



NEWSLETTER

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1. Third EDPS opinion on a revised proposal for data protection in third pillar

On 20 April the German Presidency consulted the European Parliament on a revised proposal for a Framework Decision on data protection in the third pillar. The aim is to speed up negotiations in the Council and to improve data protection in EU's 'third pillar'. In his two previous opinions on the subject, the EDPS stressed the need for a general framework for data protection in an area of freedom, security and justice where enhanced police and judicial cooperation is acquiring growing relevance.

The EDPS considers that the substantive changes contained in the revised proposal, as well as its importance, call for a new opinion, which will be issued by the end of April. In this third opinion, the EDPS will take a critical position on the revised proposal, by assessing the extent to which it:

- provides the appropriate high level of protection of personal data required by EU law;
- respects the international obligations of the Member States stemming from Council of Europe Convention 108;
- has an impact on efficiency in police and judicial cooperation.

The Opinion will be available on the EDPS website by the end of April.

2. Prüm Initiative - EDPS Opinion

On 4 April, the EDPS presented his opinion on the initiative of 15 Member States to make the Treaty of Prüm applicable throughout the EU. It aims to step up cross-border cooperation, particularly for combating terrorism and cross-border crime. The initiative deals with the exchange of biometric data (DNA and fingerprints) and requires Member States to set up DNA databases.

Although data protection plays an important role in this Treaty, the provisions are meant as specific ones - on top of a general framework for data protection - which has still not been adopted. Such a framework is needed to give the citizen enough protection, since this decision will make it much easier to exchange DNA and fingerprint data.

Since the Prüm Treaty has already entered into force in three Member States, the 15 that took the initiative intend to limit substantial modifications. Therefore, the EDPS' suggestions mainly serve to improve the text without modifying the system of information exchange itself. In particular, he notes that:

- the approach relating to the different kinds of personal data is good: the more sensitive the data, the more limited the purposes for which they can be used and the more limited the access is;
- the Council should include an impact assessment and an evaluation clause in the procedure of adoption;

- the initiative does not specify the categories of persons that will be included in the DNA databases and it does not limit the retention period.

Read the [opinion](#).

3. Council proposal for a resolution regarding exchange of data about radical imams and terrorist incidents

On 9 March a revised EU Action Plan for Combating Terrorism was published by the Presidency and the Counter Terrorism Coordinator.

One of the measures of this strategy is "*Developing a common approach to the exchange of information on deportations and expulsions related to terrorism, including radical imams*". The strategy was originally proposed by France purely as a means to exchange information on the expulsion of radical preachers inciting violence and racial hatred. However, the focus of the resolution has widened.

The EDPS expressed his concerns to the Presidency concerning the purpose definition of this data processing, the relation with existing channels for exchange of information, as well as the apparent lack of explicit safeguards in relation to European data protection legislation.

4. Coordination of social security systems

On 6 March the EDPS adopted an opinion on a Commission proposal containing implementing measures on coordination of social security systems. The proposal covers a vast range of areas in social security (pensions, benefits in respect of maternity, invalidity, unemployment, etc). It aims at modernising and simplifying the existing rules by strengthening cooperation and improving methods of data exchange between social security institutions of the different Member States.

The EDPS welcomed the proposal to the extent that it aims at favouring the free movement of citizens and improving the standard of living and conditions of employment of those moving within the Union. While it is true that social security could not exist without the exchange of different kinds of personal data, it is also true that a high level of protection of these data is necessary. Bearing this in mind, the EDPS advises to:

- pay utmost attention to basic data protection principles such as purpose limitation as well as proportionality in data processed, bodies authorised to process data and retention periods;
- ensure that each proposed mechanism of processing and transmission of personal data is clearly based on specific legal grounds;
- provide the concerned persons with relevant information on the processing of their personal data;

- enable data subjects to exercise their rights effectively in a trans border context.

Read the [opinion](#).

5. PNR Workshop

On 26 March, the EDPS attended a workshop in Brussels organised by the Article 29 Working Party. This workshop examined the privacy issues of the interim agreement on the transfer of data contained in Passenger Name Records (PNR) from the EU to the US. A more permanent agreement is due to be negotiated by July 2007. Participants included representatives from the European Commission, national governments, the airline industry, researchers and members of the European Parliament and of national parliaments.

The workshop consisted of three panel sessions dealing with various legal and technical aspects of the transfer of passenger data to the US Department of Homeland Security. The aim was to come to a common approach which strikes the right balance between security demands, fundamental rights and economic concerns.

Among the main conclusions were that one of the ways for a future agreement to guarantee fundamental rights is by ensuring that travel agents and air carriers inform passengers about their rights and how their data is processed.

The results of the workshop were reported to the European Parliament at a public hearing in the afternoon. Some papers and more information can be found [here](#).

6. Workshop on data protection in international organisations

A second workshop on data protection as part of good governance in international organisations was organised in Munich on 29 March. Hosted by the European Patent Office, it gathered a number of representatives who discussed issues of common relevance such as the role of an internal and independent data protection officer, how to establish a data protection regime and challenges of international cooperation with entities having different data protection standards.

