



EDPS NEWSLETTER

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1. EDPS comments on ePrivacy

On 2 September 2008, in response to a petition of the Chairman of the LIBE Committee, the EDPS adopted Comments on selected issues that arose in the context of the IMCO Report on the Review of Directive 2002/22/EC (Universal Service) and Directive 2002/58/EC (ePrivacy). Additional guidance was provided, at the request of the rapporteur of the IMCO Report, through a letter of 8 September 2008.

In his comments, the EDPS made positive remarks on the amendments pursuant to which companies operating on the Internet will be covered under the scope of the obligation to notify security breaches. However, he expressed concern about *ad hoc* amendments which, particularly taken as a whole, would weaken the protection of personal data and privacy of individuals.

The EDPS comments include the following recommendations:

- **setting up conditions under which IP addresses will be deemed personal data:** the EDPS recommends to delete this provision insofar as it is unnecessary and unjustified. The existing definition of personal data in Art 2(a) of the Data Protection Directive as interpreted by the Working Party 29 and judicial review provide the necessary tools to assess whether, in a given case, IP addresses are personal data. The EDPS suggests that an amendment requiring a study to be carried out by the European Commission on the subject would provide additional guidance on IP addresses in specific situations;
- **processing of IP addresses for security purposes:** existing legislation covers this type of data processing, rendering this provision pointless. However, if adopted, it should be ensured that its language is tightened to avoid its use for purposes that are not purely security related;
- **monitoring of the Internet for the purposes of creating a "3 Strikes approach scheme":** it should be clarified that cooperation procedures created pursuant to the Universal Service Directive do not allow for a systematic and proactive surveillance of Internet usage. The language of some amendments should also be redrafted to the same effect. The EDPS also points out that data protection principles are not respected in instances that entail widespread, systematic proactive monitoring of the Internet of alleged copyright infringers.

🔗 EDPS comments on ePrivacy ([pdf](#))

2. EDPS opinion on European Criminal Records Information System (ECRIS)

On 16 September 2008, the EDPS adopted an opinion on a proposal for a Council Decision on the establishment of an electronic European Criminal Records Information System (ECRIS). The Decision is part of a package designed to help EU Member States to share the criminal records of their citizens and exchange information on past criminal convictions.

The EDPS supports the proposal for the establishment of ECRIS, provided that a number of considerations are taken into account. In particular, he points out that additional data protection guarantees should compensate the current lack of a comprehensive legal framework on data protection in the field of cooperation between police and judicial authorities. He therefore emphasises the need for effective coordination in the data protection supervision of the system, which involves authorities of the Member States and the Commission as provider of the common communication infrastructure.

The EDPS opinion also includes the following recommendations:

- a reference to a **high level of data protection** should be made in the Decision as a precondition for the **implementing measures** to be adopted;
- the **responsibility** of the Commission for the **common infrastructure** of the system, as well as the applicability of Regulation 45/2001, should be **clarified** to better ensure legal certainty;
- the **Commission** should also be responsible for the **interconnection software** of ECRIS - and not Member States as provided in the proposal - in order to improve the effectiveness of the exchange and to allow better supervision of the system;
- the use of **automatic translations** should be clearly defined and circumscribed, so as to favour mutual understanding of criminal offences without affecting the quality of the information transmitted.

↪ EDPS opinion on ECRIS ([pdf](#))

3. EDPS opinion on transparency of debtor's assets

On 22 September, the EDPS adopted an Opinion on the Commission Green paper on the Effective Enforcement of Judgements in the European Union: the Transparency of Debtors' Assets.

The Green paper focuses on possible measures at EU level that can be adopted with a view to improving the transparency of debtor's assets and the right of creditors to obtain information in order to effectively enforce their rights. The Green paper analyzes in detail the current situation, as well as a broad range of possible options to reach these objectives whilst respecting the principles for the protection of debtor's privacy pursuant to the provisions of the Data Protection Directive 95/46/EC.

