



NEWSLETTER

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1. Letter to the Portuguese Presidency: fundamental rights are not the captives of security

On 11 June, Peter Hustinx (EDPS) sent letters to the Portuguese Ministers for Justice and the Interior. He asked the upcoming presidency to ensure sufficient consideration of data protection implications before Council initiatives are adopted. It seems that a number of agreements on new anti-terrorist measures have been concluded without fully considering the impact on fundamental rights.

The EDPS is particularly concerned that messages such as 'no right to privacy until life and security are guaranteed' are developing into a mantra suggesting that fundamental rights and freedoms are a luxury that security can not afford. He expressed his concern that such a negative approach to individual privacy rights reveals an apparent lack of understanding of the framework of human rights law, which has always allowed for necessary and proportionate measures to combat crime and terrorism.

The EDPS urges the Council to - just like the European Commission - make use of his availability as an advisor on all matters concerning personal data processing. A wide range of EDPS advice to the Commission for instruments in the first as well as in the third pillar (police and judicial cooperation in criminal matters) of the EU resulted in improved legislation both in terms of legitimacy and efficiency.

Read the [letter](#).

2. Developments in the third pillar under the German Presidency

Among the conclusions adopted at the close of the German Presidency last month were a number with relevance to data protection, notably in cross border police cooperation:

- Visa Information System (VIS) - the Council called for swift implementation of the Decision on access by police authorities (including Europol) to the VIS database for prevention, detection and investigation of terrorist offences.
- Cross border police cooperation - member states agreed to integrate the main provisions of the Prüm Convention into the EU's legal framework. This decision deals with the exchange of biometric data (DNA and fingerprints) in the fight against terrorism and cross border crime. It also requires member states to set up DNA databases.
- The importance of strengthening Europol's operational capabilities was once again underlined as well as the intention to transform the Europol Convention into a Europol decision.
- Data protection in the third pillar - the Council decided to reach agreement on a Framework Decision before the end of the year.

The EDPS will continue to closely monitor developments in this area and (as indicated in his letter to the Portuguese Presidency) be available for advising on these matters.

3. New PNR agreement

A new PNR agreement is reported to have been agreed upon between the US and the EU. The EDPS has not taken part in the negotiations. However, based on publicly available information, the EDPS has expressed concerns that if the agreement goes ahead as planned, European citizens' data protection rights will not be adequately protected.

The EDPS will continue to follow the developments closely and will decide whether to react individually and/or in the framework of the Article 29 Working Party (of which the EDPS is a member) once the full text of the agreement has been published.

4. SWIFT

The EDPS actively follows the developments in the SWIFT case, with a view to ensure that international payments are carried out in full compliance with data protection laws and that citizens' rights are guaranteed.

The Article 29 Working Party met again in June with representatives of SWIFT as well of European banking associations. The Working Party took stock of the progress achieved so far by SWIFT and called on financial institutions to provide their customers - at the latest by 1st September - with appropriate information concerning the access to personal data by US authorities.

In the context of the coordinated action of EU data protection authorities, the EDPS collected relevant information on the systems used by the ECB and other EU institutions for international payments. In those cases where EU institutions have a direct contract with SWIFT and thus play the role of "financial institutions", the EDPS will ensure that they comply with their legal obligations, in particular that they provide sufficient information to customers. Furthermore, the EDPS will continue to monitor efforts by SWIFT and institutional decision makers in order to ensure that the architecture of European payment systems is fully compliant with data protection legislation.

With regard to the recent "Representations" of the United States Treasury Department, the EDPS welcomes the improvements announced in the [Commission press release](#). However, the EDPS notes that uncertainty still remains in relation to a number of important issues such as proportionality, effective redress, data retention and independent oversight. Furthermore, the EDPS recalls that compliance by SWIFT and financial institutions with applicable data protection laws is an absolute prerequisite to the legitimacy of

any transfer of personal data to a third party outside the EU. The supervision of this compliance falls within the competence of Data Protection Authorities.

5. Data protection and freedom of expression - EDPS intervention before Court of Justice

In June, the EDPS requested to intervene before the Court of Justice in a preliminary reference brought by the Finnish Supreme Administrative Court concerning the interpretation of the data protection directive (95/46), and in particular of its Article 9 on processing of personal data and freedom of expression.

