



EUROPEAN DATA
PROTECTION SUPERVISOR

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- HIGHLIGHTS -

> EDPS Annual Report 2011: a consistent and effective approach to privacy and data protection is needed

On 20 June 2012, Peter Hustinx, European Data Protection Supervisor (EDPS) and Giovanni Buttarelli, Assistant Supervisor, presented their Annual Report of activities for 2011 to the **Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament**. This was followed by a press conference attended by journalists from European print and radio media.

In their presentation, they highlighted that the EDPS had made significant efforts in 2011 to push the effective protection of personal data. In the





supervision of EU institutions and bodies, a **benchmarking exercise** was carried out to gather indicators of compliance with the Data Protection Regulation. As a consequence, targeted **visits** to selected institutions and agencies below the benchmark or because of a lack of cooperation are now taking place throughout 2012. Overall, the effects of the new EDPS **enforcement policy** showed that most EU institutions and bodies are making good progress in complying with the Regulation, while others should increase their efforts.

In the consultation on new legislative measures, the EDPS issued a **record number of opinions** on a range of relevant subjects. The most prominent was the **Review of the EU legal framework for data protection**, which will remain high on the EDPS agenda in 2012. However, the implementation of the **Stockholm programme** in the area of freedom, security and justice and the **Digital Agenda**, as the cornerstone for the Europe 2020 strategy, also had an impact on data protection. This can also be said of new EU law as a consequence of the **financial crisis**, and a wide variety of other policy areas.

“ 2011 was a very productive year, in line with our efforts to ensure consistent and effective protection of privacy and personal data in a fast-changing, interconnected world. In its support of technological advances and economic development, particularly in an age of austerity, it is important that the EU administration does not lose sight of the right of the European citizen to privacy and data protection. Only a joint effort to apply a consistent and effective approach will maintain this fundamental right. ” Peter Hustinx, EDPS

[EDPS Annual Report 2011](#)



CONSULTATION

> Smart meters: consumer profiling will track much more than energy consumption if not properly safeguarded



On Friday 8 June 2012, the EDPS adopted an opinion on the **Commission Recommendation on preparations for the roll-out of smart metering systems**, which gives guidance to Member States to prepare for the roll-out of these systems. While the Europe-wide rollout of smart metering systems may bring significant benefits, it will also enable massive collection of personal data which can track what members of a household do within the privacy of their own homes. In light of these risks, the EDPS calls on the Commission to assess whether further legislative action is necessary at EU level and provides

pragmatic recommendations for such legislative action. Some of these can already be implemented via an amendment to the Energy Efficiency Directive, which is currently before the Council and Parliament. These should at least include a mandatory requirement for controllers to conduct a data protection impact assessment and an obligation to notify personal data breaches.



On 9 March 2012, the Commission adopted a Recommendation on preparations for the roll-out of smart metering systems. The rollout is foreseen by 2020 subject to an economic assessment of costs and benefits.

☞ EDPS Opinion ([pdf](#))

> Cross border threats to health - clarity needed on rules and responsibilities

On 28 March 2012, the EDPS issued an Opinion on the Commission proposal on serious cross-border threats to health. The proposal aims to expand the existing Early Warning Response System (EWRS) to include new tasks. Currently, the system is limited to certain communicable diseases; the proposal opens it up to other cross-border threats to health, such as hazards of biological, chemical, or environmental origin that are likely to have an impact across borders. The EDPS had several recommendations to make on the proposal. Notably, the text should provide clearer rules on contact tracing (collecting personal data on persons who have been in contact with persons exposed to health threats), including when it should be used, how concerned persons will be informed and which types of data is to be processed. Additionally, the EDPS requested clarifying the relationship between the EWRS and the proposed 'ad hoc surveillance networks' meant to monitor the spread of certain other threats to health. Similarly, the responsibilities of the different actors involved should be clarified. Finally, more specific reference should be made to the requirements on data security and confidentiality.



☞ EDPS Opinion ([pdf](#))

> Statutory audits of annual accounts and consolidated accounts: data protection safeguards inadequate



On 13 April 2012, the EDPS published an Opinion on two Commission proposals regarding the statutory audit of annual accounts and consolidated accounts. The proposals raised data protection concerns in a number of areas including exchanges of information, record keeping, the publication of sanctions and the reporting of breaches.

