



EUROPEAN DATA
PROTECTION SUPERVISOR

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CONSULTATION

> EDPS opinion on net neutrality



On 7 October 2011, the EDPS adopted an opinion on the European Commission Communication on the open Internet and net neutrality in Europe.

The EDPS highlights the serious **implications** of some monitoring practices of ISPs on the **fundamental right to privacy and data protection of users**, in particular in terms of confidentiality of communications. He has called on the Commission to initiate a debate involving all the relevant stakeholders with a view to **clarifying how the data protection legal framework applies** in this context.

He recommends guidance to be provided in areas such as:



- determining inspection practices that are **legitimate**, such as those needed for security purposes;
- determining when monitoring requires the **users' consent**, for instance in cases where filtering aims to limit access to certain applications and services, such as peer to peer;
- in such cases, guidance may be needed regarding the application of the necessary **data protection safeguards** (purpose limitation, security, etc.).

“*By looking into users' Internet communications, ISPs may breach the existing rules on the confidentiality of communications. A serious policy debate on net neutrality must make sure that users' confidentiality of communications is effectively protected.*” Peter Hustinx, EDPS

Depending on these findings, additional legislative measures may prove necessary to strengthen data protection rules and ensure legal certainty. They should guarantee users the possibility to exercise a real choice, notably by requiring ISPs to offer non-monitored connections.

↪ EDPS opinion ([pdf](#))

> EDPS opinion on recording equipment in road transport (tachographs)

On 6 October 2011, the EDPS adopted an opinion on the European Commission proposal to revise the EU legislation on tachographs – the device used in road transport to monitor driving times and rest periods of professional drivers – as a means of checking compliance with social legislation in the field. The revision is meant to make use of new technological developments to improve the effectiveness of digital tachographs against manual ones, notably through the use of geolocation equipment and remote communication facilities. The initiative therefore invades the **privacy of professional drivers** in a very visible way, as it allows the constant monitoring of their whereabouts as well as remote surveillance by control authorities that will have direct access to the drivers' personal data stored in the system.



The EDPS welcomes the inclusion of a specific provision on data protection (e.g. the 'Privacy by Design' principle). He stresses, however, that this provision alone does not tackle all the data protection concerns linked to the use of tachographs. **Additional data protection safeguards** are needed to guarantee a satisfactory level of data protection in the system. The EDPS also urges the Commission to update the technical specifications and security measures relevant to the many technologies associated with the new devices to avoid discrepancies in their implementation by industry.

“*The introduction of a new digital tachograph could turn out to be extremely privacy-invasive if its use is not adequately safeguarded*”

Giovanni Buttarelli, Assistant Supervisor

The EDPS recommendations also include that:

- the installation and use of devices for the direct and principal purpose of allowing employers to **remotely monitor in real time the actions or whereabouts of their employees** should be excluded;



- the **general modalities of the processing of personal data** in tachographs should be set out clearly in the Proposal (e.g. types of data recorded, recipients and time limits for data retention);
- the **security requirements** for the digital tachograph laid down in the Proposal need to be further developed, in particular to preserve the confidentiality of the data, to ensure data integrity and to prevent fraud and unlawful manipulation;
- the introduction of any technological update (e.g. remote communication or Intelligent Transport Systems) in tachographs should be duly supported by **privacy impact assessments** to assess the privacy risks raised by the use of these technologies.

↪ EDPS opinion ([pdf](#))

> EDPS comments on body scanners

On 17 October 2011, the EDPS sent a letter to the European Commission Vice-president Sim Kallas concerning three proposals on common basic standards on civil aviation security as regards the use of security scanners at EU airports. The draft measures were adopted through "comitology".

The EDPS welcomes the safeguards included in the draft measures and the fact that there is an EU approach to security scanners, as this can guarantee legal certainty as well as a consistent level of protection of fundamental rights. However, he questions the **necessity** and the **proportionality** of such measures, and reminds that **data protection legislation is applicable**.

The EDPS also **regrets that body scanners providing a detailed image of the body will be allowed**, especially given the fact that preference could have been given to a less privacy-intrusive device (a body-scanner showing a "stick figure" instead of the human body).

