



EDPS NEWSLETTER

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HIGHLIGHTS

Data protection and the EU institutions

A year ago, the EU adopted the General Data Protection Regulation (GDPR) and the Directive for the police and justice sectors. With an ambitious and forward-thinking set of rules now in place, attention has turned to the EU institutions and revision of the rules that apply to them.

Over the past 18 months, the EDPS has worked with EU institutions at the highest level to prepare them for the challenges they will likely face under their new Regulation. We have placed a strong emphasis on the principle of accountability, which aims to ensure that EU institutions not only comply with data protection rules but can demonstrate their compliance.

On 15 March 2017, we issued an [Opinion](#) on the Commission's Proposal for the revised Regulation, drawing on our experience of twelve years of independent supervision, policy advice and advocacy. We highlighted the need for the EU to ensure that the rules applying to the EU institutions are consistent with the GDPR and that all new data protection law applies from the same date: 25 May 2018.

We believe that the Commission Proposal strikes a good balance between the various interests at stake. However, there are still a number of areas in which the proposal could be further improved, particularly with regard to restrictions to individual rights and the provision for EU institutions to use certification mechanisms in

certain contexts. With regard to our own tasks and powers as an independent body, we believe that the Proposal represents a reasonable reflection of the normal functions of an independent data protection authority, as outlined under the Charter of Fundamental Rights and reaffirmed in recent case law issued by the EU Court of Justice.

We encourage the EU legislator to reach an agreement on the proposal as swiftly as possible, to allow EU institutions to benefit from a reasonable transition period before the new Regulation becomes applicable.

[EDPS Opinions](#)

[EDPS Blogpost](#)

EDPS sees opportunity for stronger consumer and data protection

Individuals are entitled to enjoy the same rights online as they do offline, under EU law. This includes when consuming goods and services, whether they are supplied in exchange for money or not. Developing the data-driven economy is essential for EU growth, and trust in that economy requires upholding fundamental rights, the European Data Protection Supervisor (EDPS) said on 15 March 2017, as he published his [Opinion](#) on the Commission's Proposal for a Directive on certain aspects concerning contracts for the supply of

digital content. The Opinion was issued at the specific request of the Council.

Giovanni Buttarelli, EDPS, said: ***The EDPS supports the aim of the Commission's initiative, which is to enhance consumer rights. I consider this an opportunity to harness synergies between consumer and data protection law in the interests of the individual. The proposed directive should avoid unintentional interference with the data protection rights and obligations set down by the***

EU last year in the General Data Protection Regulation. Individuals should not be required to disclose personal data in 'payment' for an online service. Rather, their rights and interests should be safeguarded by coherent application of up-to-date rules in the consumer and data protection area.

[EDPS Opinion](#)

[EDPS Press Release](#)

High quality data protection for high quality decision making



The European Union Intellectual Property Office (EUIPO) uses what are known ex-ante product quality audits to ensure the quality of its output. This means checking the quality of its decisions on trademarks and designs before they are issued. EUIPO records the error rate and trends in the type and category of errors detected and uses a database to record the monitoring process.

As staff members remain identifiable throughout the process and are given individual feedback dependent on the outcome, the process could have an impact on their performance evaluation. We therefore undertook to assess the procedure.

In our [Opinion](#) of 16 February 2017, we recommended that EUIPO ensure that all involved in the procedure are comprehensively informed of the processes involved. They should also be allowed to consult their own data, stored in the database, and to exercise their data protection rights wherever and whenever relevant.

[EDPS Opinion](#)

Investigating infringements: the privacy-friendly approach

The European Parliament employs the accredited parliamentary assistants (APAs) of all 751 Members of the European Parliament. Whilst the vast majority of these are employed legally and in accordance with the relevant contractual obligations, there have been examples of cases in which these contractual obligations have allegedly been breached.

The Parliament has therefore launched an information exchange system, named Confluence. The system aims to increase the efficiency with which the Parliament is able to investigate APAs suspected of infringements, such as non-residence in Brussels or the failure to declare professional activities undertaken outside their work at the Parliament.



