



EDPS NEWSLETTER

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1. Opinion on Stockholm programme

The EDPS has adopted an opinion on the European Commission's Communication of 10 June 2009 entitled "An area of freedom, security and justice serving the citizen". The Communication is the Commission's contribution to the discussions on the new multi-annual EU programme in the area of justice and home affairs, the so called Stockholm programme, which is due to be adopted by the European Council in December 2009.

The EDPS supports the attention that has been devoted in the Communication to the protection of fundamental rights, and in particular the protection of personal data, as one of the key issues of the future framework for EU action on the questions of citizenship, justice, security, asylum and immigration. He fully endorses the Commission's view that more emphasis should be given to data protection in the areas concerned, and calls for the European Council to follow the same approach when adopting the Stockholm multi-annual programme.

Taking the need for protection of fundamental rights as main angle of the analysis, the EDPS opinion focuses on the following issues:

- **need for a comprehensive data protection scheme:** the EDPS fully supports the call for a comprehensive data protection scheme covering all areas of EU competence, regardless of the entry into force of the Lisbon Treaty;
- **data protection principles:** the EDPS welcomes the intention of the Commission to reaffirm a number of basic principles of data protection. He emphasises the importance of the purpose limitation principle as a cornerstone of data protection law. Focus should also be given to the possibilities for improving the effectiveness of the application of data protection principles, in particular through instruments that can reinforce the responsibilities of the data controllers;
- **European information model:** the EDPS notes the developments towards a European information model and an EU Information Management Strategy with great interest and underlines the attention that should be given in these projects to data protection elements. The architecture for information exchange should be based on "[privacy by design](#)" and "[Best Available Techniques](#)".

↪ EDPS opinion ([pdf](#))

2. Notice of consultation on the EDPS Video-surveillance Guidelines

On 7 July 2009, the EDPS published and circulated to stakeholders the consultation draft of the EDPS Video-surveillance Guidelines.

By issuing these Guidelines, the EDPS intends to:

- contribute to the prevention of the uncontrolled proliferation of video-surveillance in cases where the use of this technology is not warranted; and
- assist the Community institutions and bodies ("institutions") in using video-surveillance responsibly and with effective safeguards in place in those cases where the use of video-surveillance is justified.

The EDPS intends to meet these goals by providing practical advice on what uses of video-surveillance the EDPS is likely to find objectionable, and what steps the institutions need to take before they install a video-surveillance system and on an on-going basis to ensure an adequate level of data protection.

More specifically, the Guidelines recommend the institutions to:

- clearly establish the purposes they wish to achieve with the system;
- carefully analyze whether video-surveillance technology is an efficient and proportionate means to achieve this purpose;
- look for alternative solutions before deciding to use cameras;
- consult stakeholders, including the Staff Committee; and work together with the Data Protection Officers of the institutions to decide where to site cameras, how to use them, and what safeguards to introduce to help protect the privacy and other fundamental rights or legitimate interests of the individuals captured on the cameras.

The institutions will need to adopt a video-surveillance policy and carry out a self-audit or third-party audit of their system. Whenever the risks to privacy and other fundamental rights so require (e.g. if a system is particularly complex, novel, or intrusive), a privacy and data protection impact assessment must also be carried out by the institution. The institutions are also required to provide a meaningful notice to the public, which should include, in addition to signs on the spot, more detailed information on the website of the institution.

Deadline for written comments from stakeholders is 15 September 2009. Comments will be discussed in a workshop with Data Protection Officers of Community institutions and bodies on 30 September 2009. The final version of the Guidelines will be issued following the workshop.

☞ [EDPS draft Video-surveillance Guidelines \(pdf\)](#)

3. Supervision Group issues second inspection report on Eurodac

The Eurodac Supervision Coordination Group has issued a report on their second coordinated inspection of the large-scale database that contains fingerprints of asylum seekers found within the EU. The Supervision Group - composed of data protection authorities of each of the participating States and the EDPS - has investigated how the database has been used over the last two years. Two main issues were scrutinised: the right of information of asylum seekers and the methods for assessing the age of young asylum seekers in view of their registration in the system. The report presents both the findings and the recommendations based on the replies to the questionnaire received from all the Member States.

