



EDPS NEWSLETTER

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1. EDPS opinion on ePrivacy Directive review

On 10 April, the EDPS adopted an opinion on the European Commission's proposal amending, among others, the Directive on Privacy and electronic communications (usually referred to as the ePrivacy Directive).

On the whole, the EDPS supports the Commission's drive to enhance the protection of individuals' privacy and personal data in the electronic communications sector. He particularly welcomes the proposed creation of a mandatory security breach notification system and the possibility for legal persons (e.g. consumer associations and Internet service providers) to take legal action against spammers. The clarification regarding the inclusion of a number of RFID applications in the scope of application of the Directive also represents a significant progress.

The EDPS however feels that the opportunity of this review should be used to its full potential so as to ensure that the proposed changes provide for a proper protection of personal data and privacy. He calls for further improvements to the Directive that should include the following:

- **security breach notification:** the obligation to notify any breach of security should not only apply to providers of public electronic communication services in public networks but also to other actors, especially to providers of information society services which process sensitive personal data (e.g. online banks and insurers, on-line providers on health services, etc.);
- **scope of the Directive:** the Directive should broaden its scope of application to include providers of electronic communication services also in mixed (private/public) and private networks;
- **right of action against spammers:** the new possibility given to legal persons to take action against those who infringe spam provisions should be extended to cover infringement to any provision of the ePrivacy Directive.

🔗 EDPS opinion on ePrivacy Directive review ([pdf](#))

2. EDPS opinion on biometrics in passports

On 26 March, the EDPS adopted an opinion on the Commission's proposal aiming at revising the 2004 Council Regulation that sets out minimum standards for security features and biometrics in passports and travel documents.

The EDPS welcomes the introduction of exemptions from giving fingerprints based on the age of the person or his/her inability to provide fingerprints. However, he still considers these exemptions as insufficient to remedy the imperfections of biometrics, such as the impact of misidentification or failure to enrol.

The EDPS' opinion includes the following recommendations:

- **fingerprints from children:** the proposed six-year age limit should be considered as a provisional one, or brought in line with international practice (14 years). After three years, the age limit should be reviewed and defined by an in-depth study which is to identify the accuracy of the systems obtained under real conditions;
- **fingerprints from the elderly:** an age limit for elderly, based on similar experiences already in place (79 years), should be introduced as an additional exemption;
- **principle of "one person-one passport":** this principle should be applied only to children above the relevant age limit;
- **"breeder" documents:** additional measures should be proposed to harmonise the production and the use of documents required in Member States to issue passports ("breeder" documents).

The EDPS recalls that exemptions should in no way stigmatize or discriminate individuals who will be exempt, because of their age as a precautionary principle or because they present obviously unreadable fingerprints.

🔗 EDPS opinion biometrics in passports ([pdf](#))

3. EDPS opinion on Eurojust

On 25 April, the EDPS adopted an opinion on the Initiative of 14 Member States with a view to adopting a Council Decision concerning the strengthening of Eurojust. The initiative aims at further enhancing the operational effectiveness of Eurojust. The EDPS was not asked for advice on this initiative, although a significant part of the initiative deals with the - conditions for - processing of personal data by Eurojust. The opinion was therefore issued on his own initiative.

In his opinion, the EDPS emphasises that he understands the need to improve the legal framework of Eurojust. However, he regrets that the initiative was not accompanied by an impact assessment, together with an analysis of the shortcomings of the existing rules and the expected effectiveness of the new provisions.

Furthermore, the opinion highlights the various arguments in favour of waiting for the entry into force of the Lisbon Treaty. Other issues addressed in the opinion are the provisions on data protection, the relations with third parties and the supervision.

🔗 EDPS Opinion on Eurojust ([pdf](#))

4. EDPS opinion on computerised reservation systems

On 11 April, the EDPS issued an opinion on the proposal for a Regulation on a Code of conduct for computerised reservation systems (CRSs).

The objective of the proposal is to update the provisions of the Code of Conduct for Computerized Reservation Systems that was established in 1989 by Regulation 2299/89. The Code would need simplification in order to reinforce competition - while maintaining basic safeguards, and ensuring the provision of neutral information to consumers.

