



EDPS NEWSLETTER

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DATA PROTECTION OFFICERS

HIGHLIGHTS

Dealing with rule-breakers in the EU institutions

All EU staff are obliged to abide by the [Staff Regulations](#), which outline the rules, principles and working conditions for EU Officials. However, though they help to identify when someone has broken the rules, the Staff Regulations do not specify how [EU institutions](#) should deal with these cases.

On 18 November 2016, the EDPS published [Guidelines](#) to address this issue. The Guidelines aim to provide the EU institutions with a framework by which to conduct administrative inquiries and disciplinary proceedings and are designed to ensure that any processing of personal data is lawful, fair, transparent and in compliance with data protection obligations.

When an EU institution launches an administrative inquiry to investigate a breach of the Staff Regulations, it must adopt a specific

legal instrument. This acts as a legal basis for launching the inquiry, setting out the process involved and giving those implicated in the inquiry the necessary information about their rights. Among other things, our Guidelines point out that data protection rules, which specify the different ways in which it is possible to collect potential evidence for the investigation, should be reflected in a manual, to be used alongside the legal instrument.

When carrying out an inquiry, informing all individuals involved about the processing of their personal data and their rights is an important step. If informing the person under investigation at an early stage of the inquiry or proceeding could be detrimental to the investigation, the EU institution must inform the individual concerned of the principal reasons why it is

necessary to restrict their right to be informed and clearly document the reasons why. The individual should also be informed of their right of recourse to the EDPS. The principle of data minimisation should be applied during an inquiry, ensuring that only personal data which is adequate, relevant and necessary to the purpose of the particular case is collected and processed.

An adequate framework for conducting administrative inquiries and disciplinary proceedings in the EU institutions, as outlined in our Guidelines, is essential if we are to ensure that all personal data, including sensitive data, is treated with the necessary care and respect when carrying out an investigation.

[EDPS Guidelines](#)

[EDPS Blogpost](#)

Towards a new reality: Taking back control of our online identities

The General Data Protection Regulation (GDPR) provides individuals with increased control over how their [personal data](#) is collected and used online, but more can and should be done to ensure that individuals are able to take back control of their online identities, the European Data Protection Supervisor (EDPS) said today, as he published his [Opinion](#) on Personal Information Management Systems (PIMS).

Giovanni Buttarelli, EDPS, said: **Our online lives currently operate in a provider-centric system,**

where privacy policies tend to serve the interests of the provider or of a third party, rather than the individual. Using the data they collect, advertising networks, social network providers and other corporate actors are able to build increasingly complete individual profiles. This makes it difficult for individuals to exercise their rights or manage their personal data online. A more human-centric approach is needed which empowers individuals to control how their personal data is collected and shared.

The recently adopted GDPR provides for increased transparency, powerful rights of access and data portability, giving individuals more control over their data. However, it is not the final step in this process. Instead, it should be seen as the foundation for further efforts to improve how we enforce control over our online identities.

[EDPS Opinion](#)

[EDPS Press Release](#)

Developing a common vision on data protection



The General Data Protection Regulation (GDPR) will come into force in May 2018, changing the way many EU companies and organisations approach data protection. However, the impact of the EU's new data protection rules will also be felt further afield.

At the beginning of November, a representative from the EDPS was invited to participate in a seminar organised by the *Iberoamerican Data Protection Network* (RIPD), entitled *Europe-Iberoamerica: a common vision on data protection. The new European framework and its impact in Iberoamerica*. The event took place in Montevideo, Uruguay from 8-9 November 2016 and was attended by *data protection authorities* (DPAs) and other bodies from within the Network, as well as representatives from both the

Organisation of American States and the EDPS.

Several topics were addressed during the event's *open session*, including the right to be forgotten, the impact of the GDPR in the region, international transfers, digital education and the protection of children, and the strategies of DPAs in the changing international landscape. In the closed session, a draft reference document on Iberoamerican data protection standards was discussed, in

addition to organisational and strategic proposals related to the development of the RIPD.

