



## NEWSLETTER

Nr. 7 - 14 December 2006

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## **1. SWIFT case**

On 22 November, the Article 29 Working Party unanimously adopted an opinion on the access by US authorities to EU banking data through SWIFT. In the opinion, the EU data protection authorities state that SWIFT bears the primary responsibility for the fact that personal data have been transferred to the US and accessed in violation of national law giving effect to the data protection directive (95/46). However, the financial institutions also bear some responsibility for how their clients' personal data are processed.

The Article 29 Working Party stressed that in the SWIFT case, there was neither an adequate legal ground, nor independent control by data protection supervisory authorities. Hidden, systematic, massive and long-term transfers of personal data to third country authorities therefore constitute a violation of the fundamental principles of European data protection law.

This is why SWIFT, financial institutions as well as Central banks are invited to take immediate action to ensure that international money transfers are made fully in compliance with data protection law. Furthermore, they have to take measures to avoid that the regrettable lack of transparency which has characterised this case will be repeated.

Just as most national supervisory authorities, the EDPS is conducting an inquiry within his competence. The EDPS inquiry focuses on the role of the European Central Bank and will be closed early next year.

Read the Article 29 Working Party [Opinion](#), or the [press release](#).

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## **2. Common Consular Instructions - EDPS opinion**

On 27 October, the EDPS issued an opinion on the European Commission proposal for amending the Common Consular Instructions in view of the implementation of the Visa Information System (VIS). The main points of the opinion concern biometric identifiers and cooperation between consular posts in the visa procedure.

Regarding biometric identifiers, the EDPS underlines that it is a political decision rather than a purely technical one to determine from which age fingerprints shall be collected. This should not be based entirely on arguments of feasibility. Especially the mandatory fingerprinting of all children aged 6+ raises also ethical questions. The EDPS moreover recalls that all biometric identification systems are inherently imperfect and that the system therefore must provide for adequate fallback solutions.

Regarding the cooperation between consular posts and embassies of Member States, the EDPS emphasises the need to guarantee data security; which can prove difficult in some third countries. When the processing of visa applications, including the collecting of biometric identifiers, is outsourced to a private company, the EDPS stresses the need for it to be located in a place

under diplomatic protection. Otherwise, authorities of the third state could easily access data of visa applicants and their contacts in the EU. This could prove dangerous for the visa applicants, for example in case of political opponents trying to leave their country.

Read the [opinion](#).

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### **3. Third Pillar - new EDPS opinion on the Framework Decision**

For the first time, the EDPS has issued a second opinion on a proposal for EU-legislation. The reason for this is two-fold. Firstly, a framework decision on the protection of personal data in the third pillar is extremely important to the EDPS. Secondly, there are serious fears that the negotiations in Council will result in essential safeguards to the citizens being deleted or substantially weakened.

Therefore, the EDPS recommends that Council allows for more time for the negotiations in order to achieve a result that offers sufficient protection. Furthermore, he objects to limiting the proposal to data that are exchanged with other Member States. Such a limited scope is unworkable and would lead to additional complexity and costs for the law enforcement authorities. Moreover, it would harm the legal certainty of individuals.

Read the new [opinion](#), the [press release](#), or the first [opinion](#).

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### **4. Data Retention - EDPS intervention before Court of Justice**

In October, the EDPS requested to intervene before the Court of Justice in the data retention case of Ireland vs. the Council and the European Parliament (Case [C-301/06](#)). Ireland claims that the Court should annul the Directive on the retention of communication data (2006/24/EC).

The EDPS requests to intervene in support of the defendants, mainly because this case offers the possibility to clarify the Court judgement in the PNR-cases (see Newsletter 5). The key question concerns the applicability of Community law to the use of personal data collected by private companies for law enforcement purposes. According to the EDPS, a too limited interpretation of the scope of Community law in this respect would harm the protection of the individuals.

The next step will be a decision by the Court on the request by the EDPS.

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### **5. London Statement - Communicating Data Protection**

The main subject of the 28th International Conference of Data Protection and Privacy Commissioners, held in London in early November, was that in many ways we already live in a surveillance society. While this may bring benefits

for instance in terms of economic convenience or public security, it also brings privacy and integrity risks for everyone.

The number of databases is increasing and they are becoming interlinked. Technical advances enable processing of digitalised pictures, fingerprints, DNA, etc. These and many more developments call for a need to make citizens and policy makers more aware of the risks. Proper discussions are needed and data protection must be communicated more concretely. Data protection authorities also need to work more effectively. The EDPS was one of the co-sponsors of a strategic initiative to face these challenges.

Read the [statement](#).

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## **6. MoU between the EDPS and the European Ombudsman**

On 30 November, the European Ombudsman and the EDPS signed a Memorandum of Understanding. The purpose of the agreement is to ensure the consistent treatment of complaints concerning data protection and to avoid unnecessary duplication.

In a joint statement, the Ombudsman and the EDPS pointed out the importance of coordinating on cases where their competences partly overlap. The reason is that maladministration includes failure by the EU institutions to comply with their data protection obligations. The agreement builds upon the current practice of good cooperation between the two institutions.

Read the full text of the [Memorandum](#), or the [press release](#).

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## **7. First inventory of proposed legislation that the EDPS will follow**

The EDPS recently published his first inventory of planned activities within the scope of his consultative tasks. The inventory contains European Commission proposals on which the EDPS intends to react.

