



NEWSLETTER

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Content:

1. [Maintenance payments](#) - EDPS Opinion on draft Regulation
 2. [Criminal records](#) - EDPS Opinion on draft Framework Decision
 3. [Annual Report 2005](#)
 4. [PNR judgement](#)
 5. [Interoperability](#) - EDPS in European Parliament seminar
 6. News on EDPS [prior checking](#) of processing of personal data
 7. [Eurodac](#) coordination meeting
 8. New [Data Protection Officers](#)
 9. [Council working party on data protection](#)
 10. [Speeches/Articles](#)
 11. [edps.europa.eu](#)
 12. [Prize to Data Protection Best Practices in European Public Services](#)
 13. [Colophon](#)
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1. Maintenance payments: EDPS Opinion on draft Regulation

The European Data Protection Supervisor (EDPS) recently presented an opinion on a draft Regulation concerning maintenance payments. Relating to beneficiaries and persons liable in the 25 Member States, the proposed regulation deals with a complex reality - maintenance payments may be awarded to children, to divorced spouses, and to parents, etc. and those involved may live or have assets in different Member States.

The EDPS welcomes the proposal, which is linked to the basic concept of Europe; the free movement of people implies the free movement of court decisions. A general remark, however, is that the European Parliament should clearly be involved in the matter as part of a co-decision procedure. The EDPS also emphasizes that data protection principles must be duly respected, such as purpose limitation, proportionality of data processed, and limiting the use of sensitive data. The most important concern is the key principle that data collected for a specific purpose should not be used for different purposes, which would be a consequence of the proposal.

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

2. Criminal records: EDPS Opinion on draft Framework Decision

Earlier this week, the EDPS presented an opinion on the draft Framework Decision on Member States' organisation and exchange of information in criminal records. Satisfied with the general approach to data protection in the proposal, the EDPS relates it to the draft Framework Decision on data protection in the third pillar. The EDPS puts forth a range of advice on how to improve the proposal, such as by further clarifying ownership of and responsibilities for the personal data. The EDPS also asks for more precise criteria for transmitting data to a third Member State for other purposes than criminal proceedings.

The main issue is that as long as the Framework Decision on data protection in the third pillar is not yet adopted, there are no general safeguards, and thus a legal uncertainty for European citizens. Only some articles in the present proposal deal with specific situations, but that does not give the necessary protection.

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

3. Annual Report 2005

Peter Hustinx, EDPS, presented his second Annual Report on 19 April at a well attended press conference. While the first Annual Report concentrated on the setting up of the new independent authority, its sequel focused more on consolidating the three roles - supervision, consultation and cooperation.

Protection of personal data is an obligation that was introduced later in the EU institutions and bodies than in the Member States. This has forced the EDPS to take a pragmatic and constructive approach, in view of the fact that a sound data protection culture needs to be developed. The EDPS has therefore allowed for a learning period - until spring 2007, after which the whole EU administration needs to fully ensure good governance when it comes to the fundamental right to data protection.

In his supervisory role, the EDPS has focused efforts on prior checking risky processing operations in the following thematic priorities: medical files, staff appraisal, disciplinary procedures, social services and e-monitoring. Some 6 opinions were delivered in the equally important role to provide advice on proposals for new legislation, including one on the highly controversial data retention directive. The majority of these opinions relate to the policy area "Justice, Freedom and Security".

The Annual Report was also presented at the LIBE committee of the European Parliament and in the Council Working party on Data Protection. Printed copies in English or French can be ordered from the EDPS secretariat.

Click to read the [full text version](#) or the [executive summary](#).

4. PNR judgement

The EDPS has provided his initial reactions to the judgment of the Court of Justice in the two PNR-cases concerning the transfer of flight passenger's personal data to the US. The EDPS has used, for the first time in these cases, his powers to intervene before the Court in support of the Parliament.

The Court has now decided to annul the decisions of the Council and the Commission on which the access of US authorities to PNR-data of European airlines was based, without entering into the substance of these decisions. Ruling that the wrong legal basis was chosen since the processing operations concern public security and activities of criminal law, the Court states that it is not decisive that the data had originally been collected for commercial purposes (the air transport of the passengers).

