



EDPS NEWSLETTER

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DATA PROTECTION OFFICERS

HIGHLIGHTS

Privacy Shield: more robust and sustainable solution needed

In his capacity as an independent supervisor of the [EU institutions](#) and advisor to the EU legislator, on 30 May 2016 the EDPS published his [Opinion](#) on the EU-U.S. Privacy Shield in which he offers practical solutions to address some of the concerns the proposal raises.

Giovanni Buttarelli, EDPS, said: ***I appreciate the efforts made to develop a solution to replace Safe Harbour but the Privacy Shield as it stands is not robust***

enough to withstand future legal scrutiny before the Court. Significant improvements are needed should the European Commission wish to adopt an adequacy decision, to respect the essence of key data protection principles with particular regard to necessity, proportionality and redress mechanisms.

Moreover, it's time to develop a longer term solution in the transatlantic dialogue."

In April 2016, the Article 29 Working Party issued an [Opinion](#) on the Privacy Shield proposal to which the EDPS contributed as a member. It contains a detailed legal analysis and request for clarification over a number of concerns. The EDPS Opinion has been issued as part of the EDPS' mission as independent advisor to the EU institutions on the implications of policies which have an impact on the rights to privacy and data protection.

[EDPS Opinion](#)

Data protection for the digital generation: the countdown to the GDPR begins

With new data protection rules now recognised as law, the EU must turn its attention to ensuring that they are successfully implemented, the European Data Protection Supervisor said to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 24 May 2016, as he presented his [2015 Annual Report](#).

Giovanni Buttarelli, EDPS, said: ***The GDPR is one of the EU's greatest achievements in recent years and a document of which it should be proud. However, our job is not yet complete. We must ensure that the GDPR is fully and***

effectively implemented and that we close the package with equally effective agreements on Regulation 45/2001 and the ePrivacy Directive. Only then will we be able to ensure that the EU upholds its promise of effective data protection for the digital age.

The EDPS focused considerable efforts in 2015 on ensuring the successful adoption of new and effective data protection rules, providing legislators with detailed recommendations in the form of an [app](#). He now turns his attention to the successful implementation of these rules and the reform of

the current Regulation, which will apply to the work of the EDPS and the other EU institutions and bodies.

Wojciech Wiewiórowski, Assistant EDPS, said: ***The EU institutions must lead by example. Over the next two years, the EDPS will continue to cooperate closely with data protection officers from all EU institutions and bodies and to provide them with support and advice, as they prepare for the changes that will come into force in May 2018.***

[EDPS Annual Report](#)

SUPERVISION

The Accountability Initiative

The principle of accountability in data protection means that organisations are responsible for putting appropriate technical and organisational measures in place when they process data to

ensure that they are complying with their data protection obligations under the law. In other words, organisations and not Data Protection Authorities or Data Protection Officers

must demonstrate that they are compliant.

The new General Data Protection Regulation (GDPR) makes explicit reference to this principle and

requires appropriate technical and organisational measures be put in place by all organisations, public and private, before the new rules become fully implementable in May 2018.

In 2015, the EDPS initiated a project to develop a framework for greater accountability in data processing.

Our [Accountability Initiative](#) was first applied to ourselves, the EDPS, as an institution, a manager of financial resources and people - and a controller.

We developed a specific tool to ensure and demonstrate our accountability as an organisation, to plan and to keep track of related actions. The document

consists of a set of questions for the Supervisors, the Director, the staff responsible for managing processing operations and our [Data Protection Officer](#).

The questions do not go into specific detail, but rather aim to ensure that our organisation is in control of personal information and its lawful processing.

Accountability is not new to the EU institutions. Whilst [Regulation 45/2001](#) does not specifically articulate the principle of accountability, it is implicit. As part of our programme of visits to small, medium and large EU bodies, we will recommend our accountability document and suggest that they tailor it to suit their specific needs, in

order to help them to effectively implement accountability.

The initiative was published on 7 June 2016 and specifically targets EU institutions and bodies. However, other data protection authorities and controllers outside the EU institutions may also find it helpful.

