



EUROPEAN DATA
PROTECTION SUPERVISOR



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SPEECHES AND PUBLICATIONS



NEW DATA PROTECTION OFFICERS

- HIGHLIGHTS -

> EDPS applauds strengthening of the right to data protection in Europe, but regrets the lack of comprehensiveness

On 7 March 2012, the EDPS adopted an opinion on the proposed package for a reform of the EU rules on data protection. This package was adopted by the Commission on 25 January 2012 and includes a Regulation with general rules on data protection and a Directive with specific data protection rules for the law enforcement sector.

“The proposed Regulation is a huge step forward for the right to data protection in Europe. However, we are still far from a comprehensive set of data protection rules at national and EU level in all areas of EU policy. The proposals are disappointing in addressing law enforcement instruments and they leave many existing EU data protection instruments untouched, such as the data protection rules for EU institutions.”

Peter Hustinx, EDPS

The EDPS welcomed the Regulation as an instrument directly applicable to Member States, because it will remove many complexities and inconsistencies stemming from the current





national implementing laws. The rules will strengthen the rights of individuals and make controllers more accountable for how they handle personal data. Furthermore, the role and powers of national supervisory authorities (individually and combined) are effectively reinforced.

However, the EDPS expressed concern for among other things:

- the opportunity to **restrict basic principles and rights**;
- the possible derogation for **transferring data to third countries**;
- the **excessive powers granted to the Commission** in the mechanism designed to ensure consistency among supervisory authorities;
- the new grounds for **exceptions to the purpose limitation principle**.

With regard to the proposed Directive, there are many aspects of the Proposal that do not meet the requirement of a consistent and high level of data protection.

“The proposed rules for data protection in the law enforcement area are unacceptably weak. In many instances there is no justification whatsoever for departing from the rules outlined in the proposed Regulation. The law enforcement area requires some specific rules, but not a general lowering of the level of data protection.” Peter Hustinx, EDPS

The EDPS expressed particular concerns about:

- the **lack of legal certainty** on the further use of personal data by law enforcement authorities;
- the **lack of a general duty for law enforcement authorities** to demonstrate compliance with data protection requirements;
- the **weak conditions for transfers** to third countries;
- the unduly **limited powers of supervisory authorities**.

The EDPS dedicates a specific part of his website to the reform process on which relevant documents and developments are presented.

↪ EDPS Data Reform Package ([pdf](#))

> Follow-up Report shows lack of compliance by several EU institutions and bodies with Video-Surveillance Guidelines



On 13 February 2012, the EDPS issued a follow-up report outlining the status of compliance by European institutions and bodies with the [Video-Surveillance Guidelines](#) issued by the EDPS in March 2010. This follow-up report presents a systematic and comparative analysis of the state-of-play reports received from a total of 42 EU-institutions and bodies.

Overall, the EDPS noted that those institutions and bodies who submitted state-of-play reports had undertaken considerable efforts to comply with the guidelines; the limited use of "intrusive" CCTV and "privacy by design" approaches were particularly

welcome. In light of this, the EDPS is reassured that the guidelines contributed to raising the level of awareness and transparency regarding video-surveillance matters within the bodies.



However, two years after the adoption of the guidelines and more than two years after the consultation process started, the EDPS is disappointed to see that the implementation of the guidelines has been put on hold or significantly delayed in several institutions. This has implications for matters such as the content of on-the-spot notices, the publication of online video-surveillance policy documents, the lack of impact assessments as well as insufficient data protection training. In addition to noting best practices, the follow-up report, therefore, also highlights the shortcomings of those institutions lagging behind in their efforts to ensure compliance with the guidelines.

“Video-surveillance by European institutions and bodies is a matter where fundamental rights are at stake. As an expression of their institutional accountability and good administration, institutions need to comply and demonstrate compliance with the guidelines. As a supervisory authority, the EDPS must and will ensure that they do.”

Giovanni Buttarelli, Assistant Supervisor

The EDPS is determined to support, continuously monitor and where necessary, enforce steps to ensure further implementation of the video-surveillance guidelines.

