



NEWSLETTER

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1. EU and the right to privacy

On 18 September, the European Data Protection Supervisor (EDPS) and the Assistant Supervisor held a [press conference](#) which marked the mid-term of their five year mandates. They highlighted the EDPS' achievements in terms of data protection advice to the EU-institutions as well as the supervision of their data processing.

Most of the questions related to the current climate of debate - in which data protection and privacy advocates are wrongly criticised of hindering security policies. Peter Hustinx, EDPS, underlined that most citizens are unaware of

the extent to which their personal data are processed. This leads to a naivety, which plays into the hands of those who favour new security policies that infringe on fundamental rights. It is therefore important that privacy and data protection advocates invest in raising awareness, so that the rights which have been acquired over several decades are not weakened.

Joining forces with members of the European Parliament, Hustinx urged for a rapid adoption of the framework decision on data protection in the third pillar, which has been delayed by long negotiations in the Council. It is essential that the EU adopts a coherent system of data protection in the context of law enforcement activities before new instruments relating to the principle of availability are developed.

2. Residence permit - EDPS opinion

The EDPS recently issued an opinion on a draft Regulation concerning the uniform format for residence permits for third-country nationals. Following the introduction of biometric features in European passports and Schengen visas, this proposal is a third one to rely on biometric data. The justification for the use of biometrics is that it enhances the security level and facilitates fighting illegal immigration and illegal residence.

The EDPS supports the proposal but stresses that the residence permit should not be seen as a travel document. The EDPS does not oppose the use of biometric data as long as the proper safeguards which are recommended in the opinion are implemented. Moreover, the EDPS welcomes the reasoning of treating European citizens and third country residents equally by giving them access to electronic services, such as e-government services. The EDPS does however recommend postponing the insertion of an additional chip for such services until a complete impact assessment study has been conducted. [Read more.](#)

3. Community laissez-passer - EDPS opinion

The EDPS also recently issued an opinion on a draft Regulation concerning the form of the "laissez-passer" which is to be used by those staff and members of the institutions who need it for their work. The community laissez-passer is used as a diplomatic passport in third countries. Introduced in the Protocol on Privileges and Immunities of the European Communities in 1965 and used since 1967, the laissez passer needed to be redesigned in order to meet the current security standards for EU travel documents. The proposed new version will incorporate security elements and includes certain new categories of data - such as biometric data.

The EDPS supports the proposal - albeit with some reservations, especially concerning the use of biometric data. The EDPS reiterates his preference for the use of fallback procedures during the enrolment phase. Another concern is the possible creation of central databases containing biometric data, which

the EDPS opposes. The [opinion](#) lists a range of concrete recommendations on how to improve the proposal.

Because the use of biometric data can pose risks to those staff members concerned, the EDPS has informed the institutions that the processing will need to be prior checked (see item 6).

4. SWIFT case

The case of US authorities accessing EU banking data through SWIFT has been widely covered in the media over the last few months. Complaints have been lodged with the national data protection commissioners as well as with the EDPS. Because virtually all banking operations take place at the national level, the issue mainly falls under national law. SWIFT's European headquarters are Belgian based, and the Belgian privacy commissioner's investigation therefore plays a crucial role - not only on the national level - but also at the European level.

The Article 29 working party, which assembles the EU data protection commissioners, discussed the SWIFT case on 26 September and adopted a [press release](#). A formal opinion which addresses the roles and responsibilities of SWIFT and the financial institutions is being prepared. Meanwhile, investigations on the national level continue.

In July, the European Parliament (EP) adopted a resolution calling for the EDPS to check whether the ECB was obliged to react to the possible violation of data protection which had come to its knowledge. The EP organised a public hearing on the same issue on 4 October, which was attended by high level representatives of SWIFT, the European Central Bank ([ECB](#)), the National Bank of Belgium and the Belgian Senate. The chairman of the Article 29 working party and the EDPS also participated. In his contribution, Mr Hustinx focused on the role of the ECB in three aspects of its relation to SWIFT; as an overseer, as a client, and as a policy maker (being a central actor in shaping European payment systems). [Read more](#) about the hearing.

