

EDPS Newsletter



EUROPEAN DATA
PROTECTION SUPERVISOR

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CONSULTATION

> EDPS opinion on Intelligent Transport Systems



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The EDPS opinion, which was issued in July 2009, relates to the European Commission's proposed deployment plan for intelligent transport systems (ITS) in Europe, aimed at accelerating and coordinating their deployment in road transport and their connection with other modes of transport. The deployment of ITS has considerable **privacy implications**, for instance because they make it possible to track a vehicle and to collect a wide variety of data relating to European road users' driving habits.

The EDPS notes that data protection has been taken into consideration in the proposed legal framework and that it is also put forward as a general condition for the proper deployment of ITS. He however considers that the proposal is **too broad and too general** to adequately address the privacy and data protection concerns raised by ITS deployment. In particular, it is not clear when the performance of ITS services will lead to the collection and processing of personal data, what are the purposes and modalities for which



data processing may take place, and who will be responsible for compliance with data protection obligations.

“ There is a risk that the lack of clarity of the proposed legal framework will lead to considerable uncertainty, fragmentation and inconsistencies, due to different levels of data protection in Europe ” Peter Hustinx, EDPS

The opinion includes the following recommendations:

- **clarification of responsibilities:** it is crucial to clarify the roles of the different actors involved in ITS in order to identify who will bear the responsibility of ensuring that systems work properly from a data protection perspective (who is the data controller?);
- **safeguards for the use of location technologies:** appropriate safeguards should be implemented by data controllers providing ITS services so that the use of location technologies is not intrusive from a privacy viewpoint. Such safeguards should include further clarification as to the specific circumstances in which a vehicle will be tracked, strictly limiting the use of location devices to what is necessary for that purpose, and ensuring that location data are not disclosed to unauthorized recipients;
- **"privacy by design" approach:** the EDPS recommends to consider privacy and data protection from an early stage of the design of ITS to define the architecture, operation and management of the systems. Privacy and security requirements should be incorporated within standards, best practices, technical specifications and systems.

🔗 EDPS opinion ([pdf](#))

> EDPS opinion on restrictive measures in respect of Al Qaida and the Taliban



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At the end of July, the EDPS adopted an opinion on the European Commission's proposal to amend a Council Regulation imposing restrictive measures directed against certain persons and entities associated with Usama Bin Lade, the Al-Qaida network and the Taliban. This proposal amends one of those Community instruments, the so-called **"terrorists blacklists"**, adopted with a view to fighting terrorism by taking restrictive measures (e.g. freezing the assets) with regard to natural and legal persons suspected of being associated with terrorist organizations.

In his opinion, the EDPS welcomes the intention of the Commission to enhance the blacklisting procedure, also by taking explicitly into account the right to the protection of personal data and the applicability of the Data Protection Regulation (Regulation (EC) No 45/2001). While fully recognizing the objective of fighting terrorism through the processing and the exchange of personal data, the EDPS firmly believes that the protection of personal data is a crucial factor in ensuring the legitimacy and the efficiency of the restrictive measures taken by the Commission.



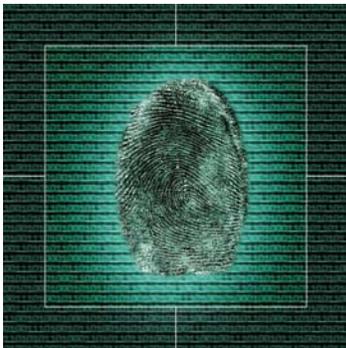
Against this background, the EDPS recommends to:

- **amend Article 7d** - which makes the release of confidential documents subject to the consent of the originator - in such a way as to preserve the data subject's right of access to his/her personal data, as well as the possibility of the EDPS and the Court of Justice to have access to personal data contained in classified information in order to effectively perform their respective tasks;
- ensure that data processed are used for **specific purposes** and that possible transfers of personal data to third countries and international organisations guarantee an **adequate protection** of these data, also through possible specific arrangements with the United Nations;
- consider whether all the **obligations of the controllers** and the **liability** which may arise in case of unlawful processing or publication of personal data should be addressed and specified in further details in the proposal.

The EDPS is also currently examining the proposals adopted by the Commission concerning analogous restrictive measures with regard to Somalia, Zimbabwe and North Korea.

🔗 EDPS opinion ([pdf](#))

> EDPS opinion on law enforcement access to EURODAC



The EDPS has adopted an opinion on two Commission proposals aiming at providing the basis for the right of law enforcement authorities to have access to EURODAC under specific conditions. These two proposals allow access to the EURODAC system for the prevention, detection and investigation of terrorist offences and other serious offences under the conditions set out in the proposals.