- The EDPS remains available to **facilitate cooperation with national Data Protection Authorities** as well as between EU institutions and bodies as there are potential benefits in the exchange of best practices amongst bodies, giving advice to newly established bodies and the option to undertake peer-reviews in the context of follow-up audits.
- The EDPS may also carry out **thematic on-site inspections** at selected bodies. These will allow the EDPS to immediately assess the state-of-play of the implementation of the video-surveillance guidelines in-situ and where possible, help resolve practical barriers. The schedule for these inspections will be established after further consideration of the follow-up report.
- The EDPS will focus on those **processing operations that require prior checking** under the video-surveillance guidelines. It should be noted that in all such cases, bodies must first carry out an impact assessment and submit their notification prior to the start of processing operation.

↪ EDPS follow-up report to the Video-Surveillance Guidelines ([pdf](#))



CONSULTATION

> EDPS Opinion on the Commission proposal to amend the Professional Qualifications Directive



The objective of the Commission proposal is to modernise and amend the existing text of Directive 2005/36/EC, the Professional Qualifications Directive. The two key aspects of the proposal are the introduction of an alert system and the introduction of a European Professional Card on a voluntary basis. The processing of personal data is to take place via the Internal Market Information System (IMI).

In his opinion, adopted on 8 March 2012, the EDPS insisted that the alert system proposed by the Commission should remain proportionate and called for further data protection safeguards.



Taking into account proportionality and the balancing of rights and interests, including the presumption of innocence, the EDPS recommended, among other things, that

- the proposal should specify that **alerts can only be sent after a decision has been made by a competent authority or a court in a Member State** prohibiting an individual to pursue his or her professional activities on its territory;
- specify that the **content of the alert must not contain information** regarding the circumstances and reasons for the prohibition;
- **clarify and limit** to the absolute minimum the period for which alerts are retained;
- ensure that the recipient **authority keeps any alert information it receives confidential** and not further distribute or publish it, unless the data was made public in accordance with the law of the Member State sending it.

In addition, the EDPS recommended that in the longer term, the Commission should review the alert system and assess its necessity and whether it can be replaced by a less intrusive system.

↪ EDPS opinion ([pdf](#))

> EDPS Opinion on driving licenses including functionalities of a driver card

On 17 February 2012, the EDPS issued an opinion on a Commission proposal to merge the driving licence of professional drivers with their driver card. The integration of two totally different functionalities in one single card, which records a range of data about professional drivers including their activities and whereabouts, would have a significant impact on the fundamental right to the protection of personal data.

The EDPS underlined that the necessity and proportionality of such a measure had yet to be demonstrated. The EDPS emphasised the need to conduct a privacy and security impact assessment before the merger of driver cards with driving licences takes place. He also stressed the need to apply a consistent approach when developing measures concerning drivers' data, such as considering the risks associated with the processing of personal data in interconnected intelligent transport systems.



He further recommended:

- evaluating the **impact of the use of a microchip** in driving licences;
- ensuring that the **overall design of the processing is privacy friendly and proportionate** to the purposes pursued;
- specifying the data or categories of **data to be stored on the microchip**, in compliance with the principles of proportionality and data minimisation;
- providing sufficient guarantees for the **effective exercise of data subjects' rights**;
- ensuring a **strict limitation of access rights** in view of the legitimate purposes for which relevant authorities and any other recipients would need to access the data.

↪ EDPS opinion ([pdf](#))



> EDPS opinions on the package of EU Financial markets legislation

On 10 February 2012, the EDPS published a package of four opinions on Commission proposals for the reform of the financial markets legislation in the EU. The four proposals all concern the monitoring of financial data, which has a significant impact on the fundamental right to the protection of personal data.



