



## **Opinion of the European Data Protection Supervisor**

### **on the Proposal for a Regulation of the European Parliament and of the Council on European statistics on safety from crime<sup>1</sup>**

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>2</sup>,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>3</sup>, and in particular Article 28(2) thereof,

Having regard to the request for an Opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001,

HAS ADOPTED THE FOLLOWING OPINION:

#### **I. INTRODUCTION**

##### **I.1. Consultation of the EDPS**

1. On 8 June 2011, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on European statistics on safety from crime (hereinafter 'the Proposal'). The Proposal was sent for consultation to the EDPS on the same day.

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<sup>1</sup> COM(2011) 335 final.

<sup>2</sup> OJ L 281, 23.11.1995, p. 31.

<sup>3</sup> OJ L 8, 12.1.2001, p. 1.

2. The EDPS is pleased that he has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and welcomes the reference to this Opinion which has been included in the preamble of the Proposal.
3. The EDPS also welcomes the fact that he was previously given the possibility to provide informal comments on the draft Proposal.

## **I.2. Objectives and scope of the Proposal**

4. The Proposal aims at implementing a new survey<sup>4</sup> in the European Union on safety from crime. It will set up a common framework for producing comparable European statistics through the collection, compilation, processing and transfer of harmonised European data.
5. The categories of data to be processed are detailed in Annex I of the Proposal, and include detailed questions on the socio-demographic background of respondents to the survey, possible incidents of sexual and physical violence that they might have suffered, their feelings of safety and their attitudes to law enforcement and security precautions.
6. The Proposal regulates the transmission of confidential data from Member States to the Commission (Eurostat) as well as the dissemination and the access to data for scientific purposes. Practical arrangements for the data coding scheme and for exchanging microdata will be adopted by means of implementing acts.

## **I.3. Aim of the Opinion of the EDPS**

7. The present Opinion will analyse the elements of the Proposal which are related to the processing of personal data. It builds on two previous Opinions of the EDPS in this field concerning, respectively, Regulation (EC) No 223/2009 which provides a reference framework for the production of European statistics<sup>5</sup> and Regulation (EC) No 1338/2008 on statistics on health and safety at work<sup>6</sup>.
8. The Opinion also refers to Regulation (EC) No 831/2002 on access to confidential data for scientific purposes<sup>7</sup>, which is currently under review. The EDPS would welcome a request for consultation in this respect. References in this Opinion to

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<sup>4</sup> Member States are also allowed to fulfil the requirements of the Proposal by changing existing national surveys.

<sup>5</sup> See EDPS Opinion on the proposal for a Regulation of the European Parliament and of the Council on European Statistics, OJ C 308, 3.12.2008, p. 2. (available on [http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2008/08-05-20\\_Statistics\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2008/08-05-20_Statistics_EN.pdf)) and Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (OJ L 87, 31.3.2009, p. 164).

<sup>6</sup> See EDPS Opinion on the proposal for a Regulation of the European Parliament and of the Council on Community statistics on public health and health and safety at work, OJ C 295, 7.12.2007, p. 1. (available on [http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2007/07-09-05\\_Statistics\\_health\\_data\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2007/07-09-05_Statistics_health_data_EN.pdf)) and Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

<sup>7</sup> Regulation (EC) No 831/2002 of 17 May 2002 implementing Regulation (EC) No 322/97 on Community Statistics on access to confidential data for scientific purposes (OJ L 133, 18.05.2002, p. 7).

Regulation (EC) No 831/2002 are without prejudice to the advice that the EDPS might provide in that context.