The EDPS recommendations included the inclusion/re-drafting of substantive provisions emphasising the full applicability of existing data protection legislation; a specification of the type of personal information to define the purposes for which personal data can be processed by competent authorities and the fixing of a precise, necessary and proportionate data retention period for such processing; the introduction of a maximum retention period for personal data; the assurance that the identity of whistle blowers and accused persons are protected as well as ensuring a right to defence. In view of the risks posed by the transfer of data to third countries, a risk assessment should take place on a case-by-case basis as well as an assessment of necessity and proportionality of the proposed provisions on the publication of sanctions. Such publication should be supported by adequate safeguards.

☞ EDPS Opinion ([pdf](#))



> EU-Canada Customs Cooperation: Clarity of scope and adequate safeguards needed

On 12 April 2012, the EDPS issued an Opinion on the draft agreement between the EU and Canada on customs cooperation on matters of supply chain security and related risk management. The EDPS welcomed the privacy requirements contained in the draft and the reference to Article 16 of the EU-Canada Agreement on Customs Cooperation and Mutual Assistance in Customs Matters of 1998. This article states that personal data can only be exchanged if the party receiving the data grants a level of protection which is at least equivalent to the one applicable to the party sending the data.



However, the EDPS recommended that the scope of the agreement be clarified and the categories of data to be exchanged be specified. As regards the processing of sensitive data, he highlighted the need for adequate safeguards and prior checking by data protection authorities. He also recommended that all data subjects be guaranteed the right to be informed; the right of access, rectification and effective judicial and administrative redress and include adequate security measures. Finally, he advised that data protection authorities of both parties supervise compliance with personal data protection law.

☞ EDPS Opinion ([pdf](#))

> Data protection safeguards needed before public sector information containing personal data can be re-used

On 12 December 2011, the Commission adopted a proposal for a Directive amending Directive 2003/98/EC on the re-use of public sector information (the PSI Directive). The proposal is part of the 'Open-Data Package'. The PSI Directive aims to facilitate the re-use of public sector information throughout the European Union by harmonising the basic conditions for re-use and removing barriers to re-use in the internal market.



In his Opinion of 18 April 2012 on the Open Data Package, the EDPS highlighted the need for specific data protection safeguards whenever PSI contains personal data. He recommended that public sector bodies take a 'proactive approach' when making personal data available for re-use and that a data protection assessment be carried out by the public sector body concerned before any PSI containing personal data is made available. The proposal should include a data protection clause within the terms of the licence to re-use PSI. Where appropriate, data should also

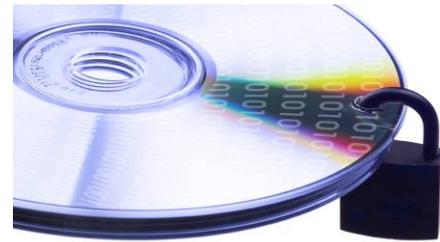
be fully or partially anonymised and license conditions should specifically prohibit re-identification of individuals and the re-use of personal data for purposes that may impact data subjects. In addition, the Commission should develop further guidance on anonymisation and licensing and consult the Article 29 Data Protection Working Party, an advisory body consisting of data protection authorities in EU Member States and the EDPS.

☞ EDPS Opinion ([pdf](#))



> ACTA: Clarity and safeguarding of fundamental rights is needed

On 24 April 2012, the EDPS followed up his Opinion of February 2010, on the Anti-Counterfeiting Trade Agreement (ACTA). After analysis of the final text, the second Opinion focused on the processing of personal data in the enforcement of IP rights on the Internet (Article 27 of ACTA). The EDPS emphasised the need for having specific safeguards in a Treaty signed by the EU that encroaches upon fundamental rights. In particular:



- He warned that the Treaty does not sufficiently ensure that measures which involve the monitoring of individuals on the Internet are limited to what is necessary and proportionate for the purpose of enforcing IP rights.
- He pointed out that certain provisions lack clarity (such as Article 27(3)) and do not provide sufficient assurances that the measures implemented further to ACTA will appropriately protect fundamental rights. A clear outline of the types of measures and the safeguards envisaged would have been preferable.
- These safeguards should ensure the right to freedom of speech, the presumption of innocence, the right to effective judicial protection and due process, the freedom to conduct a business and the rights to privacy and data protection, including respect for the secrecy of communications.

