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## SPEECHES AND PUBLICATIONS



## NEW DATA PROTECTION OFFICERS



## CONSULTATION

### > EDPS contribution to the debate on the future of privacy: state of play



The EDPS has actively participated in the debate on the revision of the legal framework for data protection. He attended consultation meetings with Member States and law enforcement agencies on 29 June 2010 and with data protection authorities on 14 July 2010, both organised by the European Commission's Directorate General for Justice. He has also provided input on a number of other occasions, focusing on some important themes, such as the need for including the principle of privacy by design and the principle of accountability in the new framework, the need for strong harmonisation of data protection law within the EU with

limited room for diversity between the Member States and the added value of one comprehensive framework which also includes police and justice. The independence and powers of data protection authorities were also recurring themes.

Vice-President Reding has recently announced that the Commission would take a little bit more time for the revision process than previously envisaged. It will present a Communication on data protection in the autumn of this year, followed by a legislative proposal in the first half of 2011.



## > EDPS opinion on new draft EU-US agreement on financial data transfers



The EDPS opinion, adopted on 22 June 2010, relates to the European Commission's draft Agreement with the United States on the **Terrorist Financing Tracking Programme (TFTP)** to allow US authorities access to European based financial data managed by the Belgian company **SWIFT** in cases of anti-terrorism investigations. Further to the decision of the European Parliament to veto the interim agreement in mid-February, the new draft aims particularly to address concerns regarding privacy and data protection.

The EDPS welcomes certain significant improvements over the interim agreement, such as the exclusion of data relating to the Single Euro Payments Area, a more limited definition of terrorism, and stronger guarantees on citizens' data protection rights. He however stresses that the **necessity** of the proposed agreement should be established unambiguously, taking into account other existing, less privacy-invasive instruments (e.g. the agreement on mutual legal assistance between the EU and the U.S.). The EDPS expresses his concerns about the plan to allow the transfers of massive amounts of bank data to the U.S. authorities ("bulk transfers"). He further points out the key elements that should be improved from a data protection perspective, in particular as regards data retention periods, enforceability of the citizens' data protection rights, judicial oversight and independent supervision.

**“ In view of the intrusive nature of the draft agreement, the necessity of such a scheme should be unambiguously established, especially in relation to already existing instruments. ”** *Peter Hustinx, EDPS*

The EDPS recommends the negotiators to:

- ensure that **bulk transfers** are replaced with mechanisms allowing financial data to be filtered in the European Union, and ensuring that only relevant and necessary data are sent to US authorities;
- considerably reduce the **storage period** for non-extracted data (i.e. data US law enforcement authorities have not accessed for terrorism-related investigations);
- entrust the task to assess the requests of the US treasury to a **public judicial authority**, in line with the negotiating mandate and the current EU legal framework for data protection;
- ensure that the **data protection rights** conferred to citizens by the proposal are clearly stated and **effectively enforceable**, particularly in US territory;
- enhance the **independent oversight** and **supervision mechanisms**.

🔗 EDPS opinion ([pdf](#))

Some of these points have been addressed by the European Commission, the European Parliament and the Council in the final procedure. A slightly revised agreement will enter into force on 1 August 2010.



## > EDPS reaction to Court ruling on Bavarian Lager case



On 29 June 2010, the European Court of Justice issued its ruling in the so-called "Bavarian Lager" case, a key case on the question of **how best to reconcile the fundamental right to the protection of personal data with the fundamental right of public access to documents.**

The Court of Justice clarified certain key concepts in the Data Protection Regulation and interpreted the Access to Documents Regulation with regard to the right to privacy and data protection.

The Court confirmed the judgment of the lower General Court that surnames and forenames are personal data and that the communication of such data falls within the definition of "processing" for the purposes of the Data Protection Regulation.

However the Court ruled that the requirements of the Data Protection Regulation apply in all circumstances where the right of access to a public document is exercised, whereas the General Court had found that the requirements of that Regulation were only applicable in those situations where the privacy or the integrity of the individual would be infringed, contrary to Article 8 of the European Convention of Human Rights.

**“The judgment of the Court confirms the importance of the review of how to reconcile two fundamental rights: access to documents and data protection in the light of the Lisbon Treaty.”** *Peter Hustinx, EDPS*

In the EDPS' view, the ruling shows the **importance and urgency of the review of the relationship between transparency and data protection** in the current revision of the Access to Documents Regulation. He will continue to provide advice to the EU legislator with a view to ensuring the protection of privacy, but also to ensure that this right is exercised within the context of the greatest possible transparency of EU public activities.