## II. ANALYSIS OF THE PROPOSAL

### II.1. Introductory remarks

9. The EDPS is aware of the importance of the development, production and dissemination of statistical data, as he has stated in previous occasions<sup>8</sup>. However, he is concerned about the risk that data subjects may be identified and the fact that sensitive data, such as data relating to health, sex life and offences, are being processed.
10. The EDPS welcomes the references to the protection of individual's rights and freedoms with regard to the processing of personal data which are made in Recitals 6 and 7 of the Proposal, but regrets that the potential impact of the Proposal on privacy and data protection has not been addressed in the accompanying Impact Assessment.
11. The present Opinion discusses the possibility of identifying data subjects in the context of statistics and in the Proposal (part II.2) and the applicability of the data protection framework (part II.3). Subsequently, part II.4 analyses the processing of sensitive data. In part II.5, the Opinion focuses on security safeguards and anonymisation and it finally addresses the information to be provided to data subjects in part II.6.

### II.2. Possibility of identifying data subjects

12. Personal data are defined in Article 2(a) of Directive 95/46/EC and Article 2(a) of Regulation (EC) No 45/2001 as any information relating to an *identified or identifiable* natural person ("data subject"). This identification might be direct, e.g., by a name, or indirect, e.g., by an identification number or other factors. Therefore, as long as there is a possibility to identify natural persons, the relevant data are considered personal data, and thus data protection legislation is applicable.
13. In the context of statistics, the possibility of identification of data subjects relates mostly to microdata<sup>9</sup>, which contain information about individual statistical units. While researchers, policy makers and other users might demand access to as much and as detailed microdata as possible in order to increase the quality and the flexibility of their researches, respondents need guarantees that their personal data will be protected, especially when the surveys deal with sensitive matters, such as

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<sup>8</sup> EDPS Opinions on statistics, cited above.

<sup>9</sup> Defined in the Proposal as "*individual statistical records*" and in Eurostat's Concepts and Definitions Database as "*non-aggregated observations, or measurements of characteristics of individual units. A microdata set is the result of a survey instance or other data collection instance after unit-level editing and imputation and possible matching with other unit-level data. It organizes unit level data so that relationships between individual units and their characteristics can be identified, so as to allow all forms of aggregation*". (Eurostat's Concepts and Definitions Database, available on [http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=DSP\\_GLOSSARY\\_NOM\\_DTL\\_VIEW&StrNom=CODED2&StrLanguageCode=EN&IntKey=22564850&RdoSearch=BEGIN&TxtSearch=microdata&CboTheme=&IntCurrentPage=1](http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=DSP_GLOSSARY_NOM_DTL_VIEW&StrNom=CODED2&StrLanguageCode=EN&IntKey=22564850&RdoSearch=BEGIN&TxtSearch=microdata&CboTheme=&IntCurrentPage=1), last accessed on 17.08.2011).

the one in the present Proposal. The protection of personal data has also raised concerns in the context of the review of Regulation (EC) No 831/2002<sup>10</sup>.

14. As regards the possibility of identifying data subjects, two different notions are relevant in the EU legislation on statistics: "confidential data" and "anonymous data". According to Regulation (EC) No 223/2009, data which allow statistical units (which might be natural persons, households, economic operators or other undertakings) to be "*identified, either directly or indirectly*", are considered "confidential data"<sup>11</sup> and are therefore subject to statistical confidentiality<sup>12</sup>. However, Regulation (EC) No 831/2002 defines confidential data as data "*which allow only indirect identification*". As in the Proposal, statistical units refer to natural persons (as well as to households),<sup>13</sup> in the present case confidential data include personal data and thus data protection legislation will apply irrespective of whether the data allow direct or indirect identification.
15. The definition of "anonymous data" is also slightly different in these two Regulations. While "anonymised microdata" is described in Regulation (EC) No 831/2002 as individual statistical records in which the risk of identification has been "*minimised*"<sup>14</sup>, according to Article 19 of Regulation (EC) No 223/2009, "anonymised records" are those "*which have been prepared in such a way that the statistical unit cannot be identified, either directly or indirectly, when account is taken of all relevant means that might reasonably be used by a third party*"<sup>15</sup>. The latter is comparable to the definition provided in Recital 26 of Directive 95/46/EC and Recital 8 of Regulation (EC) No 45/2001, according to which personal data are "rendered anonymous" when the data subject is "*no longer*" identifiable, taking into account "*all the means likely reasonably to be used either by the controller or by any other person to identify the said person*"<sup>16</sup>.
16. Therefore, after anonymisation of the microdata in the sense of Article 19 of Regulation (EC) No 223/2009, which would only apply to the present Proposal in case microdata were publicly released, the data will no longer be considered

