



EUROPEAN DATA
PROTECTION SUPERVISOR

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Subject: Various legislative proposals concerning certain restrictive measures, with regard to Iran, in the Republic of Guinea-Bissau, in Côte d'Ivoire, in Belarus, in Tunisia, in Libya and in Egypt.

Dear Mr President,

I refer to the letters of 21 September 2010, 21 December 2010, 10 January 2011, 24 January 2011, 31 January 2011, 28 February 2011 and 11 March 2011, in which the Commission, pursuant to Article 28(2) of Regulation (EC) No. 45/2001, consulted the EDPS on various legislative proposals concerning certain restrictive measures, namely with regard to Iran, in the Republic of Guinea-Bissau, in Côte d'Ivoire, in Belarus, in Tunisia, in Libya and in Egypt.

These legislative proposals, to the extent in which they envisage restrictive measures with regard to individuals, provide for the processing of personal data.

The EDPS welcomes these consultations and the reference in the preamble of the proposals. The EDPS has already issued two opinions with regard to restrictive measures, on 28 July 2009 with regard to the proposal to amend Regulation (EC) No. 881/2002 on Usama bin Laden, the Al-Qaida network and the Taliban, and on 16 December 2009 on various legislative proposals in respect of Somalia, Zimbabwe, the Democratic Republic of Korea and Guinea. In particular, the latter opinion addresses in general the application of data protection principles in the area of restrictive measures and contains several recommendations for improvements. It also states that the EDPS will issue further opinions on proposals for legislation in this area only when those new proposals substantially diverge from the provisions of the proposals on which the EDPS has already issued an opinion.

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These points were confirmed by the EDPS letter of 20 July 2010 on three new proposals in this area and were further developed in his Opinion of 24 November 2010 on the Communication from the Commission to the European Parliament and the Council - "The EU Counter-Terrorism Policy: main achievements and future challenges".

After a careful analysis of the current proposals, it appears that, insofar as provisions relating to data protection are concerned, they mirror the legislative proposals that have already been object of an EDPS opinion. Therefore, the EDPS has decided in this case not to issue a new formal opinion and to refer instead to the previous above mentioned opinions in this area that have been published both in the Official Journal¹ and on the EDPS website.

Nonetheless, the EDPS takes this opportunity to recall the main points of his opinions in this area.

While renewing his support for the fight to terrorism and its prevention, the EDPS reaffirms that fighting those who undermine the respect of fundamental rights must be done with due respect for fundamental rights. This includes also the respect for the fundamental right to the protection of personal data, especially in the light of the entry into force of the Lisbon Treaty, which reaffirms the need to lay down comprehensive and consistent rules for the protection of personal data also in the area of restrictive measures (Articles 16 TFEU and 39 TEU).

Against this background, the EDPS highly recommends the EU legislator to abandon the current piecemeal approach - with specific rules for each country or organisation - and to develop a general and consistent framework for all restrictive measures, ensuring the respect of fundamental rights, and in particular of the fundamental right to the protection of personal data.

Proposals in this area, including the current ones, should in particular ensure:

- the right of information of the listed persons, as well as the conditions and the modalities of the restrictions which may be necessary;
- the right of listed individuals to have access to the personal data concerning them contained in classified documents, subject to the proportionate restrictions that may be necessary in certain circumstances;
- adequate mechanisms and safeguards to ensure adequate protection when data are exchanged with third countries and international organisations;
- that necessary restrictions to data protection principles are clearly defined, with a view to making restrictions foreseeable and proportionate;
- that existing judicial remedies and independent supervision by data protection supervisory authorities are fully applicable and that their effectiveness is not prejudiced by the conditions imposed on the access to classified documents.

I believe that it is now high time - also in consideration of the increasing use of this kind of instruments - for the EU legislator to address in a detailed, comprehensive and consistent way the issue of data protection in relation to restrictive measures, developing a policy that would enhance not only the protection of fundamental rights, but also the legal certainty and the effectiveness of the measures taken. Furthermore, the need for further improvements of the procedure and the safeguards available to listed individuals has been recently confirmed by the General Court in the so-called "Kadi II" case².

¹ Respectively, OJ C 276, 17.11.2009, p. 1 and OJ C 73, 23.03.2010, p.1.

² Judgment of 30 September 2010 in case T-85/09 Kadi v. Commission, see in particular paras.157, 177.

In this perspective, I look forward to significant developments in this area, and in particular to the new Regulation in the area of restrictive measures, envisaged by the 2011 Commission Work Programme³.

In the meantime, I remain available to put at your disposal the EDPS expertise and to provide any further advice you may need.

I have sent this opinion to the President of the European Commission and the President of the European Parliament as well.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Hustinx', written over a vertical line that serves as a separator between the signature and the name below.

Peter HUSTINX

Cc: Mr Pierre De Boissieu, Secretary-General

³ Item 46 of Annex I to the Commission Work programme 2011.