



EUROPEAN DATA
PROTECTION SUPERVISOR



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NEW DATA PROTECTION OFFICERS

- HIGHLIGHTS -

> EURODAC: erosion of fundamental rights creeps along



On 5 September 2012, the EDPS adopted his opinion on the amended Commission proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of the fingerprints of asylum seekers. A significant addition to this amended proposal is the access to EURODAC data by law enforcement authorities. While the EDPS understands that the availability of a database with fingerprints could be a useful additional tool in combating crime, this amendment is a serious intrusion into the rights of a vulnerable group of people in need of protection. The EDPS points out that a number of legal instruments already exist which allow one Member State to consult fingerprints and other law enforcement data held by another Member State.



“ *Just because the data has already been collected, it should not be used for another purpose which may have a far-reaching negative impact on the lives of individuals. To intrude upon the privacy of individuals and risk stigmatising them requires strong justification and the Commission has simply not provided sufficient reason why asylum seekers should be singled out for such treatment.* ” **Peter Hustinx, EDPS**

The EDPS strongly urges the Commission to provide solid evidence and reliable statistics for the need to access EURODAC data. If such a need is supported by evidence, then the EDPS advocates that any access be subject to strict, appropriate safeguards.

☞ EDPS Press release ([pdf](#))

☞ EDPS Opinion ([pdf](#))

> European Strategy for Better Internet for Children



On 17 July 2012, the EDPS issued an Opinion on the 'European Strategy for Better Internet for Children' put forward by the Commission on 2 May 2012. The strategy lists a number of actions for industry, Member States and the Commission. They include the fostering of parental controls, privacy settings, age ratings, reporting tools, hotlines, and cooperation between industry, hotlines and law enforcement bodies.

The EDPS welcomed the recognition of **data protection as a key element** and illustrated specific means by which the protection and safety of children online can be enhanced from a data protection perspective, in particular:

- include references to data protection risks and to prevention tools in **awareness raising campaigns**;
- implement more **protective default privacy settings** for children including for the change of the default settings;
- deploy appropriate tools for **age verification** which are not intrusive from a data protection perspective;
- **avoid** specific targeting of young minors for **direct marketing** and for **behavioural advertising**. The EDPS calls on the Commission to help promote privacy friendly self-regulatory measures and to look into the possibility to further legislate at EU level.

The EDPS also raised concerns about the initiatives for **the fight against sexual abuse and sexual exploitation of children on the Internet**, including:

- the deployment of **reporting tools** should rely upon an **appropriate legal basis** and with a clearer definition of what type of illegal activity can be reported;
- the procedures for reporting through hotlines could be better defined and harmonised, e.g. through a European Code of Practice defining common reporting procedures and a reporting template which **embed data protection safeguards**;



- the **modalities for the cooperation** between industry and law enforcement must be defined more clearly. The **right balance** must be found between the legitimate objective to fight against illegal content and the nature of the means used. Some tasks, such as the surveillance of telecommunications networks, should primarily remain within the competence of law enforcement.

↪ EDPS Opinion ([pdf](#))



CONSULTATION

> Venture Capital and Social Entrepreneurship Funds - data protection clarity needed



On 14 June 2012, the EDPS published an opinion on two Commission proposals regarding European Venture Capital Funds and Social Entrepreneurship Funds. The main concern raised by the EDPS was that, with regard to data protection issues, the proposed Regulations are too general. It is unclear in some cases whether processing of personal data will take place under certain provisions of the proposed Regulations for example regarding exchanges of information, investigatory powers of the competent authorities and establishment of data bases by the European Securities and Markets Authority (ESMA).

↪ EDPS Opinion ([pdf](#))

> Securities settlement in the EU - yet another financial proposal raises privacy concerns

On 9 July 2012, the EDPS published an Opinion on a Commission proposal regarding securities settlement in the EU and central securities depositories. Several new and pending proposals in the financial area have raised the same data protection concerns, illustrating that a concerted effort needs to be made both to address and incorporate data protection safeguards in financial proposals. For instance, the proposal contains provisions which may have implications for the individuals concerned such as the investigative powers of relevant authorities and the exchange or transfer of information, requiring specific safeguards to be put in place.