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<sup>10</sup> The main concerns of Member States as regards the review of Regulation (EC) No 831/2002 include "*the assurance of data protection, confidentiality impact levels, the question of ownership of data and access control*" (Eurostat, Summary report of the 8th meeting of the European Statistical System Committee and 66th EEA Conference of 10.02.2011, available on [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/comitologie/info/2011/CMTD\(2011\)0018/COM-AC\\_DI\(2011\)S013045-01\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/info/2011/CMTD(2011)0018/COM-AC_DI(2011)S013045-01_EN.pdf), last accessed on 17.08.2011).

<sup>11</sup> See Article 3(7) of Regulation (EC) No 223/2009.

<sup>12</sup> Regulated by Article 2(1)(e) and Chapter V of Regulation (EC) No 223/2009, and Regulation (EC) No 831/2002.

<sup>13</sup> See Article 1 of the Proposal.

<sup>14</sup> Article 2 of Regulation (EC) No 831/2002.

<sup>15</sup> Article 19 of Regulation (EC) No 223/2009.

<sup>16</sup> According to Article 29 Working Party, the criterion of "*all the means likely reasonably to be used*" should contemplate all the factors at stake, e.g., "*the cost of conducting identification, (...) the intended purpose, the way the processing is structured, the advantage expected by the controller, the interests at stake for the individuals, as well as the risk of organisational dysfunctions (e.g. breaches of confidentiality duties) and technical failures*". The chosen anonymisation techniques should also be adapted to technological developments that in the future could enable the identification of the data subject (Article 29 Working Party, Opinion 4/2007 on the concept of personal data, 20 June 2007, (WP 136), p. 15, available on [http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf), last accessed on 17.08.2011).

personal data and the provisions of Directive 95/46/EC and Regulation (EC) No 45/2001 will not apply.

17. However, data which are considered anonymised in the context of Regulation (EC) No 831/2002 may not be anonymised according to Directive 95/46/EC and Regulation (EC) No 45/2001, as the risk of identification might remain, and will thus be subject to the data protection legislation. This definition of anonymisation will apply in the present Proposal to released microdata sets in case the relevant survey is subsequently included in the list of Article 6 of Regulation (EC) No 831/2002.

### **II.3. Applicability of Directive 95/46/EC and Regulation (EC) No 45/2001**

#### II.3.1. Collection of the data

18. The aim of the Proposal is to set up a common framework for *"producing European statistics through the collection, compilation, processing and transmission by the Member States"*<sup>17</sup> of comparable data on crime and safety.
19. The data will be collected by Member States and transferred to Eurostat, that shall disseminate them and make them available to researchers. Although the Proposal does not regulate how the collection is carried out by Member States, it specifies which data have to be transferred to Eurostat. Therefore, the questions that respondents will be asked in the survey will be determined by the categories of data that Member States are required to transfer to Eurostat, which are laid down in Annex I of the Proposal.
20. Annex I explicitly requests in Paragraph 6 the "identification of respondent". Similarly, one of the questions to be asked in the survey as regards partner and non-partner physical violence is "who did it" (Paragraph 7(1) of Annex I). If these questions are answered by a name, the data will relate to *directly* identified individuals.
21. The EDPS is aware that the aim of these questions is not to obtain the names of the respondent and the aggressor, but probably to assign a code to the respondent or to request specific characteristics of the alleged aggressor, such as the existence and degree of family relationship. In addition, the EDPS welcomes the fact that direct identifiers are not to be transmitted to Eurostat, as according to Article 7(1) of the Proposal, they have to be removed beforehand. However, the EDPS would recommend that the descriptions of these variables in points 6 and 7(1) of Annex I be modified in order to clarify which specific information is exactly required and to avoid that these direct identifiers are collected unnecessarily by Member States.
22. Even without direct identifiers, the collected data will possibly still allow *indirect* identification *"by reference to an identification number"* or, due to the elaborate number of data fields requested in the survey, by reference *"to one or more factors specific to his physical, physiological, mental, economic, cultural or social*