Regarding the right to information, the Supervision Group calls on:

- Member States to improve the quality of the information on data protection for asylum seekers that should cover the rights of access and rectification, as well as the procedure to exercise these rights;

- asylum authorities to ensure that the information provided is clear enough, well understood and sufficiently visible;
- data protection authorities to provide guidance on how to better comply with the obligation to ensure data protection information.

As far as the assessment of the age of asylum seekers is concerned, the Supervision Group recommends that:

- Member States should ensure that the methods for assessing the age of asylum seekers and the whole procedure surrounding the tests are established in a clear text accessible by the public;
- asylum authorities have to take into account the margin of error resulting from the use of some medical examinations when taking decisions affecting the legal status of the asylum seeker;
- the Commission should undertake an overall assessment of the reliability of the various methods for age assessment used in the Member States. This assessment should pay careful attention to medical and ethical aspects. Medical examination considered invasive in this context should not be used to determine the age limit for Eurodac fingerprinting. If needed at all, it should be limited to the determination of whether a child asylum seeker is under 18 or not;
- the Eurodac Regulation, currently under revision, should be modified to impose fingerprinting asylum seekers only from 18 years old on.

☞ Eurodac second inspection report ([pdf](#))

4. Second report measuring compliance with data protection obligations in the EU administration

The EDPS has issued his second general report measuring progress made in the implementation of data protection rules and principles by Community institutions and bodies, as laid down in the Data Protection Regulation (Regulation (EC) No 45/2001). The report shows that Community institutions have overall made good progress in meeting their data protection requirements. A lower level of compliance is observed in Community agencies, but the EDPS will be monitoring this closely and will encourage further compliance.

As regards implementation of data protection rules in **Community institutions**, the EDPS is satisfied that all but one institution now have an inventory of processing operations involving personal data. He also notes an increase in the number of institutions which have completed the notification of their processing operations to the data protection officer of the concerned institution. Only two institutions have so far managed to notify all existing processing operations that present specific risks to the EDPS for prior checking. There is however a positive indication that in most institutions all identified processing operations will have been notified to the EDPS by the end of 2009.

Concerning compliance in **Community agencies**, the EDPS observes that positive progress has been made in the identification of processing operations and in the adoption of implementing rules regarding the tasks and duties of the

Data Protection Officer. However, the level of notifications of processing operations to the Data Protection Officer and further notifications to the EDPS for prior checking is generally very low. Only one agency can claim that all identified operations have been notified to the EDPS.

The EDPS will encourage and closely monitor further progress, in particular in those institutions and agencies where compliance in the field of notification to the Data Protection Officer and prior checking by the EDPS needs to be improved. The EDPS will put special emphasis on ensuring better compliance in agencies. He will increasingly proceed with on the spot inspections both in institutions and in agencies in view of checking the reality and encouraging compliance.

☞ Spring 2009 report ([pdf](#))

5. 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 (EC) No 45/2001, which lays down the data protection obligations of the EU institutions and bodies.

5.1 Hearings of the Commissioners-designate at the European Parliament

On 3 July 2009, the EDPS issued a prior checking opinion focusing on the processing of personal data in the hearings of the Commissioners-designate at the European Parliament.

In his opinion, the EDPS underlines that data could be kept after the initial conservation period for historical purposes, but that there should be a selection and verification process on the basis of criteria determined at an institutional level so as to only retain data of historical value. Appropriate safeguards must also be put into place to ensure that the data kept on the basis of their historical value are not processed for any other purposes or used in support of measures or decisions regarding a particular individual.

As for data which, after selection, are not considered as of historical value, they may only be stored for longer than the initial five year period of retention, if they are made anonymous or, if this is not possible, with the identity of the data subjects encrypted. Furthermore, although the Commissioners-designate are probably aware of the public nature of the data provided by them and the fact that the hearings will be made public notably through web-streaming, in order to ensure fairness of the processing further information should be provided on this in the Privacy statement. The EDPS also invites the Parliament to ensure that the integrity of the data transmitted from the Council is respected.