The case ([C73-07](#)) concerns two Finnish companies using tax data, which are in the public domain under national legislation, publishing them in extensive lists and disclosing them for commercial purposes through CD-ROMs and text messaging services. Further to an appeal lodged by the Finnish Data Protection Ombudsman, the Finnish Court raises in particular the question of whether these kinds of personal data processing may be considered as being for journalistic purposes. Such processing could fall within the scope of the derogations and exemptions allowed by Article 9 of the directive.

The EDPS requests to intervene in order to contribute - as an advisor to the EU institutions - to the uniform interpretation of the Directive, and the appropriate definition of the delicate balance between personal data protection and freedom of expression.

6. News on EDPS prior checking of personal data processing

Processing of personal data by the EU administration that is likely to result in specific risks for the people concerned (the data subjects) is subject to a prior check by the EDPS. This procedure serves to establish whether or not the processing is in compliance with Regulation 45/2001, which lays down the data protection obligations of the EU institutions and bodies.

"Spring 2007"

In spring 2007, the EDPS launched a stock taking exercise regarding the progress made in the institutions and agencies in the implementation of the Regulation. This exercise resulted notably in the appointment of a Data Protection Officer in all institutions and operational agencies and in a significant increase in the number of processing operations sent for prior checking to the EDPS: the number of notifications doubled in the months of May and June in comparison with the first few months of the year.

Free Phone Service - OLAF

On 6 June, the EDPS issued an opinion on the OLAF Free Phone Service. OLAF has put this tool at the public's disposal, enabling individuals to provide information that may be useful in the fight against fraud, corruption and other illegal activities affecting the financial interests of the Community. Anyone, EU staff as well as citizens, can use the Free Phone Service to report such types of unlawful behaviour.

After listening to the voice messages and deleting those that are deemed fully improper and pointless, OLAF investigators summarise the remaining messages in a "free phone screening form". This form indicates whether or not the messages are relevant to OLAF's work or to that of other authorities, such as member states or European Commission services. Based on this assessment, OLAF will deem them irrelevant, investigate them further and potentially open an investigation, or send them to other authorities if the case is relevant for them.

The OLAF Free Phone Service is subject to prior checking as it deals with data which may relate to suspected offences, criminal convictions or security measures. In his opinion, the EDPS concluded that OLAF has substantially followed all the principles of the Regulation. Nevertheless some recommendations were made, including:

- ensuring the deletion of voice messages with information deemed irrelevant. This should not be recorded in writing or, if so, should be deleted immediately after confirmation of their irrelevance.
- ensuring the right to information to those who have been named by callers who use the Free Phone Service, subject to the application of the exceptions provided for in the Regulation.
- setting up a voice recording so that, upon calling the Free Phone Service, a short version of the privacy statement is provided or, alternatively, publishing it on OLAF's website.

Competence Inventory

In mid-June, an opinion on the "competence inventory" exercise of the European Training Foundation (ETF) was issued. This complex exercise serves to create a database listing all relevant competences of each employee. It involves self-assessment, peer-review and moderation by a panel to ensure consistency throughout the ETF. The primary purpose is to obtain aggregate data for strategic management purposes such as to identify competence gaps and adjust recruitment and training policies accordingly.

The EDPS concluded that there are doubts on the proportionality of the establishment of the database and the data quality. For these reasons, the EDPS recommended that ETF reconsiders the necessity of carrying out the competence inventory exercise and look for less intrusive alternatives.

In any event, the EDPS insisted that the database should not result in a parallel performance evaluation system and ETF's management must clearly and explicitly recognise the limitations of the reliability of the data to inform decisions that individually affect data subjects, for example, assessment of

applications for internal mobility. Therefore, the data should never be used for pre-selection or exclusion, but only as one of several sources to inform decision-making. Similarly, the competence inventory should not be used for performance appraisal, promotion or assessing contract renewal. Moreover, use of the database should not lead to dismissal, exclusion when tasks are allocated or team leaders and managers are selected, or to similar prejudices to staff members.

Published opinions can be downloaded from the [EDPS website](#).

7. Eurodac meeting

On 28 June, the EDPS organised a fourth coordination meeting for the national data protection authorities regarding the joint supervision of Eurodac. Representatives of data protection authorities from most of the member states (and also Iceland) participating in the system as well as observers from Switzerland were present.