In our [Opinion](#) on the use of *Confluence*, we examined the implications of the system for data protection. We advised the Parliament to revise its provisions on administrative investigations and disciplinary proceedings to ensure that they provide for the use of an administrative pre-enquiry tool such as *Confluence*.

We also stressed the need to adequately inform APAs involved in such a procedure. In this way, the Parliament will be able to adequately investigate suspected infringements whilst ensuring that its own actions do not infringe upon data protection rules.

[EDPS Opinion](#)

A healthy approach to data protection

It is vital that the medicines prescribed to patients are safe and that the benefits of taking them outweigh the risks. One of the ways in which the European Medicines Agency (EMA) ensures that this is the case is by holding public hearings. The idea behind these hearings is to engage EU citizens in the safety review process of medicines by listening to their views and experiences of them.

The hearings are open to all members of the public who can justify a specific interest in the subject matter concerned, such as

patients and consumers. However, to justify their interest, potential participants must submit health data to the EMA.

In our [Opinion](#) on this process, we reminded the EMA of the need to properly inform all individuals participating in the hearings on how their personal information will be processed. We also stressed the importance of not keeping this information for any longer than necessary.

[EDPS Opinion.](#)



Observing Schengen



The Schengen Area of border-free travel represents one of the EU's most notable achievements. Its success depends on a collaborative effort from all states involved. One measure designed to ensure that states effectively implement Schengen rules are [regular peer review exercises](#), known as Schengen evaluations (SCHEVAL).

The European Commission coordinates these peer evaluations, which are carried

out by experts from the Member States. The EDPS can also participate in the evaluation teams as an observer, and has so far participated in the SCHEVAL exercises for seven Member States in the current Schengen evaluation mechanism.

In the area of data protection, the evaluation focuses on the independence, role and powers of the national [data protection authority](#) (DPA), on data protection rules, including security, for the

national Schengen (SIS) and Visa (VIS) information databases, on public awareness of Schengen and on international cooperation. Our regular inspections and audits of the central SIS and VIS databases mean that we are able to offer a different and complementary perspective on the SCHEVAL process, which is of clear added value in the supervision, enforcement and promotion of data protection in this highly sensitive area.



EDPS calls for consistent improvements in the approach to EU border policy

In recent years, the Commission has proposed several initiatives aimed at ensuring EU borders remain safe and secure. Though we support these efforts, it is vital to ensure that the proposals fully respect the fundamental rights of those concerned, the European Data Protection Supervisor (EDPS) said on 7 March 2017, as he issued his [Opinion](#) on the proposed European Travel Information and Authorisation System (ETIAS). The proposal would require visa-exempt travellers to undergo a risk assessment with respect to security, irregular migration and public health before entering the EU.

visa-exempted travellers to the EU and checking it against a dedicated ETIAS watchlist, screening rules and information stored in other EU databases. The EDPS understands the need for the EU to better address the challenges of migration, borders and refugees. However, as the information gathered will be used to grant or deny individuals access to the EU, based on the migration, security or health risks they may pose, it is vital that the law clearly defines what these risks are and that reliable methods are used to determine in which cases they exist.

Giovanni Buttarelli, EDPS, said: **The ETIAS proposal involves collecting personal data from**

[EDPS Opinion](#)

[EDPS Press Release](#)



EDPS publishes priorities for 2017



On 15 February 2017, we published the priorities for our policy and consultation role in 2017, consisting of a [note](#) and an [annex](#).

We aim to be accountable for our work across the range of our responsibilities, and in our priorities for advice you will find those European Commission proposals that, in our assessment, seem most likely to have implications for the fundamental rights to privacy and to the protection of personal data. We may respond to these proposals

by means of a formal Opinion or in comments on a few specific aspects of the proposal. In all cases, we work with our fellow [data protection authorities](#) (DPAs) in the [Article 29 Working Party](#) to ensure a consistent and strong EU voice on data protection matters.