The EDPS has analysed the proposals in the light of their legitimacy, while taking as a starting point the need to strike a right balance between the need for public security and the fundamental right to privacy and data protection, in compliance with Article 8 of the European Convention on

Human Rights (ECHR). The analysis leads to the conclusion that **the necessity and proportionality of the proposals, which are both crucial elements to legitimate privacy intrusion, are not demonstrated**. As a result, the EDPS has serious doubts whether the proposals are legitimate and whether legislative instruments should be adopted on this basis.

“To be valid, the necessity of the intrusion in privacy must be supported by clear and undeniable elements, and the proportionality of the processing must be demonstrated. This is all the more required in case of an extensive intrusion in the rights of individuals constituting a vulnerable group in need of protection”
Peter Hustinx, EDPS

The EDPS recommends assessing the legitimacy of the proposals in a wider context, notably:

- the tendency of granting law enforcement access to personal data of individuals that are not suspected of any crime and that have been collected for other purposes;
- the need for a case-by-case assessment of every proposal of this kind and for a coherent, comprehensive and future-oriented vision, preferably related to the next five-year framework programme for justice and home affairs ("Stockholm programme");



- the need to first implement and evaluate the application of other new EU instruments, such as the Prüm Decision, that permit consultation by one Member State of fingerprints and other law enforcement data held by another Member State;
- the opportunity to postpone the proposals, in the light of the changing legal and policy environment (e.g. entry into force of Lisbon Treaty, current discussions about the recast of EURODAC and Dublin Regulations).

The EDPS also emphasises that the necessity of the proposals should be proven by the demonstration of substantial evidence of a link between asylum applicants and terrorism and/or serious crime.

🔗 EDPS opinion ([pdf](#))



SUPERVISION

> 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 is subject to a prior check by the EDPS. This procedure serves to establish whether the processing is in compliance with the Data Protection Regulation (EC) No 45/2001, which lays down the data protection obligations of Community institutions and bodies.

Eudravigilance database - European Medicines Agency

The European Medicines Agency (EMA) hosts and manages the EudraVigilance database, which contains **reports on suspected adverse reactions to medicinal products for human use** (referred to as "Individual Case Safety Reports" or ICSRs). This information is provided to EMA by national competent authorities, marketing authorization holders, sponsors of clinical trials and others.

The purpose of the database is to enable both national competent authorities and EMA the reporting and evaluation of ICSRs during the development and following the marketing authorization of medicinal products.

The EDPS opinion emphasizes that EMA, national competent authorities, marketing authorization holders and sponsors **share responsibilities** with respect to the rights of data subjects, under different legal frameworks to the extent of their tasks (Regulation (EC) No 45/2001 for EMA and national laws implementing Directive 95/46/EC for the other actors). As a result, some of the recommendations addressed to EMA emphasize the **need for coordination** and joint efforts among the different actors.

The EDPS has made some recommendations, particularly regarding **compliance with the data quality principle**. In particular, he has asked EMA to:

- engage in an examination of the possibility to anonymise or pseudoanonymise personal information contained in ICSRs as well as to minimize the personal data recorded in ICSRs;
- engage on a dialogue with national competent authorities, marketing authorization holders and sponsors in order to draft a standard notification form to provide the required information to individuals, which should include a reference EudraVigilance;



- engage in an assessment of the legal grounds for transferring data out of the EU; assess whether the recipient authorities ensure an adequate level of protection; or whether an exception applies because of the irregularity of the transfers. Alternatively, consider entering contractual arrangements;
- consider whether a limited conservation period would fulfil the purposes sought by the data processing;
- adopt some security measures described in the opinion.

🔗 EDPS opinion ([pdf](#))

> Consultations on administrative measures

Regulation (EC) No 45/2001 provides for the right of the EDPS to be informed about administrative measures which relate to the processing of personal data. The EDPS may issue his opinion either following a request from the Community institution or body concerned or on his own initiative. The term "administrative measure" has to be understood as a decision of the administration of general application relating to the processing of personal data done by the institution or body concerned.

Transfers of personal data to third countries: "adequacy" of signatories to Council of Europe Convention 108 - consultation by OLAF

The European Anti-fraud Office (OLAF) has raised the question whether three groups of identified countries can be considered to have an **adequate level of data protection**, in the light of their relation to Council of Europe Convention 108 and its Additional Protocol.

