



EDPS NEWSLETTER

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1. EDPS opinion on Transparency

On 30 June, the EDPS adopted an Opinion on the Commission's proposal aimed at reviewing the rules on public access to documents held by EU institutions. The Opinion focuses on an amended provision dealing with the relation between public access to documents and the protection of personal data.

Although the EDPS welcomes the Commission's intention to clarify the delicate interaction between public access and data protection, he feels that the substance of the proposed amendment fails to provide the appropriate answer.

The EDPS' position is mainly based on the following grounds:

- **failure to reflect the European Court case law:** with the deletion of the reference to the harm to "the privacy and the integrity" of the individual as a necessary threshold to justify refusal of access to documents containing personal data, the Commission strongly alters the balance reached so far by the legislator, as interpreted by the Court of First Instance (Bavarian Lager case);
- **insufficient balance between the fundamental rights at stake:** the proposed provision implies that the decision on a request for public access must be based on the Data Protection Regulation, and not on the Public Access Regulation. This approach may respect the right to data protection, but not the right to public access, and as such does not strike a right balance between the two considered rights;
- **lack of practical viability:** the provision refers to EC legislation on data protection that does not provide a clear answer when a decision on public access must be made, and will therefore result in a "catch 22" situation.

The EDPS also suggests clarifying the relations between the Public Access Regulation and the Data Protection Regulation, in particular so as to ensure that the right of public access to documents is without prejudice to the right of access to own personal data.

🔗 [EDPS opinion on Transparency \(pdf\)](#)

2. EDPS opinion on Children and the Internet

On 23 June, the EDPS adopted an Opinion on the proposed multi-annual Community programme on protecting children using the Internet and other communication technologies, which was presented by the European Commission in February 2008.

The EDPS fully supports the general orientations of the programme and stresses the fact that the protection of children's data is an essential first step in guaranteeing more safety and prevention of abuse on the Internet. Data protection considerations should also apply to all persons who are connected in some way with the information circulating on the network to prevent illegal

content and harmful conduct (e.g. person reported as suspect, reporting person, victim of abuse).

The EDPS Opinion includes the following main comments:

- **data protection authorities** play a decisive role in the protection of children on the Internet. This should be taken into consideration when it comes to the implementation of the multi-annual programme;
- any **reporting system** to be put in place in order to report illegal or harmful content online has to take into account the existing data protection framework. Guarantees related to the supervision of the system, in principle by law enforcement authorities, are decisive elements to comply with this framework;
- **filtering or blocking tools** to control access to networks should be used cautiously, bearing in mind their potential adverse effect (e.g. preventing access to legitimate information) and taking advantage of the privacy enhancing opportunities offered by technology.

🔗 [EDPS opinion on Children and the Internet \(pdf\)](#)

3. EDPS opinion on Road Safety

On 8 May 2008, the EDPS issued an opinion on the proposal for a Directive facilitating cross-border enforcement in the field of road safety.

The proposal aims at reducing fatalities, injuries and material damage resulting from traffic accidents. In this context, the proposal intends to establish a system to facilitate the cross-border enforcement of sanctions for specified road traffic offences.

In order to contribute to a non discriminatory and more effective enforcement towards traffic offenders, the proposal foresees the establishment of a system of cross-border exchange of information between Member States.

The EDPS considers that the proposal provides for sufficient justification for the establishment of the system for the cross-border exchange of information, and that it limits the quality of data to be collected and transferred adequately.

He also welcomes the redress procedure foreseen in the proposal and, in particular, the fact that access to personal data will be possible in the country of residence of the data subject.

The EDPS also made the following recommendations:

- on the information of data subjects: the way data subjects will be informed of the fact they have specific rights of access to their data and possible correction of these data will depend on the format of the offence notification. It is therefore important that the proposal lists all information relevant for the data subject, in a language that he/she understands.
- on the security of the system: the EDPS has noted that it is foreseen to make use of an already existing infrastructure to exchange the information.

The EDPS has no objection to this objective as far as it limits financial or administrative burdens. He insists however on the fact that this should not lead to interoperability with other databanks. The EDPS welcomes the proposed limit on the possibilities of use of the data by Member States other than the one where the offence was committed.