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<sup>17</sup> See Article 1 of the Proposal.

*identity*”<sup>18</sup>. Therefore, the processing of the data by Member States is subject to the national law implementing Directive 95/46/EC.

23. In this regard, the EDPS would like to underline the phenomenon of unique or rare combinations, where the combination of different pieces of information allows data subjects to be differentiated from others and thus to be identified, as it has been pointed out by the Article 29 Working Party<sup>19</sup>.

### II.3.2. Transmission, access and dissemination

24. The possibility of identification will remain at the moment of transmission of the data to Eurostat and when these data are accessed by researchers, as Article 7(1) of the Proposal<sup>20</sup> does not require the removal of *indirect* identifiers, as discussed above. Furthermore, Article 7(1) and 7(2) explicitly require Member States to transfer *confidential* microdata to Eurostat. Similarly, according to Article 9(2) of the Proposal<sup>21</sup>, Eurostat may grant access to *confidential* data for scientific purposes.

25. As discussed above, confidential data are data which allow at least indirect identification of statistical units, which in this case include natural persons. Therefore, the processing of data by Eurostat and their access by researchers will constitute a processing of personal data to which the provisions of Regulation (EC) No 45/2001 apply.

26. As regards dissemination, Article 9(1) states that Eurostat "*shall disseminate the statistics on safety from crime by 31 December 2014 at the latest*", but does not specify the modalities in which this dissemination has to be done. If the survey that will be set up by this Proposal is subsequently included in the list of Article 6 of Regulation (EC) No 831/2002, the risk of identification will only be "*minimised*" before the release of microdata. In this case, Regulation (EC) No 45/2001 will apply, as long as identification of data subjects is still possible.

27. In case microdata were publicly disseminated, Article 19 of Regulation (EC) No 223/2009, which requires anonymisation in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001 before individual statistical units are disseminated in the form of a public file, would apply. After anonymisation in this sense, the microdata would no longer be considered personal data and thus Regulation (EC) No 45/2001 would not be applicable any more.

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<sup>18</sup> Article 2(a) of Directive 95/46/EC and Article 2(a) of Regulation (EC) No 45/2001.

<sup>19</sup> "A combination of details on categorical level (age category, regional origin, etc) may also be pretty conclusive in some circumstances, particularly if one has access to additional information of some sort. This phenomenon has been studied extensively by statisticians, always keen to avoid a breach of confidentiality" (Article 29 Working Party, Opinion 4/2007 on the concept of personal data, 20 June 2007, (WP 136), p. 13, available on [http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf)).

<sup>20</sup> And Regulation (EC) No 223/2009 (cited above), which is referenced in this Article.

<sup>21</sup> And to Regulation (EC) No 831/2002 (cited above), to which this Article makes a reference.