With the support of the EDPS, the film *Democracy*, which documents the legislative process behind the GDPR, was also screened in Montevideo. The *event* took place on the evening of 9 November 2016 and was organised by the Uruguayan DPA, the EU Delegation in Uruguay and the Goethe Institut. After the screening, representatives from the Spanish DPA and the EDPS provided some

background comments on the GDPR and the film.

The Commission has approved *Adequacy Decisions* with both Argentina and Uruguay, certifying that both countries ensure an adequate level of data protection. The RIPD has also contributed significantly to the international dialogue on data protection and to progress in the legislative field. We welcome the work done by the RIPD and were delighted to be able to contribute to it. We look forward to further strengthening our cooperation.

DPOs discuss DPIAs

The 40th meeting between the EDPS and the *data protection officers* (DPOs) from the *EU institutions and bodies* took place on 27 October 2016. Meetings between the EDPS and the DPOs take place twice a year and are an opportunity for the EDPS to interact with our data protection partners and reinforce our collaboration.

Hosted on this occasion by the European Union Intellectual Property Office (EUIPO) in Alicante, items on the agenda included *Data Protection Impact Assessments* (DPIAs), individuals' right of access and restrictions

to that right and two newly adopted EDPS guidelines on *mobile applications* and *web services*. For the newly-appointed DPOs, we also ran a workshop on the practical application of the principles of the current *Data Protection Regulation*, which applies to the EU institutions and bodies.

In our *October 2016* Newsletter we reported on the introduction of DPIAs under the new *General Data Protection Regulation* (GDPR). While the GDPR does not apply to the EU institutions, bodies and agencies, it is expected that the

data protection rules that do apply to them will soon be *adapted to reflect the GDPR*, and will therefore include the requirement to carry out DPIAs. Our discussions on the implications and practicalities of DPIAs at the DPO meeting were aimed at helping DPOs to start thinking about and preparing for their introduction.

The next DPO meeting will take place in Tallinn, Estonia, in early 2017. DPIAs will once again be on the agenda as we continue to prepare for the changes and challenges to come.



CONSULTATION

A balanced approach to privacy and security

On 6 April 2016, the Commission adopted a Communication entitled *Stronger and Smarter Information Systems for Borders and Security*. The Communication outlines proposals on the *Common European Asylum System* and an *Entry/Exit system (EES)*, which we addressed in our *October Newsletter*, as well as the need to improve the interoperability of information systems used to manage EU borders.

The EU operates several information systems, or databases. Examples include the Schengen Information System (*SIS II*), put in place to manage the abolition of internal border controls in the EU, the Visa Information System (*VIS*), which is used to register visa applications in the EU, and

Eurodac, a fingerprint database used in applications for asylum.

Interoperability is the way in which these databases exchange and manage information. Improved interoperability would help the EU to better manage its borders and aid in the fight against crime and terrorism. However, increased interoperability also poses challenges for data protection and privacy. In a speech given at the meeting of the high level experts group on interoperability, EDPS Giovanni Buttarelli emphasised the need to accurately define what is meant by interoperability and how this definition will be implemented in practice. In particular, he highlighted the need for purpose limitation, to

ensure that the data contained in these databases is only processed in relation to the purpose for which it was originally collected. He recognised the value of

increased interoperability, but stressed that this must not come at the expense of the fundamental right to data protection and privacy.

The EDPS pledged to support the Commission in the establishment of a long-term solution which balances the need for greater security with the protection of privacy.



A privacy-friendly cloud?

On 19 April 2016, as part of its Digital Single Market (DSM) Strategy, the European Commission published a [Communication on the European Cloud Initiative \(ECI\)](#). The Communication builds on the theory that information and data, if processed in a structured way and using computing technology of adequate power, are important drivers for economic growth.