↪ EDPS comments ([pdf](#))



> EDPS opinion on European statistics on safety from crime

On 19 September 2011, the EDPS adopted an opinion on the Commission's proposal for a Regulation on European statistics on safety from crime. The proposal aims at implementing a new EU survey on safety from crime. The survey would include detailed questions on possible incidents of sexual and physical violence that the respondents might have suffered within or outside the couple, on past relationships, on their sociodemographic background and on their feelings of safety and attitudes to law enforcement and security precautions.



The EDPS is aware of the importance of the development, production and dissemination of statistical data. However, he is concerned about the risk that data subjects may be identified and the fact that sensitive data, such as data relating to health, sex life and offences, are being processed.



His recommendations include the following:

- to modify the description of the variables 'identification of respondent' and 'who did it' in order to avoid the possibility of unnecessary direct identification of data subjects. For the same purpose, anonymising the microdata should also be ensured as soon as possible;
- confidential data – which might allow indirect identification – should only be used if necessary (if the same purpose cannot be achieved by using anonymous microdata data). In these cases, the 'substantial public interest' justifying the processing of sensitive data should be further clarified and explicitly stated in the text of the proposal.

↪ EDPS opinion ([pdf](#))

> EDPS comments on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

On 20 September 2011, the EDPS commented on the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The EDPS highlighted the importance, also in the area of data protection, of facilitating the settlement of cross-border disputes. The EDPS emphasised the need for further reflection on some of the issues raised in the proposal, also in the context of the ongoing review of the data protection framework in the EU:

- further reflection should be given on whether jurisdictional rules should protect the weaker party also in data protection litigation – as is already the case in employment, insurance and consumer protection matters;
- with regard to the retention of the *exequatur* for privacy, defamation, and rights relating to personality, and the possibility of denying recognition of judgments on public policy grounds in these cases, the EDPS stresses the need for a strict interpretation of those exceptions;
- it is not clear whether the above exception for privacy rights is intended to cover also violations of legal rules for the processing of personal data as provided for in the Data Protection Directive, and if so, to what extent this may be the case. This may create problems of interpretation, and will not contribute to the legal certainty that the proposal aims to establish;
- further reflection should be undertaken on how to better align the courts' jurisdiction with the competence of data protection authorities.



↪ EDPS comments ([pdf](#))

> EDPS opinion on credit agreements relating to residential property

On 25 July 2011, the EDPS adopted an opinion on a Commission proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property.

Responsible lending is defined by the Proposal as the care taken by creditors and intermediaries to lend amounts that consumers can afford and meet their needs and circumstances. In the Proposal's perspective, irresponsible behaviour by certain market players was at the source of the financial crisis. The Proposal therefore introduces prudential and supervisory requirements for lenders and obligations and rights for borrowers in order to establish a clear legal framework which should safeguard the EU mortgage market from the disruptive effects experienced during the financial crisis.



The EDPS welcomed the specific reference in the Proposal to Directive 95/46/EC. However, he suggested some modifications in the text in order to clarify the **applicability of the data protection principles to the processing operations**, in particular in relation to the consultation of the database on creditworthiness which is established in almost all Member States. In particular, the EDPS highlighted that:

- the Proposal should specify in a more detailed way the sources from which information on the creditor's creditworthiness can be obtained;
- the text should include the definition of criteria for the possibility to consult the database and the obligations to communicate the data subjects' rights before having any access to the database, thereby ensuring concrete and effective possibilities for data subjects to exercise their rights.

↪ EDPS opinion ([pdf](#))

> EDPS opinion on the Agreement between the EU and Australia on Passenger Name Record

On 15 July 2011, the EDPS adopted an opinion on a Commission proposal concerning an Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data. The EDPS has welcomed the safeguards foreseen in the proposals, especially with regard to the concrete implementation of the agreement, in particular data security aspects, supervision and enforcement provisions.

However, he has also identified a significant **margin for improvement**, in particular as regards the scope of the agreement, the definition of terrorism and the inclusion of some exceptional purposes, as well as the retention period for PNR data. He also considers that the legal basis for the agreement should be reconsidered and should refer to Article 16 of the Treaty on the Functioning of the European Union (TFEU).