## II.4. Processing of sensitive data

28. It is important to underline that the personal data in question fall within a special category of data which is subject to stricter rules in Directive 95/46/EC and Regulation (EC) No 45/2001. Article 8(1) of Directive 95/46/EC and Article 10(1) of Regulation (EC) No 45/2001 explicitly prohibit, except under strict conditions, the processing of personal data *revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life*) and restrict the processing of personal data relating to offences, criminal convictions or security measures<sup>22</sup>.
29. Member States are required to submit to Eurostat, among other categories, data on current and past relationships; partner and non-partner physical and sexual violence; medical treatments; exposure to drugs; offences and national origin of respondents and their parents. These categories include data concerning health, sex life and offences and could reveal ethnic origin. Below are some examples.
- Data relating to health: *"whether the respondent was injured; whether the injury was medically treated* in points 2(2)(4) and 7(1); *whether the respondent was exposed to drugs problems"* in point 3; *"whether anyone (...) hit with fist(...), or kicked, dragged or beaten up; (...) choked or burnt, threatened or used gun, knife or other weapon"* in point 7(1); and *"whether present partner or a partner in the past slapped or threw (...)"* in point 7(3).
  - Data relating to sex life: *"past relationships; the facto marital status"* (asked in addition to *"marital status"*) in point 5; *"whether anyone ever forced into unwanted sexual intercourse (...), or done anything else sexually that was unwanted"* in point 7(2); and *"whether respondent had unwanted sexual activity because was afraid of what present partner or a partner in the past (...) might do"* in point 7(4).
  - Data which might reveal under certain conditions racial or ethnic origin: *country of birth of mother; country of birth of father* (asked in addition to *country of birth*) in point 5; and *language used for the interview* in point 6.
  - Data relating to suspected offences or criminal convictions: *"experience of crime by types of crime; household related crime; non-conventional crime"* as well as large list of *crime details* (points 1 and 2).
30. Article 8(2) to (4) of Directive 95/46/EC and Article 10(2) to (4) of Regulation (EC) No 45/2001 contain exceptions to the prohibition of processing these categories of data. In the present case, Article 8(4) of Directive 95/46/EC and Article 10(4) of Regulation (EC) No 45/2001, which allow the processing of such data for reasons of "substantial public interest", could apply. This exception is however subject to the provision of "appropriate safeguards" and must be "laid down by law"<sup>23</sup>.
31. As regards this last requirement, the EDPS believes that a Regulation, which will be adopted by the ordinary legislative procedure as required by Article 338 of the

<sup>22</sup> Article 8(5) of Directive 95/46/EC and Article 10(5) of Regulation (EC) No 45/2001.

<sup>23</sup> Article 8(4) of Directive 95/46/EC and Article 10(4) of Regulation (EC) No 45/2001.

Treaty on the Functioning of the European Union, will provide an adequate legal basis for the processing.

32. However, the relevant "substantial public interest" justifying the collection, transmission and dissemination of such detailed and sensitive data is not sufficiently stated in the Proposal. According to its Article 1, the Proposal aims at establishing "*a framework for the development, production and dissemination of comparable statistics on safety from crime*". Yet although the Explanatory Memorandum and the Preamble provide explanations on the relevant political context, they do not make explicit the specific purposes or policy objectives pursued by these statistics. These are only partly mentioned in the Legislative Financial Statement attached to the Proposal<sup>24</sup>.
33. The EDPS would therefore recommend to clearly state in the preamble of the Proposal the substantial public interest justifying the processing, as it has been done in other regulations requiring the processing of health data<sup>25</sup> and setting up European statistics<sup>26</sup>. This is also important for assessing the necessity of the processing of such detailed categories of sensitive data, as they might be excessive and cannot be considered relevant if the purpose is not clearly specified.

## II.5. Security safeguards and anonymisation

34. As regards the need for "appropriate safeguards", the EDPS notes the references to Regulation (EC) No 223/2009, Regulation (EC) No 831/2002 and the European Statistics Code of Practice<sup>27</sup>, which require the protection of confidential data. But, as already pointed out by the EDPS<sup>28</sup>, the fact that data relating directly or indirectly to identifiable natural persons are considered confidential data and treated as such, does not, in itself, ensure that the processing of these data will fully comply with data protection legislation. In this sense, the EDPS welcomes the references to

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<sup>24</sup> Paragraph 1.4.3. of the Legislative Financial Statement states that one of the "*expected results*" of the Proposal are *statistics to underpin the formulation of policies to promote safety and prevent crime*" (p. 23 of the Proposal) and according to Paragraph 1.5.2. the "*added value of EU involvement*" is the "*comparability of results on safety from crime at EU level which will contribute to evidence based policy making*".