↪ EDPS Opinion ([pdf](#))



> European Cybercrime Centre - data processing tasks need to be defined

In his Opinion of 29 June 2012 on the Communication from the European Commission on the establishment of a European Cybercrime Centre, the EDPS welcomed the approach of combating cybercrime through such centres. In addition, the EDPS recommended:



- data processing tasks (in particular, investigations and operational support activities) that the Centre's staff can be engaged in, alone or in collaboration with joint investigation teams be clearly defined
- clear procedures be established that ensure the respect of individual rights (including the right for data protection) and
- also provide guarantees that evidence has been lawfully obtained and can be used in court.

Another issue raised by the EDPS was the exchange of personal data of the future EC3 with the "widest array of public, private and open source actors". The risks are addressed by the current Europol Decision which establishes that, in general, Europol should not exchange data directly with the private sector and can only exchange data with specific international organisations in very concrete circumstances.

↪ EDPS Opinion ([pdf](#))

> Simplifying the transfer of motor vehicles registered in another Member State



On 9 July 2012, the EDPS issued an Opinion on a proposed Regulation simplifying the transfer and re-registration of motor vehicles registered in another Member State. The EDPS **welcomed** the inclusion of **several specific data protection safeguards** in the Proposal and the inclusion in the Annex of a specific list of data that may be exchanged between vehicle registration authorities. The EDPS also suggested the following safeguards:

- specify 'reasons for the destruction' in **pre-defined fields**;
- highlight that motor vehicle registration authorities may only gather information from each other that they are **allowed to process** under applicable law;
- vehicle registration authorities should be required to make their **privacy policy** governing the processing of data for the purpose of re-registration of vehicles easily available;
- clarify how **electronic exchanges of data** will take place and whether the Commission will play a role in facilitating these data exchanges;



- ensure the **appropriate segregation of data** exchanged for re-registration purposes from others that may be exchanged through the IT infrastructure for other purposes;
- the Commission should be required to regularly evaluate the **adequacy of the security measures** and to update them where necessary.

☞ EDPS Opinion ([pdf](#))

> A practical proposal: Posting of Workers

The Commission proposal on the Posting of Workers aims to improve, enhance and reinforce the way in which the Posting of Workers Directive 96/71/EC is implemented, applied and enforced in practice across the European Union.

In his Opinion, issued on 19 July 2012, the EDPS welcomed the efforts made in the proposal to address data protection concerns and the fact that the use of an existing information system, the Internal Market Information System (IMI), is proposed for administrative cooperation. On a practical level, IMI already offers a number of data protection safeguards.



Nevertheless, some concerns remain relating mainly to bilateral exchanges, access to the registries and to the 'alert system' and the Opinion recommends clarification and safeguards to address these.

☞ EDPS Opinion ([pdf](#))

> Special Committee on Organised Crime, Corruption and Money Laundering



Set up by the European Parliament, the aim of the special Committee on Organised Crime, Corruption and Money Laundering (CRIM) is to analyse and evaluate the extent of organised crime, corruption and money laundering and its impact on the Union as well as the current implementation of Union legislation in this regard. At the end of its mandate on 1 April 2013, the Committee must present its policy recommendations for measures and initiatives to be taken in these areas and in related security policies. These issues have considerable data protection implications, so the EDPS was pleased to receive a standing invitation for the meetings of the CRIM Committee.

☞ EDPS Reply ([pdf](#))



> Eradication of Trafficking in Human Beings - a welcome strategy

On 10 July 2012, the EDPS published his comments on the Commission communication for an EU strategy towards the eradication of trafficking in human beings (THB) for 2012-2016. The EDPS welcomed the strategy and its focus on the protection of fundamental rights but drew attention to the fact that addressing THB is an area that requires significant processing of data, in many cases involves personal data, consequently creating the risk of intrusion into privacy. The EDPS' comments emphasised that data protection is a precondition to trust and highlighted through practical and feasible suggestions, how data protection can contribute to a more effective and efficient cooperation between all the stakeholders in this field.