The EDPS opinion is mainly aimed at providing guidance with regard to data protection issues that may arise in possible legislative initiatives stemming from this Green paper. It also complements the public consultation launched by the Commission in March.

In particular, the EDPS welcomes the Green paper and the broad consultation to which it has been submitted, and recommends the following:

- paying specific attention to the **legal grounds** for enforcement authorities to process personal data;
- ensuring **proportionality** in storing and disclosing information on debtors;
- defining **exceptions** to the purpose limitation principle;
- guaranteeing **information** to the debtors, **rights** of data subjects, and **security** of processing.

The EDPS will remain available to provide informal comments on draft proposals arising from this Green paper and expects to be consulted on any relevant adopted legislative proposal.

↪ EDPS opinion on debtor's assets ([pdf](#))

4. EDPS Opinion on the Commission IMI Decision - Follow-up

In July 2008, the EDPS and the European Commission agreed on further steps towards developing a comprehensive data protection framework for the Internal Market Information System ("IMI"), a large-scale IT system operated by the Commission to facilitate information exchanges between competent authorities in Member States in the area of internal market legislation.

The agreement is outlined in an exchange of letters and follows on from the 22 February 2008 EDPS opinion on the Commission Decision on the data protection aspects of IMI ("**IMI Decision**"). In the 22 February opinion, the EDPS recommended adopting a separate legal instrument for the IMI-system at the level of the Council and the European Parliament. Additionally, the opinion called for comprehensive regulation of the data protection aspects of IMI.

There is now agreement that the Commission will adopt a set of data protection guidelines on IMI in the form of a Commission Recommendation or Communication to address issues that were left out from the IMI Decision. Work has already begun.

Some differences of view remain regarding the long term plans. The Commission's approach is to first assess the effect of the guidelines and then, within a "reasonable period of time", to evaluate their practical effect and decide whether or not additional Community legislation would be appropriate. On the other hand, the EDPS emphasises that as IMI will gradually broaden its scope to additional areas of internal market legislation and as this will lead to increased complexity and an increasing number of participating authorities and data exchanges, it will be necessary to provide for specific data protection safeguards in legally binding Community legislation (Council and Parliament Regulation).

Despite these differences, the EDPS believes that the Commission Recommendation is a good first step towards developing a comprehensive legal framework for IMI. Additional Community legislation may then be enacted when further experience is gained with IMI, but in any event, before

IMI's complexity, its user base and the number of information exchanges that occur within it, reach a critical mass.

☞ EDPS's answer to the Commission's letter ([pdf](#))

5. EDPS consultation on access to public documents

The EDPS has received a consultation from the European Commission's data protection officer (DPO) related to a request for access to public documents containing personal data.

In the framework of a pending case before a Member State Supreme Administrative Court, one of the parties has requested the Commission to provide him *“with the relevant documentation that shows the employment status of [Ms X] in the Organization of the E.C., specifically if she is a full time employee in a General Directorate of the E.C. and the commencement date of her employment”*, as well as whether Ms X was employed by the Commission on four specific dates (between December 2005 and May 2006).

The Commission refused to give access to this information, invoking the application of Article 8 of Regulation (EC) No. 45/2001. As a consequence of this refusal, the person who requested access to the documents submitted a complaint to the European Ombudsman. He adopted a proposal for a friendly solution to the case suggesting *“that the Commission could reconsider its contested refusal and provide the complainant with the documentation or information he requested unsuccessfully, unless it invokes valid and adequate grounds for not doing so”*.

In this context, the European Commission's DPO submitted a consultation to the EDPS.

The EDPS conducted an analysis taking into account the methodology described in his background paper “Public access to documents and data protection” ([pdf](#)). This paper provides an indicative list that may serve as a guidance to identify in which situations the privacy of an individual may be affected. The present case could not be identified with any of the examples mentioned therein. Furthermore, the EDPS has not been provided with and does not see any other appropriate reason why the privacy and integrity of the data subject would be at stake, and in any case why the interest to have her data protected would not be overridden by the interest of access to public documents.