<sup>25</sup> Recital 23 of Regulation (EU) No 1235/2010 on pharmacovigilance states that "*The purpose of safeguarding public health constitutes a **substantial public interest** and consequently the processing of personal data can be justified if identifiable health data are processed only when necessary and only when the parties involved assess this necessity at every stage of the pharmacovigilance process*". (Regulation (EU) No 1235/2010 of the European Parliament and of the Council of 15 December 2010 amending, as regards pharmacovigilance of medicinal products for human use, Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, and Regulation (EC) No 1394/2007 on advanced therapy medicinal products, OJ L 348, 31.12.2010, p. 1).

<sup>26</sup> Recital 12 of Regulation (EC) No 1338/2008 (*op.cit.*) states that "*the statistical requirements to which Community action in the field of public health, national strategies for the development of high-quality, accessible and sustainable health care and Community strategy on health and safety at work gives rise, as well as requirements arising in connection with structural indicators, sustainable development indicators and ECHI and other sets of indicators which it is necessary to develop for the purpose of monitoring Community and national political actions and strategies in the areas of public health and health and safety at work, constitute a **substantial public interest***".

<sup>27</sup> Communication of the Commission to the European Parliament and to the Council on the independence, integrity and accountability of the national and Community statistical authorities, COM (2005) 217 final, OJ C 172, 12.07.2005, p. 22.

<sup>28</sup> EDPS Opinions in the field of statistics, cited above.

Directive 95/46/EC and Regulation (EC) No 45/2001 which are made in the Preamble of the Proposal.

35. However, taking into account the sensitive nature of the data to be processed and the fact that statistical purposes might be fulfilled by anonymised microdata<sup>29</sup>, the EDPS emphasises that data should be anonymised as soon as possible in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001<sup>30</sup>. In case that, due to the level of detail that is necessary for the survey, complete anonymisation of the microdata cannot be guaranteed before transmission to Eurostat or before granting access to researchers, and if this is clearly justified, the Proposal should at least strive for anonymisation in the sense of Regulation 831/2002/EC (minimisation of the risks of identification).
36. Confidential data, which in this case would be sensitive data, should only be processed if it is necessary, i.e., if the same scientific purposes cannot be achieved with microdata which has been anonymised in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001 or in which the risks of identification have been minimised in the sense of Regulation 831/2002/EC. Data released to the public should in any case be anonymised in the sense of Directive 95/46/EC, Regulation (EC) No 45/2001 and Article 19 of Regulation (EC) No 223/2009.
37. Until their anonymisation in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001, the data will need to be subject to adequate technical and organisational measures to ensure their confidentiality and security, as required by Articles 16 and 17 of Directive 95/46/EC, and Articles 21 and 22 of Regulation (EC) No 45/2001. These measures should take into account the risks represented by the processing and the sensitive nature of the data to be protected.
38. In addition, Article 27(1) of Regulation 45/2001 provides that "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data Protection Supervisor". Article 27(2) specifies that processing of data relating to "health", "suspected offences", "offences" and "criminal convictions" presents such risks, and thus requires prior checking.
39. As the processing by Eurostat will involve personal data relating to these categories, it will be subject to prior checking<sup>31</sup>. Therefore, in the framework of a prior checking procedure, the EDPS may provide further guidance and specific recommendations with regard to compliance with data protection rules.

