



European Data Protection Supervisor

NEWSLETTER

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Content:

1. [Data retention - EDPS Opinion](#) on the Commission proposal for a Directive
2. [SIS II - EDPS Opinion](#) on three related proposals
3. Draft Framework Decision on [Data Protection in the Third Pillar](#)
4. EDPS workshop on [EURODAC supervision](#)
5. [PNR/USA](#) - EDPS at oral hearing in the Court of Justice
6. News on EDPS [prior checking](#) of processing of personal data
7. EDPS workshop on [Data protection in International Organisations](#)
8. 27th [International Conference on Privacy and Personal Data Protection](#)
9. [Paper](#) - Data Protection in the Administration of the European Community
10. [Colofon](#)

1. Data retention: EDPS Opinion on the Commission proposal for a Directive

Retention of traffic data of telecommunications has been high on the political agenda during the last months. When presenting his Opinion on the Commission proposal for a Directive, at a well attended press conference, Peter Hustinx, the EDPS, stated:

"This is an incredibly sensitive issue. The Directive has a direct impact on the protection of privacy of EU citizens and it is crucial that it respects their fundamental rights, as settled by the case law of the European Court of Human Rights. A

legislative measure that would weaken the protection is not only unacceptable but also illegal".

Although not being convinced of the necessity of the proposed Directive, Hustinx presented his view on its main elements, stating that for it to be acceptable, it needs to provide, *inter alia*:

- strictly limited retention periods which reflect the needs of law enforcement.
- that a limited number of data are stored, which reflect the needs of law enforcement and ensure that access to content data is not possible.
- adequate safeguards and adequate technical infrastructure.
- that data subjects are able to exercise their rights and that data protection authorities are enabled to supervise effectively.

The Opinion contains a number of constructive and concrete proposals to ensure respect for fundamental rights. It also mentions that co-decision of the Council and the Parliament is the only acceptable way forward.

[click to read the [Opinion](#), or the [press release](#)]

The Opinion was well received among the interlocutors. The proposal for a Directive has been debated several times in the European Parliament's LIBE committee, which organised a workshop on the topic on 6 October. There, Joaquín Bayo Delgado, the assistant EDPS, emphasized need for provisions on access and further use of traffic and location data by law enforcement agencies. The debate is now focusing on the existence of a legal basis to include such provisions in the first pillar Directive and the relationship with the proposal for a Framework Decision on Data Protection in the Third Pillar (see below).

2. SIS II - EDPS Opinion on three related proposals

A new "second generation" Schengen Information System (SIS II) will replace the current one, allowing for the enlargement of the Schengen area to the new Member States.

SIS II will introduce new functionalities - such as the interlinking of alerts, but also include new categories of data - such as biometric data (fingerprints and photographs). A widened access to the system is foreseen, providing for authorities to also have access to data "for information".

When presenting his Opinion on 19 October, Peter Hustinx welcomed the three proposals related to SIS II, albeit with a number of reservations relating to the increased risks for the people concerned. One of his concerns is that there seems to be an overestimation of the reliability of biometrics. Another concern is that up to a third of the data in the current system are said to be incorrect or outdated, which led Hustinx to underline the importance of the rights of the people concerned (the data subjects).

[click to read the [Opinion](#), or the [press release](#)]

3. Draft Framework Decision on Data Protection in the Third Pillar

On 4 October, the Commission presented its long awaited and important proposal for a Draft framework decision on data protection in the third pillar. The EDPS welcomes the proposal, as a tailor-made legal framework for protection of personal data in the area of law enforcement, which currently does not exist at the EU-level. The EDPS will study it thoroughly and present an Opinion within the weeks to come.

The proposal is linked to another, which deals with the Principle of availability (as introduced in the Hague program), presented by the Commission on 12 October. It focuses on the principle that the information available for law enforcement authorities in one Member State should also be available for the equivalent authorities in other Member States.

4. EDPS workshop on EURODAC Supervision

On 28 September, the EDPS hosted a first cooperation meeting with Data Protection Authorities (DPA) of the Member States and some non-Member States. All DPAs were represented. The meeting started with an exhaustive presentation by the Commission on Eurodac and the last annual report. A round table discussion followed. The meeting was a very welcome exchange of information and an interesting occasion to discuss a common approach for supervision.

The discussions resulted in a plan of action for the future supervision of Eurodac. The DPAs and the EDPS decided to focus on a short list of crucial issues which directly concern the data subjects. These subjects will be investigated at the national level, and the results will be discussed at a meeting next spring. A high level of cooperation will also be facilitated by the EDPS sharing the results of his first inspection of the Eurodac Central Unit.

Eurodac is an information system which is established (by Council Regulation 2725/2000) for the comparison of fingerprints of asylum applicants and illegal immigrants. It facilitates the application of the Dublin Convention, which makes it possible to determine the State responsible for examining the asylum application.

The EDPS is the supervisory authority for Eurodac's Central Unit, and also monitors the lawfulness of the transmission of personal data from the Central Unit to the Member States.

The competent authorities in the Member States, in turn, monitor the lawfulness of the processing of personal data, including their transmission to the Central Unit.

Supervision therefore needs to be exercised, in close cooperation, at both levels.