OLAF has also asked that should one or more of these groups could not be considered to have an adequate level of protection within the meaning of the Data Protection Regulation (Article 9.1 of Regulation (EC) 45/2001), whether the commitments they have undertaken in the context of the Convention and/or Mutual Administrative Assistance agreements in customs matters could be considered as "adequate safeguards" (Article 9.7 of the Regulation).

Following his analysis, the EDPS concluded that he had not received sufficient evidence as to the satisfactory implementation of Convention 108 and its Additional Protocol, where relevant, in the countries mentioned in the consultation. Therefore, the three groups of countries **could not be considered**, in principle, **to have an adequate level of protection**.

The EDPS added that OLAF could nevertheless consider carrying out an **assessment** in order to confirm whether a transfer - or a set of transfers - can be made, limited to specific purposes and recipients in the country of destination, in case they effectively provide an adequate level of protection. Such an assessment would entail a review of the national law that implements the Convention and its Protocol and their effective implementation.

The EDPS also mentioned that a **third course of action**, which may offer more certainty and enhance the protection of privacy and personal data, could be an alternative possibility for OLAF and recipients to adduce adequate safeguards. In this regard, the commitments undertaken so far by these groups of countries can not be considered *as such* to be an "adequate safeguard", given the fact that the controller has not adduced the existence of measures that would compensate for the absence of evidence of a general level of protection.

🔗 EDPS analysis ([pdf](#))



Consultation on processing of personal data in the frame of pandemic procedure - European Central Bank

The EDPS was consulted on the issue of processing of personal data by the European Central Bank (ECB) in the event of a pandemic. Apart from processing of personal data by the medical services of the ECB, the pandemic would also require informing local management that a specific person is under the suspicion of being infected so that the relevant members of the team can be warned.

The EDPS considered that, in the absence of any national legal obligation, Article 5(a) of Regulation (EC) 45/2001 can serve as **legal basis** for the processing of the data in the frame of the pandemic procedure. However, as this is exceptional it would be desirable that there be a **formal decision** taken by the **direction of ECB** on which any communication to management can be based. A **special crisis procedure** could be established to guarantee the protection of the rights and freedoms of the persons concerned, and in particular their right to privacy. This procedure could notably be based on the World Health Organisation recommendations which have no legal binding value, but that could serve as the basis for any internal decision on this topic.

The EDPS further underlined that as the processing concerns **health-related data**, the processing of such data is prohibited unless exceptions can be found in compliance with Article 10 of the Regulation. The processing of health-related data could be based on a legal obligation for employers to comply with obligations on health and safety at work. The EDPS also considered that in the present case **reasons of "substantial public interests"** could also **justify the processing** of health data in the frame of this procedure, but that **adequate safeguards** must be put into place to protect the interests of the data subjects. These safeguards should notably include provisions whereby the data may not be used for any other purposes, they may not be transferred to any third parties, adequate time limits must be established for the conservation of the data and the data protection rights of the data subjects must be ensured.

🔗 [EDPS analysis \(pdf\)](#)

> Inquiries

The EDPS conducts inquiries on his own initiative or on the basis of a complaint. He has extensive powers to access personal data, information and documents which are necessary for his inquiries and to access premises, in case an on the spot investigation is needed. The EDPS also performs on-site inspections to verify in practice compliance by all institutions and bodies with Regulation (EC) No 45/2001 on the protection of personal data.

EDPS inspection procedure and policy adopted

On 23 July 2009, the EDPS adopted its **internal staff manual** and published on his website the summary of the procedure followed by his staff members during the standard inspection procedure. The inspection procedure is based essentially on the existing legal framework, the general principles of EU law, and the good administrative practices common to the Community institutions and bodies. A policy document on the role of inspections in supervision activities and on criteria for undertaking an inspection will be developed and made public in due course.



The rules reflect the current experiences of EDPS. The inspection manual is a living document, and thus subject to changes as the EDPS practices and experiences are evolving. The EDPS inspection policy is part of the effort to **measure compliance** with Regulation (EC) No 45/2001 in the form of carrying out different checks in Community institutions and bodies.

☞ EDPS inspection policy and procedure ([pdf](#))



EVENTS

>> Forthcoming events

> "Responding to data breaches" Seminar (Brussels, 23 October 2009)

On 23 October, the EDPS, together with the European Network and Information Security Agency (ENISA) will be hosting a seminar on "Responding to Data Breaches" in the European Parliament.

