



European Data Protection Supervisor

NEWSLETTER

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1. Data protection in the third pillar - EDPS Opinion on the proposal for a framework decision

Yesterday, the EDPS presented his Opinion on the proposal on data protection in the field of police and judicial cooperation in criminal matters. Underlining the need for an additional set of rules addressing the specific nature of law enforcement, the EDPS welcomed the proposal which has been issued at a time when the need for it has been clearly demonstrated. The recent adoption of the data retention directive and the proposal on the exchange of information under the principle of availability - which will increase the amount of data available for law enforcement purposes enormously - both accentuate its necessity.

The framework decision will be one of the three principal data protection instruments in Europe and it is imperative that common standards - applicable to all processing - are adopted. Striving to improve data protection consistency, the EDPS puts forth a number of proposals, the five most important of which are that:

- major data protection rules must cover all police and judicial data - not only data exchanged between member states, but also data used within one country;
- data on different categories of persons - suspects, convicted persons, victims, etc. rely on different, appropriate conditions and safeguards;
- the proposal fully reflects the case law of the European Court on Human Rights regarding the principles of necessity and proportionality;
- the quality of data received from a third country is carefully assessed in the light of human rights and data protection standards before they are used;
- specific provisions on automated individual decisions - similar to those in the data protection directive 95/46 - are introduced.

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

2. Data protection officers: their role in the EU administration

The EDPS has published a paper on the role of the Data Protection Officers (DPO) in a push to advance compliance with the EU administration's data protection requirements (laid down in Regulation 45/2001). Every EU institution or body is obliged to appoint at least one DPO who shall ensure compliance in an independent manner. The DPO should be notified of processing of personal data within his or her entity and make sure that risky processing is notified to the EDPS for prior checking (see more below).

So far all institutions have appointed a DPO, while only 6 of the 18 bodies have done this. Although appointing a DPO is a vital step, it does not automatically lead to full compliance with the Regulation. Peter Hustinx, the EDPS, has given the EU administration until spring 2007 at the latest to get its house in order and to fully respect its notification and prior checking responsibilities. By going into details on the role and duties of the DPO, the paper aims at providing constructive guidance for the EU institutions and bodies.

[click to read the [position paper](#) or the [press release](#)]

3. EDPS first supervision inspection of the EU administration

In the context of a complaint regarding the right of access to personal data, assistant EDPS Joaquín Bayo Delgado and a member of his team carried out the EDPS' first 'on the spot investigation' at an EU body. The complaint revolves around refused access to evaluation data in relation to an oral exam as part of a recruitment procedure. The investigation enabled the EDPS to determine the exact scope of the data that were requested.

Mr Bayo Delgado took the opportunity to also meet up with other services of the body in order to explain the main functions and activities of the EDPS.

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

Processing of personal data by the EU administration that is likely to result in specific risks for the people concerned (the data subjects) are subject to a prior check (control) by the EDPS. This procedure serves to establish whether or not the processing is in compliance with the data protection regulation 45/2001. The Opinions are generally published on our website.

The European Commission uses a system for the Human Resources management of its staff called SYSPER 2. One of the modules of SYSPER 2 is the career development review system (CDR/REC) - a computer tool used to manage the annual staff evaluation, the drafting of training period reports as well as for attestation and certification procedures.

An annual CDR report is drawn up for every official and temporary agent, following several steps: preparation of a self-evaluation; dialogue between the person evaluated and the evaluator; elaboration of the report by the evaluator and the 'validator' (the evaluator's immediate superior); and finally communication of the report to the evaluated staff member.

Edited on the PC of each of the persons involved, the report is linked to SYSPER 2 which has a message function. Automated e-mail messages also remind the people concerned of their deadlines. The CDR-module manages the different steps and records the changes made (the agreements, refusals and comments).

The EDPS has analysed all data protection aspects of the CDR system. The conclusion is that the Commission has substantially followed all the principles of the data protection regulation. Some recommendations have nevertheless been made regarding the retention periods, long term conservation, limitation to the strict purpose and the right to information.

Click [here](#) for the index with the full text versions of the Opinions (the CDR-opinion is currently only available in French)

5. Eurodac inspection report

The Joint Supervisory Body of Eurodac was replaced by the EDPS in January 2004, in accordance with the Eurodac regulation 2725/2000. As the supervisory authority of the Central Unit of Eurodac, the EDPS started a comprehensive three-phase inspection. The first two steps included visits at

the Eurodac central premises in Brussels and in Luxembourg; and the submission of a questionnaire to the management unit of Eurodac.

A meeting was organised with a representative of TESTA - a private trans-European communication infrastructure managed by the European Commission. The main objective was to collect facts on the implemented security and data protection measures and compare them with the requirements in the field. The report is being finalised and will be presented in the beginning of 2006. The efficiency of the implementation of these security measures will be assessed in early 2006 by an in-depth security audit, which will form the third, and final, phase of the EDPS inspection.

6. Speeches:

- **the European Approach - regulation through protection authorities**

At a seminar in Paris, Peter Hustinx presented his views on the European way of regulating data protection by means of independent authorities. Referring to national data protection laws as a necessary regulatory framework for the success of the authorities, Hustinx highlighted the historical developments in data protection legislation. In the speech, Hustinx discusses the differences between and similarities of the right to privacy and the right to data protection. Although different as rights, they both build on similar elements - requiring a legal basis and legitimate purpose for the processing of personal data, as well as safeguards for the people concerned. Among the safeguards provided by data protection are a number of specific rights for data subjects and control by an independent authority.

Before going into how data protection authorities act in society, Hustinx comments on their different powers: to give advice on new legislation, to intervene, investigate and engage in legal proceedings, and in some cases to issue orders and impose sanctions. A first observation is that the data protection directive has encouraged a more selective approach to supervision - sorting out less sensitive processing and focusing on those that pose more risks. A second observation relates to the appointment of internal privacy officers - such as the EU administration's DPOs - and a third one relates to the development of codes of conduct, which are encouraged by the directive. Hustinx also brings up the question of raising awareness among data subjects and the importance of them being able to exercise their individual rights.

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- **Data Protection: the next 21 years?**

Concluding a conference in Manchester, Peter Hustinx put forth 10 observations concerning the future of data protection in Europe. Focusing on the role of the data protection authorities, Hustinx commented on their powers and on how to improve compliance with the data protection directive.

[Click [here](#) to read the speeches]

7. Colofon

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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