



# EDPS NEWSLETTER

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## **1. EDPS comments on EU border management package**

On 3 March 2008, the EDPS issued first comments on three Communications presented by the European Commission on 13 February 2008 to develop the EU's external border management.

The comments focus on those measures raising data protection concerns, in particular the creation of an entry/exit system that would include the recording of travellers' information, the use of biometric data and possibly the creation of a large-scale EU database to store these data. The EDPS emphasizes that, although driven by a legitimate goal - i.e. making EU borders more secure while facilitating travel for bona fide travellers - the proposed measures demand careful scrutiny as they involve large processing operations of personal data, with significant privacy intrusions.

The EDPS' comments include the following general remarks:

- **piling up of legislative proposals in the area:** the EDPS is concerned that far-reaching proposals intended to contribute to the monitoring of travellers (e.g. Second-generation Schengen Information System (SIS II), Visa Information System (VIS), review of Eurodac Regulation, etc.) are succeeding each other rapidly, making it difficult for stakeholders to have a comprehensive overview;
- **heavy reliance on biometric data:** proposed systems, such as the entry-exit system, rely heavily on biometrics. Although offering considerable advantages, the use of biometrics presents inherent weaknesses (mainly in terms of accessibility and accuracy) that will need to be properly addressed;
- **lack of evidence supporting the need for new data systems:** the immigration figures contained in the impact assessment are based mainly on estimates or samples, not on undisputable data. Infringements on the privacy of individuals should be based on solid grounds, clearly demonstrating their need and how extensive they should be;
- **lack of evaluation of existing systems:** a substantial number of databases in the area of border control are already planned or in place (e.g. SIS, VIS, Eurodac, etc.). An evaluation of the existing systems should be carried out before setting up new ones.

The EDPS will publish formal opinions at a later stage, following consultation from the European Commission on precise proposals.

🔗 [EDPS comments \(pdf\)](#)

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## **2. EDPS Opinion on Internal Market Information System**

On 22 February, the EDPS issued an Opinion on the new Commission Decision on the data protection aspects of the Internal Market Information System ("IMI" and "IMI Decision" of 12 December 2007).

This Opinion is part of the broader EDPS efforts to improve the data protection safeguards for this large-scale system operated by the European Commission to facilitate information exchanges between competent authorities in Member States in the area of internal market legislation.

The EDPS supports the establishment of this electronic system for the exchange of information. Nevertheless, establishment of a centralized electronic system also creates certain risks. These include that more data might be shared and more broadly than strictly necessary for the purposes of efficient cooperation, and that data, including potentially outdated and inaccurate data, might remain in the electronic system longer than is necessary. The security of a database accessible in 27 Member States is also a sensitive issue, as the system is only as safe as the weakest link in the network permits it to be.

In the Opinion, the EDPS questions the adequacy of the legal basis chosen for the adoption of the IMI Decision. The EDPS recommends that the Commission replaces the IMI Decision by a legal instrument that fulfils the requirement of legal certainty. As an ultimately most sound solution, the EDPS suggests adopting a separate legal instrument for the IMI-system, at the level of the Council and the European Parliament, similar to the Schengen Information System, Visa Information System and other large-scale systems.

Additionally, the Opinion makes a number of suggestions on the provisions regulating the data protection aspects of IMI. These recommendations relate to:

- transparency and proportionality;
- joint control and allocation of responsibilities;
- notice to data subjects;
- rights of access, objection, and rectification;
- data retention, security measures and joint supervision.

🔗 [EDPS Opinion on Internal Market Information System \(pdf\)](#)

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## **3. Google / Doubleclick Merger and Data Protection Issues**

On 11 March 2008, the European Commission cleared under the EU Merger Regulation the acquisition of the company DoubleClick - a company providing online advertising technology - by Google, the owner of one of the major internet search engines. These companies manage vast databases containing personal data on both the searching and the surfing behaviour of internet users, and the combined use of these databases raises delicate and complex issues relating to the right to the protection of personal data.

At the end of January, the EDPS contributed to a hearing organised by the LIBE Committee of the European Parliament on data protection on the Internet. Furthermore, as an advisor to EU institutions on all matters relating to data protection, the EDPS exchanged letters with Competition Commissioner Kroes. His staff met with the relevant staff at the Commission and provided expertise on data protection issues that may arise in competition cases such as this merger.