☞ EDPS opinion ([pdf](#))

5.2 Enterprise data warehouse

The DG ENTR Data Warehouse (EDW) is a system in charge of retrieving data from multiple data sources (ABAC, COMREF, SYSLOG and DG ENTR's in-house financial data). The main goal is to provide managers with powerful reports presenting metrics of performance, like the 'Scoreboard' report, at destination of the Head of Units, Directors and Director General.

The EDPS examined the processing in the light of the legal requirements of Regulation (EC) No 45/2001 and concluded that there was no breach of the Regulation provided certain recommendations are taken into account, including the following:

- the Data Warehouse should be limited to the use of data specified in the current notification and require further authorisation if other databases were to be added as database sources;
- the data minimization principle, the accuracy of data and the necessity to transfer them should be assessed and evaluated;
- DG ENTR should implement specific security measures relating to the planned system's specifications.

↪ EDPS opinion ([pdf](#))

5.3 Staff recruitment procedures in certain Community agencies

It is the first time that the EDPS carried out an examination of 14 notifications at the same time. The EDPS analysed each agency's practice regarding each principle of data protection stated in Regulation (EC) No 45/2001 and evaluated whether they followed the EDPS Guidelines on the issue or not. In view of the similarities in terms of procedures and substance, the EDPS decided to examine all notifications in the same context and issued one joint opinion.

The data subjects concerned are permanent staff, temporary agents, contract agents, national experts and trainees. The processing operations under examination are subject to prior-checking (Article 27(2)(b) of the Regulation), since they involve an evaluation of the applicants' ability to perform the job functions for which the selection and recruitment procedures have been organized. Some of these processing operations might also involve the processing of data related to health and to criminal offences, which constitutes an additional ground for prior-checking (Article 27(2)(a) of the Regulation).

The procedure towards this joint opinion seems to have been beneficial to the agencies concerned as well: on one hand it allowed them to compare data protection practices adopted within each agency, and on the other hand, it made them reconsider their practices in the light of the EDPS recommendations. Indeed, the EDPS notes that most of the agencies seem to have adopted their data protection practices following the EDPS Guidelines and the provisions of the Regulation. However, the controller of each agency should adopt specific and concrete measures in implementing the EDPS recommendations and inform him of those measures within three months after issuing the opinion.

↪ EDPS opinion ([pdf](#))

6. Speeches and articles

- "Data protection and the need for an EU Information Management Strategy", speech ([pdf](#)) delivered by Peter Hustinx at the first meeting under Swedish Presidency of the Council Ad Hoc Working Group on Information Exchange, Brussels, 6 July 2009.
- "Legal Restrictions-Surveillance and Fundamental Rights", speech ([pdf](#)) delivered by Giovanni Buttarelli at the conference on "New Technical Means of Surveillance and the Protection of Fundamental Rights - Challenges for the European Judiciaries", Vienna, 19 June 2009.
- "Data protection in the light of the Lisbon Treaty and the consequences for present regulations", speech ([pdf](#)) delivered by Peter Hustinx at the 11th Conference on Data Protection and Data Security, Berlin, 8 June 2009.
- "The Children faced with the Information Society", speech ([pdf](#)) delivered by Giovanni Buttarelli at the 1st Euro-Ibero American Data Protection Seminar on "Protection of Minors", Cartagena de Indias, 26 May 2009.
- "Transparency and notification in the age of internet - some thoughts on the need for more effective protection in practice", speech ([pdf](#)) delivered by Peter Hustinx at the Data Protection Conference 2009 "Personal data - more use, more protection?", Brussels, 20 May 2009.
- "Towards a charter on digital data protection and freedom of information?", speech ([pdf](#)) delivered by Giovanni Buttarelli at the Data Protection Conference 2009 "Personal data - more use, more protection?", Brussels, 20 May 2009.

7. New Data Protection Officers

Each Community 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 application of Regulation (EC) No 45/2001 in the concerned institution/body.

Recent appointments:

- Radoslav HANAK, DPO, and Raymond MONK, deputy DPO, European Joint Undertaking for ITER and the Development of Fusion Energy ("Fusion for Energy")
- Daniella PAVKOVIC, SESAR Joint Undertaking (SJU)

☞ See full list of [DPOs](#).

8. 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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