🔗 EDPS Comments ([pdf](#))

> European Consumer Agenda - Boosting confidence and growth



On 22 May 2012, the European Commission issued a communication "A European Consumer Agenda - Boosting confidence and growth" setting out four key objectives to empower consumers: improving consumer safety, enhancing knowledge, improving implementation, stepping up enforcement and securing redress and aligning rights and key policies to economic and societal change.

The EDPS believes that the protection of consumer rights and the protection of personal data is useful in creating synergies, particularly in the digital environment. In comments issued on 16 July 2012, he, therefore, recommends reinforcing data protection rights in implementing the objectives of the Communication. In particular:

- awareness raising campaigns aimed at consumers, especially those targeting children, should include information on data protection rights;
- specific training on data protection rights should be included in the training activities of non-profit organisations advising consumers.
- codes of conduct related to consumer rights should take into account data protection rights.
- collective redress for infringements of data protection legislation is necessary.

The EDPS expects to be consulted on initiatives adapting consumer law to the digital environment which in any case, must comply with data protection law.

🔗 EDPS Comments ([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.

> EACI: only relevant certificates should be collected for indefinite contracts



The EDPS received a consultation from the DPO of the Executive Agency for Competiveness and Innovation (EACI) under Article 46(d) of Regulation 45/2001 on the collection of CAST certificates from all contract agents (CA) working at the EACI.

The purpose for processing CAST certificates is to complete and update CA personnel files, as it is a requirement in order to benefit from an indefinite contract within the EACI. In his reply of 23 July 2012, the EDPS considered that the processing is generally in line with Regulation 45/2001.

However, the EDPS noted that EACI's HR asks staff members to also provide CAST certificates which relate to a different function group to the one they have been recruited for at the EACI and for which they would benefit an indefinite contract. In this particular case, the EDPS highlighted that CAST certificates cannot be considered relevant to the new purpose and recommended that the HR collects only the CAST certificates which are relevant to the function group for which staff members have been recruited.

🔗 EDPS Reply ([pdf](#))

> Exit Survey at the EACI - legality and necessity addressed by the EDPS

The EDPS received a consultation on the need for prior checking from the DPO of the Executive Agency for Competiveness and Innovation (EACI) on the exit survey addressed to staff members leaving the agency.

As to the legality of the processing, the EDPS stressed in his reply of 23 July 2012, that consent must be considered a complementary legal basis to the processing, provided that it is true consent under of Article 2 (h) of Regulation 45/2001 and the rights of the data subjects are not prejudiced.





Furthermore, the EDPS questioned the necessity of some data collected (i.e. the function group, the unit, the gender, the age range and the seniority of the staff member) in relation to the purpose for which it is collected and recommended that the EACI assesses and evaluates the necessity in light of the data quality principle as established in Article 4(1)(c) of Regulation 45/2001.

The issue of controller and processor was also addressed and the EDPS confirmed that the EACI remains the controller and has ultimate responsibility for the processing; as to the processors, they are simply external actors.

↪ EDPS Reply ([pdf](#))



COOPERATION

> Second generation Schengen Information System - heading in the right direction

In his Opinion of 9 July 2012 on the proposal for a Council Regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II, recast), the EDPS welcomed the efforts made to ensure that the migration will happen fully in accordance with the law.

In particular, the EDPS welcomed that under the new provisions, the legal framework for SIS II enters into force once the first Member State has successfully completed the switchover. This is relevant as under the old legislation, the SIS II legal framework would only have come into force once all Member States completed migration to SIS II, which would have created legal ambiguity particularly with regard to new functions. The EDPS also recommended that coordinated supervision by national data protection authorities and EDPS should be applicable from the start of the migration.