In this context, the EDPS welcomes that the Commission explicitly clarified in the [press release](#) that its decision is based exclusively on the EU Merger Regulation and is without prejudice to the merged entity's obligations under the EU and national data protection legislation.

Furthermore, the EDPS, as a member of the Article 29 Working Party, is actively contributing to a paper on data protection and search engines, which is expected to be adopted by the Working Party in April 2008.

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#### **4. Judgment in the case of Promusicae**

On 29 January 2008, the Court of Justice of the EU rendered an important judgment in the area of data protection in Case C-275/06, in a case referred to the Court by a commercial court in Madrid.

Promusicae is a Spanish non-profit-making organisation of producers and publishers of musical and audiovisual recordings. It requested Telefónica to disclose the identities and physical addresses of certain persons whom it provided with Internet access services, whose IP address and date and time of connection were known. It sought disclosure of this personal information in order to be able to bring civil proceedings against the persons concerned.

In its judgment, the Court points out that the case raises the question of the need to reconcile the requirements of the protection of different fundamental rights, namely the right to respect for private life on the one hand and the rights to protection of property and to an effective remedy on the other.

The Court gave some indications on how to strike the right balance between these rights, also by interpreting Article 15 of the ePrivacy-Directive 2002/58.

It concludes that EU legislation does not oblige service providers to release data in the context of civil procedures.

🔗 [Case C-275/06](#)

## **5. Independence of data protection authorities - Commission v. Germany case**

The EDPS requested to intervene in an infringement procedure before the Court of Justice on the implementation of the Data Protection Directive 95/46/EC by Germany (Case C-518/07).

This case was brought before the Court by the European Commission because it is of the opinion that the data protection authorities in the German Länder lack the independence that is required by the Data Protection Directive.

According to the Commission it is incompatible with Article 28(1) of the Directive to make the authorities which are responsible for the monitoring of data processing in the private sector subject to technical, legal or administrative supervision by the State. They should not be subject to influence from other public authorities or to influence from outside of the State administration.

The EDPS supports the position of the Commission in this case.

☞ [Case C-518/07](#)

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## **6. 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 (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.

### **6.1. Identity Management Service - Commission**

On 6 February 2008, the EDPS issued his Opinion on a notification for prior checking related to the processing of personal data that DG Informatics (DIGIT) carries out to operate the Identity Management Service (IMS).

The IMS is a service primarily used to manage user populations and their rights in the context of information services. In the off-line world, this situation would be similar to that of a security company hired by different companies to check the identity and access entitlements of each individual who wishes to enter the premises of such companies.

In particular, IMS facilitates the authentication and access control of users to different Commission information services, which are managed by different Directorates General. In doing so, IMS customizes user's interfaces according to user's individual characteristics. IMS is used for Commission staff as well as for personnel of other organizations and members of the public.

The opinion concludes that the Commission has substantially complied with Regulation 45/2001. Nevertheless, the EDPS made recommendations regarding:

- the lawfulness of the processing, and suggests the need to obtain users' consent to process data processed through IMS for customization purposes (interactively and on screen, for example, using the technique of a "pop up" window);
- retention periods, in particular, and suggests shortening the data retention deadlines for log files;
- accuracy of the data and in particular recommends putting in place a system that ensures the accuracy of personal information of non Commission staff members who have been registered in IMS by third parties such as their employers.

☞ [EDPS Opinion on IMS \(pdf\)](#)

## 6.2. Control system by an iris scan - European Central Bank

On 14 February 2008, the EDPS released a prior checking Opinion on the setting up of an access control system which scans the iris of the European Central Bank (ECB) staff members, as well as external individuals accessing highly secured areas within the institution. The system works together with a pre-existing access control system based on a contactless badge.