We have identified three areas of strategic importance for this year:

- Ensuring the protection of confidentiality and privacy in electronic communications, in particular in the context of the

ongoing review of the ePrivacy Directive 2002/58/EC.

- Contributing to a Security Union and stronger borders based on respect for fundamental rights, including the proposals on ETIAS, the revision of SISII and ECRIS, as well as the issue of interoperability between these systems.
- Working towards a new legal framework for the EDPS, outlined in the proposal for a new Regulation on data protection in the EU institutions,

bodies, offices and agencies.

Privacy and data protection are significant issues across the spectrum of EU policies. There is a need for early assessment and independent advice on how to include them in these policies. It is an integral part of our role and of all independent DPAs.

[EDPS Priorities Note](#)

[EDPS Priorities Annex](#)

[EDPS Blogpost](#)

Data protection and the fight against tax evasion

On 5 July 2016, the Commission proposed amendments to the Anti-Money Laundering (AML) Directive. The amendments would extend the scope of the Directive to tackle tax evasion and advocate a stricter approach to countering money laundering and terrorism financing. However, they could also have serious implications for data protection and privacy. In our [Opinion](#) of 2 February 2017, we highlighted the areas in which the amendments constitute a cause for concern.

The proposed amendments suggest that personal data collected and processed under



the current AML Directive, for the purpose of countering money-laundering and terrorism financing, might also be processed for other purposes,

which are not clearly defined. This would contravene the principle of purpose limitation, which requires that personal data must only be collected and processed

for a specific and pre-defined purpose.

It also raises questions about the proportionality of the proposal, as it implies that the invasive personal data processing considered acceptable in the fight against money laundering and terrorism could be used to achieve other, undefined aims, for which the use of such methods might not be appropriate.

The amendments depart from the risk-based approach to data protection adopted in the current AML Directive and remove safeguards that help to establish

proportionality, such as the setting of access conditions for information on financial transactions by Financial Intelligence Units. They also significantly broaden access to beneficial ownership information, so that both competent authorities and the public are able to use this information as a policy tool in the enforcement of tax obligations.

If implemented, the amendments would pose significant and unnecessary risks to individual privacy and data protection. For this reason we urge the Commission to re-think their position.

[EDPS Opinion](#)

Keeping passengers and their personal data safe



On 6 June 2016 the Commission adopted a Proposal for a Directive that aims to simplify and modernise the existing regulatory framework for passenger ship safety.

Ship operators are currently required to record the number of people on board, as well as their name, age and gender, and store it in their company data collection system, ensuring that it is readily available for transmission to the competent search and rescue authorities if required. Collecting and recording this data ensures

that a ship does not exceed its maximum capacity and helps to facilitate search and rescue operations.

Under the new Proposal, ship operators will also have to collect the nationality of passengers. All data collected will then be stored in a common electronic database, with the aim of making it easier to access data about those on board a ship in case of an emergency.

Our [recommendations](#) aim to ensure that both passengers and their personal data remain

safe. We therefore advise the Commission that the Proposal should specify that the personal data collected is not processed for any purpose other than those outlined in the Directive and that it is destroyed once it is no longer needed. It should also clearly state that, without an appropriate, specific legal basis, the personal data collected should not be used for commercial purposes or as a new resource for law enforcement or border control purposes.

[EDPS Comments](#)

Mobile data protection

On 8 December 2016, the EDPS received a request for Comments on the Commission's draft Regulation on roaming. The proposal aims to facilitate the consistent implementation of a *fair use policy*, designed to ensure that customers cannot abuse the new system.

The Commission's roaming policy would enable EU mobile phone users to pay the same prices for mobile services in other EU countries as they do at home, eliminating the roaming charges that currently apply. However, prices for mobile services vary widely across the EU. For the policy to work fairly, therefore, network providers must be able to establish that a customer is either resident in, or has stable links to, a specific Member State.