The ECI will be targeted initially at the scientific community, with the intention to expand the user base to the public sector and industry at a later date. Ultimately, it is hoped that the ECI will create solutions and technologies that will benefit all areas of the economy and society, but in a way that respects the data protection rights of all individuals involved.



However, if the initiative is to become a reality the Commission must overcome a range of

challenges, one of which is to ensure that the ECI is compliant with data protection principles. Compliance would build confidence in the Cloud and therefore act as an incentive for it to be used, both directly by Cloud customers and indirectly by customers of services provided through the Cloud.

In our role as adviser to the EU institutions on issues of data

protection, we have undertaken to analyse the proposal and its data protection implications. Our aim is to provide recommendations on how to ensure that EU data protection rules are applied consistently and effectively to the development and operation of the ECI.

The EDPS Opinion on the ECI will be published on our [website](#) shortly.



COURT MATTERS

Defining personal data

To connect to the internet, we need to use an Internet Protocol (IP) address. Every device capable of connecting to the internet has one, whether *dynamic* or *static*. Dynamic IP addresses change each time there is a new connection to the internet, making it difficult to identify the individual associated with the address without additional information.

On 19 October 2016, the Court of Justice [ruled](#) that dynamic IP addresses should be considered personal data and therefore be processed in accordance with data protection rules. The ruling helped to clarify the definition and scope of what constitutes personal data.

In his case against the German Federal Ministry of Justice and

Consumer Affairs (BMJV), Patrick Breyer, a German MP, judge and data protection activist, argued that dynamic IP addresses were personal data, and not just a technical detail. Consequently, they should receive the same level of protection as other

personal data. Websites under the authority of the BMJV store information on all operations relating to access to their websites, including the IP address of the computer from which access was sought. The system is designed to prevent



against cyber attacks and to help in the prosecution of internet pirates.

As part of the case, the German Federal Court of Justice (BGH) referred two questions to the EU Court of Justice (CJEU). They concerned:

1. Whether the definition of personal data, specified in the EU [Data Protection Directive](#) as *any information relating to an identified or identifiable natural person*, applies to dynamic IP addresses
2. Whether the Directive allows Member States to pass national legislation prohibiting the processing of

certain personal data, such as IP addresses

While the Court ruled that dynamic IP addresses are personal data, it found that the Directive prevents Member States from adopting national legislation to prohibit its processing, as the opposing rights and interests in each individual case must be assessed.

As this was a preliminary ruling handed down to the BGH by the CJEU, the matter will now be adjudicated by the BGH at national level. The EDPS will continue to monitor the case and its implications for data protection and privacy.



IT POLICY

Guidelines for going mobile

On 7 November 2016, the EDPS published [Guidelines](#) on the protection of personal data processed by mobile applications. These guidelines offer practical advice to organisations on how to integrate data protection principles into the processing of personal data by mobile applications.

Mobile apps are software applications used on smart devices, such as smartphones and tablets. Most of them are designed to interact in a specific way with a wide range of online resources and they can also exchange information with other connected devices. The tools integrated in smart mobile devices, such as cameras, microphones and

location detectors, are also often exploited by apps. However, though these tools increase the value of an app for users, their use may involve the collection of great quantities of personal data.

Our Guidelines provide advice on how to ensure that mobile apps process this data in a way that does not interfere with an individual's privacy. Though the advice is aimed at the EU institutions, anyone or any organisation interested in data protection and mobile applications might find it useful. Some recommendations include ensuring that the mobile app only collects data that is strictly necessary for the performance of

its lawful functionalities, providing the relevant information to the user so that they can make an informed decision on consenting to the processing of their data or not, performing and following an [information security risk assessment](#) as part of the app development process and actively involving the [Data Protection Officer \(DPO\)](#) early in the design process.