🔗 EDPS press release ([pdf](#))

## > EDPS letter on new Commission proposals for restrictive measures



On 20 July 2010, the EDPS sent a letter to the European Commission, the European Parliament and the Council as a response to the Commission's consultation on three legislative proposals concerning certain restrictive measures, namely with regard to Mr Milosevic and persons associated with him, in support of the mandate of the International Tribunal for the Former Yugoslavia, and in respect of Eritrea.

In the letter, the EDPS reaffirms his position that when EU institutions take restrictive measures with regard to certain individuals, data protection principles and any necessary restrictions to them should be comprehensively and clearly laid down.



The Commission's proposals envisage fighting terrorism or human rights abuses by imposing restrictive measures - notably, asset-freezing and travel bans - on natural and legal persons suspected of being associated with terrorist organisations and/or on certain governments. To this end, the European Commission publishes and publicises "blacklists" of the natural or legal persons concerned.

Referring to two previous EDPS opinions of July and December 2009, the letter recalls that ensuring data protection in this area entails providing adequate information, access for listed individuals to their own personal data, adequate protection when data are exchanged with third countries or international organisations, the effectiveness of judicial remedies, and that necessary restrictions to data protection rights are clearly defined and thus foreseeable.

In conclusion, the EDPS stresses that - one year after the first EDPS opinion in this area and several months following the entry into force of the Lisbon Treaty - it is now the right time for the EU legislator to address in a detailed, comprehensive and consistent way the issue of data protection in relation to restrictive measures, developing a policy that would enhance not only the protection of fundamental rights, but also the legal certainty and the effectiveness of the measures taken.

☞ EDPS letter ([pdf](#))

## > EDPS letter on the Internal Market Information System



On 27 July 2010, the EDPS addressed a letter to the Internal Market and Services Directorate General of the Commission (DG MARKT), in which he took stock of what has been achieved and what further progress needs to be made on the issues raised in the **Commission Report on the state of data protection in the Internal Market Information System (IMI)**.

The letter, while welcoming the progress made thus far, called for the adoption of a new legal instrument, preferably a Council and Parliament Regulation, necessary to set a more comprehensive framework for the operation of IMI and provide for legal certainty and a higher level of data protection.

☞ EDPS press release ([pdf](#))

☞ EDPS letter ([pdf](#))



## SUPERVISION

### > 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 is subject to a prior check by the EDPS. This procedure serves to establish whether the processing is in compliance with the Data Protection Regulation (EC) No 45/2001, which lays down the data protection obligations of Community institutions and bodies.

>> **Central Exclusion Database: registration of data subjects and consultation - Commission and Committee of the Regions**



On 26 May 2010, the EDPS adopted a prior-check opinion on the registration of data subjects in the Central Exclusion Database. In order to protect the financial interests of the institutions, the European Commission processes data which are contained in a newly established central exclusion database. The data may only be used for the purposes of excluding from any procurement, or grant procedures funded with EU Funds or European Development Funds, entities which represent a threat to European financial interests. The legal basis for the processing is laid down in the Financial Regulation on which the EDPS provided comments at the time of its last revision.

The EDPS conducted his analysis in full cooperation with the institution from an early stage of the procedure and concluded that there was no reason to believe that there was a breach of the provisions of the Data Protection Regulation. However, the EDPS made some recommendations regarding the prior information of candidates, tenderers and grant applicants to be provided in the call for proposals and call for tenders.

The EDPS also underlined the necessity of ensuring that in case of a manifest error in the inclusion of an entity in the database or if an entity has been cleared, the procedure will have no legal consequences.

All EU institutions and bodies are involved in this procedure. The EDPS therefore received a first notification from the Committee of the Regions concerning the consultation and update of the central exclusion database by its services. The main points highlighted in the EDPS' opinion related to the clarification of the purposes of the processing by the Committee and the transfers of data to the Commission.

The significant issue of transfers to a third party or to international organisations is currently being discussed with the services of the Commission to ensure full respect for the Data Protection Regulation.

☞ EDPS opinion ([pdf](#))

## > EDPS Guidelines

The EDPS issues guidelines on specific themes in order to provide guidance for EU institutions and bodies in certain fields relevant for them, such as recruitment, processing of disciplinary data and video surveillance. These guidelines also facilitate the prior checking by the EDPS of processing operations in the EU agencies as they served as a reference document against which agencies could measure their current practices.

### >> Follow-up to the EDPS video-surveillance guidelines: summary of preliminary recommendations in nine prior checking procedures



As anticipated in the EDPS Video-surveillance Guidelines of 17 March 2010, the EDPS issued recommendations in nine ex-post prior checking procedures on 8 July 2010. The EDPS welcomed the progress made and encouraged the nine institutions and bodies, as well as all others who are working towards the implementation of the Guidelines, to continue their efforts to achieve full compliance by 1 January 2011.