A specific article on data protection has been developed in the proposal with a view to complementing the provisions of Directive 95/46/EC which continues to apply as a *lex generalis*.

The EDPS welcomes the inclusion of such principles in the proposal. He stresses that these provisions could nevertheless be usefully complemented by additional safeguards on three points:

- **ensuring the fully informed consent** of data subjects for the processing of sensitive data;
- **providing for security measures** taking into account the different services offered by CRSs,
- **protecting marketing information** relating to individuals from access by third parties.

With regard to the scope of application of the proposal, the criteria that make the proposal applicable to CRSs established in third countries raise the question of its practical enforcement, taking into account the complexity of the CRS network.

It is deemed as essential to put the CRS question in this global context and to be aware of the implications of having a large amount of personal data, some of them sensitive, processed in a global network practically accessible to third state authorities.

The EDPS considers it as decisive that effective compliance is ensured by competent authorities for enforcement (i.e. the Commission), as foreseen in the proposal, as well as data protection authorities.

🔗 EDPS opinion on computerised reservation systems ([pdf](#))

5. EDPS policy paper on his role in EU research and technological development

On 28 April 2008, the EDPS adopted a policy paper which sets out his role and possible contributions to EU research and technological development (RTD). The policy paper develops possible models of contribution, both in the preparatory stages of an EU Framework Programme and with regard to individual RTD projects.

The overall objective of these contributions is for the EDPS to promote and reinforce the application of the principle of "privacy by design" (i.e. application of data protection requirements as early as possible in the life cycle of new technological developments).

The EDPS' contributions to a research Framework Programme and to calls for proposals may aim at the following:

- participation in workshops and conferences intended to identify future challenges that can be relevant for EU RTD policy;
- contribution to research advisory boards launched by the European Commission in connection with the Framework Programme, and provision of opinions on data protection matters;
- assistance to the European Commission in the evaluation process of proposals, in particular regarding possible data protection issues these proposals might trigger.

The EDPS may also give an opinion in relation to individual RTD projects, either at the request of a consortium of a project, or on his own initiative.

🔗 EDPS policy paper ([pdf](#))

6. Request of medical file by National Court

The medical service of a European body (the controller) received a request from a national tribunal asking for a copy of the full medical file of an official for the purpose of a divorce case. The EDPS was consulted under Articles 24.1(b) and 46(d) of Regulation 45/2001.

With regard to this matter, the EDPS made the following recommendations:

- regarding the **lawfulness of the processing**, Article 5(b) of the Regulation stipulates that personal data may be processed only if “processing is necessary for compliance with a legal obligation to which the controller is subject”. In this case, the controller is subject to the obligation to cooperate with national jurisdictions and, therefore, the processing activity would be justified under this perspective. Nevertheless, the medical service is subject to the obligations derived from the medical secrecy regulations. When information is requested by courts in the frame of legal proceedings, cooperation with national jurisdictions therefore has to take place in accordance with the requirements and mechanisms imposed by the national regulations on medical secrecy. Given the sensitivity of the data, consent of the data subject would be advisable as a complementary basis for lawfulness. A refusal of the data subject to provide his/her consent will however not invalidate the basis under Article 5(b). In any case, a refusal to give consent has to be taken into account from the perspective of proportionality and data quality in general.
- regarding the **quality of the data**, and considering that access to the whole medical file is requested, the controller has to ensure that only adequate, relevant and not excessive data are transferred. Given that the request from the tribunal does not specify the purpose of the requested processing, it is legitimate to require further specification in this regard (Article 4.1.b).

7. 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.

7.1. - Commission - Authorization to testify in justice

On 28 March, the EDPS released a prior checking opinion on "permission to disclose information in any legal proceedings". According to article 19 of the Staff Regulation, EC officials and agents shall not disclose information of which they have knowledge by reason of their duties, in any legal proceedings, without the permission of the appointing authority. The Commission set up a procedure to implement this article of the Staff Regulation. The procedure involves a processing operation which includes sensitive personal data such as suspected offences or criminal convictions and that is the reason why it has been checked by the EDPS.