🔗 [EDPS Opinion on Road Safety \(pdf\)](#)

4. EDPS intervention in Data Retention Case

On 1 July, the European Court of Justice held an oral hearing in the Data Retention Case (case C-301/06: Ireland vs. European Parliament and Council). In this case, Ireland seeks the annulment of the Data Retention Directive 2006/24 because it contests the competence of the European Community under the first pillar of the EU Treaty to establish rules for the purpose of the fight against serious crime.

The EDPS intervened in this case on the side of Parliament and Council. The reason for intervention should not be considered as a support for the directive as such. The EDPS remains critical about the content of the directive. The intervention aims to emphasise to the Court the risks for the system of data protection *if* the substance of the directive were not to be covered by the first pillar.

In his pleading, the agent of the EDPS underlined that the directive imposes obligations on private operators to systematically retain within their systems the data that have been collected for commercial purposes. Those data will only incidentally, on a case by case basis, be accessed by law enforcement authorities.

The EDPS also used the occasion to specify that the facts of this case are different from the facts leading to the PNR Judgement.

The next step in the procedure will be the opinion of Advocate General Bot, foreseen for 14 October 2008.

🔗 [EDPS pleading in case C-301/06 \(pdf\)](#)

5. EDPS contribution to LIBE Round Table on Border Policy

On 30 June, Peter Hustinx, EDPS, presented two interventions at a Round Table organised by the LIBE Committee of the European Parliament, involving both the European Parliament and representatives from national parliaments. The topic of this Round Table was “Freedom and security in the integrated management of the European Union's borders-Exchange of views on the new Schengen Information System (SISII), Frontex, Eurosur, entry-exit system, profiling”.

The first intervention of the EDPS addressed the issue of “Data protection implications in the Migration from SIS I+ to SIS II”. With regard to the Central Unit, which shall be under the EDPS’ supervision, Peter Hustinx underlined that he intends to conduct an audit during the very first stage of operations, i.e. to provide for a benchmarking tool for future use. He also reminded how crucial the cooperation was with national data protection authorities and the Schengen Joint Supervisory Authority in order to ensure a smooth transition between the two systems.

In a second intervention during a session devoted to "Protecting freedom, security and privacy in the future EU border management", the comments of the EDPS on the “Border Package” ([pdf](#)) was mentioned on several occasions. The EDPS himself recalled some key elements such as the need to take the time for reflection before rolling out new proposals without an assessment of the existing reality. He also addressed the issue of profiling which, while useful in some contexts, calls for appropriate safeguards in view of the potential intrusion in the private lives of citizens.

- ☞ EDPS contribution on the migration from SIS I+ to SIS II ([pdf](#))
 - ☞ EDPS contribution on the entry-exit system and on profiling ([pdf](#))
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6. EDPS updated inventory

On 30 May, the EDPS updated the inventory of his activities in the area of consultation. This inventory serves the purpose of identifying, selecting and compiling a list of those Commission proposals - and similar documents - to which the EDPS intends to react.

The updated list now consists of 43 items. 22 of those items are flagged as having particular importance for the EDPS, normally leading to an opinion.

The next update will take place in the early autumn.

- ☞ EDPS updated inventory ([pdf](#))
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7. Report from the Conference on data protection and law enforcement (26-27 May, Trier)

The Conference organised by the European Law Academy (ERA) together with the EDPS and held within the premises of this academy in Trier on 26 and 27 May was a success.

This conference on data exchange and data protection in the area of police and justice attracted around 100 participants from a large number of Member States of the European Union. Specialists on data protection and on law enforcement discussed the legal framework for data exchange and data protection, now and in the near future. Many interventions underlined the importance of bringing together the perspectives of data protection and law enforcement, both necessary elements of good governance.

- ☞ Final programme of the conference ([pdf](#))
 - ☞ ERA [press release](#) on the results of the conference
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8. EDPS visit to the European University Institute (10 June, Florence)

On 10 June, the EDPS visited the European University Institute, an important academic institute based in Florence which provides advanced training and research at the highest level in key EU-related areas.

Peter Hustinx, EDPS, was welcomed by Professor Stefano Bartolini, Director of the Robert Schuman Centre for Advanced Studies, and by the Secretary General of the Institute, Marco del Panta.

After meeting some of the top staff of the Institute and discussing issues concerning the protection of personal data in international organizations, the EDPS delivered a speech entitled "EU Data Protection in a Global Economy: Threats and Dangers to Collective Security and Human Rights", which gave rise to a lively debate with the numerous professors, academic staff and researchers attending the event.