The EDPS is of the opinion that, in this case, the access to public documents would not undermine the protection of privacy and the integrity of the data subject, and therefore, the exception stipulated in Article 4.1(b) of Regulation (EC) No. 1049/2001 cannot be applied.

☞ EDPS consultation ([pdf](#))

6. EDPS decision on the right of access to and rectification of medical file

On 14 November 2007, an employee of the European Parliament submitted a complaint to the EDPS claiming that she was denied to exercise her right of access and rectification to her medical file by the Sick Leave Management Unit of the Parliament.

In his legal analysis, the EDPS gave *inter alia* a non-restrictive interpretation of Article 13 of Regulation (EC) No. 45/2001 (right of access) and held that the complainant did not only have the right of access to her medical file but also the right to obtain a copy or photocopy without any limitation in terms of copies of her own medical data. With regard to the right of rectification of her data, the EDPS stressed that although it is impossible to rectify medical appreciations, the complainant should have the right to keep her medical file up to date by adding other medical opinions. As to the complainant's request to transfer her medical file to the doctor appointed by her, the EDPS considered that the necessity of such transfer was demonstrated by her explicit consent, which also proved that it could not have prejudiced the data subject's legitimate interests.

The EDPS concluded that the Parliament:

- had not respected the 3 month deadline foreseen in Article 13 of the Regulation according to which the complainant should have been granted access to her medical file;
- had refused to allow the complainant to make photocopies of her medical file without a legal basis contrary to Article 13;
- had not granted the complainant the right to rectify her data so that all data in her medical file are complete and kept up to date, in violation of Articles 14 and 4(d); and
- had refused to transfer the complainant's complete medical file to the doctor appointed by her in infringement of Article 8 (transfer of data).

In the light of the above, the EDPS urged the Parliament to ensure that the complainant's rights are fully respected.

The EDPS decision on this complaint was of a particular interest for the Parliament's trade union SFIE which sent an e-mail to the staff of the European Parliament citing the EDPS recommendations.

7. 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.

7.1. Flexitime interface at DG ENTR - Commission

On 15 September 2008, the EDPS adopted a prior-check opinion on the processing operations relating to the flexitime specific to DG ENTR. In this notification relating to flexitime, DG ENTR intends to implement a button interface in working PCs to collect presence data.

In his analysis, the EDPS considers that the purpose of the notified treatment by DG ENTR does not fully meet the purpose of flexitime, as derived from the analysis of the time management system (TIM) of the Commission and opposes the sending of e-mails to a functional mailbox of the heads of units. However, the EDPS recognises that the idea to have a user friendly interface to store timestamps into TIM, without the need to use the graphical user interface of SYSPER2-TIM, should not be prevented.

↪ EDPS opinion ([pdf](#))

7.2. Interface Flexitime/PersonaGrata - Council

On 16 September 2008, the EDPS adopted a prior-check opinion on the processing operations relating to the interface between the Flexitime - PersonaGrata systems of the Council. This prior-check is the first one based on Article 27 § 2 (c) of Regulation (EC) No. 45/2001 requiring the prior check of *"processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes treatment allowing linkages not provided for under national legislation or community between data processed for different purposes"*.

The interface between Flexitime and PersonaGrata aims to avoid the duplication of data considered as equivalent between the two databases with the possibility of errors that it involves. It will also ensure consistency between the databases, improve the efficiency of personnel management in services and units as well as provide more reliable information. The purpose of the interface is designed to import data from the flexitime system into the PersonaGrata database. The EDPS considered that the recording of data was not equivalent and analysed this aspect further.

The EDPS' main recommendations relate to data which were not considered as equivalent (recordings), to the compliance of the interface with the rules set regarding flexitime data (among other things regarding the information of the data subjects and the period of data retention), in order to maintain consistency between cases. The EDPS also calls for a specific back-up procedure in the context of this interface.