🔗 EDPS Opinion ([pdf](#))

> Storage and exchange of personal data in Union Registry under EU ETS should be subject to stricter controls

The EU Emissions Trading System (ETS) was established to help meet EU greenhouse gas emission reduction targets under the Kyoto Protocol. One of the key novelties introduced via the Regulation is the establishment of a centralised Union Registry, instead of the previous system of a combination of national registries.



In his Opinion of 11 May 2012, on the Commission Regulation establishing a Union Registry for the trading period commencing on 1 January 2013, the EDPS recommended that amendments to the Regulation, planned for later this year, should contain further data protection safeguards. Among other things, the Regulation should clarify that no criminal records or suspicions regarding criminal activities be recorded in the central databases; provide further safeguards in case of access to data by third parties, including Europol, prohibit transfers of sensitive personal data to the International Transaction Log (ITL) and with regard to the proposed blacklisting system, limit retention periods. Furthermore, clarification is needed on security and accountability (audits) and a data protection policy should also be adopted.

🔗 EDPS Opinion ([pdf](#))



> Towards an integrated European market for card, internet and mobile payments: Data protection principles not only important for security purposes

On 11 April 2012, the EDPS responded to a public consultation launched by the European Commission on its Green paper which identifies the potential obstacles that prevent a European integration in the card, internet and mobile payment markets. The EDPS welcomed the reference to data protection under the issue of security payments but pointed out that data protection principles apply in other areas too and not in security alone. In particular, the EDPS stressed the need to clearly identify the role and responsibility of each player and to ensure that they only access and process data that are necessary for the performance of their services. He also highlighted that the principles of 'accountability' as well as 'privacy by design and by default' be taken into account early when developing a strategy and/or instruments. Finally, he stressed the need to put effective mechanisms in place to enable data subjects to exercise their rights in a complex, cross border context.



🔗 EDPS Opinion ([pdf](#))

> Court Hearing: Commission v. Austria



An infringement procedure has been brought by the Commission against Austria, because it believes that the way in which the Austrian Data Protection Authority (DPA) is set up is not in conformity with the EU Data Protection Directive. The Commission claims that the independence of the Austrian DPA is not sufficiently assured, due predominantly to the close ties between the DPA and the Federal Chancellor.

The case was brought before the Court of Justice and on 25 April 2012, the EDPS participated as an intervening party in support of the Commission at the hearing.

In legal terms, the case is comparable to the Commission v. Germany (C-518/07), in which the EDPS also acted as an intervening party in support of the Commission. In its judgment of 9 March 2010, the Court considered that DPAs should be free from any external influence, whether direct or indirect. The mere risk of an external influence is sufficient to conclude that the DPA cannot act with complete independence. In the case against Austria, the Court was asked to provide clarity on the requirements of independence.

The opinion of the Advocate-General is due on 3 July and a Court decision is expected shortly after the summer.

🔗 Commission v. Germany (EDPS newsletter 23, [March 2010](#))



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.

> Safe Mission Data: Consent of the data subject applies

The purpose of collecting data in the European Parliament's (EP) "Safe Mission Data" system (SMD) is to provide support to EP delegations outside the three main places of work where a rapid and effective reaction is needed in emergency situations.

The EDPS Opinion of 24 May 2012, focused on one of the very reasons to establish the SMD: the processing of health data to protect the vital interests of the data subject. In principle, the processing of health data is prohibited, but the consent of the data subject is one of the exceptions that allows such processing.



The EDPS considered that this exception applies to the SMD: the health data processed is provided by data subjects on a voluntary basis by means of a collection form, which explicitly notes that there is no obligation to provide any such information. In his Opinion, the EDPS also noted the importance of keeping the health data up-to-date and accurate.