[EDPS Accountability Initiative](#)

The DPO function: EU institutions leading by example



Since 2002, all EU institutions and bodies have been required to appoint a [data protection officer](#) (DPO). Their job is to independently monitor how their institution stores, uses and shares data and to advise their colleagues on data protection issues.

The DPOs organise themselves in a network, which the EDPS,

as their supervisory authority, actively supports. The main feature of this network is the DPO meetings, which take place twice a year and are an opportunity for DPOs to share experiences from their respective institutions. Since the DPOs are our close partners and point of contact within the EU institutions and bodies, the meetings also provide the EDPS

with an opportunity to present our policies and activities.

The first DPO meeting of the year took place on 28 April 2016 and was hosted by Eurofound in Dublin. Discussions included the EDPS eCommunications guidelines, staff appraisals, whistleblowing and cloud computing. The enthusiastic engagement of DPOs made the event a success and inspired interesting ideas for future meetings.

Under the new data protection rules which come into force in 2018, public authorities and some private companies will also be required to appoint a DPO. The EDPS aims to share the expertise we have gained in our work with the DPO network with this wider audience. As *co-rapporteur* in the [Article 29 Working Party](#) subgroup responsible for preparing the [DPO Guidelines](#) that will help organisations in the public and private sector to prepare for the new rules, we hope to help make the transition less challenging for public authorities and companies.

Partners in compliance

In 2014, the EDPS ran a [pilot project](#) on exchanges, visits and short secondments for EDPS staff. The aim of the project was to strengthen links between the EDPS and our stakeholders.

Following the success of the pilot project, two more secondments took place in the first half of 2016. These involved two members of the EDPS Supervision and Enforcement team, one working with the European Securities and Markets Authority (ESMA) and the other with the European External Action Service (EEAS).

The aim of these secondments was to help support the development of a data protection culture in each agency and to provide practical guidance to the [data protection officers](#) (DPOs) working there. The seconded EDPS staff

members held meetings with relevant [controllers](#) and members of staff in the different units at each agency to help them with pending [notifications](#) and to advise them on topics such as data retention and transfers. At the EEAS, work also focused on their ongoing efforts to implement data protection rules in the 139 EU delegations around the world.

The secondments were useful for both the agencies and the EDPS. We gained a better understanding of their tasks and responsibilities and the challenges they face in complying with data protection rules, whilst helping them to improve their data protection awareness and establishing the EDPS as a partner in their journey to achieve full data protection compliance.



CONSULTATION

Catching up with criminal records

On 13 April 2016, the EDPS issued an [Opinion](#) on the exchange of information on non-EU nationals through the European Criminal Records Information System (ECRIS). The Opinion is a response to a [legislative proposal](#) published by the Commission in early 2016.

ECRIS does not currently allow for the effective exchange of information about the criminal convictions of non-EU citizens resident in the EU, as the system uses member state nationalities as a reference. The European Commission proposal provides for the exchange of this information

through a decentralised system. An *index-filter* will be updated with specific information every time a non-EU national is convicted of a crime in the EU. This will then be sent to all member states.

The EDPS welcomed the proposal for a decentralised system to process this data. We also considered the search feature, which requires member states to submit their own data and search for matches through a *hit/no-hit* mechanism, to be appropriate since technical measures will be in place to limit interference with the rights to respect for private life and for personal data protection.



However, we also identified three areas of concern:

• **Fingerprints:** The legislator

as possible, in the processing of personal data, particularly in the case of fingerprints.

• **Anonymity:** The proposal identifies the information in the index-filter as *anonymous* but it is actually pseudonymised. This must be made clear.

• **Discrimination:** Using different systems for EU and non-EU nationals carries the risk of discrimination. It is essential to implement appropriate safeguards against this, particularly for people with dual nationalities, one EU and the other non-EU.

[EDPS Opinion](#)

Securing Europe's Rights and Borders



The EDPS supports the EU's efforts to manage migration and reinforce internal security and offers advice on the data protection implications of the EU's recent proposal regarding the management of its external borders. In his [Opinion](#) on the proposed *European Border and Coast Guard Regulation*, the EDPS outlines his recommendations to make the proposal clearer and more workable.