The seminar will be devoted to three main objectives, which correspond to the "life cycle of data breach":

- sharing and exploring best practices for **preventing** and mitigating the occurrence of data breaches from a data controller point of view;
- exchanging best practices developed by data protections authorities, as well as institutional and industry stakeholders on how to **manage** security breaches, including the development of procedures aimed at investigating breaches;
- gathering experience on data breach **notification** management from other sectors and from non-EU Member States.

☞ To register to this event, please send an email to: EDPS-Events@edps.europa.eu.

☞ Seminar [agenda](#)

> International Conference on Data Protection and Privacy Commissioners (Madrid, 3-6 November 2009)

A delegation of the EDPS will participate to this conference. Peter Hustinx will chair a session on applicable law and globalisation where the consequences of new phenomena like hosting and housing services and cloud computing will be addressed.

The conference envisages adopting a Resolution on International Standards of Privacy. The Resolution welcomes a joint proposal for a draft of International standards on the protection of privacy with regard to the processing of personal data. This joint proposal provides for a set of principles, rights, obligations and procedures that any legal system of data protection and privacy should strive to meet. In this perspective, the processing of personal data in the public and private sector would be performed in a more internationally uniform approach. The Resolution has been coordinated by the Spanish Data Protection Authority further to a resolution of the previous conference of Data Protection and Privacy Commissioners in Strasbourg in 2008. The EDPS is one of the co-sponsors of this initiative and was actively involved in its preparation.



☞ More information at www.privacyconference2009.org

>> Past events

> EDPS - Data Protection Officers meeting (Brussels, 2 October 2009)

On 2 October 2009, the EDPS held the biannual meeting with the Data Protection Officers (DPOs) of the European institutions and agencies hosted in Brussels by the European Commission and OLAF.

Both opening speeches of Catherine Day (Secretary General of the Commission) and Nicholas Ilett (Deputy Head of OLAF) reiterated the commitment of their institutions to the protection of personal data.

After a general introduction by Peter Hustinx, EDPS, on recent developments in data protection at European and international level underlining the gradual trend towards accountability and responsibility of stakeholders, the meeting focused on developments in the field of EDPS supervision activities. Various members of the EDPS staff presented recent developments of the EDPS in areas such as inspections in the EU institutions and agencies, complaint handling, prior checking of processing operations and consultations on administrative measures. The meeting was also an occasion to make preliminary conclusions relating to the [EDPS CCTV workshop](#) (see below).

Items left open for further discussions between the DPOs and the EDPS include the establishment of professional standards for DPOs, the notifications forms for prior checking and the issue of inter institutional processing operations.

> EDPS workshop on draft Video-Surveillance Guidelines (Brussels, 30 September 2009)



Giovanni Buttarelli, Assistant EDPS, speaking at the workshop

Nearly a hundred Data Protection Officers, security officers, video-surveillance and IT specialists and staff representatives from over 40 Community institutions and bodies participated at the EDPS video-surveillance workshop in Brussels on 30 September 2009. The main input to the workshop was the **consultation version of the EDPS Video-surveillance Guidelines** published on 7 July 2009.

In his **opening address**, Assistant EDPS Giovanni Buttarelli emphasized that there are "fundamental rights at stake", such as the right to privacy at the workplace, the right to be free from discrimination, the freedom of speech and the freedom of assembly. Therefore, decisions on whether to install cameras and how to use them should not be made solely on security needs. Rather, security needs must be balanced against respecting the fundamental rights of an individual.

The opening address was followed by an **overview of the compliance framework** proposed in the Guidelines that focused on the need to move away from a culture of seeing data protection as an administrative burden, to one based on privacy by design, transparent local decision-making involving all



stakeholders, data protection officers taking an active role, and accountability of the institution responsible for operating the video-surveillance system. To help ensure a more effective procedural framework that is not overly prescriptive, in most cases there is no need for EDPS to individually prior check the video-surveillance systems before implementation.

The workshop achieved its two goals of eliciting **feedback to improve the draft Guidelines** and **increasing cooperation** to ensure compliance with data protection principles. The overall response to the Guidelines was positive. In a climate of increasing concern over surveillance participants welcomed that the Guidelines provide **practical advice** for deciding whether or not to install or use video-surveillance equipment and when using, how best to address data protection issues.

In the discussion, important **concerns** were raised regarding accountability, local decision-making and the legal value of the Guidelines. Stakeholders requested further clarifications on key “compliance tools” such as the video-surveillance policy, self-audit and impact assessments. They also commented on “substantive” issues such as what can be considered lawful and proportionate purposes for video-surveillance and how long images can be retained.