The [EDPS Strategy 2015-2019](#) outlines the importance of increasing the accountability of EU institutions with regard to data protection. In practice, this means helping them not only to comply with EU data protection rules, but to be able to demonstrate their compliance. Our Guidelines



support this by providing practical advice and serving as a reference document against which organisations can measure their activities.

[EDPS Guidelines](#)

[EDPS Blogpost](#)

Protecting privacy in online communication

On 19 October 2016, the European Court of Justice [ruled](#) that, in many cases, the data collected by web servers, such as the [IP addresses](#) of users, is personal data. The decision underlined the need to put in place adequate safeguards to protect personal data when operating websites and other online services.

The EU institutions, and many other organisations, rely increasingly on online tools to communicate and interact with citizens. In addition, online transactions are becoming more complex. The implementation of effective data protection policies for the processing of all personal data used by web-based services is essential if we are to protect the rights of users. In particular, we need to address the use of cookies, online tracking, security and personal data transfers. Our [Guidelines](#) on the protection of personal data processed through web services, published on 7 November 2016, aim to do this.

The Guidelines offer practical advice to organisations on how to integrate data protection principles into the development and management of their web-based services. They include recommendations on how to increase accountability, which requires that organisations not only comply with data protection rules but are also able to demonstrate their compliance. The main topics covered by the Guidelines are:

- The use of cookies, scripts and any other tools stored or used on the user's computer
- The processing of personal data by web servers and the issue of online tracking
- The use of third party components and services and the transfer of personal data
- Security issues specific to web services

In addition to including feedback from a variety of specialists from the EU institutions, our aim has been to make these guidelines as practical as possible so that anyone or any organisation interested in data protection and web services might find them useful.

[EDPS Guidelines](#)

[EDPS Blogpost](#)



EVENTS

Computers, Privacy & Data Protection 2017: The age of intelligent machines

The annual Computers, Privacy and Data Protection (CPDP) conference will take place from 25-27 January 2017, at [Les Halles de Schaerbeek](#) in Brussels. CPDP gathers academics, lawyers, practitioners, policy-makers, computer scientists and members of civil society from all over the world to exchange ideas and discuss the latest emerging issues and trends in data protection and privacy. Its unique multidisciplinary formula has made it one of the leading data protection and privacy conferences in Europe and around the world.

The main focus of CPDP2017 will be *Artificial Intelligence*, including discussions on a broad range of ethical, legal and policy issues related to new technologies. The conference will host more than 60 panels, which will address current debates in the areas of information technology, privacy and data protection. Already lined up are panels on the compliance of companies with the General Data Protection Regulation (GDPR), Big Data and insurance, the implications of Brexit for data protection, a review of the

ePrivacy Directive and online behavioural advertising, social robots and data protection, the EU-US Privacy Shield, algorithmic decision-making and cybersecurity. CPDP is also an extraordinary networking opportunity within the privacy and data protection community.

For more information and to register visit www.cpdpcferences.org

You can also follow CPDP on [Facebook](#) and [Twitter](#)

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Europol Director visits the EDPS

The EDPS was pleased to welcome Rob Wainwright, Director of Europol, to our premises in Brussels on 1 December 2016. Mr. Wainwright met and spoke with staff about Europol's activities, the strong commitment of his institution to data protection and the security challenges ahead.

This is the latest in several meetings between Europol and the EDPS, both at staff and management levels, as the EDPS prepares to take over responsibility for supervision of personal data processing at Europol. We look forward to

further increasing cooperation between our two institutions over the coming months.



Building global partnerships: EDPS visits the US

EDPS Giovanni Buttarelli spoke at a series of roundtable discussions in the San Francisco Bay Area in November, as part of his efforts to help build global partnerships on data protection. It was his first visit to the United States since the adoption of the General Data Protection Regulation (GDPR), the EU's new data protection rules.