The judgement is very important from the perspective of data protection and a careful analysis of its consequences is needed. The initial reaction of the EDPS is that the judgement:

- addresses the scope of the data protection directive (95/46), notably when it comes to interaction with law enforcement.
- seems to create a loophole in the protection of the European citizen since it is no longer assured that data collected for commercial purposes but used by police are protected by the data protection directive.

The judgement will take effect after a transition period that expires by 30 September. The EDPS insists that all actors make use of this time to come to a balanced solution. For his part, the EDPS will be available as an advisor to the EU institutions in the proposals for replacing instruments. He will also work actively with the national data protection authorities of the EU Member States.

5. Interoperability - EDPS in European Parliament seminar

The EDPS recently participated in a seminar on interoperability of European databases which was organised by MEP Alvaro, *rapporteur* at the LIBE committee. Presenting the main lines of his Comments on the Commission Communication on interoperability, Hustinx regretted that the term interoperability is still blurred, and that its legal and political dimensions have been greatly played down, or even ignored. The EDPS reiterated that the use of biometrics requires stronger and more specific safeguards and that their implementations have technical and legal limits which must be better recognised and enforced.

Click to read the EDPS [Comments](#).

6. 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) is subject to a prior check (control) by the EDPS. This procedure serves to establish whether or not the processing is in compliance with Regulation 45/2001, which lays down the data protection obligations of the EU institutions and bodies. Prior checks also concern processing of personal data that started before the EDPS was appointed, and for which the control is thus only done afterwards. The following priorities guide such prior checks: disciplinary files, staff appraisal, medical files, social services and e-monitoring. Recent Opinions concern:

Recording of communications at the European Central Bank (ECB) and the European Investment Bank (EIB)

It is common practice in the banking sector to record proceedings of telephone conversations concerning financial transactions to serve as proof in case it is challenged afterwards.

The recording presents specific problems, which are so important that a specific provision and special safeguards have been provided in Regulation 45/2001; notably on the confidentiality of communications. Furthermore, records are sometimes used to identify violations of professional secrecy or misuse of inside information, and to identify fraud. For these reasons, the EDPS decided to prior check the procedures of recording communications at the ECB and EIB.

The recommendations centred essentially around the obligation to provide information to counterparties to a transaction, whose data are also recorded. The EDPS also stressed the importance of determining the purposes for which the data are initially collected and ensuring that they are not subsequently processed for other, incompatible, purposes.

Disciplinary cases at the ECB

Processing operations in disciplinary procedures are subject to prior checking because they evaluate personal aspects (the conduct) of the data subjects and because the processing of the data may also contain information on offences, suspected offences, or on criminal convictions, etc.

After having examined the personal data processing in the disciplinary procedures of the ECB, the EDPS made various recommendations. These included, among others, guidance on the conservation of data related to disciplinary proceedings which are kept in the personal file, in the disciplinary file and in the logbook, respectively.

Social and financial assistance at the European Commission

The Commission pursues a social welfare policy for its staff, which includes financial assistance, psychosocial support and practical assistance. Social welfare service files may include details relating to the health of an official, which subject the data processing to prior control by the EDPS. Moreover, data processing by the social welfare service may be intended to evaluate personal aspects relating to the data subjects.

The EDPS recommendations concerned, among others, that extreme care should be taken in all communications that include personal data with external services. Moreover, the EDPS called for data to be rendered anonymous when statistics of financial assistance are prepared; and called for the stamping of the words "Staff matter" on all letters given the confidentiality and sensitivity of the data.

The Opinions are published on the EDPS website. Click [here](#) for the index with the full text versions of the Opinions.

7. Eurodac coordination meeting

The EDPS will organise a second coordination meeting for the national data protection authorities on 28 June regarding the joint supervision of Eurodac. During the previous coordination meeting in September 2005, the EDPS and national data protection authorities discussed a range of issues, some of which were selected for further scrutiny at the national level. The EDPS will present the findings of his first inspection of the Eurodac central unit at the June meeting.