The EDPS also recalls the wider context of the **legitimacy** of any PNR scheme, seen as the systematic collection of passenger data for risk assessment purposes. Only if the scheme respects the fundamental requirements of necessity and proportionality under Articles 7 and 8 of the Charter of Fundamental Rights and Article 16 TFEU, could a proposal satisfy the other requirements of the data protection framework.

↪ EDPS opinion ([pdf](#))

> EDPS opinion on the Commission's Communication on migration

On 7 July 2011, the EDPS adopted an opinion on the Commission's Communication on migration. The Communication was intended to outline the European Union's approach to migration, which includes several areas relevant to data protection, e.g. border management and Eurodac. It marked



the start of a series of further Communications and legislative proposals in these areas planned for the near future.

In his opinion, the EDPS focused on the need to prove the **necessity of proposed new instruments** such as the Entry-Exit-System. To this end, he recalled the case-law of the European Court of Human Rights and the European Court of Justice which establishes that the standard of proof needed for interference with the rights to privacy and data protection is that of 'being necessary in a democratic society'. In this connection, he recommended that:

- each new proposal should be accompanied by a specific privacy impact assessment;
- the intended scope of initiatives such as EUROSUR should be clarified;
- if new instruments are adopted, the principle of 'privacy by design' should be taken into account.



Another issue addressed was the use of **biometrics**. Here, the EDPS urged that any use of biometrics should be accompanied by strict safeguards and complemented by a fall-back procedure for persons whose biometric characteristics may not be readable. Additionally, he specifically called on the Commission not to reintroduce the proposal to grant law-enforcement access to Eurodac.

🔗 [EDPS opinion \(pdf\)](#)

> EDPS comments on the anti-corruption package

On 6 July 2011, the EDPS issued formal comments on the anti-corruption package, which consists of a Communication setting out the European Union's approach to curb corruption, a Commission Decision to establish a regular EU anti-corruption report and a Report on the terms of EU participation in the Council of Europe Group of States against Corruption.



The Communication refers to a planned strategy for improving the quality of financial investigations and developing financial intelligence, including sharing of information within and between Member States, EU agencies and third countries. In this regard, the EDPS encouraged the Commission to ensure a sufficient level of data protection in this future strategy. He also recommended that the sharing of best practices envisaged in the EU anti-corruption report should be understood to also include practices for ensuring data protection in anti-corruption investigations.

These formal comments have been preceded by informal comments on draft documents submitted by the Commission; many issues were already resolved at this informal stage.

🔗 [EDPS comments \(pdf\)](#)



> EDPS opinion on technical requirements for credit transfers and direct debits in euros

On 23 June 2011, the EDPS adopted an opinion on a Commission proposal for a Regulation establishing technical requirements for credit transfers and direct debits in euros, which relates to the Single European Payment Area (SEPA).

SEPA is a project aiming at establishing a single market for retail euro payments by overcoming the technical, legal and market barriers existing in the period prior to the introduction of the single EURO currency. Once SEPA has been completed, there will be no difference between national and cross border euro payments: they will all be domestic. Since the market itself has not autonomously developed towards a completion of SEPA, the purpose of the proposal is to establish rules and a deadline for the final implementation of SEPA in the euro area.

The introduction and development of SEPA involves several data processing operations: names, bank account numbers and content of contracts need to be exchanged directly between payers and payees and indirectly through their respective payment service providers in order to guarantee a smooth functioning of the transfers. The proposal also introduces a new role for national authorities competent to monitor compliance with the regulation and take all necessary measures to ensure such compliance. While this role is fundamental for guaranteeing an effective implementation of SEPA, it might also involve broad powers for the further processing of personal data by the authorities, including the total amount of euro transfers between individuals and entities.

The EDPS therefore recommended some modifications in the text in order to ensure that the exchanges of such data comply with the relevant applicable legislation and in particular with the principles of necessity, proportionality and purpose limitation.



☞ EDPS opinion ([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.

>> Prior-check opinion on the European Commission's Physical Access Control System

The system being examined aims at the implementation of a unique and coherent physical access control system (PACS) for the whole European Commission, by performing all the required physical security functions. The system is based on the use of biometric data, which present specific risks to the rights and freedoms of data subjects, due to some inherent characteristics of this type of data.