The EDPS was globally very satisfied and only made a few recommendations to the Commission:

- the data subject should have the right to express his opinion on the case he is concerned by unless a limitation applies (article 20 of Regulation 45/2001);
- the managers of the "permission files" should only have access to the files they are responsible for.

7.2. OLAF - Identity and access control system

On 7 April, the EDPS released a prior checking opinion on the setting up of a physical access control system of staff members at the European Anti-Fraud Office (OLAF).

The identity and access control system is part of the security infrastructure that protects OLAF premises and IT systems. The purpose of the data processing is to ensure that only authorised persons have access to OLAF's premises. The system is designed to control the identity and permit or deny access of persons entering and exiting from OLAF's premises outside working hours and special secure zones. To do so, OLAF uses a smartcard and the use of fingerprints authentication. Users' biometrics data are stored only on the smartcard which cannot be used for any other purpose.

The EDPS considers that the processing operation is not in breach of Regulation 45/2001 provided that OLAF takes into account the following recommendations:

- the need for a reassessment of the concerned data subjects submitted to enrolment; the development of fallback procedures;
- the setting of a shorter conservation period of data after the first year of operation of the new system;
- the amendment of the privacy statement; and
- the reconsideration of the technological choice taking into consideration the choice of the best available techniques and current discussions on future security systems.

🔗 EDPS opinion ([pdf](#))

7.3. General recruitment procedures in the European Parliament

On 13 March, the EDPS released three prior checking opinions on the recruitment of officials, temporary agents and contract agents. The recruitment procedures are subject to prior checking as the processing operations intend to evaluate personal aspects relating to the data subject, including ability and efficiency.

The opinions include the three phases of the procedure: selection, recruitment and the fixing rights. EPSO assistance to the different selection procedures was not analysed as it has already been checked by the EDPS in previous opinions.

The opinions set out the two main following recommendations:

- the criminal record which is collected as a condition for the recruitment should not be kept in the personal file for an undetermined duration;
- information to be provided to the data subject from whom data are collected (articles 11 and 12 of Regulation 45/2001) is lacking in the three procedures. As this obligation is closely related to the issue of fair processing operation, it is of paramount importance for the European Parliament to provide the data subject with complete and specific information.

🔗 EDPS opinions: (1) officials and transfers (FR) ([pdf](#))
(2) temporary agents (FR) ([pdf](#))
(3) contractual agents (FR) ([pdf](#))

8. Recent EDPS speeches

- "Strategic challenges for data protection in Europe", speech given by Peter Hustinx at the 9th Data Protection Conference (Berlin, 6 May 2008)

🔗 Speech ([pdf](#))

9. Forthcoming events

9.1 Presentation of the EDPS Annual Report 2007 to the press: 15 May

Peter Hustinx, Supervisor, and Joaquín Bayo Delgado, Assistant Supervisor, will present their 2007 Annual Report to the press on 15 May. The press conference will run through the main features of the EDPS activities in 2007 with regard to his supervisory and consultative tasks.

2007 saw a considerable increase in the number of prior-checks relating to processing operations of personal data in Community institutions and bodies. Moreover, the EDPS gave further effect to his advisory role on new EU legislative proposals having an impact on data protection with the publication of 12 opinions. 2007 also saw the signing of the Lisbon Treaty that provides for an enhanced protection of personal data and whose impact for data protection will be closely monitored.

A summary of the Annual report was presented to the LIBE committee of the European Parliament on 26 March and will be presented in Council next 26 May.

The full text of the Report and an Executive summary will be made available on the EDPS website on 15 May.

9.2. Conference on data protection and law enforcement (26-27 May 2008, Trier, Germany)

On 26 and 27 May, the European Law Academy (ERA) and the EDPS jointly organise a conference on 'Data exchange and data protection in the Area of Freedom, Security and Justice'. The registration for this conference develops quite successful. However, there are still some last places available for participants.

☞ Programme and Registration form can be found on the [ERA website](#)

10. 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 appointment:

- Elisa DALLE MOLLE, Trans-European Transport Network Executive Agency (TEN-TEA)
- Richard LUNDGREN, European Agency for Reconstruction (taking over from Martin DISCHENDORFER)

☞ See full list of [DPOs](#).

10. 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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