In his recommendations, the EDPS highlighted the need for further efforts to ensure that the purpose of the



surveillance is defined with sufficient clarity and specificity, and that the surveillance is sufficiently selective and targeted. The EDPS welcomed that the majority of institutions and bodies have reported that they would not use covert monitoring, and recommended that those who wished to do so carry out an impact assessment and submit their plans to the EDPS for prior checking.

The EDPS also welcomed that the majority of the nine institutions and bodies concerned established retention periods of between three days and one week. The EDPS recommended that the rest of the institutions or bodies should reduce their retention period to seven days or less, unless they provide sufficient justification and adequate safeguards. Further efforts are also necessary to ensure that a consistent access policy is established, and that the policy is implemented and effectively communicated to data subjects. The EDPS also emphasised that additional efforts should be made to ensure that the information is easily available to everyone and is provided in a user-friendly format. The EDPS also encouraged all institutions and bodies to make better use of privacy-friendly technologies, and consult their staff when developing their video-surveillance policies.

Finally, to ensure transparency, and also to enable the EDPS to effectively carry out his supervisory role, the EDPS encouraged all institutions and bodies concerned to adopt a comprehensive video-surveillance policy, carry out an audit, and report to the EDPS on their compliance status by 1 January 2011, as stated in the Guidelines.

- ☞ Summary of EDPS recommendations ([pdf](#))
- ☞ EDPS Video-surveillance Guidelines ([pdf](#))

## > Consultations on administrative measures

Regulation (EC) No 45/2001 provides for the right of the EDPS to be informed about administrative measures which relate to the processing of personal data. The EDPS may issue his opinion either following a request from the Community institution or body concerned or on his own initiative. The term "administrative measure" has to be understood as a decision of the administration of general application relating to the processing of personal data done by the institution or body concerned.

## >> Policy on the internal use of email - European Commission

The European Commission has consulted the EDPS regarding its policy on the internal use of email. The EDPS analysed specific points of the policy in terms of personal data protection and privacy principles.

In this context, the Commission informed the EDPS that it does not conduct large scale monitoring at an individual level. A letter sent to the EDPS stated that *"[t]he only form of routine monitoring that takes place by the email service of the Commission (DG DIGIT) is at the DG/service level and not at the level of individual mailboxes or individual traffic data level. DG DIGIT monitors the usage in order to reduce operational threats, but no routine reports are produced that monitor individual mailbox activity or provide any individual traffic data that can be used for analysis of individual abuse"*.

This implies that any individual mailbox monitoring could only take place as part of an ongoing investigation. The EDPS welcomes this approach which he considers to be best practice.

- ☞ EDPS comments ([pdf](#)) on the Commission policy on the internal use of email, 1 February 2010
- ☞ Follow-up letter of 12 July 2010 ([pdf](#))



## EVENTS

### > Forthcoming events

#### >> International Conference of Privacy and Data Protection Commissioners (27-29 October 2010, Jerusalem)



The 32nd Annual Conference of Data Protection and Privacy Commissioners will take place on 27-29 October 2010 in Jerusalem. The title of the conference is "Privacy: Generations". It refers to a new generation of technologies (like mobile devices, biometrics, RFID and cloud computing) and to a new generation of users posting personal information and communicating with friends and colleagues on social networks. This may in turn require a new generation of governance relating to privacy issues.

The programme reflects this focus on new issues and includes many of the subjects that are currently being widely discussed, such as privacy by design, accountability, behavioural targeting and the right to oblivion. The list of distinguished speakers includes three representatives of the EDPS: Peter Hustinx, Giovanni Buttarelli and Rosa Barcelo.

The activities in Jerusalem will start on 26 October with an event organised by the Organisation for Economic Cooperation and Development (OECD) marking the 30th anniversary of the OECD Privacy Guidelines.

More information on the [Conference website](http://www.privacyconference2010.org)

### > Outcome of past events

#### >> Data Protection in Criminal Proceedings (Madrid, 14-16 July 2010)



The EDPS and Assistant EDPS attended the Data Protection in Criminal Proceedings (DPICP) project event in Madrid on 14-16 July 2010.

The DPICP is a project led by the Spanish University of Castilla-La Mancha in the framework of the "Criminal Justice" Programme of the European Commission. The main objective of the Project is to promote a judicial culture favourable to data protection principles for the processing and exchange of criminal data between judges, prosecutors and civil servants from the Ministries of Justice and Home Affairs.

The EDPS is one of the "partners" in the DPICP Project, together with other public bodies and institutions such as Eurojust, Europol, the Council of Europe, the Spanish Data Protection Authority and the UK Information Commissioner.

The workshops organised in that framework aim at facilitating the knowledge of the principles, rights and proceedings of data protection in relation to the investigation of serious crime. A wider implementation of data protection in this specific context is an important goal in the long term.