In his opinion, the EDPS notes that the Commission has developed a privacy-friendly approach to the implementation of the processing operations at stake by involving the EDPS at a very early stage of



the notification procedure, by developing a pilot project phase and by considering all relevant data protection aspects at an early stage of its work.

Through this collaboration between the two institutions, the implementation of data protection requirements was facilitated. Among other aspects of the PACS, the EDPS focused his analysis on the biometric enrolment, the categories of data subjects concerned, the existence of fallback procedures and the security measures implemented.

☞ EDPS opinion ([pdf](#))

>> Prior-check opinion on Access Control System – Joint Research Centre of Ispra

In this prior-checking, the EDPS concluded that the European Commission was **in breach** of Regulation (EC) No 45/2001 ('the Data Protection Regulation') since it had installed and ran a biometric access control system without notifying the planned processing operation to the EDPS ex ante.

The purpose of the Access Control System at the Joint Research Centre (JRC) of Ispra is to protect the Commission premises in Ispra against unauthorised access and against external and internal threats.

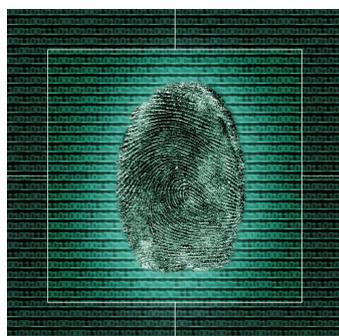
The EDPS noted that access to some protected areas of the JRC premises was covered by biometric readers and that only some staff members were using biometric readers. This element triggered the prior-checking procedure.

Among the recommendations, the EDPS requested the JRC to:

- enact a legal instrument providing the legal basis for the processing operations that take place in order to set up an access control system based on the use of biometrics;
- comply with the CCTV guidelines and report to the EDPS on the measures it has implemented;
- reconsider the decision taken in terms of technological choices through an impact assessment, including a viable timetable to implement changes in technology.

☞ EDPS opinion ([pdf](#))

>> Prior-check opinion on fingerprint recognition study of children



The purpose of the processing is to study in detail the physiological development of the fingertip ridge structure of children (ridge distance, position of minutiae) and the resulting recognition rate of fingerprint matching algorithms adapted to children.

To do so, the Commission's Joint Research Centre will conduct processing of fingerprint data for scientific purposes. The processing relates to biometric data, subject to prior-checking by the EDPS, to verify that stringent safeguards have been implemented.

In his conclusions, the EDPS recognised the importance of the study and recommended the adoption by the data controller of a risk assessment and access policy relating to the processing operation in question.

☞ EDPS opinion ([pdf](#))



>> Prior-check opinion on the Electronic Exchange of Social Security Information system - European Commission

The EDPS prior-checked an IT system for the exchange of social security information developed by the European Commission (Electronic Exchange of Social Security Information – EESSI), which should be fully operational by 1 May 2012. The cross-border exchanges of data through EESSI are aimed at facilitating decision-making for the calculation and payment of social security benefits, and allowing for a more efficient verification of data.

The EDPS welcomed the Commission proposal to create a ‘one stop point’ for data protection by designating the administration at which a claim was made as the contact point for individuals’ exercise of rights.

The EDPS also called on the Commission to implement a number of technical measures to ensure the security of EESSI data, in particular to:

- transmit only encrypted data, to prevent it from having access to the content of the sensitive data transiting through EESSI;
- complement the security policy with detailed provisions, especially in those areas in which the policy remains at a high level.

Since the system is still in its production phase, the EDPS emphasised that he should be notified of any substantial change to the design of the system which would impact the level of data protection in EESSI.

↪ EDPS opinion ([pdf](#))

>> Prior-check opinion on the ‘IDEAS – Exclusion of Experts by Applicants’ project – European Research Council Executive Agency

In the context of peer evaluation, project proposals submitted to the European Research Council Executive Agency (ERC) are subject to a review by panels composed of independent scientists and scholars. Under the notified procedure, applicants submitting a project proposal can include a reasoned request that up to three specific persons do not act as peer reviewer in the evaluation of the proposal. The purpose of the processing is to guarantee a fair, equal and objective assessment of project proposals, and neutralise applicants’ concerns regarding the correctness of the evaluation outcome and the objectivity of experts.

In the light of the principle of data quality, the EDPS invited the ERC to investigate the possibility of defining predetermined categories (e.g. ‘direct scientific rivalry’, ‘professional hostility’), rather than a ‘free text’ field for submitting specific reasons for excluding certain peers from becoming panel members.

The EDPS further recommended that the ERC ensure procedurally that access rights and rectification of the experts concerned were limited only in cases where necessary, and that all experts could verify whether they wanted to rectify objective data and/or add their own statement ‘neutralising’ or ‘balancing’ the subjective assessment of the applicant.

↪ EDPS opinion ([pdf](#))



>> Prior-check opinion on "Verification of flexitime clocking operations with respect to data on physical access" – European Council

In July 2011, the EDPS received a letter from the Data Protection Officer of the European Council informing him that, following the EDPS prior-check opinion on the abovementioned processing operation, the data controller had withdrawn the notification, and the planned system had not been implemented.

In his analysis, the EDPS concluded that 'from the point of view of the protection of personal data, and without prejudice to any other alternative solution, the EDPS confirms his doubts regarding the proportionality of the planned processing operation'.

Furthermore, the EDPS stated that '(he) considers that the planned processing operation would violate the Regulation on various levels (lawfulness of the processing operation, necessity and proportionality, change in purpose, data quality) if the verification of flexitime clocking operations with respect to data on physical access checks, as described in the notification, were to be carried out outside the framework of an administrative investigation.'



↗ EDPS opinion ([pdf](#))

> Enforcement

>> Visit to the European GNSS Agency (Brussels, 23 September 2011)

On 23 September 2011, the EDPS and his staff visited the European GNSS Agency (GSA) at its premises in Brussels. This visit was triggered by an insufficient level of compliance with the Data Protection Regulation.



The meeting allowed the EDPS and his staff to express their concerns as to the current level of data protection compliance at the GSA. It was also an opportunity for the

Agency's Data Protection Officer to update the EDPS on the GSA's progress towards achieving compliance, notably with regard to the inventory, register and prior-checking notifications. A roadmap was agreed upon by the GSA and the EDPS, with a number of actions scheduled up to mid-2012 aimed at bringing the GSA to a satisfactory level of compliance. The EDPS will therefore be monitoring the GSA's efforts towards compliance in accordance with the roadmap.

> 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.



>> Consultation on controller-processor relationships where CCTV is operated on the premises of an institution by another institution



On 28 July 2011, the EDPS replied to a consultation regarding the controller-processor relationship by the Trans-European Transport Network Executive Agency (TEN-T EA). The Agency's video surveillance system is designed, installed, operated and managed by the Commission, based on a 'Service Level Agreement'.

In his reply, the EDPS recalled Opinion 1/2010 of the Article 29 Data Protection Working Party on the concepts of 'controller' and 'processor'. The Opinion stresses that the concept of controller is a functional concept, intended to allocate responsibilities where

the factual influence is. It also specifies that, in case of doubt, elements such as the degree of actual control exercised by a party, the image given to data subjects and reasonable expectations of data subjects on the basis of this visibility may be useful to find the controller.

Whilst considering that the role of the Commission, on the facts of the case, appears to be more than a mere processor, and its role is better described as that of a controller, the EDPS highlighted that, at the same time, the Agency cannot escape its liability as a controller on the grounds that:

- it is obliged to conclude a contract with the Commission; and that
- the Commission's services are standard services, offered by the Commission to all its partners.

Against this background, the EDPS stressed that the Agency should act in due diligence in reviewing the relevant practices of the Commission, communicate the Commission's practices to its staff and visitors, and raise with the Commission (and ultimately, with the EDPS, if legality is at stake) any concerns it may have regarding the legality or customisation of the Commission's services as it deems necessary.

> Thematic 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 staff evaluation



On 15 July 2011, the EDPS issued Guidelines on processing operations which involve evaluation of EU staff, such as career development review, probation, promotion, reclassification, certification and attestation.

The Guidelines provide a summary of the EDPS views on the application of the data protection principles already outlined in his numerous opinions adopted to date. They will serve as guidance to EU institutions and bodies in



submitting prior-checking notifications to the EDPS. The Guidelines will also be used as a reference for the outstanding prior-checking notifications and enable any problematic practices to be addressed efficiently.

☞ EDPS opinion ([pdf](#))



EVENTS

> 33rd International Conference of Data Protection and Privacy Commissioners (Mexico City, 2-3 November 2011)

The 33rd Annual Conference of Data Protection and Privacy Commissioners will take place on 1-3 November 2011 in Mexico City. The title of the conference is 'Privacy: The Global Age'. The main focus of the event will be the challenges relating to the increasing internationalisation of processing activities based on fast innovation and global networks.



Building on the assumption that data protection authorities must work together in the globalised age, the Conference will explore ways for building the relationships and tools necessary to protect the data of individuals beyond national borders. The list of distinguished speakers will include Peter Hustinx, EDPS, and Giovanni Buttarelli, Assistant Supervisor.

The activities in Mexico City will start on 31 October with a preconference entitled 'Privacy as Freedom', followed on 1 November by two events organised by the Organisation for Economic Co-operation and Development and the Information and Privacy Commissioner of Ontario, Canada.

☞ [More information](#)

> European School of Administration – Erasmus for Public Administration' programme (Brussels, 20 October 2011)

The programme 'Erasmus for Public Administration' is organised by the European School of Administration. It aims at helping young national civil servants dealing with EU affairs and, through them, their administrations, to learn more about the EU decision-making processes and the way in which the institutions function.

Giovanni Buttarelli, Assistant Supervisor, spoke at the October session to present the EDPS' duties (consultation, cooperation and supervision) to officials, civil servants and staff from national data protection authorities.)

☞ For more information:

<http://europa.eu.int/eas>

<http://intracomm.cec.eu-admin.net/home/dgserv/eas> (European Commission Intranet)



> EDPS meeting with Heads of EU Agencies (Helsinki, 14 October 2011)

On 14 October 2011, Peter Hustinx, EDPS, participated in the network meeting of the Heads of EU Agencies in Helsinki.

The meeting provided the opportunity to present a general overview of EDPS activities, as well as the new compliance and enforcement policy, focusing on the implications of the policy for the work of the Agencies and on EDPS expectations.

The Supervisor also underlined the importance of the Data Protection Officers in ensuring compliance with the Data Protection Regulation and reminded the Agencies of their obligation to provide DPOs with adequate resources and time to perform their duties.

> EDPS – Data Protection Officers meeting (Strasbourg, 7 October 2011)

On 7 October 2011, the EDPS held the biannual meeting with the Data Protection Officers (DPOs) of the EU institutions and bodies. The meeting was hosted by the European Ombudsman in Strasbourg.

After an overview of recent developments in data protection, focusing on issues of relevance for DPO work, an open discussion was held on shared issues and common concerns. The presentation of the recent EDPS Guidelines on the processing of personal data in relation to the appraisal procedures for statutory staff prompted further discussion on specific issues relating to these procedures.

The second part of the meeting was devoted to developments in the EDPS activities and the provision of information on recently adopted opinions on prior-checking notifications and consultations.

> Commission-ETSI Conference on cloud computing (Nice, 28-29 September 2011)

On 28-29 September 2011, the European Telecommunications Standards Institute (ETSI) and the European Commission organised a joint conference to support an EU-US dialogue on standardisation in the developing cloud computing sector. Cloud computing is a major shift in IT architectures and services that aims to render IT services more networked, more specialised, more agile and ultimately more cost-effective. It also involves serious challenges for public authorities, corporations and SMEs

in terms of data security, data privacy, jurisdiction and liability. Common standards should be encouraged to facilitate safe and transparent development of cloud computing.



The conference was attended by representatives of the European Commission, representatives of the US government and IT industry, as well as members of standardisation bodies from across the world.