Mr Hustinx and the President of the ECB, Mr Trichet, met last week with a view to clarify the case and to find appropriate solutions to the current situation. EDPS' inquiry into the SWIFT case continues and a final opinion will be issued before the end of the year.

5. EDPS Court intervention on transparency and data protection

On 13 September, the EDPS participated in an hearing on a case before the Court of First Instance ([T-194/04](#)). The case dates back to 1996, when the European Commission held a meeting which addressed the conditions for importing beer to the UK. A company wanting to sell German beer in the UK

requested access to the list of participants of the meeting. That was refused by the Commission, which based itself mainly on data protection legislation for the non-disclosure (Regulation 45/2001).

The EDPS has published a [paper](#) which deals with the intersection between public access to documents and protection of personal data. The Court hearing constituted a good occasion for the EDPS to present his conclusions; i.e. that documents containing personal data can be made public unless it substantially harms the privacy of the individual.

Because data protection rules do not imply that there is a general right to participate anonymously in Commission activities, the EDPS intervened in support of the applicant. Stressing that transparency and data protection are two fundamental rights, on equal footing, the EDPS asked the Court to annul the Commission's refusal to disclose the attendance list in full.

6. News on EDPS prior checking of processing of personal data

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.

EU CV online system

The EU CV online replaces the current manual or semi-manual handling of spontaneous applications for Commission vacancies with a harmonised electronic system. The new system processes professional information of external applicants for posts within the Commission, or within other bodies having access to the system. Candidates fill in and upload their CVs via the Internet using the Commission's standard e-CV format.

In general, information kept in the database can be accessed by HR staff and managers who need it for recruitment purposes. Jobseekers may, however, restrict the right to use their data, for instance by limiting access to only certain recipients of a particular application.

Recruiting services can carry out anonymous searches based on the professional specifications of a job and send messages to all who correspond to the search criteria. This search facility is limited to professional information that does not identify the applicant. The EDPS decided to prior check the system because it has a pre-evaluative aspect.

The EDPS' opinion concludes that the Commission has substantially followed all the principles of the Regulation. Some recommendations were nevertheless made regarding storage periods, use of backup data and consent of the reference persons included in the CV.

The Opinions are in general published on the [EDPS website](#).

7. Complaints

An important aspect of ensuring that the EU-institutions and bodies comply with their data protection obligations is the handling of complaints by individuals who feel that their rights have been violated.

A recent complaint dealt with an EU civil servant who claimed the right of access to the Reports Committee opinion on the civil servant's probationary period. The administration denied access to the Reports Committee opinion on two grounds: that disclosure of the opinion could undermine the decision-making process of the institution (Article 4.3 of Regulation 1049/2001); and that the proceedings of the Report Committee are secret. The EDPS contested both arguments.

Firstly, Regulation 1049/2001 is not relevant in this case, as the request of the complainant does not respond to a need for transparency but regards the rights of a data subject. According to Article 13 of Regulation 45/2001, the data subject has the right to obtain, without constraint, information about data relating to him/her.

Secondly, the EDPS considers that - once the opinion of the Committee is finalised - the data subject can have access to the opinion as long as the comments are not linked to a particular member of the Committee. A second condition is that no comparison is established between the person concerned and someone else, in order to protect the rights and freedom of the other person.

The EDPS investigation resulted in the complainant being granted access to the Reports Committee opinion.

8. New Data Protection Officers

Each EU-institution and body has to appoint at least one person as a Data Protection Officer (DPO). These officers have the task of ensuring in an independent manner the internal application of Regulation 45/2001.

Recent appointments:

Markus GRIMMEISEN, European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

Joachim MENZE, European Maritime Safety Agency (EMSA)

The full list of DPOs is available [here](#).

9. 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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