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<sup>29</sup> According to the Minutes of the European Statistical Advisory Committee (ESAC) meeting of 29.10.2010, *"there seems to be a persistent misunderstanding, regarding the concept of confidential data; academic researchers are interested in anonymised micro-data, they do not seek access to confidential data. Thus what is being sought is the release of anonymised individual level data"*. (Minutes of the 6th meeting of the ESAC of 29.10.2010, p.3, available on [http://epp.eurostat.ec.europa.eu/portal/page/portal/esac/documents/6th%20ESAC\\_Minutes.pdf](http://epp.eurostat.ec.europa.eu/portal/page/portal/esac/documents/6th%20ESAC_Minutes.pdf), last accessed on 17.08.2011).

<sup>30</sup> See paragraphs 15 and 16 of the present Opinion.

<sup>31</sup> It is to be noted that the data processing carried out by Member States might also be subject to prior checking by national or regional data protection authorities under national data protection laws adopted pursuant to Article 20 of Directive 95/46/EC.

40. Finally, Article 8(2) of the Proposal states that practical arrangements for the data coding scheme and for exchanging microdata will be adopted by means of implementing acts. The EDPS would welcome a request for consultation as regards these practical arrangements.

## **II.6 Information to be provided to data subjects**

41. The EDPS reminds that, as the data will be directly collected by Member States from respondents, Article 10 of Directive 95/46/EC will be applicable. Therefore, data subjects will have to be informed, at least, on the voluntary nature of the survey and the possibility to refuse to reply to one or more questions; the purposes of the processing operation for which the data are intended; the identity of the controller; the fact that the data will be transmitted to Eurostat, who might grant access to researchers; and the existence of the rights of access to, rectification, blocking and erasure of the data; unless the processing falls within the exceptions to these rights provided by national data protection laws.

## **III. CONCLUSIONS**

42. The importance of the development, production and dissemination of statistical data has been repeatedly acknowledged by the EDPS. Nevertheless, the EDPS is concerned about the processing of sensitive data in this specific survey and the possibility of identifying victims and aggressors of physical and sexual violence. Therefore, he recommends, in particular, the following:

- The description of the variables "identification of respondent" and "who did it" should be modified to avoid unnecessary *direct* identification of data subjects. In addition, in order to also avoid *indirect* identification, the EDPS recommends anonymising the microdata as soon as possible in the sense of Recital 26 of Directive 95/46/EC and Recital 8 of Regulation (EC) No 45/2001 (no possibility of identification, taking into account all the means likely reasonably to be used).
- In case that due to the level of detail that is necessary for the survey, anonymisation of the microdata in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001 cannot be guaranteed before transmission to Eurostat or before granting access to researchers, data which are anonymised in the sense of Regulation (EC) No 831/2002 (minimisation of the risks of identification) might be processed.
- Confidential data should only be used if it is necessary, i.e., if the same purposes cannot be achieved using anonymous microdata data, and if this necessity is clearly justified in the Proposal.
- In these cases, the "substantial public interest" justifying the processing of sensitive data should be further clarified and explicitly stated in the text of the Proposal. It should also be ensured that all the categories of personal data to be collected and processed are relevant and not excessive for this specific purpose. Data released to the public should in any case be anonymised in the sense of

Directive 95/46/EC, Regulation (EC) No 45/2001 and Article 19 of Regulation (EC) No 223/2009.

- Until data are anonymised in the sense of Directive 95/46/EC and Regulation (EC) No 45/2001, adequate technical and organizational measures to ensure the confidentiality and security of personal data processed should be implemented, according to Articles 16 and 17 of Directive 95/46/EC and Articles 21 and 22 of Regulation (EC) No 45/2001, taking into account the risks represented by the processing and the sensitive nature of the data to be protected. In addition, the processing will be subject to prior checking by the EDPS.
- The EDPS reminds that data subjects will have to be adequately informed before the collection of their data in accordance with national data protection laws.
- Finally, the EDPS would welcome a request for consultation as regards the review of Regulation (EC) No 831/2002 and the practical arrangements for the data coding scheme and for exchanging microdata that will be adopted by means of implementing acts.

Done in Brussels, 19 September 2011.

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor