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## CONSULTATION

### > EDPS opinion on EU Passenger Name Record



The opinion, adopted on 25 March 2011, analyses the new Commission proposal obliging airline carriers to provide EU Member States with the personal data of passengers (Passenger Name Record - PNR) entering or departing the EU for the purposes of fighting serious crime and terrorism.

The EDPS recalls that the need to collect or store massive amounts of personal information must rely on a clear demonstration of the relationship between use and result (necessity principle). This is an essential prerequisite for any development of a PNR scheme. In

the view of the EDPS, the current Proposal and accompanying Impact Assessment **fail to demonstrate the necessity** and the proportionality of a system involving **large-scale collection** of PNR data for the purpose of a **systematic assessment** of **all passengers**.

*“Air passengers' personal data could certainly be necessary for law enforcement purposes in targeted cases. It is their use in a systematic and indiscriminate way, with regard to all passengers, which raises specific concerns.”* Peter Hustinx



The EDPS recommendations also include the following:

- **scope of application:** the scope of application should be much more limited with regard to the type of crimes involved. The EDPS recommends explicitly defining and excluding minor crimes from the scope and prevent Member States from expanding the scope;
- **data retention:** no data should be kept beyond 30 days in an identifiable form, except in cases requiring further investigation;
- **data protection principles:** a higher standard of safeguards should be developed, particularly in terms of data subjects' rights and transfers to third countries ;
- **list of PNR data:** the EDPS welcomes the fact that sensitive data are not included in the list of data to be collected but still regards it as too extensive and recommends that it is further reduced;
- **evaluation of EU PNR system:** the assessment of the implementation of the system should be based on comprehensive statistical data, including the number of persons effectively convicted - and not only prosecuted - on the basis of the processing of their personal data.

↪ EDPS opinion ([pdf](#))

## > EDPS background paper on public access to documents containing personal data



On 24 March 2011, the EDPS published a background paper on public access to documents containing personal data, to serve as guidance for EU institutions. The paper explains the updated EDPS position on the matter following the ruling of the European Court of Justice in the Bavarian Lager case on the reconciliation of the fundamental rights to privacy and data protection with the fundamental right to public access to documents and transparency.

The EDPS paper provides further guidance to the EU institutions on how to **ensure that both rights are equally respected** in their daily practice. As a matter of good practice, the EDPS recommends that EU institutions follow a proactive approach by **making clear in advance** to the persons concerned **which personal data may be subject to public disclosure**.

*“ Whilst the fundamental right to data protection must be respected by the institutions, care should be taken that data protection is not used as a pretext for not being transparent. This is detrimental to good governance and not in the interest of data protection either. ”* Peter Hustinx, EDPS

In case of public disclosure of personal data by the EU institutions, such a proactive approach would ensure that the persons concerned are well-informed and able to invoke their data protection rights. It would also be beneficial to the institutions as it would reduce future administrative burdens for those responsible for the data processing and those who deal with public access requests.



The EDPS encourages the EU administration to develop **clear internal policies**, creating a presumption of openness for certain personal data in specified cases (e.g. documents which contain personal data relating solely to the professional activities of the person concerned).

The EDPS maintains that a change of the rules on public access is needed and he encourages Council and Parliament to accelerate the pending revision process

☞ EDPS background paper ([pdf](#))

## > EDPS letter on various legislative proposals concerning certain restrictive measures

On 16 March 2011, the EDPS sent a letter to the European Commission, the European Parliament and the Council as a response to the Commission consultation on various legislative proposals concerning certain restrictive measures with regard to Iran, the Republic of Guinea-Bissau, Côte d'Ivoire, Belarus, Tunisia, Libya and Egypt.

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 proposals envisage fighting human rights abuses by imposing restrictive measures - notably, freezing of assets and economic resources - on natural and legal persons who are considered to be involved in such abuses. 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 once again that it is time for the EU legislator to address in a detailed, comprehensive and consistent way the issue of data protection in relation to restrictive measures and to develop a policy that would enhance not only the protection of fundamental rights, but also the legal certainty and effectiveness of the measures taken.

☞ [EDPS letter](#)



## > EDPS opinion on Technological project "Turbine"

On 1 February 2011, the EDPS adopted an opinion based on his policy paper "The EDPS and EU Research and Technological Development", adopted in 2008. This paper describes the possible roles the EDPS could play for research and technological development (RTD) projects in the context of the Commission's Framework Programme for Research and Technological Development.

In his opinion, the EDPS analyses the Turbine (TrUsted Revocable Biometric IdeNtitiEs) research project whose overall objectives are to:

- develop an innovative, privacy enhancing technology solution for electronic identity (eID) authentication through fingerprints biometrics and
- demonstrate the performance and security of this solution for use in commercial eID management applications, as well as its benefit for the citizen in terms of enhanced privacy protection and user trust in electronic identity management through the use of fingerprints.



The analysis of the EDPS focuses on some important features of the project, namely the protection of the biometric template by cryptographic transformation of the fingerprint information into a **non reversible** key (where it is not possible to return to the original biometric information) and the **revocability** of this key (where a new independent key can be generated to re-issue biometric identities). Moreover, through the test phase, the project tested implementation of the features in real case scenarios.

The EDPS welcomes the project as it demonstrates that implementing "privacy by design" as a key principle in research, represents an effective means to ensure "privacy compliant" solutions.

☞ [EDPS opinion \(pdf\)](#)

☞ [Further information about the project](#)



## 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.

### >> Joint opinion on the processing of health data in the workplace

As a follow-up to his Guidelines on the processing of health data in the workplace, the EDPS issued a joint opinion on the "processing of health data in the workplace" carried out by 18 EU agencies on 11 February 2011. This challenging exercise, subject to prior-checking under the Data Protection Regulation covered 18 notifications on pre-recruitment examinations, annual check-ups and sick leave absences involving different categories of data subjects.



In his analysis, the EDPS identified the practices of those agencies which did not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines and provided them with recommendations. Good practices were also highlighted.

The main issues in the Joint Opinion concern:

- the wide concept of "health data" and the impact of data protection principles of the Regulation on processing operations related to pre-recruitment examinations, annual check-ups and sick leave absences
- the inclusion of clauses on security measures and data protection in the agencies' contracts with their external medical providers
- the issue of the data subject's prior informed consent and hence the importance of a complete privacy statement addressed to all data subjects.

In light of the EDPS' recent policy paper on monitoring and ensuring compliance with the Regulation, the EDPS is expecting follow-up from each agency which should submit to the EDPS specific measures demonstrating that his recommendations have been implemented.



☞ 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.

### >> Guidelines on processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment

On 21 February, the EDPS issued Guidelines on how to manage processing of personal data relating to harassment procedures. More specifically, the Guidelines deal with the informal procedure put in place by the EU institutions and bodies to fight against - but also to prevent - harassment. The selection of the confidential counsellors, who play a key role in the procedure, is also touched upon in the document.

The confidentiality expected by the data subject is the cornerstone of the informal procedure. From a data protection point of view, the challenge is to ensure the **confidentiality of the data** while allowing the prevention of harassment cases. The Guidelines therefore make the distinction between hard data (objective data) that can be structurally transferred under certain circumstances to help the identification of recurrent and multiple cases and soft data (subjective data) that can never be structurally transferred to preserve the confidential character of the procedure.



The EDPS also insisted on the principles of the data subject's right of access and right to be informed. If restrictions to these rights apply on a case by case basis and in light of the principle of proportionality, those principles must be guaranteed beforehand to ensure a fair processing operation.

☞ EDPS opinion ([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.

### >> Publication of employees' pictures on the Intranet - Committee of the Regions

The Data Protection Officer of the Committee of the Regions submitted a consultation in which he requested the EDPS position concerning the setting up of the "Who is who project" on the Committee's Intranet. This project concerned the display of a photo of the Committee's staff members with their functions and responsibilities. For this purpose, the Secretary General intended to send an Outlook message to the staff informing them about the project and about the fact that their photo will be published, unless they click on a specific tab "No, I don't want my picture to be published".

Staff members were, therefore, given the possibility to opt-out. The requirement of "**unambiguous consent**" under Article 5(d) of the Data Protection Regulation implies that in every individual case the data subject should give his/her consent freely without any doubt. The proposed system leaves room for certain uncertainty as to whether by not clicking on the "No" button, the staff member gives an "unambiguous consent", in other words, whether by taking no action he/she really intended to have his/her picture published.