☞ [More information](#)

## >> **Transparency and Data Protection: Cooperating or Conflicting Elements of Good Governance? (Maastricht, 3-4 June 2010)**

On 3-4 June 2010, the EDPS, in cooperation with the European Institute for Public Administration (EIPA), organised a seminar on "Transparency and Data Protection: Cooperating or Conflicting Elements of Good Governance?". The seminar, attended by approximately 25 participants, was considered to be very informative and fruitful.

The first day of the seminar was dedicated to the issue of transparent governance at EU as well as Member State level. Recent transparency developments were discussed by representatives of the European Parliament, the European Ombudsman and NGO's (such as Access Info Europe and Statewatch). Particular attention was given to the current political impasse on the revision of the EU rules on transparency.

The protection of personal data was the focus of the second day. The right to access one's own personal data was compared with the right of access to public information. This was discussed in relation to different policy areas of the EU. Presentations were made by representatives of the EDPS as well as Eurojust.

The seminar ended with a presentation on instances where transparency and data protection posed conflicting interests. An example of this is the Bavarian Lager case, which is mentioned earlier in this newsletter.

The conclusion of the seminar was that transparency and data protection are in any event both important elements of good governance. In most cases they reinforce each other. When they lead to conflicting interests, institutions should seek a solution which best serves all the interests involved. EU legislation should be in place which enables institutions to do so, and the envisaged revision of the EU rules on transparency offers an opportunity to achieve this.

☞ More information on [EIPA website](#)

## >> **Biannual Conference on data protection and law enforcement (Trier, 31 May-1 June 2010)**

On 31 May and 1 June 2010, the European Law Academy (ERA) together with the EDPS organised the second biannual conference on data protection in the area of police and justice, under the title 'Data protection in the era of Swift, PNR, Prüm and eJustice'. Peter Hustinx delivered an opening speech on "Data Protection for Law Enforcement after Lisbon" (see below under Speeches).

It was a lively conference with extensive participation from data protection professionals, law enforcement agencies, governments and academics. A number of hot topics were discussed, such as the new EU Information Model as foreseen in the Stockholm Programme, the exchange of personal data with the United States (PNR, TFTP and the initiative for a general agreement on data protection in the law



enforcement area), the independence of data protection authorities, data retention and exchanges under the Treaty of Prüm, as well as eJustice.

The final debate focused on the upcoming review of the data protection framework and the need for one comprehensive legal framework for data protection.

🔗 [ERA website](#)



## SPEECHES AND PUBLICATIONS

- "Recent developments in data protection at European Union level", article by Hielke Hijmans published in the [ERA-Forum Journal](#), Academy of European Law (30 June 2010)
- "Intelligent Transport Systems and Data Protection", speech ([pdf](#)) delivered by Peter Hustinx at the ITS Conference 2010 on "Intelligent Transport in Europe – Putting the Commission's Plan into Action" (Brussels, 22 June 2010)
- Speaking notes ([pdf](#)) by Peter Hustinx for the LIBE Hearing on the Impact of the Charter of Fundamental Rights in the development of a European Area of Freedom, Security and Justice, European Parliament (Brussels, 21 June 2010)
- Editorial ([pdf](#)) by Peter Hustinx in EUCRIM, The European Criminal Law Associations' Forum, [nr. 2010/1](#), Focus: Data Protection (18 June 2010)
- "Data protection legislation in Europe, preventing cyber-harassment by protecting personal data and privacy", speech ([pdf](#)) delivered by Giovanni Buttarelli, Assistant European Data Protection Supervisor, during the Cyber-Harassment Closing Conference (Bratislava, 7 June 2010)
- "Shortcomings in EU Data Protection in the third and the second pillars. Can the Lisbon Treaty be expected to help?" ([pdf](#)), Hielke Hijmans and Alfonso Scirocco (EDPS), Common Market Law Review 46, 1485-1525, 2009, Kluwer Law International (2 June 2010)
- "Data Protection for Law Enforcement after Lisbon", speech ([pdf](#)) delivered by Peter Hustinx at the ERA Conference "Data Protection in the Age of SWIFT, PNR, Prüm and E-Justice" (Trier, 31 May 2010).



## NEW DATA PROTECTION OFFICERS

Each Community institution and body has to appoint at least one person as a Data Protection Officer (DPO). These officers have the task of ensuring the application of the data protection obligations laid down in Regulation (EC) No 45/2001 in their institution or body in an independent manner.

### Recent appointments:

- Mr Rastislav **SPÁC**, Committee of the Regions
- Mr Camillo **SOARES**, European Institute of Innovation and Technology (EIT)
- Mr Johan **VAN DAMME**, in replacement of Jan KILB, European Court of Auditors (ECA)

☞ See full list of [DPOs](#).

### About this newsletter

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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