After a brief introduction from the EDPS regarding the state of play, the European Commission (DG JLS) gave a detailed presentation of its recently published "Dublin Evaluation". This is a document which assesses the Dublin system (which aims to determine which member state is responsible for the examination of an asylum application) over the period from September 2003 to December 2005. Among the main issues explored in the evaluation were law enforcement access to Eurodac and special searches (access right of the person concerned).

The EDPS then presented a joint draft report on the national inspections. Some interesting findings were shared during a round table discussion that followed. The final report has been adopted with some amendments and will be issued in July 2007.

The working methods were addressed through a draft presented by the EDPS and are due to be adopted at the next coordination meeting.

Finally, some data protection aspects of the Dublin evaluation were discussed. The EDPS will prepare a reaction and communicate this to the coordination group.

8. Annual Report 2006

On 2 May, Peter Hustinx and Joaquín Bayo Delgado presented their third annual report (2006) at a well attended press conference. After three years in operation, this annual report begins to measure results and to call on the EU administration to demonstrate data protection compliance. The EDPS has been alerting the EU administration for some time now that, as from spring

2007, he will broaden his supervisory activities, and start to inspect and measure results.

In his supervisory role, the main focus in 2006 was on supporting the Data Protection Officers; issuing prior check opinions in a variety of fields (such as staff appraisal and medical files) that are risky for the persons concerned; addressing e-monitoring, traffic data retention and data transfers to third countries in surveys; as well as conducting an in-depth security audit of Eurodac's central database.

As an advisor to the European legislator, the EDPS issued an increasing number of opinions. They covered areas such as: the exchange of information in the 'third pillar', biometrics in visa, passports and consular instructions, and financial matters. A major concern was that legislation facilitating exchange of data is adopted before an adequate level of protection is guaranteed in the 'third pillar'. The EDPS also intervened in a case before the Court of First Instance on data protection and public access to documents.

The annual report was presented at the LIBE committee of the European Parliament and in the Council Working party on Data Protection. Printed copies in English, French and German can be ordered from the EDPS secretariat. Click to read the [full text version](#) or the [executive summary](#).

9. European data protection conference

On 10 and 11 May, the Spring Conference of European Data protection Authorities was held in Larnaka, Cyprus. The programme included a number of outstanding data protection issues, such as discussions on electronic health records, and media and data protection. Sessions were also held on the future of data protection (related to a surveillance society) and on data protection in the third pillar. Peter Hustinx gave a presentation on data protection in the EU-administration.

The conference also adopted [declarations](#) on:

- the Principle of Availability, with Common Position and Checklist
- the Draft Framework Decision on Data Protection in the Third Pillar

Finally, it was decided to give the Police Working Party a wider and more permanent mandate. It is now called the Working Party on Police and Justice. Franco Pizzetti from Italy was elected as Chairman and Bart de Schutter from Belgium as Vice Chairman.

10. Upcoming events

Workshop on data protection in criminal proceedings

Peter Hustinx and Joaquín Bayo Delgado (Assistant Supervisor) will take part in a workshop for judges and prosecutors on data protection in criminal

proceedings, which will be held from 12 to 14 September 2007 in Strasbourg. Existing information systems, principles and guarantees regulating the access to personal data, the fundamental right to personal data protection and its limits in the police and legal sector will be the main themes of this event, hosted by the Council of Europe and organised by its public and private law Unit, the University of Castilla-La Mancha (Spain), the DPO of Eurojust and the EDPS. The programme is available on the [EDPS website](#) and the registration form can be downloaded from the [Council of Europe website](#).

11. New Data Protection Officers

Each EC institution and body has to appoint at least one person as Data Protection Officer (DPO). These officers have the task of ensuring in an independent manner the internal application of Regulation 45/2001.

Recent appointments:

- Rieke ARNDT - Community Fisheries Control Agency (CFCA)
 - Dimitri NICOLAÏDES - European GNSS Supervisory Authority
 - Zografia PYLORIDOU - European Railway Agency (ERA)
 - Malgorzata NESTEROWICZ (replacing Joachim MENZE) - European Maritime Safety Agency (EMSA)
 - Eva LÄTTI - Public Health Executive Agency (PHEA)
 - Cécile MARTEL (replacing Arne TVEDT) - European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).
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12. Colophon

This newsletter is issued by the European Data Protection Supervisor - an independent EU authority established in 2004 to:

- monitor the EU administration's processing of personal data;
- give advice on data protection legislation;
- co-operate with similar authorities to ensure consistent data protection.

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EDPS - the European guardian of personal data protection

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