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Dear Mr Faull,

I am writing to inform you that the Commission's Communication on "A Strategy on the External Dimension of the Area of Freedom, Security and Justice" (COM(2005) 491 final) has attracted my attention for its relations to my mission as European Data Protection Supervisor, as provided for in Regulation 45/2001 on the basis of Article 286 of the EC Treaty.

This brief reaction on some of the main questions raised in the Communication intends to contribute to further reflection, and should not be seen as my final view on the subject.

In general, I consider the Commission's Communication to be a valuable document and I support the view that external and internal policy aspects of the Area of Freedom, Security and Justice are intrinsically linked: sharing and promoting the values of freedom, security and justice in third countries would contribute to the establishment of the internal Area of Freedom, Security and Justice.

### **1. Protection of personal data in law enforcement and judicial cooperation with third countries and international organisations**

The Communication aims at developing the external aspects of the Area of Freedom, Security and Justice, by setting out a strategy supplemented by political priorities and policy instruments.

In particular, it paves the way to a series of actions aimed at improving relevant cooperation with third countries and international organisations: cooperation to combat terrorism, improved law enforcement and judicial cooperation, international agreements on visas, operational cooperation of Europol, Eurojust, the European Police College and Borders Agency with counterparts in third countries, cooperation with US and other countries in border security and law enforcement, and Europol/Eurojust agreements with third countries and international organisations.

With regard to this, it is paramount not to overlook that the development of this international cooperation is likely to generate a large increase in the collection and international transfer of data. Therefore, it is essential that principles of fair and lawful processing - as well as principles of due process in general - apply to the collection and transfer of personal data across Union borders, and that personal data are transferred to third countries or international organisations only if an adequate level of protection or appropriate safeguards are guaranteed by those third parties concerned. In this context, the future legal instrument on the protection of personal data in the third pillar would provide the most appropriate framework to supplement the current data protection legislation by ensuring a consistent and comprehensive protection of personal data throughout the whole spectrum of EU activities, including the exchange of data with third countries and international organisations.

## **2. Promotion of personal data protection in third countries and international organisations**

I am pleased that one of the political priorities of the Commission's Communication is promoting human rights in third countries in line with international standards and ensuring that human rights are placed at the heart of law enforcement policies.

In this perspective, I would also like to encourage the Commission to take a proactive role in promoting the protection of personal data at international level, by supporting bilateral and multilateral approaches with third countries and cooperation with other international organisations. The promotion of the fundamental right to protection of personal data should be embedded not only in enlargement and pre-accession processes, but also in the European Neighbourhood Policy Action Plans, and consistently integrated in all other forms of international cooperation, institution building and development policies.

It is relevant to mention in this context that, earlier this year and in cooperation with the Council of Europe and the OECD, I have organised a Workshop on "Data Protection as part of good governance in international organisations". This workshop was held on 13 September 2005 in Geneva and attracted representatives from twenty international organisations, including some active in the field of law enforcement and judicial cooperation. Since a clear interest emerged in further cooperation along these lines in the near future, this may be an area for the Commission to take an initiative and stimulate further progress.

## **3. The EDPS and the external dimension of the Area of Freedom, Security and Justice**

In conclusion, I believe that the fundamental right to the protection of personal data should also play a relevant role in the external dimension of the Area of Freedom, Security and Justice. Therefore, I would appreciate discussing these issues more in depth with your services and be informed of further developments of the actions envisaged by the Communication.

Let me add that, as stated in the EDPS Policy paper on his consultative role (March 2005), the EDPS does not only give advice on formal proposals for legislation, but may also react on preceding documents. In this context, I confirm my availability to give advice on future

Commission's Communications relating to the protection of personal data, regardless of the area concerned.

Furthermore, I shall expect to be consulted in any case where Commission action stemming from this Communication comes within the scope of Article 28(2) of Regulation 45/2001.

I hope that the information provided in this letter will be useful to you.

Yours sincerely,

Peter HUSTINX