As regards using test data during migration, the EDPS stressed that if 'test data' are to be based on 'scrambled' real data from SIS, all necessary measures need to be taken to ensure that it is impossible to reconstruct real data from the test data.

Preventive security measures were especially welcomed and the EDPS recommends introducing a specific provision in the text of the recast requiring the Commission and Member States to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the migration and also by the specific nature of the personal data to be processed.

↪ EDPS Opinion ([pdf](#))



EVENTS

> 2012 Case Handling Workshop: constructive cooperation continues



The annual Case Handling Workshop this year took place in Budapest on 3 and 4 September. Hosted by the Hungarian National Authority for Data Protection and Freedom of Information, Data Protection Authorities (DPAs) from all over Europe as well as the EDPS participated actively in the meeting.

Subjects of common interest for DPAs were discussed including an update of the development of inspection and audit procedures and practices

as well as information on the judicial supervision of DPA decisions. Views were also exchanged on the exercising of powers to impose fines and other administrative sanctions.

Many practical problems and real cases were presented and discussed, contributing to the endeavour of finding a common approach when applying data protection rules in different jurisdictions as well promoting future cooperation between authorities in specific cases.

The meeting has, once again, demonstrated fruitful collaboration between European DPAs.

> The Proposed General Data Protection Regulation: Conference organised by ERA and the EDPS, Trier, 20-21 September 2012

The EDPS, in cooperation with the Academy of European Law (ERA), has organised two seminars on the proposal for reforming the current data protection rules. The first seminar, which took place on 20-21 September in Trier, concentrated on the proposed general data protection Regulation and brought together many different stakeholders. The general themes of the programme covered the key objectives and challenges of the proposed Regulation. Other sessions were more specific and concentrated on the impact of the new rules for industry, the role of data protection authorities in enforcing the data protection rules and third country data transfers. The closing panel, comprising representatives of the European Parliament, the Commission and the Council, as well as the EDPS, discussed the way forward.



☞ Conference programme ([pdf](#))

> Data Protection in the Area of European Criminal Justice Today - Reform or status quo? Conference organised by ERA and the EDPS, Trier, 5-6 November 2012

The second seminar will take place on 5-6 November and will focus on the proposed Directive for data protection rules for the law enforcement sector. As well as a general discussion on the need and feasibility of replacing the current data protection rules for law enforcement, the first day will be



dedicated to discussing the new features of the proposal and their effectiveness. On the second day, the different stakeholders will discuss specific issues including law enforcement access to Eurodac, the transfer of PNR data and the data retention Directive in light of the proposal. The seminar will be concluded with a panel discussion on the new challenges for data protection in the Union.

☞ Conference programme ([pdf](#))

> Conference of Privacy & Data Protection Commissioners, 23-24 Oct 2012, Punta del Este, Uruguay

The 34th International Conference of Data Protection and Privacy Commissioners will address the balance between technology and privacy, analyse future opportunities and problems and outline how society will need to adapt to these changes in the coming years.

The open sessions of the Conference will take place on October 23-24 and side events will begin on October 22. The closed session for Commissioners and staff will be on October 25-26 and focus on issues around profiling in the public and private sector.

The Conference will have particular relevance for Latin-America in view of the European Commission decision of 21 August 2012 stating that Uruguay provides an adequate level of protection.



SPEECHES AND PUBLICATIONS

- "The Right to be Forgotten, or: How to Exercise User Rights?", speech ([pdf](#)) delivered by Peter Hustinx at the Greens/EFA hearing on "Data Protection for the Digital Age", European Parliament, Brussels (28 June 2012)
- 'It really is about the future', interview ([pdf](#)) with Peter Hustinx published in Privacy & Informatie (P&I, 2012, nr. 3, p. 94-99, 30 June 2012)



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:

- Ms. Angela Bardenhewer-Rating, Fusion for Energy
- Mr. Michele Marco Chiodi, BEREC
- Mr. Alberto Souto de Miranda, EIB
- Ms Emmanuelle Brun, EU-OSHA

☞ 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;
- cooperate with similar authorities to ensure consistent data protection.

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