🔗 EDPS Opinion ([pdf](#))

> Organisation of Council meetings: prior check reveals that data processing is justified so long as consent is voluntary



On 16 March 2012, the EDPS issued an Opinion on a notification for Prior Checking received from the Data Protection Officer of the Council of the European Union on the Organisation of Council meetings and meals of the Meetings of Heads of States or Governments, of Summits or Official Meetings with Third Countries and of the Council of the EU and other Meetings at ministerial level or above.

The purpose of collecting personal data for the various meetings is to ensure that participants are served appropriate meals in accordance with their medical and dietary restrictions as well as religious and philosophical beliefs. The purpose for collecting the blood type from the heads of delegations is for medical emergencies.

The EDPS considered that the processing of this data is justified so long as the participants voluntarily provide information on their medical, dietary restrictions and blood type. Furthermore, consent should be based on the information provided by the Council to the data subjects on why the data is being requested. The processing of blood type is also justified as it is necessary to protect the vital interests of the data subject.



Aside from the importance of the privacy statement that the Council should make available to all participants, Council staff members collecting the data should also sign specific declarations of confidentiality.

☞ EDPS Opinion ([pdf](#))

> Visits to DPAs foster sharing of common practice and experience

In the first 6 months of 2012, the Supervision and Enforcement (S&E) Unit carried out a number of staff level visits to Data Protection Authorities (DPAs) in Member States with a view to sharing best practice in the implementation of data protection principles, particularly with regard to S&E related activities.

Visits to Germany, France, U.K, Greece, Cyprus and the Czech Republic culminated in colleagues from the DPAs in these countries presenting their methodology in dealing with notifications and complaints, monitoring compliance, carrying out audits and inspections. These meetings were also an occasion to share common experiences in the performance of supervisory tasks.

> Visits to EU Agencies encourage compliance and dialogue

As a result of the performance analysis conducted via his 2011 survey of 58 EU institutions and bodies, the EDPS organised visits to five EU agencies between March and June 2012 - ERA, ERCEA, ETF, EASA, and ECDC - to discuss and better understand their level of compliance with the Data Protection Regulation. The visits had a similar structure, consisting of a meeting between the Supervisor or Assistant-Supervisor and the Director of the Agency, further meetings involving the data protection officer and persons in charge of processing operations, and also included presentations on the EDPS approach to monitoring and ensuring regulatory compliance. These meetings provided an opportunity for the EDPS to raise specific concerns - a low level of compliance of the body or a lack of communication with the EDPS - and allowed the Agencies to provide updates on their progress towards compliance. At the end of each visit, a specific roadmap was agreed upon, detailing priority actions to be undertaken by the Agencies and relevant deadlines, under EDPS monitoring, in order to ensure a better level of compliance with the Regulation.

> OHIM: Full cooperation ensures constructive inspection

As noted in the 2010 Policy Paper on "Monitoring and Ensuring Compliance with Regulation (EC) 45/2001", the Regulation provides "broad powers, including those of inspection, enabling the EDPS to perform his function as a supervisory authority". Given the significant time and resources required to carry out inspections, the EDPS ensures a selective approach to their use.



In April 2012, the EDPS conducted an investigation at the Office of Harmonization for the Internal Market (OHIM). The OHIM was selected for inspection on the basis of a risk assessment exercise (the OHIM scored below one of the benchmarks established in its peer Group in the 2011 EDPS Survey) and in order to raise awareness about the EDPS, his powers and the importance of compliance with data protection rules. The overall aim of the inspection was to verify facts and practices particularly as a follow-up to selected complaints and to check the full implementation in practice of the recommendations contained in selected prior check Opinions. The



OHIM cooperated fully and constructively throughout the inspection exercise and the evidence gathered is currently under examination.

> CCTV: An update



As an expression of institutional accountability and good administration, institutions and bodies need to comply and demonstrate compliance with the 2010 Video-Surveillance Guidelines and, as a supervisory authority, the EDPS must and will ensure that they do.