Giovanni Buttarelli, EDPS, said: ***I fully understand that Europe must urgently put in place***

meaningful measures to deal with migration and to combat cross-border crime. The legislative proposal aims to serve these two purposes but in the rush to elaborate the text, they have not been treated separately, thus diluting their justification.

The 'mixing' of objectives may have legal and practical consequences so we urge the EU legislator to deal with the two purposes more clearly and specifically.

Migration and security are two complex matters for the EU and the proposal reflects this complexity. The EDPS regrets that, despite the pressing political agenda of the European Commission, he was not consulted at an earlier stage of the legislative process since this proposal has clear data protection implications. His recommendations address his main data protection concerns and can help make the proposal more robust to withstand legal scrutiny.

[EDPS Opinion](#)



COURT MATTERS

EU-Canada PNR under scrutiny

On 5 April 2016, the EDPS was invited to a [hearing](#) on the draft agreement between the EU and Canada on the transfer and processing of Passenger Name Record (PNR) data. The draft agreement was negotiated by the European Commission to replace the previous [arrangement](#) which expired in 2009. The EDPS issued an [Opinion](#) on the draft Agreement in 2013.

On 25 November 2014, the European Parliament [asked](#) the Court of Justice of the European Union (CJEU) for an opinion on the compatibility of the draft agreement with the EU treaties and to assess whether the proposed legal basis for the agreement is appropriate.

Though the EDPS cannot intervene in such procedures on its own initiative, the CJEU can invite the EDPS, as advisor to the European

institutions on data protection, to answer specific questions in writing and attend the hearing. In our [pleading](#) to the Court we made the following points:

- The draft agreement will serve as a benchmark for similar bilateral agreements with non-EU countries, which facilitate personal data transfers and have been put in place in the name of public security;

- The guarantees required under Article 8 of the [EU Charter of Fundamental Rights](#) must be respected, including when transfers are regulated in an international agreement;

- The processing of PNR data is systematic and intrusive, since it allows authorities to engage in *predictive policing*. Judicial scrutiny of EU laws on PNR must therefore be strict.

We concluded that in its present form the draft Agreement does not ensure the level of protection required under Article 8 of the Charter.

Advocate General Mengozzi will deliver his opinion on the case on 30 June 2016.

[EDPS Pleading](#)



Covering all your case law needs



The EDPS published an [overview of data protection case law](#) on 15 March 2016. The document consists of factual summaries of case law relevant to the protection of personal data, the right to the protection of private life, access to public documents and the right to freedom of expression published between 1 December 2014 and 31 December 2015.

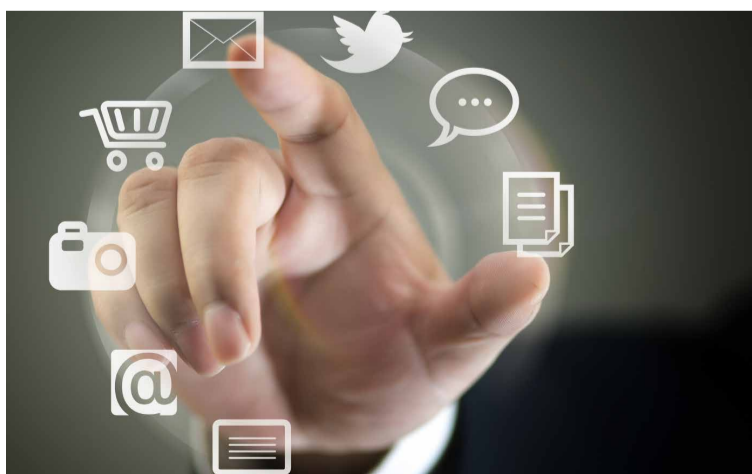
The content includes case law from both the Court of Justice of the European Union and the European Court of Human Rights, as well as several decisions taken by national courts in EU member states and references to pending cases in EU courts. We hope that it will be a useful practical tool for anyone with an interest in data protection.

[Data Protection Case Law Overview](#)



IT POLICY

EDPS guide to securing information



In his [Guidance](#) on Information Security Risk Management published on 21 March 2016, the EDPS advised EU institutions on how to ensure a secure and trustworthy digital environment for the information that is essential for the functioning of their services, in line with Article 22 of [Regulation 45/2001](#).