In our [Comments](#) of 14 December 2016, we noted that the Proposal would offer network providers

the option to process customers' personal data for two purposes: establishing proof of normal residence or stable links in a Member State and operating a control mechanism aimed at preventing *abusive* or *anomalous* use of roaming.

We welcomed the Commission's explicit commitment to ensuring that both current and future data protection rules are respected under this proposal. However, we also highlighted the need to ensure that the principles of data *minimisation*, *purpose limitation* and *storage limitation* are respected. This means ensuring that any personal data processed by network providers is limited to what is truly necessary, is processed for the specified purpose only and is not kept in an identifiable format for any longer than strictly necessary.

[EDPS Comments](#)



IT POLICY

Encouraging accountability in IT

The EU institutions rely on information systems and databases to perform a range of operational and administrative tasks, many of which involve the processing of personal data. To help them ensure that this personal data is adequately protected, we will soon publish Guidelines on the protection of personal data in IT governance and IT management.

The Guidelines will provide an analysis of the data protection

considerations which must be taken into account when using information systems, as well as recommendations and best practices aimed at helping EU institutions to comply with their data protection obligations under [Regulation 45/2001](#).

In line with our [Strategy 2015-2019](#), our recommendations focus on helping the EU institutions to strengthen their [accountability](#) in relation to the development,

operation and maintenance of the databases used. Specifically, they provide guidance on how to establish an internal control system for IT governance and IT management, which would enable the EU institutions not only to comply with their data protection obligations but to demonstrate their compliance.

Under the General Data Protection Regulation (GDPR), it will become a legal requirement for designers

and developers to incorporate [data protection by design](#) into new technologies. This approach will help to develop more privacy-friendly IT systems, and therefore make it easier for the EU institutions to ensure that personal data is protected.

The Guidelines will be available soon on the [EDPS website](#).





ETHICS

Ethics initiative gains momentum

On 26 January 2017, the members of the Ethics Advisory Group (EAG) took part in a [public discussion](#) at the Computers, Privacy and Data Protection Conference (CPDP), in Brussels. The date marked the first anniversary of the Group, which was established by the EDPS to contribute to and nurture the international debate on digital ethics. The event, co-organized by Mozilla, provided the audience with an insight into the Group's work to date on ethical responsibilities in the digital era.

The Group will next meet with experts from the research community, at the Data Driven Life Conference taking place

at the European Parliament on 18 May 2017. The conference will focus on six areas where data makes a big difference: health and scientific research; humanitarian intelligence; banking, insurance and credit scoring; citizenship, elections and democracy; smart cities; and entertainment. It will bring together speakers from a variety of academic and practical perspectives and provide a unique opportunity for speakers and participants to contribute to the EAG's first interim report, which will be published this year. The agenda of the conference will be available soon on the [EDPS website](#).



EVENTS

A new website for the EDPS



The EDPS website has undergone quite a makeover! The new layout is designed to be more accessible and transparent, providing easy access to EDPS work, which is organised by topics, and to social media, through a Twitter wall. We have also introduced a powerful new search engine, making it

easier for users to find the information they need.

To learn more about it, you can watch our [video](#) or simply visit the [website](#) itself. We would also love to know what you think of the website so please take a few minutes to fill in our online [feedback form](#).

Happy browsing!

2018 International Conference of Data Protection and Privacy Commissioners to be hosted in Brussels

The European Data Protection Supervisor (EDPS), Giovanni Buttarelli and the Chairman of the Commission for Personal Data Protection of the Republic of Bulgaria, Ventsislav Karadjov thank the Members, the Chair and the Executive Committee of the International Conference of Data Protection and Privacy Commissioners (ICDPPC) for their confidence in them to

jointly host the prestigious 40th annual conference in October 2018.

The conference will be an important step in the recently launched international debate on the ethical dimension of data protection in the digital era.