The opinions on:

- 1) the revision of banking legislation ([pdf](#))
- 2) the market abuse directive and regulation (MAD/MAR) ([pdf](#))
- 3) the regulation and the directive on markets in financial instruments (MIFID/MIFIR) ([pdf](#))
- 4) the revision of the credit rating agencies regulation (CRA) ([pdf](#))

all raise similar data protection concerns. The EDPS, therefore, made the following overall recommendations:

- the inclusion of substantive provisions emphasising the **applicability of existing data protection legislation**;
- the addition of **specific safeguards to the provisions for the transfer of data to third countries**;
- the limiting of **access to private premises and records of telephone and data traffic to identified and serious violations** of the proposed legislation and clearly specifying the **categories of telephone and data traffic records which are required to be retained** by financial institutions and/or provided to supervisory authorities;
- the assessment of **necessity and proportionality of the proposed provisions on the publications of sanctions**. The publication obligation should be **supported by adequate safeguards**;
- ensuring that the **identity of whistleblowers** is protected;
- guaranteeing **the right of the accused person to defence** and to be heard, as well as **the right to seek effective judicial remedy** against any decision or measure concerning him.

> EU-US Customs Cooperation



On 9 February 2012, the EDPS adopted an opinion on a draft decision on customs cooperation between the EU and the US involving the exchange of data on trade operators. The draft agreement provided for the mutual recognition of EU and US supply chain security programmes (namely the EU Authorised Economic Operator Programme and the US Customs-Trade Partnership Against Terrorism Program).



The EDPS recommended:

- specifying the **purpose of the exchanges of data** between the EU and the US and the categories to be exchanged;
- international transfers should only be allowed if the **receiving country guarantees a level of protection which is at least equivalent** to the one granted by the draft agreement;
- specifying **maximum data retention periods**;
- informing **data subjects** and guaranteeing their **right to redress**;
- **not limiting rights of EU data subjects** unless such restriction is necessary to safeguard an important economic or financial interest;
- provision of adequate, independent **oversight and review**.

EU-US relations in the area of customs are based on the Agreement on Customs Cooperation and Mutual Assistance in Customs Matters (CMAA). This agreement set up the Joint Customs Cooperation Committee (JCCC), which consists of representatives of the customs authorities of the EU and the US. The mutual recognition of supply chain security programmes is to be established by a decision of this Committee.

↪ EDPS opinion ([pdf](#))

> EDPS comments on the Commission proposal for establishing the European Border Surveillance System (EUROSUR)

The proposed European Border Surveillance System (EUROSUR) aims to increase cooperation between border control authorities on the EU's eastern and southern borders. To this end, the authorities will share more information between each other and with FRONTEX, which manages the system.

While in principle the proposal does not aim to process personal data, there are some instances where this might happen nonetheless. In his formal comments of 8 February 2012 on the proposal, the EDPS urged the **legislator** to be **clear** about cases where personal data might be processed and to provide **sufficient safeguards** for them. He also called for clearer rules on **agreements with third countries** and transfers of personal data to them.



↪ EDPS comments ([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.

>> Prior check regarding the processing of personal data in connection with regulations requiring asset freezing as CFSP related restrictive measures



On 22 February 2012, the EDPS issued a prior check opinion on the Commission's processing of personal data as part of restrictive measures in the framework of the Common Foreign and Security Policy. These measures include the freezing of funds, of which some measures have been adopted at UN level and some at EU level. The opinion detailed the establishment of a framework for dealing with these measures in the long-term.

To fulfil its tasks under the various legal bases for such measures, the Commission processes personal data of listed persons and their lawyers. Data is used to correspond with the listed persons, for a review process and for the publication of sanction lists. These lists are published both in the Official Journal of the EU and serve as the basis for a consolidated list, which is published on the internet.

The EDPS recommendations include **minimising the processing of personal data** to that which is really necessary for identifying listed persons, improving the review process and providing better information to the listed persons. These recommendations should also be applied to future regulations imposing restrictive measures.