It follows that consent must be obtained before the personal data are collected to ensure that data subjects can fully appreciate that they are consenting and what they are consenting to. The most appropriate system to be used to obtain consent is therefore an **opt-in mechanism** requiring an affirmative action to indicate the staff member's consent before publishing his/her photo. Consequently, the EDPS recommended that the staff member should be given the possibility to express his/her consent by clicking on a box stating for example, "Yes, I want my picture to be published".

The EDPS also highlighted that the Committee should clarify to staff members that they are completely free to give their consent, which has to be specific and informed.

☞ EDPS opinion ([pdf](#))



## >> Role of the European Medicines Agency in the elaboration of data for a clinical study in the frame of a research project (notion of controllership)

On 21 March 2011, the EDPS adopted an opinion on a consultation by the European Medicines Agency (EMA) on certain legal issues raised by its participation in the conduct of a clinical study in the framework of a European-wide research project. The research project is carried out by a consortium of 29 members, which EMA contributes as coordinator.

In particular, the Data Protection Officer of the Agency asked whether EMA could be considered as a "joint controller" together with all other participants in the research project and whether the processing of personal data for the clinical study would fall under the scope of the Data Protection Regulation.

The first step, therefore, was to determine whether EMA is a controller. Although EMA specified that the purposes and means of the processing are determined by a steering committee, the EDPS considered that, in this case, **the notion of controller should be analysed with regard to the consortium as a whole.**

As a consequence, the EDPS considered that all members of the consortium co-decide the conduct of the study. The EDPS was not in a position to evaluate specifically the degree to which members of the consortium each or as a whole control the processing.

The EDPS analysis was focused on the responsibilities of EMA, who must be considered as one of the controllers. The EDPS provided recommendations to EMA in order to ensure that its processing complies with the Data Protection Regulation.

🔗 EDPS opinion ([pdf](#))

## >> Lawfulness of the further processing of data for purpose of data transfers to AMEX - European Food Safety Agency

The European Food Safety Agency (EFSA) processes annual Declarations of Interests (DoI) of certain persons engaged in the activities of EFSA for the purpose of verifying that these persons have no conflict of interest which could interfere with the activities they carry out for EFSA.

In the course of the prior checking of these data processing operations, the DPO of EFSA asked the advice of the EDPS on the further use of the DoI database for the purpose of providing its travel agency, AMEX, with the identification data of EFSA external experts.

The Data Protection Officer of EFSA asked the EDPS whether the further processing of the data included in the DoI database for purpose of providing the travel agency with the identification data of EFSA external experts would respect Article 4(1)(b) of the Regulation.

According to this provision, personal data shall be collected for specific, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.

In his opinion of 21 December 2010, the EDPS concluded that any further processing by EFSA of data processed in the DoI database, for the purpose of providing the identification data of persons who can benefit from AMEX travel services, would serve a totally **different purpose** which would not be

considered compatible with the initial purpose of the data collection and processing. Therefore, such a further processing by EFSA would not comply with Article 4(1)(b) of the Regulation.

↪ EDPS opinion ([pdf](#))



## EVENTS

### > Forthcoming events

#### >> Festival of Europe - Open Day of the European institutions: Visit the EDPS stand to learn more about your data protection rights (Brussels, 7 May 2011)



On Saturday 7 May 2011, the EU institutions will hold a festival of Europe and conduct open days in Brussels to mark the Schuman Declaration anniversary.

The EDPS will have a stand in the European Parliament's premises (ASP building - main street) from 11.00 am to 03.00 pm. Visitors will have the opportunity to test their knowledge in data protection and meet with EDPS staff should they wish to discuss the issue further. Various awareness raising materials will also be provided.

↪ [More information](#)

### > Past events

#### >> European Conference of Data Protection Commissioners (Brussels, 5 April 2011)

On 5 April 2011, the EDPS and the Chairman of the Article 29 Data Protection Working Party hosted the annual Spring Conference of European Data Protection Commissioners in Brussels, involving data protection authorities from EU and non-EU Member States, as well as various authorities at EU level.

The central theme of the Conference was the current **review of the data protection legal framework**. The Conference adopted a **Resolution** in which it stressed the need for a comprehensive data protection framework, which includes the law enforcement sector.

The Conference recalls that the challenges are enormous, due to globalisation and trans-border flows of personal data, the development of technology especially in the on-line world as well as developments in the police and justice sector. All these developments offer tremendous opportunities for real improvement of the data protection framework, offering **effective protection** to all individuals under all circumstances, now and in the future.



