

Presentation of Annual Report 2004

Introductory Speech at Press Conference: "Building a new institution"

Brussels, 31 March 2005

Mr. Peter J. Hustinx

European Data Protection Supervisor

I am here today, together with my colleague Joaquín Bayo Delgado, to present to you our Annual Report 2004 covering the first period of the existence of the European Data Protection Supervisor.

The EDPS is not part of the European Commission or another existing institution, nor a new agency, but a new independent supervisory authority to ensure data protection at the European level. This is based on Article 286 EC Treaty and Regulation (EC) 45/2001 which lays down the rules and principles applying at Community level and describes the roles and powers of the EDPS.

Let me highlight some elements first and then give you sufficient time for questions and perhaps also look at some consequences.

The invitation for this event and the annual report itself speak about "building a new institution". This is appropriate since it is a completely new body interacting with other institutions like the European Parliament, the Council and the Commission, and with a range of other bodies. It is also important for you to realize that early last year, there was in fact very little apart from a legal basis and two newly appointed members of a new authority.

At this moment, we have a running organisation with a budget of EUR 2.8 million for 2005, a multidisciplinary team of some 20 individuals, and a fully equipped office at Rue Montoyer 63, enabling us to work effectively and to develop our tasks. This was only possible with the assistance of the Parliament, the Council and the Commission.

In June 2004, I entered into an agreement for administrative cooperation with these institutions, and I want to use this occasion to express thanks for their continuing support. This allows us to do our job effectively and to meet the high standards that currently apply to all European institutions and bodies.

At this point, let me also express thanks to the staff supporting our mission, that is doing a great job. The annual report refers to this mission in terms of "supervision", "consultation" and "cooperation". Let me briefly mention each of them and make a few additional comments.

It is a new experience for Community institutions and bodies to be bound by data protection standards and to be supervised in their performance. Let me say here, quite frankly, that the Community was early in developing policies for the member states, but rather late in applying the same policies to its own data processing operations. Moreover, our appointment came about three years after the entering into force of the relevant Regulation.

This means that full implementation has now become urgent. After all, the EU cannot afford not to deliver on the rules it has imposed on itself and on the member states, and which are also visible in the Constitutional Treaty currently subject to ratification.

A very good element in the Regulation is that each institution or body should have at least one internal Data Protection Officer. At present, there are about fifteen of these officers with whom we closely cooperate. We expect that their number will grow in the course of this year.

As a first step, we have been concentrating on data processing operations subject to prior checking. Obviously, prior checking by the EDPS was not possible for a while, so there is a considerable backlog. Our inventory shows that more than 100 systems are waiting to be prior checked on an *ex post* basis. The new operations are subject to prior checking before they can start.

The annual report mentions that the number of notifications to DPO's - meaning that the Regulation has been implemented for a data processing operation - is also lagging

behind. We are determined to see that these notifications will increase considerably and we think that full compliance should be reached two years from now at the latest. If this does not happen, enforcement actions will be quite likely.

The report mentions our first experiences with complaints. It also mentions two areas where we started investigations. In the course of the spring, we will be presenting a report on the relationship between "access to public documents" and "data protection" with guidelines on how to enhance the two. Both are principles of good governance mentioned in the EU Constitution.

As to "consultation", the most interesting developments are taking place in the area of advising on new legislation. The Commission is obliged to request the advice of the EDPS whenever it adopts a proposal for legislation which relates to the protection of personal data.

Recently, I have published a policy paper setting out how I intend to take this role forward. So far, a number of opinions have been issued, most recently on the proposal for a Visa Information System (VIS), presented yesterday in the LIBE Committee of the European Parliament. More opinions are likely to come this year: for instance about the retention of communication traffic data, as you know a highly controversial issue. We are analysing the work program of the Commission and intend to inform them about other subjects of particular interest.

As to "cooperation", let me say that this mainly refers to two areas: cooperation with national supervisory authorities, either bilaterally or in the Article 29 Working Party, and cooperation with joint supervisory bodies in the "third pillar" (Schengen, Europol, Eurojust and Customs).

On the latter, let me emphasize the growing importance of data protection standards in the third pillar. Exchange of data for better law enforcement is high on the agenda of the Council, the Commission and the Parliament. Data protection is an essential condition to get this subject right, in line with the underlying values of the Union. This will also be an important priority on my list of activities for the near future.

As to the subjects dealt with in the Article 29 Working Party, you may have read about my request for intervention in the PNR case presently before the Court of Justice. Only yesterday, we were informed that the Court has granted this request. Arguments in support of the Parliament will thus be submitted in the near future.

I was particularly pleased to see that the Court has granted the request on the basis of the EDPS's task to ensure a high level of data protection in all Community policies.

On a similar note, let me mention that we have run an information campaign among all EU institutions and bodies. About 35.000 officials have received a personal letter and we have published brochures on the role of the EDPS and the rights of the data subject. These brochures will be available in all Community languages and will be distributed in all member states.

After all, a growing number of EU policies depend on the lawful use of personal data. Data protection should therefore be seen - and of course acted upon - as a condition for their success. This is a central message in the brochures, in the annual report, and in our meetings with new Commissioners. And so far, I am quite satisfied about the feedback we are getting on this message.

I am now ready to answer any questions you may have, provided they are within the area of my competence.