🔗 [EDPS Prior check opinion \(pdf\)](#)

>> EDPS prior-check on the revised OLAF investigation procedures

On 3 February 2012, the EDPS issued a prior check opinion on the new investigative procedures at OLAF. While the changes were mainly organisational, the EDPS referred in general to the recommendations made in his previous opinions on OLAF procedures and put forward some additional specific recommendations. In particular, the EDPS advised the controller to:

- strengthen the **protection and safeguards** when dealing with special categories of data in the framework of **investigations**;
- evaluate the **necessity and proportionality** of the current periods for conservation of personal data;
- transmit final reports of internal investigations, especially where no follow-up is recommended, only on the basis of a concrete **evaluation of the necessity of the transfer**;



- put in place an effective mechanism for dealing with the **right to object** or with data protection claims made in the context of inspections, on-the-spot checks or forensic examination of computers.

The EDPS further stressed the inevitable privacy risks connected to the forensic examination of computers, where forensic copies of full hard-disks of employees are copied. He, therefore, requested OLAF to prepare an assessment report concerning the implementation of the Protocol focusing on aspects more strictly related to the processing of personal data in view of a possible revision of the document and current practices.

In the framework of the procedure, it emerged that OLAF intends to set-up a new internal database, whose purpose is to automatically cross-match new incoming information with information (data fields) extracted from other case files. This analysis would support the procedure for the selection of cases and possibly subsequent investigation. The EDPS found that the new database would need to be autonomously notified and prior-checked in light of its specific characteristics and asked OLAF to suspend the implementation and use of the database until such a prior-check had taken place.

☞ 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.

>> EDPS consultation on billing individual users of fixed phone calls made for non-work related purposes - EFSA

On 1 March 2012, the EDPS replied to a consultation regarding the European Food Safety Agency's (EFSA) policy for billing individual users of fixed phone calls made for non-work related purposes.

The EDPS first addressed the issue of whether this EFSA policy had to be notified to the EDPS for prior checking. The EDPS highlighted that a distinction must be drawn between the processing of data solely for billing and traffic management without any assessment of the individual conduct, on the one

hand and the processing of data with a view to monitoring and assessing individual conduct on the other (for instance for detecting excessive or illegal use of telephone by staff). While the former processing type is not as such subject to prior checking, the latter is. Although the written policy of EFSA contained a reference to the verification of authorised use of telecommunication systems, the





EFSA DPO clarified that the sole purpose of the policy is billing and budget management and thus proposed to remove the reference.

As regards the categories of data processed, the EDPS considered that some data included in the template invoice received from the telecommunications company were not necessary for the purpose of billing. In particular, he suggested the data fields relating to the identification of the called persons and unanswered calls be removed from the invoice.

The EDPS also recommended that EFSA limit the number of people authorised to have access to the data and remind those authorised persons that the sole purpose of the data is for billing and budget management use. Finally, EFSA should provide current and future staff with adequate information pursuant to Articles 11 or 12 of the Regulation.

↪ EDPS Opinion ([pdf](#))

>> EDPS consultation on the Internet publication of the official directory of the agents of European institutions and bodies

The publication by a European Union institution or body of names, tasks and contact details of civil servants on their institutional websites involves the processing of personal data by that institution or body and is thus subject to Regulation 45/2001 (the "Regulation"). Accordingly, the publication of these data must be based on one of the grounds for processing pursuant to Article 5 of the Regulation.



In his opinion of 8 February 2012, the EDPS considered that the publication of a directory of staff can be based on Article 5.a of the Regulation as it is done in the public interest, i.e. to increase accessibility and transparency in line with Article 1 TEU and 15 TFEU. It is, however, for institution or body concerned to evaluate, on a case by case basis or per categories of staff, whether such publication is necessary in specific cases and which data need to be published (by reason, for instance, of the staff member functions, responsibilities, frequent relationships with external stakeholders, etc.).