As part of the visit, he addressed a cybersecurity forum on the subject of encryption and had the opportunity to follow up on discussions from earlier in the year with Apple CEO, Tim Cook. He also participated in a discussion with policymakers, academics and businesses on the prospect of quantum computing and its likely impact on data security and anonymity. The EDPS floated the

idea of a *Global Friends of Privacy* initiative in which companies on the West Coast and elsewhere could lead by example in setting the standards for privacy safeguards in the digital space.

Taking place a week after the US Elections, the visit included discussions on the new political

climate, including uncertainty around ongoing trade deals and questions of how to ensure compliance with EU data protection rules, especially on transfers of data outside the EU. The EDPS will continue to monitor the changing political landscape in the US and its possible impact on data protection and privacy.



The EDPS encourages cooperation with Canada

On 4 November 2016, EDPS Giovanni Buttarelli gave a speech at the University of Laval in Quebec, Canada, at the invitation of local [Jean Monnet Chair in European Integration](#), Professor Olivier Delas.

In his speech, the EDPS took the opportunity to demonstrate the many values shared by Canada and Europe. He proposed that Europeans and Canadians should reflect jointly on three big issues: a shared understanding of the digital challenge; a shared concept of what human dignity means in the online environment and how



to translate this into effective laws and regulation; and on working together to put these shared values into practice.

The EDPS also focused on the tension between the protection and exploitation of personal data. With reference to his proposal for a [Digital Clearing House](#), he noted that Europeans and Canadians are equally worried about excessive market powers, the concentration of data in too few hands and unfair terms and conditions. He stressed that the only way of counteracting these trends is through reinforced

cooperation between regulators. The Digital Clearing House would allow digital market regulators of any size to discuss common concerns and potential violations of data protection frameworks.

Mr Buttarelli concluded by referring to Europe and Canada as *natural allies* in building a new consensus, both on the rules governing international data flows and on ethics, particularly in relation to the behaviour of states and corporations in the digital environment.

[Speech](#)

Recognition for EDPS work on accountability and the GDPR

On 28 October 2016, two colleagues from the EDPS participated in the ISACA Valencia Congress [Internet of Things. ISACA of Things](#), in Valencia, Spain. The event focused on the relationship between IT governance, security and audit and the Internet of Things (IoT).

Head of IT Policy at the EDPS, Achim Klabunde, spoke about whether tracking and surveillance are unavoidable in the Internet of Things. In his presentation, he emphasised the importance of implementing the principles of [data protection](#)



[by design](#) and by default into the development and manufacturing of new products and technologies, to ensure that they are privacy-friendly. Other topics of discussion included IoT security, IoT trends, applications and future challenges, a case study on the use of iBeacon technology for forensics and IoT devices.

The EDPS was honoured to be presented with an award from ISACA Valencia at the Congress, in recognition of our ongoing work on [accountability](#) and the General Data Protection Regulation (GDPR).

Looking to the future: the 38th International Privacy Conference

The ancient city of Marrakech hosted this year's [International Privacy Conference](#), which took place from 17-20 October 2016. Entitled *Opening new territories to privacy*, the conference aimed to encourage the participation of many African colleagues and facilitate discussions on artificial intelligence, robotics and machine learning.

The closed session of the conference addressed one of the most forward-looking topics ever seen at an International Privacy Conference: the implications of artificial intelligence, machine learning and robotics for privacy and data protection. The EDPS contributed with a [background paper](#) on the topic, analysing technologies such as big data and automated decision

making, image recognition, natural language processing, autonomous machines, self-driving cars and drones.

The panels in the open session dealt with issues of international relevance, including contributions from several African representatives. These presentations underlined the importance of privacy and data protection for democracy, as an institutional pillar in the fight against discrimination and fraud and to empower individuals.

Both EDPS Giovanni Buttarelli and Assistant Supervisor Wojciech Wiewiórowski played an active part in the conference. In his [keynote speech](#) as part of a panel on adequacy, localisation and cultural determinism, the EDPS

stressed the importance of respect for the individual and human dignity, the need to free up flows of data around the world and ensure that everyone is able to enjoy the benefits of technological change and globalisation. He also highlighted the need for a common framework of reference for ethics in the digital age.

