



# NEWSLETTER

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## **1. PNR - after the ECJ judgement**

On 30 May, the European Court of Justice (ECJ) annulled the decisions of the Council and the Commission to grant access to US authorities to information about European airlines' flight passengers (PNR-data) because of a faulty legal basis. The Court decided that the transfer of the data falls outside the scope of the Data Protection Directive 95/46/EC. Developments after the judgement have shown that it has important ramifications, not only for citizens who fly to or through the US, but perhaps even more in the general context of the scope of personal data protection in the EU.

In order to avoid legal uncertainty by 1 October when the current agreement needs to be terminated, the EDPS and the national Data Protection Authorities addressed the matter at the Article 29 Working Party in mid-June.

In an opinion, they insisted that the duration of the new agreement is limited to 1 November 2007 (the same end date as initially foreseen for the current agreement). By then, stronger safeguards that fully respect the right to data protection should be put in place. The Opinion can be downloaded [here](#).

The European Commission has proposed two initiatives to correct the choice of legal basis. As the Court did not deal with the substance of the agreement, the Commission has opted not to change its content. This means that if the US and the EU agree on the new proposal, there will be no data protection improvements, such as a reduction of the number of PNR-data.

The more general implication of the Court judgement is that it seems to have created a loophole in the protection of personal data in Europe. It does so by its wide interpretation of an exception in Directive 95/46 (Article 3(2)), which excludes processing within a framework established by the public authorities that relates to public security. With the judgement, the Court lays down that this exception no longer requires state activity but can also include processing of personal data by private parties.

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## **2. SWIFT - EDPS letter to ECB**

Some three weeks ago, US media broke the story of a Terrorist Finance Tracking Program by which US authorities are reported to have accessed financial data passing through SWIFT. SWIFT stands for the Society for Worldwide Interbank Financial Telecommunication, and is a banking industry cooperative that manages the "Swift" code for international payments. Because the money transfers are done by banks that act under national law, the SWIFT affair has primarily consequences for the national legal systems. The SWIFT European headquarters are based in Belgium and Belgian authorities are currently investigating whether these transfers were legal and whether the rights of its citizens were respected.

The EU institutions are also following this issue. The Commission is actively looking into the matter and the European Parliament has adopted a resolution which underlines the importance of respecting human rights. The EDPS, who supervises personal data processing by the European Central Bank (ECB), has addressed the president of the ECB to obtain factual information about the case. Additional facts are necessary for the EDPS to establish the possible applicability of the Data Protection Regulation (45/2001).

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## **3. News on EDPS prior checking of processing of personal data**

Processing of personal data by the EU administration that is likely to result in specific risks for the people concerned (the data subjects) is subject to a prior check by the EDPS. This procedure serves to establish whether or not the processing is in compliance with Regulation 45/2001, which lays down the data protection obligations of the EU institutions and bodies.

### Internal Investigations by the European Anti-Fraud Office (OLAF)

In order to combat financial irregularities such as fraud and corruption, OLAF has the power to conduct internal administrative investigations in the EU institutions and bodies. The investigation power extends also to serious matters of misconduct by EU staff. OLAF has access to any information of any data medium and can request oral information from staff members, etc. Where necessary the results of its investigations are submitted to national and/or Community authorities for follow-up (for instance judicial or disciplinary). The EDPS prior checked the system because it evaluates the conduct of officials and because the files can include data on suspected offences, offences and criminal convictions.

The EDPS made numerous recommendations to improve compliance with the Regulation, notably on the rights of data subjects, such as access, rectification and information. The EDPS also addressed guarantees on the quality of the data to be introduced in the investigation files and on the confidentiality of e-mails, as well as on transfer of reports and related documents, etc.

### EU-China Tourism Agreement: Commission website on Approved Destination Status (ADS)

A protected website of the European Commission external relations' DG facilitates real time exchange of information between the Commission and the embassies and consulates of European countries (EU plus some others) that participate in the ADS tourism agreement with China. The website contains a list of accredited travel agencies and their couriers (people acting on their behalf) authorised to deal with ADS visa applications to European Union countries. It contains proposed and imposed sanctions for violating the ADS rules, but also other information. The EDPS prior checked the system because sanction data on travel agencies can be data on "suspected offences" committed by physical persons. Excluding agencies from certain rights means excluding their couriers from those rights.

The recommendations centred on the data subjects' rights of access and rectification and on the information to be given to them. Access to the website should only be given on a case-by-case basis - when necessary for Commission staff to perform their task.

### SYSPER2 e-CV: the Commission's human capital database

The e-CV is an information tool with which Commission staff can enter their professional data (studies, skills, languages, experience, knowledge and training). The idea is to create a multiple purpose human resources system that works for statistics, policies, planning, allocation, career guidance as well as mobility. Personal data will be exploited with a search engine and a matching tool. Due to the evaluation aspects of staff, the EDPS decided to prior check the database.

The main recommendations concerned the information to be provided to staff members as well as the establishment of guarantees related to the access to data in the system.

The Opinions are published on the EDPS website. Click [here](#) for the index with the full text versions.

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#### **4. Eurodac coordination meeting**

On 28 June, the EDPS organised a second coordination meeting for the national data protection authorities regarding the joint supervision of Eurodac. Representatives of data protection authorities from all member states (and also Iceland and Norway) participating in the system as well as observers from Switzerland were present.

The EDPS gave an outline of the state of play in Eurodac supervision from the different stakeholders' perspectives. Underlining that the so-called "special searches" were under scrutiny by different institutions, the EDPS also mentioned that a review of the Eurodac Regulation is foreseen in the coming months. If needed, the group could present amendments to the regulation. The EDPS presented the findings of his first inspection of the Eurodac central unit, and announced that a larger audit of the Central Unit would follow.

National investigations launched after the first coordination meeting were addressed. Some interesting findings were shared during a round table discussion that followed. Remaining national contributions will be sent to the EDPS so as to enable discussions on a provisional text by the next meeting in December. The final report will be produced by early 2007.

The working methods were addressed through a discussion paper presented by the EDPS. National colleagues will comment on that paper in view of the third coordination meeting.

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#### **5. EDPS - ENISA cooperation**

EDPS and the European Network and Information Security Agency (ENISA) are preparing collaboration in cases where the specialist competences of the other are required. The first operational case will be the in-depth security audit of the Eurodac central unit, scheduled for the second half of the year, in relation to which ENISA will play a facilitating and advisory role.

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#### **6. E-monitoring workshop**

On 29 June, the EDPS organised a workshop on the processing of personal data related to the use of the communications network (e-mails, Internet, phones, faxes, etc.) in the EU institutions and bodies. Over 50 representatives of the EU administration participated, ranging from Data Protection Officers,

Data Protection Coordinators (see previous newsletter) and IT staff, to staff committees and trade unions.

The reason for organising the workshop is that the EDPS is elaborating a paper on the use and monitoring of the communications network of the EU institutions and bodies. One aim of the workshop was to test the guiding principles of this document to concrete scenarios in the presence of the main actors involved. The participants worked on themes such as the conservation of traffic data for budget purposes; the reading of staff e-mails during their absence and the employer's monitoring of a fair use policy. The outcome of the discussions will provide valuable input for the EDPS paper which will shortly be available on the website.

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## **7. Colophon**

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;
- co-operate with similar authorities to ensure consistent data protection.

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