Large scale IT-systems in the EU, such as the second generation Schengen information system and the Visa information system, are going to be set up in the near future. Consisting of national elements and a central unit, the protection of personal data in these systems will (just as for Eurodac) rely on close cooperation of different data protection authorities, both on the national and on the European level.

8. New Data Protection Officers

Each EU-institution and body has to appoint at least one person as Data Protection Officer (DPO). These officers have the task of ensuring in an independent manner the internal application of Regulation 45/2001.

Because of its size and the number of dossiers handled, the European Commission has not only appointed a DPO and a deputy DPO, but has also introduced a system of Data Protection Coordinators (DPC). The DPCs have a delegated responsibility in the General Directorates of the Commission, and they answer to Philippe Renaudière, who was recently appointed as the new Data Protection Officer of the Commission. The European Anti-Fraud Office (OLAF) has a separate DPO.

The full list of DPOs is available [here](#).

9. Council working party on data protection

The Austrian EU presidency has reactivated the Council working party on data protection, which met after four years of inactivity in March and May. The working party played a role in the development of Directives 95/46 (Data protection directive) and 2002/58 (Directive on telecommunications) as well as Regulation 45/2001. It will now focus on ensuring a horizontal approach, taking a coordinating role, in order to work for a comprehensive and consistent protection of personal data. Finland and Germany, the two upcoming presidencies, have announced that they will support the Austrian initiative.

10. Speeches/Articles

At a recent conference in Warsaw on Public Security and Data Protection, Peter Hustinx delivered a speech on 'Human Rights and Public Security: Chance for a Compromise or Continuity of Safeguards?' In this speech, Hustinx advocates a fundamental principle of 'conservation of protection', much like 'conservation of energy', a basic principle in physics stating that the total amount of energy in a closed system is constant. In other words, energy can be converted from one form to another, but it cannot be created or destroyed. This helps to understand essential requirements of human rights protection, including privacy and data protection.

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On the occasion of the 10th anniversary of the Hungarian Data Protection Authority, Peter Hustinx contributed with an article on the notion "adequate level of protection", which is central when it comes to allowing for a transfer of personal data to a third country. Before becoming an EU Member State, and thus part of the internal market and its high level of protection and free flow of personal data, Hungary was granted adequate protection status by a European Commission decision of July 2000.

Hustinx' article also deals with the adequacy decisions of the Commission relating to Switzerland and the US Safe Harbour regime which were taken at the same time as the decision on Hungary (contrary to other adequacy decisions which relate to the protection in a whole country, the ones for the US are limited to two specific set of rules - Safe Harbour and for PNR-data (also see Court decision)). The article also relates to the differences of the Council of Europe Convention on data protection (No 108) and the (more developed) Data Protection Directive (95/46) of the EU.

Click [here](#) to read the speech and the article.

11. edps.europa.eu

9 May 2005 - the Europe day - saw the introduction of the europa.eu domain name for the EU administration. Just as all other institutions and bodies, the EDPS thus has new website and e-mail addresses.

The old (eu.int) addresses will function and transfer e-mail messages for another 11 months, but please update your address books and bookmarks today (see below).

12. Prize to Data Protection Best Practices in European Public Services

The Data Protection Agency of Madrid has opened up for applicants to the third edition of the Prize to Data Protection Best Practices in European Public Services. The main goal of the award is raising awareness and promoting sound data protection policies in the public sector. In the first two editions, the prize went to the City Council of Vitoria-Gasteiz (2004) and to the Government and Data Protection Commission of Austria (2005).

The deadline for presenting applications is on 5 October, 2006. To find out more about the Prize and how to submit applications, click [here](#).

13. Colophon

This newsletter is issued by the European Data Protection Supervisor - an independent EU authority established in 2004 to:

- monitor the EU administration's processing of personal data;
- give advice on data protection legislation;
- co-operate with similar authorities to ensure consistent data protection.

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