The Conference adopted resolutions on international enforcement cooperation, Human Rights Defenders, new metrics of data protection regulation and on an International Competency Framework on Privacy Education. The EDPS contributed to the drafting of some of these resolutions and all of them can be found on the [EDPS website](#).



EDPS continues to support debate on ethics in the digital world

In our [July Newsletter](#) we reported on the first EDPS-Ethics Advisory Group (EAG) workshop. The workshop took place as part of a wider discussion, both in the EU and globally, on the digital environment and its ethical implications.

The EAG was launched as part of a broader EDPS initiative to consider the ethical impact of the digital era, since it challenges not only existing data protection principles but our values and mores as a society.

As part of their mandate to explore how to ensure the integrity of our values while embracing the benefits of



new technologies, the EAG met in October to discuss how ethics can contribute to a data protection regime confronted by a digital world. Their discussions emphasised the importance of complying with the new General Data Protection Regulation (GDPR), but also of building upon that compliance and the need to consider what goes beyond it.

With the balance of power between individuals and big business tipped in favour of internet giants, holding fast to our values requires more energy and commitment today than it did before the onset of the digital age. The EAG is

therefore working to identify the ethical responsibilities of online actors. The greatest challenge is to encourage long term, ethical analysis and prospective thinking towards technological innovation.

The first interim report of the EAG will be published next year and a second EDPS-EAG workshop with experts from the scientific research community is planned for spring 2017. For more information on the EAG, visit the [EAG webpage](#) on the EDPS website.

[EDPS Blogpost](#)



SPEECHES AND PUBLICATIONS

- Keynote speech ([PDF](#)) given by Giovanni Buttarelli at the 7th Annual Data Protection and Privacy Conference, Brussels, Belgium (1 December 2016)
- 'Encryption protects security and privacy', speech ([PDF](#) and [video](#)) given by Giovanni Buttarelli at the conference Chiffrement, Sécurité et Libertés at Assemblée nationale française, Paris, France (21 November 2016)
- Closing speech ([PDF](#)) given by Giovanni Buttarelli at Cybersecurity under the next president: A Symposium with cybersecurity industry leaders, San Francisco, United States (15 November 2016)
- "'I'm sorry, my friend, but you're implicit in the algorithm...'" Privacy and internal access to #BigDataStream', interview ([PDF](#)) with Giovanni Buttarelli by Roberto Zangrandi (15 November 2016)
- Keynote speech ([PDF](#)) given by Giovanni Buttarelli at the IAPP Europe Data Protection Congress 2016, Brussels, Belgium (9 November 2016)
- 'Privacy in an age of hyperconnectivity', keynote speech ([PDF](#)) given by Giovanni Buttarelli at the Privacy and Security Conference 2016, Rust am Neusiedler See, Austria (7 November 2016)
- 'Les données personnelles: entre protection et exploitation', speech ([PDF](#)) given by Giovanni Buttarelli at the Autumn School 2016 on the EU, University of Laval, Québec, Canada (4 November 2016)



DATA PROTECTION OFFICERS

Recent Appointments:

- Mr. Constantin Chira-Pascanut (DPO) and Ms. Simone Baptista (Assistant DPO), European Economic and Social Committee (EESC)
- Mr. Paolo Sinibaldi, European Investment Fund (EIF)

[See full list of DPOs](#)

Keep up to date with the EDPS on [Twitter](#) and [LinkedIn](#)! You can also follow our activities on the [EDPS blog](#). For up-to-date listings of [Opinions](#), [Events](#) and [News](#), visit the [EDPS website](#).

About this newsletter

This newsletter is issued by the European Data Protection Supervisor (EDPS) – an independent EU authority established in 2004 to:

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

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