Up to one thousand national regulators, government

representatives, NGOs and experts will come to Brussels to attend the conference in a year when the EU General Data Protection Regulation comes into force. Accompanying conference events will also take place in Bulgaria.

[EDPS Press Statement](#)



Data protection and international trade



On 28 February 2017 EDPS Giovanni Buttarelli met with EU Commissioner for Trade, Cecilia Malmström. Their aim was to discuss how to better integrate data protection issues into discussions on trade.

restrictions, such as unjustified obligations to store all personal data in a particular territory or unjustifiably onerous licensing obligations for cloud services, which have negative repercussions for EU businesses.

The meeting was encouraging and productive, focusing in particular on how best to tackle *digital protectionism*. This term refers to measures taken by non-EU countries which result in protectionist

We are confident that this meeting represents the beginning of renewed and fruitful cooperation between the Commission's Directorate General for Trade and the EDPS.

The EDPS celebrates Data Protection Day 2017



28 January is Data Protection Day. The date marks the anniversary of the Council of Europe's Convention 108 on the protection of personal information, the first legally binding international law in the field of data protection.

To mark the occasion the EDPS held a [lunchtime conference](#) for trainees working at the EU institutions. The

EDPS and Assistant Supervisor were joined by Joe McNamee, Executive Director of European Digital Rights (EDRI), Riccardo Masucci, Senior Privacy and Security Policy Manager at Intel Corporation, Irena Kamara, PhD researcher at Tilburg Institute for Law, Technology and Society (TILT), and Ralf Bendrath, Senior Policy Advisor to Jan Albrecht MEP, to

discuss the Internet of Things and its implications for data protection.

The annual [Computers, Privacy & Data Protection \(CPDP\)](#) coincided with Data Protection Day once again this year and the EDPS was well represented at the conference, as in the past. CPDP is a chance for academics, lawyers, practitioners, policymakers, computer scientists and members of civil society from all over the world to exchange ideas and discuss important issues and trends in data protection. In addition to the many members of staff who represented the EDPS as panelists during the Conference, the EDPS also hosted a [public panel discussion](#) on Ethics in the Digital Era. The discussion was an opportunity for anyone interested to interact with members of the Ethics Advisory Group (EAG), an independent group of experts, established by the EDPS.



DATA PROTECTION OFFICERS

Recent Appointments:

- Ms. Maria Chacon Mohedano (acting DPO), European Research Council Executive Agency (ERCEA)
- Mr. Pelopidas Donos, European Investment Bank (EIF)
- Ms. Panagiota Kalyva, Education, Audiovisual and Culture Executive Agency (EACEA)
- Ms. Ioana Ratescu (Assistant DPO), European Medicines Agency (EMA)
- Ms. Nayra Perez, Frontex
- Ms. Ioanna Pliota, European Union Agency for Law Enforcement Training (CEPOL)
- Mr. Francesco Ronfini, Innovative Medicines Initiative Joint Undertaking (IMI2 JU)

[See full list of DPOs](#)



SPEECHES AND PUBLICATIONS

- "All we need is L... Privacy by design and by default", speech ([PDF](#)) given by Giovanni Buttarelli at RightsCon 2017, Brussels, Belgium (29 March 2017)
- Concluding remarks ([PDF](#)) given by Giovanni Buttarelli at the 10th Computers, Privacy and Data Protection Conference (CPDP), Brussels, Belgium (27 January 2017)
- Opening statement ([PDF](#)) given by Giovanni Buttarelli for panel on Digital Rights and Enforcement at the 10th Computers, Privacy and Data Protection Conference (CPDP), Brussels, Belgium (26 January 2017)
- "Ethics, research and the data-driven society", speech ([PDF](#)) given by Giovanni Buttarelli at the ESOMAR European Insights Summit, Brussels, Belgium (24 January 2017)
- Address ([PDF](#)) given by Giovanni Buttarelli to the Socialists and Democrats Group workshop on the Proposed Digital Content Directive at the European Parliament, Brussels, Belgium (12 January 2017)



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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