Wojciech Wiewiórowski, Assistant Supervisor, said: ***The security of personal data is a legal requirement, but it is also necessary in the interests of***

organisations that rely on the use of information for their daily business. It is essential that they maintain appropriate security levels for information since the value and efficiency of their work is so dependent upon it.

I urge the hierarchies in the EU institutions to engage in the tailored development and use of information security risk management processes to address the specific needs of their organisation.

Different organisations are exposed to different security risks to the information they use. State-of-the-art risk assessment methods provide an efficient way of identifying the appropriate solutions for the specific risks faced by an institution. The steps outlined in the Guidance are designed to facilitate treatment of the identified risks and can justify the use of financial and IT resources to develop the necessary solutions.

[EDPS Guidance](#)

Spotlight on Supervision Coordination Groups



In our [April Newsletter](#), we highlighted the work being done by the EDPS and EU [data protection authorities](#) (DPAs) to develop a security audit framework. This framework is designed to ensure that inspections of the EU's [large-scale IT systems](#) cover all relevant security concerns.

The EU large-scale IT databases ([SIS II](#), [VIS](#) and [Eurodac](#)) are each supervised by Supervision Coordination Groups composed of national DPAs and the EDPS. The national DPAs are responsible

for supervising the national parts of the databases, which are managed and operated by the relevant organisation in each EU country, and the EDPS is responsible for supervising the central parts, which are managed and operated by the responsible EU agency, eu-LISA. The role of the Supervision Coordination Groups is to ensure that there is overall consistency in this supervision.

The work on the security audit framework is one example of this. A sub-group of *technical*

experts from the Supervision Coordination Group of the Schengen Information System II (SIS II) were responsible for the development of the framework, but it will be an equally valuable tool for the groups which supervise VIS and Eurodac.

You can read more about the work of these Groups and see their activity reports [online](#). The Groups will soon have their own dedicated website which we hope to report on in our next Newsletter.



EVENTS

EDPS-Civil Society Summit 2016



The EDPS is committed to listening to and learning from civil liberties advocates and leading academics on the challenges facing data protection and privacy. On 16 June, therefore, we held our second annual round table discussion with NGOs and researchers at our premises in Brussels.

Distinguished speakers, including Joe McNamee from EDRI, Professor Ian Brown of

the Oxford Internet Institute and Ralf Bendrath from the German Working Group on Data Retention and *Digitale Gesellschaft*, led discussions on the implementation of the GDPR, the reform of the ePrivacy Directive and the notions of necessity and proportionality in fundamental rights law. Further details can be found in our [blog](#) and a video of the event is available on our [website](#).

An ethical approach to data protection

On 31 May 2016, the first EDPS-Ethics Advisory Group (EAG) workshop was held at the EDPS offices in Brussels. Experts from the data protection community met with the distinguished members of the EAG and other eminent ethics experts to explore the main concerns of the wider data protection

community. The outcome was a highly successful and insightful day of discussions, which will provide valuable input for the continued work of the Group.

The topics discussed at the workshop are outlined in the workshop [agenda](#). See also the [EDPS blog](#) for more information.

A report from the meeting will be available on the [EDPS website](#) in due course and a second EDPS-EAG workshop with experts from the research community is in the planning.

[EDPS Blog](#)

[Workshop Agenda](#)

ETHICS

EU Open Day 2016

The annual Open Day of the EU institutions took place on 28 May 2016. Held every May in recognition of Europe Day (the anniversary of the [Schuman Declaration](#)), the general public are invited to take a tour of the main EU buildings, take part in debates, conferences and other activities so that they can learn more about the European Union and how it works.

The EDPS stand, located in the European Parliament, proved as popular as ever. Visitors were invited to test our interactive facial detection software and learn about online tracking.

Many also took the opportunity to talk to EDPS staff about data protection and privacy and to take part in our data protection quiz.

The event is a great opportunity to interact with the general public and increase awareness of the role of the EDPS and the importance of data protection and privacy in our everyday lives. We look forward to welcoming visitors again in 2017!