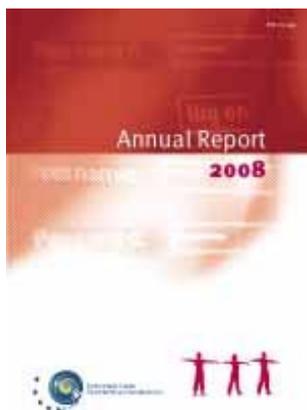
The Guidelines are to be formally issued before the end of this year.

☞ All relevant documents related to the event are available on our [website](#).



PUBLICATIONS AND SPEECHES

> Publication of EDPS Annual Report 2008



The EDPS has issued his Annual Report which covers 2008 as the fourth full year of activity of the EDPS as a new independent supervisory authority. This Report also concludes the first EDPS mandate and provides an opportunity to take stock of developments since the start.

The report shows that significant progress was achieved both in the EDPS supervisory and advisory tasks. Most Community institutions and bodies are making good progress in ensuring compliance with data protection rules, but there are still great challenges ahead. The EDPS supervision work is therefore putting more emphasis on measuring the level of compliance in practice, in particular through more systematic verifications on the spot, and on monitoring the implementation of recommendations in prior checking. The EDPS also further improved his performance as an advisor to the European institutions and submitted opinions on an increasing number of legislative proposals.

As regards the EDPS activities in **supervision**, the report highlights the record number of prior-checking opinions for personal data operations in Community institutions and bodies, mainly covering issues related to health data, recruitment of staff and selection of candidates, staff evaluation, identity management systems, access control and security investigations. In 2008, the EDPS also reviewed certain key issues for the first time, e.g. access control with iris scanning or fingerprint authentication, monitoring of the use of internet by staff and video surveillance systems.



In his **advisory role**, the EDPS put special emphasis on new initiatives in the area of freedom, security and justice, in particular the adoption of the Data Protection Framework Decision in police and judicial cooperation in criminal matters. Other policy areas such as the review of the Directive on privacy and electronic communications, public access to documents and cross-border healthcare were also quite prominent. The EDPS also examined issues related to the establishment of information systems and access to those systems (e.g. Commission's EU border management package, transatlantic information sharing for law enforcement purposes), quality of data, as well as the use of new technologies and developments taking place in the Information Society (e.g. RFID and ambient intelligence).

☞ EDPS Annual Report 2008 ([pdf](#))

> Speeches

- Welcome address ([pdf](#)) of Giovanni Buttarelli on "Fundamental rights at stake" - EDPS Workshop on Video-surveillance within Community institutions and bodies (European Commission, Brussels, 30 September 2009)
- Speech ([pdf](#)) delivered by Giovanni Buttarelli at a meeting of the LIBE Committee of the European Parliament on the use of information technology for customs purposes (Brussels, 29 September 2009)
- "The relation between transparency and the rights of privacy and the protection of personal data", speech ([pdf](#)) delivered by Peter Hustinx at the Seminar "Transparency and Clear Legal Language in the EU" organised by the Swedish Presidency (Stockholm, 8 September 2009)
- Speech ([pdf](#)) delivered by Peter Hustinx at the Joint Meeting of LIBE and ECON Committees of the European Parliament on EU-US interim agreement following the entry into force of the new SWIFT architecture (Brussels, 3 September 2009)
- "Current Challenges for Data Protection in Europe", speech ([pdf](#)) delivered by Peter Hustinx, at the Spring Conference of the Austrian Commission of Jurists (Weissenbach am Attersee, 21 May 2009)



NEW DATA PROTECTION OFFICERS

Each Community 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 application of the data protection obligations laid down in Regulation (EC) No 45/2001 in the concerned institution or body.

Recent appointments:

- **Beata HATWIG**, Executive Agency for Health and Consumers (EAHC)
- **Triinu VOLMER**, European GNSS Supervisory Authority (GSA)
- **Francesca PAVESI**, European Aviation Safety Agency (EASA)

☞ See full list of [DPOs](#).

About this newsletter

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.

☞ You can (un)subscribe to this newsletter on the [EDPS website](#).

CONTACTS

www.edps.europa.eu

Tel: +32 (0)2 34234234234

Fax: +32 (0)2 34234234234

e-mail: see our contacts page

POSTAL ADDRESS

EDPS – CEDP

Rue Wiertz 60 – MO 63

B-1047 Brussels

BELGIUM

OFFICE

Rue Montoyer 63

Brussels

BELGIUM

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