The Assistant Supervisor, Giovanni Buttarelli, chaired the session on "Policy and legal concepts/tools to support market developments and build confidence". He delivered a speech ([pdf](#)) on the challenges posed

by cloud computing to the current and future architecture of European Data Protection law.



> Polish Presidency conference on data protection (Brussels, 20-21 September 2011)

On 20-21 September 2011, the Polish Presidency of the Council of the European Union organised an international conference on data protection, in close cooperation with the Polish data protection authority, the governments and data protection authorities of Hungary and Spain, and the Council of Europe and the European Commission.



The review of the data protection framework was at the heart of the conference. Sessions were held on the effectiveness of data protection principles in a changing world, the data protection framework in the areas of police and justice, and the question of whether European data protection standards should be considered as the benchmark for others.

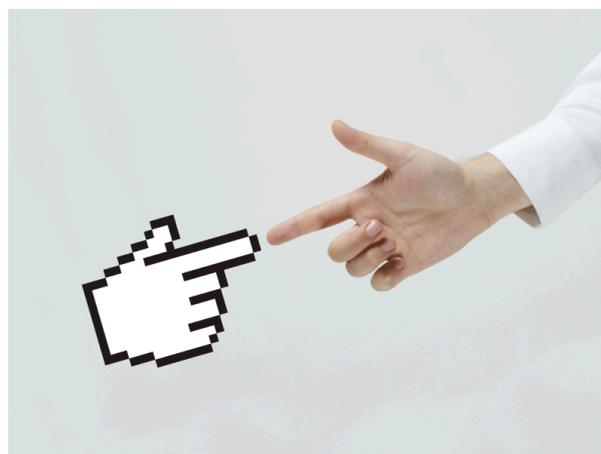
Peter Hustinx, EDPS, made the closing remarks.

The conference was attended by stakeholders from governments, national data protection authorities, industry and civil society. It had considerable participation on the US side, which also gave insight into the US perspective.

☞ More information can be found on www.conference2011.giudo.gov.pl.

> Peter Hustinx's lecture on "The privacy implications of online behavioural advertising" (University of Edinburgh, School of law, 7 July 2011)

In a public lecture on the privacy implications of online behavioural advertising (pdf), the EDPS called on the European Commission to ensure that safeguards for online behavioural advertising are fully respected. These safeguards are laid down in Article 5(3) of the e-Privacy Directive, as revised in 2009. According to this provision, the storing of information, such as cookies, on computers for tracking purposes is only allowed if the user concerned has given his/her consent, having been provided with clear and comprehensive information about the purposes of the tracking. This new requirement is still being contested in large parts of the online advertising community.



In his speech, Peter Hustinx emphasised that the systematic tracking and tracing of consumer behaviour online is a highly intrusive practice that is now rightly subject to more stringent requirements.

Although initiatives for increased transparency and consumer control in the online environment are most welcome, this should not result in a limitation of consumer rights. In the EDPS' view, the Commission should avoid any ambiguity as to its determination in making sure that these rights are delivered in the EU.

In September 2011, the issue was the subject of two parliamentary questions from MEP Sophie In't Veld to Commission Vice-President Neelie Kroes, in which she raised the interpretation of Article 5(3) of the e-Privacy Directive. In her response, Neelie Kroes confirmed the EDPS stance by stating that "The ePrivacy Directive indeed requires consent of the users for the storing or accessing of information on their terminals. The user must be informed and decide on the access to his or her terminal. This is reflected in the EDPS statements."



SPEECHES AND PUBLICATIONS

- Speaking notes ([pdf](#)) of Peter Hustinx for the LIBE Hearing on Cyber Attacks against Information Systems (Session IV - Data protection and legal certainty), European Parliament, Brussels (4 October 2011)
- "Do not track or right on track? – The privacy implications of online behavioural advertising", speech ([pdf](#)) delivered by Peter Hustinx at the University of Edinburgh, School of Law (7 July 2011)



NEW 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.

> Recent appointments



- Leelo Kilg, European Police College
- Edina Telessy, Translation Centre for the Bodies of the European Union
- Ulrike Lechner, European Network and Information Security Agency
- Ignacio Vázquez Moliní, European Monitoring Centre for Drugs and Drug Addiction

↪ 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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