Following the publication in February 2012 of a Follow-up Report outlining the status of compliance of EU institutions and bodies with the 2010 Video-Surveillance Guidelines, the EDPS has pushed for further progress where necessary:

- At the beginning of February, the EDPS reminded nine institutions and bodies of their obligation under the Guidelines to adopt a video-surveillance policy. One agency has, in the meantime, followed this up by adopting a policy; four others have submitted draft policies.
- In mid-March, reminders were sent to ten institutions and bodies which according to the Guidelines required an impact assessment as well as subsequent prior checking. In the meantime, these issues have been successfully resolved for five institutions and bodies and commitments have been received from all but one.
- At the beginning of April, 15 bodies which at the time of publication of the Guidelines in March 2010, had not or only recently been established, were invited to establish compliance with the Guidelines and to notify the EDPS accordingly by 30 June 2012. This involves verifying the adequacy and compliance of their existing practices, preparing a video-surveillance policy and auditing the practices against the policy, the Guidelines and the Regulation in a formal adequacy and compliance audit.

> EDPS-DPO meetings: fruitful collaboration continues

The bi-annual meeting of Data Protection Officers and the European Data Protection Supervisor took place at the European Chemicals Agency in Helsinki on 30 March 2012. Discussions included:

- the Data Protection Reform Package. The EDPS gave an update on the progress of the European Commission proposal and highlighted some notable issues such as the accountability principle and the role of the DPO;
- the EDPS Roadmap 2012 setting out the supervision activity and the changes foreseen in the prior check procedure;
- Recent developments in prior checking opinions or consultations.

The meeting concluded with an open discussion between DPOs and the EDPS on shared issues and common problems such as the data retention period in evaluation procedures.

The meeting once again demonstrated fruitful collaboration between the EDPS and the DPOs.



COOPERATION

> Inspection Report: Eurodac Central Unit, June 2012



The EDPS carried out his first inspection of the EURODAC Central Unit in 2006 followed by a security audit in 2007. The European Commission's DG HOME committed to implement the resulting recommendations on the security of the central unit during its upgrade to EURODAC plus, which in itself aimed to enhance performance, quality and security.

The scope of the second inspection in June 2012 was to verify implementation of the EDPS recommendations and to assess the overall organisational and technical procedures for the protection of personal data and security in EURODAC plus, in accordance with Regulation 45/2001 and the EURODAC Regulation.

The EDPS inspectors found that the overall level of data protection and security of the EURODAC Central Unit is high. Most of the EDPS recommendations made in the 2006-2007 inspection and security audit have been taken into account in EURODAC plus. Nonetheless, there are some elements which need further improvement in order to assure data protection and security of the overall system.

↪ EDPS inspection report ([pdf](#))

> Audit report of the Visa Information System: security needs improving

The Visa Information System (VIS) is a system for the exchange of short-stay visa data between Member States. It was established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).



As the supervisory authority of the Central Unit of the Visa Information System, the EDPS launched a comprehensive security audit of the Central Unit and the Backup Central Unit, located in Strasbourg (France) and Sankt Johann im Pongau (Austria). The audit comprised two visits (7-8 July 2011 and 16-18 November 2011). The second visit took place approximately one month after the Visa Information System went live on 11 October 2011.

The audit report sent to the European Commission, the European Parliament, the Council and the national data protection authorities on 7 June 2012, detailed the findings of an audit team together with specific recommendations. None of the security weaknesses found will impede normal operation of the system. However, some of the issues represent significant security risks and require prompt correction.

↪ EDPS audit report ([pdf](#))



EVENTS

> Accountability Workshop Phase IV - The Brussels Project Plenary Session, 31 May 2012



On 31 May 2012, the EDPS hosted the plenary session of the Accountability project Phase IV, organised by the Center for Information Policy Leadership. The session focused on **how to make accountability work in practice** on a global scale. Participants included representatives from private organisations, academics, the European Commission, as well as supervisory authorities in Europe, Canada, the US (FTC) and Mexico. Discussions included:

- A review of an **accountability scorecard**, developed by the Center, for the purpose of matching privacy programs against Canadian guidance on Accountability;
- A preview of the **forthcoming guidance from the CNIL** on Binding Corporate Rules as a Privacy compliance programme;
- Understanding the **risk to privacy** when establishing a legal basis to process data;
- An update on the Review of the **OECD Guidelines** on the Accountability Principle
- A presentation of the APEC governance model, the work done by the CNIL and the US Department of Commerce in mapping BCRs requirements to those of **cross-border privacy rules in the APEC framework**.