5 PNR/USA: EDPS at oral hearing in the Court of Justice

On 18 October, the EDPS had his views presented at an oral hearing in the Court of Justice, in two cases initiated by the European Parliament against the Council and the Commission and dealing with the processing and the transfer of PNR-data (Passenger Name Records) by air carriers to the United States' Department of Homeland Security, Bureau of Customs and Border Protection.

The EDPS has previously submitted written observations to the Court, in support of the conclusions of the European Parliament, that the Commission Decision and the Agreement with the United States of America should be annulled.

When granting the EDPS the right to intervene, the Court of Justice confirmed, in its Orders, a broad interpretation of the EDPS' mission - to ensure a high level of data protection in all policies of the Community institutions and bodies.

The Opinion of the Advocate General will be presented on 22 November.

[Click to read the [press release](#) or the [Court Orders](#) of 17 March]

6. News on EDPS prior checking of processing of personal data

Certain processing operations of the EU institutions and bodies which are likely to present specific risks with respect to the rights and freedoms of the data subjects are subject to prior checking by the EDPS. This serves to establish whether or not the processing is in compliance with Regulation 45/2001. The EDPS Opinion is, in general, published on the website. Two recent prior checks are:

Manager Desktop, which is a program at the European Investment Bank that allows hierarchical superiors on-line access to professional data that they need to manage staff under their responsibility (with the exception of personal data such as address, place of birth, family circumstances or data relating to dependants).

The EDPS Opinion underlines the importance of the principle of proportionality - some data appear excessive and have to be deleted. The Opinion also puts forth that data stored for historical, statistical or scientific reasons have to be rendered anonymous when the professional relationship ceases.

Compass, which is the Court of Auditors' appraisal system. The "staff report", on the ability, efficiency and conduct of a staff member in the service is to be drawn up each year. The appraisals are based on the requirements, as defined in the respective job description, and on the objectives, discussed and agreed between the appraiser and the appraised, before the start of the reference period and on the evaluation of his/her competences, deliverables and performance.

The EDPS Opinion emphasises the importance of properly informing the officials about the relevant data protection aspects, as foreseen within Articles 11 and 12 of the Regulation. The Opinion also mentions that the Court of Auditors has to strengthen the security system in connection with e-mails sent and exchanged during the appraisal procedure. It furthermore mentions that access by the Appeals Committee is restricted only to the relevant data, and that this should be guaranteed by putting an appropriate procedure in place.

Click [here](#) for the index with the full text versions of the Opinions.

7. EDPS workshop on Data protection in international organisations

With assistance from the Swiss Federal Data Protection Commissioner, the EDPS, together with the OECD and the Council of Europe, organised a workshop in Geneva, on 12 September, which gathered representatives from some 20 international organisations. The full day event dealt with the topic: data protection as part of good governance in international organisations.

International organisations are in many ways exempted from national laws, including data protection legislation. As a result, there are often insufficient safeguards for the persons concerned. Challenging and wanting to resolve that shortcoming, the organisers of the workshop focused on universal data protection principles and their practical implications for international organisations. A number of highly relevant presentations were made by the organisers and some of the participants, resulting in fruitful and constructive discussions.

A report of the workshop was made during the International Conference on Privacy and Personal Data Protection (see more below). The Declaration adopted in Montreux, in turn, appeals to international organisations to commit themselves to complying with the principal international data protection and privacy instruments.

[Click to read the [Montreux declaration](#), or the EDPS [press release](#)]

8. 27th International Conference on Privacy and Personal Data Protection

The 27th International Conference on Privacy and Personal Data Protection took place in Montreux, Switzerland, between 14 and 16 September. Gathering data protection and privacy commissioners from some 40 countries, as well as numerous other interested, the discussions focused on the role of the right to data protection and privacy in a globalised world.

Peter Hustinx chaired a plenary session on the experiences and prospects 10 years after the adoption of the EU Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The discussions revolved around the need to adapt to a new reality (the Directive was adopted a couple of years before the Internet boom), and that privacy and data protection advocates should try to establish alliances with consumer associations, standardisation organisations, NGOs, etc.

The International Conference saw the adoption of:

- the [Montreux Declaration](#): "The Protection of personal data and privacy in a globalised world: a universal right respecting diversities";
- a [Resolution](#) on the use of biometrics in passports, identity cards and travel documents; and
- a [Resolution](#) on the use of personal data for political communication.

[Click [here](#) to read more]

9. Paper - Data Protection in the Administration of the European Community

In the paper, Joaquín Bayo Delgado outlines the legislative setting in which the EDPS works. A detailed description on the EU legislation on personal data protection is followed by an analysis of the scope of EDPS' supervision tasks.

Thereafter, the systems of Data Protection Officers and registers are elaborated, as is EDPS' method of prior checking of processing operations - which are likely to present specific risks - and of which he has been notified. The paper provides a good explanation of how the protection of personal data is ensured in the EU-institutions and bodies.

[Click [here](#) to read more]

10. Colofon

This newsletter is issued by the European Data Protection Supervisor, which is a new and independent EU authority, established in 2004 to:

- monitor the processing of personal data in EU institutions and bodies;
- advise the institutions on data protection legislation or policy;
- co-operate with similar authorities to ensure consistent data protection.

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