Although directly applicable only to the ECB, the EDPS Opinion gives more broadly relevant guidance as to the appropriate features of a privacy compliant biometric system. In particular, the EDPS refers to the following:

- **impact assessment:** given the highly sensitive nature of biometric data, the execution of a targeted impact assessment evaluating the reasons that justify the use of a biometric system is essential before the setting up such a technique. In this particular case, the EDPS recommends that the ECB carries out an impact assessment reconsidering the decision taken in terms of technological choices, including a viable timetable to implement changes in the current iris scan system
- **"one to one" search mode:** the EDPS calls upon the ECB to consider the implementation, in due time, of a "one to one" search mode system where biometric data would be stored in chips rather than in a central database as with the current system.
- **fall back procedures:** as biometric systems are neither accessible to all nor completely accurate, readily available fallback procedures shall be implemented. Such procedures would enable to respect the dignity of persons who could not be enrolled or could have been wrongly identified and avoid transferring the burden of the system imperfections onto them.

In addition to the above, the EDPS recommends that the ECB enacts a legal instrument providing the legal basis for the processing operations in order to set up an access control system based on the use of biometrics.

☞ EDPS Opinion on ECB iris scan system ([pdf](#))

### 6.3. PowerLab - Commission's Joint Research Centre

On 17 January 2008, the EDPS issued a prior checking Opinion on the PowerLab software used by the Joint Research Centre (JRC) of the European Commission.

PowerLab is a software environment used for the management of the work cycle of clinical and radio-toxicological laboratories at the JRC. It is applied in relation to laboratory tests needed during pre-employment, periodic and other occupational risks related medical visits. It also includes production and/or storage of the respective test reports.

The PowerLab software environment is interfaced to the MeDeL software environment used for the management of occupational health related activities of the DG JRC Medical Service (this is being analysed in a separate prior checking opinion).

The main recommendations provided in the PowerLab prior checking opinion relate to:

- the necessity to comply with the professional secrecy obligation by all laboratory staff;
- the obligation not to use the data received for any further purposes than the one for which they were transmitted;
- the need to provide complete information about the possible data recipient; the legal basis of the processing, the exact purpose of processing, as well as for the correct contact details of the EDPS.

☞ EDPS Opinion on PowerLab ([pdf](#))

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## **7. Conference on data protection and law enforcement**

On 26 and 27 May 2008, the EDPS and the European Law Academy (ERA) will jointly organise a conference in Trier on Data Exchange and Data Protection in the Area of Freedom, Security and Justice.

This seminar aims to give an overview of the relevant EU legislation. The analysis and discussion will focus on key documents on data exchange such as the Treaty of Prüm and the most recent decision on integrating it into the EU legal framework. In the field of data protection, the seminar will deal in particular with the framework decision on data protection in the framework of police and judicial cooperation in criminal matters.

Other topics will be the increasing role in law enforcement of data collected by private companies (airlines, banks, telecoms operators), technological developments that facilitate the collection of data, as well as the institutional framework for data protection. A final session will deal with the future, under the Lisbon Treaty.

☞ Programme and Registration form can be found on the [ERA website](#).

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## **8. Data Protection Day: EDPS raising awareness among EU staff**

The Member States of the Council of Europe and the European institutions celebrated Data Protection Day for the second time on 28 January 2008. This date marks the anniversary of the Council of Europe's Convention 108, the first legally binding international instrument related to data protection.

The event gave the EDPS the opportunity to focus on raising awareness among MEPs and EU staff about their rights and obligations regarding data protection. A one-day information stand was set up in the European Parliament, the European Commission, and the Council premises. The EDPS outlined his supervisory, consultative and cooperative roles, as well as his achievements and current activities. The EDPS stand was set up in cooperation with the Data Protection Officer of the relevant institution, who presented their activities as well.

Overall, the EDPS staff welcomed about 250 visitors. Various information materials presenting the EDPS' work were distributed, together with a range of promotional items. Visitors also had the opportunity to test their knowledge of data protection issues in a short quiz and to take part in a prize draw.

☞ [European Data Protection Day - 28 January 2008](#)

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## **9. New Data Protection Officers**

Each EC 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:

- Maria ARSENE, European Economic and Social Committee (EESC) (taking over from Sofia FAKIRI)
- Elena FIERRO SEDANO, Executive Agency for Competitiveness and Innovation (EACI)

☞ See full list of [DPOs](#).

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## **10. 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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