In order to reinforce and clarify the legal basis for the processing, the institution or body concerned should adopt a decision or another administrative act describing the purpose, the conditions and the modalities for the publication as well as other relevant characteristics of the directory. Current and future staff should be provided with clear and comprehensive information in compliance with the Regulation (Article 11 and 12) and granted the right to object to the publication on compelling and legitimate grounds (Article 18 of the Regulation). Moreover, the institution or body concerned should take all the necessary measures to prevent personal data contained in the directory from being used for direct marketing, spamming or other malicious purposes (see Article 38(2) of the Regulation).

↪ EDPS Opinion ([pdf](#))



EVENTS

> Accountability Phase IV - The Brussels Project Expert Meetings (Brussels, 22-23 February 2012)



As part of the fourth phase of the Accountability Project run by the Center for Information Policy Leadership, an expert meeting was hosted by the EDPS on 22-23 February. Around 60 participants from national data protection supervisory authorities and foreign governmental bodies, industry and academia attended this two-day workshop. On day one, discussions focused mainly on the notion of accountability in emerging EU regulations compared to Canada and the US. On the second day, participants discussed how to achieve accountability in practice, the type of validation required and through which accountability agents. The next expert meeting will be held in Brussels on 30-31 May 2012.

☞ [More information](#)

> 2012 Spring Conference of European Data Protection Authorities (Luxembourg, 2-4 May 2012)

The Spring Conference of European Data Protection Authorities 2012 will take place in Luxembourg from 2-4 May 2012. Data protection authorities from EU and Council of Europe member states will attend the conference and the focus will be on the modernisation of the EU legal framework. Questions such as how the legal framework can enhance the efficient protection of personal data and the privacy of citizens in a digital and globalised world and what measures need to be taken will be addressed. Peter Hustinx, EDPS and Giovanni Buttarelli, Assistant EDPS, will both be speaking at sessions of this conference.

☞ [More information](#)



> Festival of Europe European Institutions Open Day



www.festivalofeurope.europa.eu

On Saturday 12 May 2012, the EU institutions will hold a festival of Europe and conduct open days in Brussels to mark the Schuman Declaration anniversary. The EDPS will welcome visitors at our information stand on European Parliament premises (ASP building - main street) from 11.00 am to 3.00 pm. Visitors will have the opportunity to learn more about the protection of their personal data and test their knowledge in a quiz. Various awareness raising materials will also be distributed.

Visit the EDPS stand to learn more about your data protection rights!

☞ [More information](#)



SPEECHES AND PUBLICATIONS

- "Security and privacy regulatory challenges in the Cloud", speech ([pdf](#)) delivered by Giovanni Buttarelli at the Conference "The 2012 European Cloud Computing - Making the Transition from Cloud-Friendly to Cloud-Active", Brussels (21 March 2012)
- "Review of the EU Framework for Data Protection - the current state of play", [video](#) by Peter Hustinx on the occasion of the Conference - 'Emerging Challenges in Privacy Law: Australasian and EU perspectives', Monash University, Melbourne (23-24 February 2012)
- "Data Protection and Schengen Governance", speech ([pdf](#)) delivered by Peter Hustinx at the conference "Upholding Freedom of Movement: an Improved Schengen Governance", European Parliament, Brussels (8 February 2012)
- "Innovative cross-border services and data protection", speech ([pdf](#)) delivered by Peter Hustinx at the Danish Presidency Conference "One Europe – One Market", Copenhagen (2 February 2012)
- Foreword by Peter Hustinx in "Data Protection & Privacy" ([pdf](#)), M. Kuschewsky e.a., European Lawyer Reference, London 2012, p.xi-xii (30 January 2012).



NEW DATA PROTECTION OFFICERS

Each European institution and body has to appoint at least one person as a Data Protection Officer (DPO). These officers have the task of ensuring the application of the data protection obligations laid down in Regulation (EC) No 45/2001 in their institution or body in an independent manner.

> Recent appointments:

- Rosita AGNEW, European Ombudsman
- Alain LEFÈBVRE, European Chemicals Agency
- Francesca LOMBARDO, European Institute of Innovation and Technology
- Paul MARTINET, Agency for the Cooperation of Energy Regulators
- Secondo SABBIONI, European Parliament

↪ 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.

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