)

Within the framework of the advisory role of the EDPS on all matters relating to the processing of personal data by the EU institutions and bodies, the EDPS has dealt with two different agreements on transfer of PNR data - to the USA and to Canada.

USA

The European Court of Justice has granted the EDPS request to intervene in the two pending cases of the European Parliament v the Council and the European Parliament v the Commission (C-317/04 and C-318/04, respectively).

The EDPS has submitted grounds supporting the conclusions of the European Parliament that the Commission decision and the Agreement with the USA should be annulled. The orders of the Court of Justice can be found on the EDPS ['What's new'](#) webpage at the date of 17th March, 2005.

Canada

On 15 June 2005, the EDPS issued an [opinion](#) on the Proposal for a Council Decision on the conclusion of an agreement between the EC and Canada. There are substantial differences between the agreement with Canada and the one with the USA. One example is that the agreement with the USA allows for what is called a

"pull-system" which gives the US authorities direct access to the records of the airline companies, while the agreement with Canada uses the much less invasive "push-system" which allows for greater control of the personal data by the airline companies, which transfer the information.

The EDPS approves the main elements of the proposed agreement with Canada, but has made the following remarks:

- the EDPS should have been consulted on the Commission decision in which the Canadian Border Service Agency is considered to provide an adequate level of protection for API and PNR data.
- assent of the European Parliament should have been obtained for the agreement.
- the agreement could alternatively be amended to assure that the processing of API/PNR-data by European airlines has to comply with Directive 95/46.

4. Visa Information System

A proposal for a Regulation concerning a Visa Information System (VIS) is currently being discussed in the Council and the European Parliament. The VIS-proposal falls within the first pillar of the EU and is subject to the co-decision procedure.

On 23 March 2005, the EDPS issued an [opinion](#) which puts a strong emphasis on the need for a clear definition of the purpose of the VIS as a tool for improving the implementation of the common visa policy. The EDPS does not find routine access for law enforcement to the VIS compatible with that purpose. The EDPS welcomes the fact that the supervision of the VIS shall be a task for national authorities and the EDPS jointly.

5. Speech

P. HUSTINX, [Data Protection and Security in the European Union](#), delivered at the 14th Data Protection Forum in Wiesbaden, 23 June 2005

In the speech, the EDPS discusses the current framework for data protection in the EU, both for the Member States and for the European institutions. Hustinx also touches upon a number of areas where security and data protection currently meet and where decisions are needed that may have profound consequences for the quality of life and the fundamental freedoms of EU citizens.

Moreover, Hustinx commented upon recent legislative proposals, such as Eurodac, the Visa Information System, the Schengen Information System II, retention of traffic data and the Passenger Name Records agreements with Canada and the USA.

[Link to [speeches & articles](#) section of the website]

6. Upcoming EDPS event : workshop in Geneva on 13 September 2005

The EDPS together with the Council of Europe and the OECD will host a workshop in Geneva on 13 September 2005 on "Data Protection as Part of Good Governance in International Organisation". The objective is to raise awareness of general data protection principles among the invited international organisations and to encourage further work in the area. The workshop is organised in close cooperation with the Swiss and the Austrian Federal Data Protection Commissioners.

International organisations, which in many aspects are exempted from national law, operate in a legislative vacuum when it comes to protection of personal data. The lack of legislative instruments does not however reflect reality: virtually all international organisations process personal data. Most often, this is done in the interest of and to the benefit of the persons concerned - the processing as such is fully legitimate and a mere consequence of the core activities. Nevertheless, this does not alter the fact that there are often insufficient safeguards for the data subjects. This is all the more worrying since many international organisations process sensitive personal data, such as data relating to health, racial or ethnic origin, offences and criminal convictions.

This workshop precedes the [27th International Conference on Privacy and Personal Data Protection](#) in Montreux, 14-16 September, 2005.

7. Colofon

This newsletter is issued by the European Data Protection Supervisor, which is a new and independent EU authority, established in 2004 to:

- monitor the processing of personal data in EU institutions and bodies;
- advise the institutions on data protection legislation or policy;
- co-operate with similar authorities to ensure consistent data protection.

Address:

EDPS - CEPD
Rue Wiertz 60
B-1047 Bruxelles

Offices:

Rue Montoyer 63
B-1047 Bruxelles

Contact details:

Tel: (+32-2) 283 19 00
Fax: (+32-2) 283 19 50
e-mail: edps@edps.eu.int