9. 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.

9.1. OLAF - Closed-circuit television system (CCTV)

This prior checking Opinion concerns the closed-circuit television system (CCTV system) operated by the European Anti-Fraud Office (OLAF) within its premises in Brussels for security purposes. The case is the first among the EDPS opinions involving video-surveillance.

On the whole, the EDPS was satisfied with the proportionality of the CCTV system and the data protection safeguards implemented by OLAF. The purposes of the system are clearly delineated, relatively limited and legitimate. Moreover, the location, field of coverage and resolution, and other aspects of the set-up of the CCTV system appear to be adequate, relevant and not excessive in relation to achieving the specified purposes, also taking into consideration the sensitivity of the information held by OLAF.

Nevertheless, the EDPS made important recommendations to OLAF to reconsider the planned conservation period to ensure that data are kept no longer than necessary for the purposes initially contemplated. The EDPS also recommended that OLAF adopts an internal document describing its CCTV

system and providing for appropriate data protection safeguards. Finally, the EDPS further encouraged OLAF to provide more specific and accurate information to data subjects.

🔗 EDPS opinion ([pdf](#))

9.2. OLAF Identity and Access Control

The Identity and Access Control System is part of the security infrastructure that protects the European Anti-Fraud Office (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 to persons entering and exiting from OLAF's premises outside working hours and special secure zones. To do so, OLAF uses a smartcard and fingerprint authentication. Users' biometrics data are stored only on the smartcard which cannot be used for any other purpose.

According to the EDPS, the processing operation is not in breach of Regulation (EC) No 45/2001 if OLAF takes into account the following recommendations:

- to reassess the concerned data subjects submitted to enrolment;
- to develop fallback procedures;
- to set up a shorter conservation period of data after the first year of operation of the new system;
- to amend the privacy statement;
- to reconsider the technological system taking into account the choice of the best available techniques and discussions on future security systems.

🔗 EDPS opinion ([pdf](#))

9.3. European Parliament - Skills database

On 13 June 2008, the EDPS adopted an Opinion on the notification for prior checking received from the Data Protection Officer of the European Parliament regarding the Skills database.

This database contains career data on staff covering professional experience in and before joining the European Parliament. The Skills database constitutes an electronic processing operation that facilitates human resources management in mobility, careers advice, specialised staff search, filling vacant posts and planning competitions.

Some of the information contained in the database is entered by the data subject him/herself. Other elements are derived from different databases maintained by DG Personnel, such as STREAMLINE (management of the recruitment, career, training, individual entitlements and reimbursement of expenses - e.g. missions - of staff), RAPNOT (Evaluation) and FORPRO

(European Parliament training management, the data extracted from it comprising the list of training courses completed).

The legal basis of this processing activity is Rule 197(2) of the European Parliament's Rules of Procedure, which foresees a power of organisation of the services of the institution. Given the general character of this legal basis, the EDPS recommended the adoption by the appropriate authority in the European Parliament of a decision stipulating the characteristics, definition and guarantees of the Skills database, in order to ensure transparency and legal certainty.

🔗 EDPS opinion ([pdf](#))

10. Recent EDPS speeches

- "Towards a European Freedom of Information Act - The Revision of Regulation 1049/2001 on access to EU documents", [speech](#) delivered by Peter Hustinx at a public hearing of the LIBE Committee in the European Parliament (Brussels, 2 June 2008)
 - EDPS contributions to the European Parliament's LIBE Committee Round Table on Border Policy (Brussels, 30 June 2008) (see point 5 above)
 - "Data protection in Schleswig-Holstein, in Europe and in a global information society", [speech](#) delivered by Peter Hustinx at the 30 years celebration of data protection in Schleswig-Holstein, Kiel
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11. EDPS participation at EU Open Day (7 June, Brussels)

On Saturday 7 June, the staff of European Data Protection Supervisor (EDPS) welcomed visitors at their information stand in the European Parliament's main building. Visitors were invited to participate in a quiz concerning data protection issues at EU level. The event was organised in the framework of the Open Day at the European institutions. The theme of this year's festival of Europe was "the European year of intercultural dialogue".

🔗 More information on www.fetedeleurope.eu

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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