> 16th Eurodac Coordinated Supervision meeting

The EDPS organised the 16th meeting of the EURODAC Supervision Coordination Group in Brussels on 24 May 2012. The Group took stock of the latest legislative developments on Eurodac and included representatives of the UNHCR and the Commission in discussions on the access of law enforcement authorities to the system. The coordinated security audit questionnaire, which is close to completion, was discussed with the aim of providing national data protection authorities a common framework for security audit methodology by the end of the year.

A state of play on the "failure to enrol" exercise was also presented. "Failure to enrol" refers to applicants for asylum whose fingerprints are not readable for various reasons. The aim of this exercise is to explore and share the differences in dealing with "failure to enrol" in Member States with recommendations of best practice. Along with adopting its activity report for 2010 and 2011, the Group took note of the latest developments on the Visa Information System (VIS) with a view to officially launching the VIS Coordinated Supervision before the end of the year.

> EU Open Day

On Saturday 12 May 2012, the EU institutions held its annual festival of Europe with open days in Brussels to mark the Schuman Declaration anniversary. Thousands of people joined in the celebrations and made it a very successful day.

The EDPS welcomed visitors with an eye-catching infra-red camera display as a backdrop to our information stand in the European Parliament premises (ASP building - main street). We helped visitors to learn a bit more about the protection of





personal data and take part in a quiz to win a prize as well as offering some informative and fun awareness raising materials to take home. We look forward to welcoming even more visitors to our stand next year.



SPEECHES AND PUBLICATIONS

- "Smart Borders", EU-PNR and Travellers' Surveillance, ([pdf](#)) speaking notes of Peter Hustinx at the Greens' conference "An Emerging e-Fortress Europe? - Border Surveillance, Frontex and Migration Control", European Parliament, Brussels (26 June 2012)
- "Data protection and privacy regulation: what impact on business and consumers? The evolution in the approach to privacy: the vision of US, EU and Italy", ([pdf](#)) speech delivered by Giovanni Buttarelli at the AmCham Italy and the US mission at the Italian Senate, Rome (21 June 2012)
- "Towards More Effective and Consistent Data Protection across the EU", ([pdf](#)) speech delivered by Peter Hustinx at the 14th Annual Conference DuD 2012 - Datenschutz und Datensicherheit, Berlin (18 June 2012)
- "Mobile Personal Clouds with Silver Linings", ([pdf](#)) speech delivered by Giovanni Buttarelli at the Columbia Institute for Tele-Information, New York (8 June 2012, videoconference)
- Hearing and the Workshop organised by the Committee on Civil Liberties, Justice and Home Affairs on ACTA, ([pdf](#)) ([pdf](#)) speaking notes of Giovanni Buttarelli (26 April and 16 May 2012)
- "Towards the Establishment of the European Cybercrime Centre (EC3) within Europol: Data Protection implications?" ([pdf](#)) speech delivered by Giovanni Buttarelli at the ERA Seminar, Brussels (16 May 2012)
- "The EU Data Protection Reform: New Fundamental Rights Guarantees", ([pdf](#)) speech delivered by Peter Hustinx at the 3rd Annual Symposium, European Union Agency for Fundamental Rights, Vienna (10 May 2012)
- "Modernising the Professional Qualifications Directive", ([pdf](#)) speech delivered by Giovanni Buttarelli at the Hearing of the EP Committee on the Internal Market and Consumer Protection, Brussels (25 April 2012)
- "EU General Data Protection & Privacy Regulation - What Impact on Business?", ([pdf](#)) speech of Peter Hustinx delivered at American Chamber of Commerce in France, Paris (27 March 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:

- Carine CLAEYS, ad interim, EEAS
- Paula McCLURE, The European Support Asylum Office
- Fedia MATTARELLI, Clean Sky Joint Undertaking
- Gregor SCHNEIDER, Office for Harmonization in the Internal Market (OAMI)

☞ 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;
- cooperate with similar authorities to ensure consistent data protection.

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