As a result of this statement, the Commissioners decided to adopt a more horizontal approach in the area of freedom, security and justice. The Working Party on Police and Justice and the Article 29 Working Party will work together to integrate their EU related tasks in the coming year to reinforce the effectiveness of their advisory role.

☞ Read more in the [Resolution](#) and [press release](#)

## >> EDPS - Data Protection Officers meeting (Vienne, 1 April 2011)

On 1 April 2011, the EDPS attended the biannual meeting with Data Protection Officers of the EU institutions and bodies at the Fundamental Rights Agency in Vienna.

The EDPS took the opportunity to make a general presentation on recent developments in data protection, focusing on the revision of the EU legal framework for data protection and the work of the Article 29 Data Protection Working Party. He also examined the state of play as regards the follow-up by the EU institutions and bodies of his guidelines on video-surveillance, informed the audience of his recently published additional background paper on access to documents and data protection and outlined the main points of the 2011 roadmap for supervision and enforcement activities.

The EDPS also presented the recently adopted Guidelines on the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment.



## SPEECHES AND PUBLICATIONS

- Towards more effective Data Protection in the Information Society, article ([pdf](#)) by Peter Hustinx for the 50<sup>th</sup> issue of [datospersonales.org](#) - Digital Review published by the Data Protection Authority of Madrid (14 April 2011)
- "Promoting the citizen's informational self-determination: how transparency and data protection can strengthen each other", speech ([pdf](#)) of Peter Hustinx at the public hearing on "The right to access to EU documents: implementation and future of Regulation (EC) No 1049/2001", European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Brussels (13 April 2011)
- Speech ([pdf](#)) of Peter Hustinx given at the Expert Seminar on "How much data protection do we need for European e-Justice?", Saxony Liaison Office (Brussels, 24 March 2011)
- "A new European Network and Information Security: the Data Protection perspective" speaking points ([pdf](#)) of Giovanni Buttarelli, Council of the European Union (Brussels, 1 March 2011)
- "Counter-Terrorism Policy and Data Protection" contribution ([pdf](#)) of Giovanni Buttarelli to the Hearing of the European Economic and Social Committee (Brussels, 9 February 2011)
- "New European rules on data protection?", speaking notes ([pdf](#)) of Peter Hustinx at the Joint High Level Meeting on Data Protection Day organised by the European Commission and the Council of Europe, Brussels (28 January 2011)



- "Revision of the EU Data Protection Directive: beyond the state of the art", speaking points ([pdf](#)) of Giovanni Buttarelli at the Computers, Privacy & Data Protection Conference 2011 (Brussels, 27 January 2011)
- Article ([pdf](#)) of Peter Hustinx published in "Nothing to hide - nothing to fear?", Datenschutz / Transparenz / Solidarität, Jahrbuch Menschenrechte 2011, Wien-Köln-Weimar, p. 18-19 (English) and p. 20-21 (German) (18 January 2011)



## NEW APPOINTMENTS

### > EDPS Secretariat

#### >> Appointment of Mr. Christopher Docksey as Director of the EDPS Secretariat

Mr. Docksey will be responsible for ensuring the coordination and implementation of EDPS policies and activities, the delivery of EDPS services in the context of supervision, consultation, cooperation and communication, and the management of the administration of the institution.

#### Background

Mr. Docksey is a member of the Bar of England and Wales and a graduate of Cambridge University and the University of Virginia. He has taught law at the University of Exeter, the Marshall-Wythe School of Law and the University of Washington.

Before joining the EDPS he served as a Legal Advisor to the European Commission, where he advised on data protection legislation and international negotiations since 2001. He has appeared before the European Court of Justice in major data protection cases decided over the last decade.

☞ [EDPS Organisation chart](#)

### > Data Protection Officers

Each European 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.

- Mr. Olivier CORNU (Data Protection Officer) and Ms. Helle MØLLER (Data Protection Coordinator), European Environment Agency (as of 22 March 2011)
- Mrs. Sylvie Picard, European Data Protection Supervisor (as of 16 March 2011)
- Ms. Carmen LOPEZ RUIZ, Council of the European Union (as of 1 March 2011)
- Ms. Roberta MAGGIO, European Institute of Innovation and Technology (as of 1 February 2011)
- Ms. ALEJO (Assistant DPO) - European Investment Bank

☞ 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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