↪ EDPS opinion (FR) ([pdf](#))

7.3. Council - Journalists' accreditation

On 16 September 2008, the EDPS issued a prior-check opinion regarding the accreditation of journalists who participate at European Council meetings.

The purpose of the processing under analysis is to enable the Security Office to conduct a security assessment of members of the press participating at summits. Those registered may, if necessary, receive a badge granting them access to the security perimeter established around the building where the summit takes place.

The management of information concerning journalists for the purpose of security check is done by collecting the information from a form available on a secure site (HTTPS) of the Council's Intranet.

The system administrator then automatically creates lists of requests for "screening", which are sent to the various security services (Belgian National Security Authority -NSA-, or Presidency NSA). The lists created for this purpose contain the name, surname, date of birth and nationality of the person. The results are communicated by NSAs to the responsible persons of the Security Office, first by telephone (for the sake of efficiency), then by official mail. They are limited to a "positive" or "negative" screening. However, according to the Decision of the Council's Secretary General No. 198/03, the director of the Council's Security Office may exceptionally decide otherwise during the summit (e.g. in cases of inappropriate behaviour).

In his opinion, the EDPS considers that the proposed processing does not appear to infringe the provisions of Regulation (EC) No. 45/2001, provided that the comments made above are taken into account. This means in particular that:

- a proportional conservation period is maintained, having regard to the purpose of processing;
- any person receiving and processing data be informed that she will not be allowed to use them for other purposes;
- the reference "It is important to note that applicants provide data on a voluntary basis and that no one is obliged to give" is not included in the information notice;
- an *addendum* to clause 16 of the contract is added to clarify that not only the data included in the contract should be processed in accordance with Regulation 45/2001, but also all those processed during the execution of the contract.

↪ EDPS opinion (FR) ([pdf](#))

8. Recent EDPS speeches

Peter Hustinx's presentation on ePrivacy in European Parliament

On 17 September 2008, Peter Hustinx presented his views at a hearing organised by Members from different political groups in the European Parliament. The topic of the hearing was the ePrivacy Directive, with special focus on the amendments adopted in the IMCO Report on the Review of the Universal Service and ePrivacy Directives.

Peter Hustinx exchanged views with Members of the European Parliament and other stakeholders about issues such as security breach notification, the processing of IP addresses and standardization for the purposes of designing privacy-friendly products. He commented on some amendments that, if left unmodified, could foster the surveillance of Internet usage (see also point 1).

9. Forthcoming events

9.1 International conference of data protection and privacy Commissioners (Strasbourg, 15-17 October 2008)

The 30th International Conference of Data Protection and Privacy Commissioners will take place in Strasbourg and Baden Baden from 15 to 17 October 2008. Peter Hustinx will be chairing the final session on "Limits and new instruments of regulation for the future of privacy" and Joaquín Bayo Delgado (Assistant Supervisor) will also be attending.

The theme of the conference, jointly organized by the French and the German data protection authorities, is "Protecting privacy in a borderless world", pointing to major challenges arising from the fact that privacy in an international context is subject to powerful technological, political, legal and economic developments.

Participants will include representatives of the public sector, the supervisory bodies, companies, consumer associations and those that defend liberties

☞ [More information on the conference](#)

9.2 ICT event 2008 (Lyon, 25-27 November 2008)

The EDPS will have a stand during the ICT 2008 conference organised by the European Commission and hosted by the French presidency. This event is considered to be Europe's biggest research event for information and communication technologies.

The EDPS found it a very promising opportunity for fostering the concept of "privacy by design" with RTD stakeholders and for providing complementary information on his related policy paper issued earlier this year

☞ EDPS policy paper on his role in EU RTD ([pdf](#))

☞ [More information on ICT 2008 event](#)

10. 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 (EC) No 45/2001.

Recent appointment:

- Liia KAARLOP, European Training Foundation (ETF)

☞ See full list of [DPOs](#).

11. 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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