It consists of 2 documents. Firstly, an [introductory document](#), in which the EDPS gives a short analysis of the most important trends and risks, and which also contains his priorities for 2007. Secondly, a [list](#) of the most relevant Commission proposals and related documents for expected follow up by the EDPS. The main sources are the Commission's Work Programme for 2007 and several related planning documents.

The EDPS will publish an inventory once a year every December.

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## **8. 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.

### Voice recording of Helpdesk calls - European Commission

The Directorate General (DG) INFSO of the Commission plans to install a recording system to improve the quality of the IT helpdesk support. Every conversation between users calling the helpdesk and the operators will be recorded and stored for two main purposes:

- To have the recorded conversation available for solving the reported IT problem; and
- To use some recorded dialogues in the training of the operators.

The recording of calls and their further use requires improved guarantees for those staff members who call the helpdesk and for the operators. The opinion analyses the data protection requirements for the two purposes and concludes that some elements of the processing violate basic data protection principles (necessity, proportionality, data quality and storage rules). Therefore, the EDPS made numerous recommendations along two main lines:

- Recording dialogues for solving the IT problem should be combined with a very short storage period;
- The further use of recordings for training can only be admissible either if the dialogues and related data are made anonymous or if the consent of the users and the operators is obtained.

### EPSO - selection procedure for contractual agents

The European Personnel Selection Office (EPSO) ensures the recruitment of contractual agents through pre-selection tests. All data are kept in a database called "CAST 25". The institutions concerned have access to the CV of the successful candidates through a research tool, called "CARL". This processing operation is subject to prior checking because it evaluates personal aspects (ability) of the data subjects.

The EDPS made a number of recommendations. For instance, the transmission should be limited only to services in charge of recruitment and data subjects should have the right to be informed when their data are conserved for a longer period than the initially foreseen. It was underlined that EPSO should delete the distinction between the merit groups on the reserve lists of the successful candidates if the right of access to the questions and answers of the tests are limited to unsuccessful candidates. However, if the merit groups in the reserve lists are maintained, the right of access should be extended to all candidates.

### REMEDE - Management of MEP's medical expenses reimbursements

The reimbursement of the medical expenses of the Members of the European Parliament (MEP) is managed by a system called REMEDE. The system is totally independent from the one in place for the EU civil servants. It mainly collects and processes medical invoices and prescriptions to determine the amount of reimbursement. The EDPS prior checked the system because it processes data relating to health.

The EDPS made numerous recommendations underlining that some elements of the processing do not comply fully with Regulation 45/2001. This is particularly the case for the rights of data subjects, such as access, rectification and information. The EDPS also addressed recommendations on the conservation period of data kept in electronic format.

Published opinions can be downloaded from the [EDPS website](#).

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## **9. Cooperation activities**

In November, EDPS staff participated in the International Case Handling Workshop, hosted by the Greek Data Protection Authority in Athens. It is a forum for exchanging information and sharing experiences on case handling, set up by the annual European Conference of data protection commissioners. The main topics addressed were e-government, video surveillance and current issues. Participation in the workshop is a practical way of being informed of best practices in the national supervisory authorities.

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## **10. IST 2006**

In November, EDPS staff also took part in the conference on Information Society Technologies (IST) 2006 in Helsinki. Organised every two years, this particular conference coincided with the launch of the Seventh Framework Programme for Research and Development. Since many new ICT projects and new applications process personal data, there may be risks for privacy and data protection. Therefore, the EDPS participated with an information stand for the first time.

Read more on the [IST 2006 website](#).

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## **11. e-PRODAT project book - EDPS foreword**

e-PRODAT has produced an assessment report on data protection and e-government in European regions and cities. It was published by the Madrid Data Protection Agency at the end of October.

Many governments and public administrations use personal data to provide public services, especially relating to e-Government (e.g. electronic mailing lists, road traffic management, smart cards). In his foreword, Mr Hustinx

(EDPS) strongly recommends that public authorities use the book for two main reasons. Firstly, it promotes the exchange of information and best practices among them in order to comply with data protection laws. Secondly, it encourages privacy enhancing solutions for relevant e-services in the public sector.

Hustinx also mentions that new ICT and Internet based services are bound to change the way in which public bodies relate to and interact with the citizens they are serving. Therefore, it is essential to keep public trust and confidence. In this perspective, public authorities should consider data protection not only as a legal obligation, but also as a critical success factor for their ambitions.

Read the [foreword](#). More information is available on the [e-PRODAT website](#).

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## **12. New Data Protection Officers**

Each EU 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 internal application of Regulation 45/2001.

Recent appointments:

- Olli KALHA, European Agency for Reconstruction
- Spyros ANTONIOU, European Centre for the Development of Vocational Training (CEDEFOP)

See full [list of DPOs](#).

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## **13. 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.

Postal address:  
EDPS - CEPD  
Rue Wiertz 60 - MO 63  
B-1047 Brussels  
BELGIUM

Office:  
Rue Montoyer 63  
Brussels  
BELGIUM

Contact details:  
Tel: +32 (0)2 283 19 00  
Fax: +32 (0)2 283 19 50  
e-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu)

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[www.edps.europa.eu](http://www.edps.europa.eu)