New Regulation boosts the roles of EDPS and Europol

On 19 May 2016, EDPS Giovanni Buttarelli attended the *Privacy in the Digital Age of Encryption and Anonymity Online* conference. Hosted at Europol's headquarters in The Hague, the conference was also an opportunity for the EDPS to meet with the Director of the

EU Agency for Law Enforcement Cooperation (Europol), Rob Wainwright.

The meeting followed the recent adoption by the European Parliament of the new *Regulation on Europol*.

Speaking at the conference, Mr Buttarelli and Mr Wainwright said that the new Regulation boosts Europol's powers to fight terrorism, serious and organised crime and enhances its role as the central hub for information exchange.

[Press Release](#)



Mr Buttarelli goes to the USA



At the beginning of April 2016, EDPS Giovanni Buttarelli attended the *International Association of Privacy Professionals Global Summit* in Washington, D.C. The summit was a good opportunity to explain the upcoming EU data protection reform, to debate the merits and challenges of the proposed Privacy Shield and to better understand stakeholders' expectations concerning the role

of independent data protection authorities under the GDPR.

In addition to the conference, the Supervisor's busy programme included meetings with a number of federal government representatives, NGOs and legal experts, as well as several media interviews. Mr. Buttarelli stressed the need for Europe and the United States to set a global precedent

and referred to the GDPR as the benchmark for responsible and compliant processing of personal data in the EU.

The Supervisor sat on conference panels alongside the Chairman of the Privacy and Civil Liberties Oversight Board and the President's Senior Advisor on Technology and Economic Policy, among others. He debated the role of encryption, proportionate access by law enforcement to personal information and the prospects for the transatlantic partnership in relation to big data.

This visit was followed by a second to the U.S.A. From 18 to 22 April 2016, Mr. Buttarelli visited MIT, Harvard and New York universities where he listened to presentations on the latest developments in privacy research and was invited to speak about EU data protection.

The Supervisor spoke to leading researchers at MIT, including Tim Berners-Lee, about the work carried out through MIT's *Internet Policy Research Initiative* and *Media Lab*. He also had

the opportunity to discuss the research being done at Harvard Law School's *Berkman Center*, a leading research centre for internet and society. At New York University, Mr. Buttarelli took part in the *Governing Intelligence Conference*, organised by the NYU *Center of Law and Security*.

The transatlantic dialogue on privacy is central to the debate on international data protection policy. The EDPS intends to remain a key player in this discussion and will continue to promote the importance of EU values and fundamental rights.

DATA PROTECTION OFFICERS

See full list of DPOs

SPEECHES AND PUBLICATIONS

- "What impact of the data protection on the future of a global digital economy?", speech ([PDF](#)) by Giovanni Buttarelli at Conservatoire national des arts et métiers, Paris, France (17 June 2016)
- "Convention 108: from a European reality to a global treaty", speech ([PDF](#)) by Giovanni Buttarelli at the Council of Europe International Conference, Strasbourg, France (17 June 2016)
- Keynote speech by Giovanni Buttarelli ([PDF](#)) given at the Spring Conference of European DPAs, Budapest, Hungary (26 May 2016)
- "Key Challenges for Privacy in the Digital Age", speech ([PDF](#)) by Giovanni Buttarelli to Europol/EIPA conference on Privacy in the Digital Age of Encryption and Anonymity Online, The Hague (19 May 2016)
- "European Union as a promoter of a real revolution", article ([PDF](#)) by Giovanni Buttarelli in Il Sole 24 Ore newspaper (9 May 2016)
- "Counterterrorism and Data Privacy: A European Perspective", speech ([PDF](#)) given by Giovanni Buttarelli to the symposium on Governing Intelligence: Transnational Approaches to Oversight and Security, hosted by the Center on Law and Security and the Woodrow Wilson International Center for Scholars, New York (21 April 2016)
- "Ethics at the Root of Privacy and as the Future of Data Protection", address ([PDF](#)) given by Giovanni Buttarelli at event hosted by Berkman Center for Internet and Society at Harvard University and the MIT Internet Policy Initiative and the MIT Media Lab (19 April 2016)



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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