A follow-up to the workshop is currently being considered and representatives of international organisations who would be interested in participating can contact the EDPS to find out more.

7. 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.

Time management module - European Commission

The Time management module (TIM) was set up to replace SIC CONGES (a system which dealt with all kinds of absences from work). When replacing it, the Commission took the opportunity to add an extra module which would manage the flexitime system of Commission staff. The system can be used to enter leave and other absences or to file applications for part-time work, parental leave or family leave. TIM is essentially an online registration system which involves a new automatic calculation as soon as a person concerned submits a request.

TIM is subject to prior checking as it deals with data relating to different kinds of absences, which can therefore be of a sensitive nature (e.g. because it relates to health).

Automatic registration (e.g. via magnetic badges etc.) was not covered in the notification. DGs using such systems will have to notify their specific processing operations to the EDPS for prior checking (as is the case for DG INFSO).

In his opinion, the EDPS concludes that the Commission has substantially followed all the principles of the Regulation and underlines that an acceptable way of blocking data has been found. Some recommendations were nevertheless made:

- regarding the respect of professional secrecy for all staff members managing files dealt with by TIM;
- making the data anonymous when stored beyond the foreseen period;
- data retention periods are to be specified in statements of confidentiality to be signed by staff dealing with data in TIM;
- regarding the data subject's right to rectification of false data. This is particularly important as the system makes automated decisions. To detect errors, the system indicates the total time credit at the end of the month and the number of hours transferred to the following month.

Medical check-ups - European Food Safety Authority (EFSA)

The EDPS has issued an opinion regarding pre-employment and annual medical check-ups at EFSA. Although directly applicable only to one agency, it gives more broadly relevant guidance as to (i) what purposes these medical check-ups can serve, (ii) what medical data can be collected and (iii) what medical information can ultimately be disclosed to the employer.

The *pre-employment* medical check-up must serve solely to determine whether a candidate is fit for service, and whether death or invalidity benefits should be limited due to a pre-existing condition during the first five years of service. To avoid discrimination based on lifestyle, pregnancy, the need to

care for family members, or other grounds, data must not be collected if not directly relevant for these two purposes. For example, data related to tobacco or alcohol consumption, physical exercise, health condition of family members or pregnancy should not normally be collected. Information disclosure to the employer must also be limited to a statement whether the candidate is fit for service. If any special arrangements are necessary due to disability or another health condition, the underlying medical condition should not normally be disclosed to the employer.

The *annual* medical check-up should be considered as a preventive service, which helps early detection, but leaves it up to the employees what additional steps they subsequently take to protect their health. The annual medical check-ups must not normally serve to certify fitness for service, although specific testing and certification is permissible in limited and clearly specified circumstances, e.g. if the employee is exposed to dangerous substances.

Published opinions can be downloaded from the [EDPS website](#).

8. Articles and upcoming events

Privacy and personal data - towards an "Information Society European Style"

In an article published in the European Files in February, Peter Hustinx (EDPS), outlined the European approach to data protection. Firstly, he shows that this is an issue which has never been dictated solely by economic and technological concerns. Secondly, he states that while data protection rules are in place and to some extent harmonised between the Member States, this in itself is not sufficient to protect the individual: these rules have to be applied and taken into consideration when information systems are being designed and set up. Thirdly, Mr Hustinx highlights the need for investments in public awareness, as citizens are increasingly becoming aware of their rights and the impact of technological developments on them without knowing how to draw the practical consequences for themselves. Finally, Mr Hustinx emphasised the need for adequate data protection safeguards for personal data processed or exchanged for law enforcement purposes.

Read the [article](#).

EU Open Day on 5 May 2007

As in previous years, the EU institutions and bodies celebrate the Europe Day (9 May). In Brussels, an Open Day activity will be held on Saturday, 5 May. The EDPS will also have a stand, located inside the European Parliament. Visitors will have the opportunity to test their knowledge of data protection issues in a short quiz and take part in a prize draw.

Prize to Data Protection Best Practices in European Public Services

The Data Protection Agency of Madrid is now accepting applications for the fourth edition of the Prize to Data Protection Best Practices in European Public Services. The main goal of the award is raising awareness and promoting sound data protection policies in the public sector. In the first three

editions, the prize went to the City Council of Vitoria-Gasteiz (2004), to the Government and Data Protection Commission of Austria (2005) and to the UK National Health Service and the City Council of Madrid (2006).

The deadline for applications is 3 October, 2007. To find out more about the Prize and how to submit applications, click [here](#).

9. New Data Protection Officers

Each EC institution and body has to appoint at least one person as Data Protection Officer (DPO). These officers have the task of ensuring in an independent manner the internal application of Regulation 45/2001.

Recent appointments:

- Olivier CORNU - Intelligent Energy Executive Agency (IEEA)
 - Jose GARCÍA-BLANCH (temporary, as position currently under recruitment) - European Agency for Safety and Health at Work (OSHA)
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10. 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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