

# Annual Report

**2009**

## Executive Summary



EUROPEAN DATA  
PROTECTION SUPERVISOR





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# INTRODUCTION

This is the Executive Summary of the Annual Report 2009 of the European Data Protection Supervisor (EDPS). This report covers 2009 as the fifth full year of activity in the existence of the EDPS as a new independent supervisory authority, with the task of ensuring that the fundamental rights and freedoms of natural persons, and in particular their privacy, with regard to the processing of personal data are respected by the EU institutions and bodies. It also covers the first year of the common five year mandate of Peter Hustinx, Supervisor, and Giovanni Buttarelli, Assistant Supervisor.

The main activities of the EDPS, as laid down in Regulation (EC) No 45/2001 (1) (“the Regulation”), are to:

- monitor and ensure that the provisions of the Regulation are complied with when EU institutions and bodies process personal data (**supervision**);
- advise the EU institutions and bodies on all matters relating to the processing of personal data. This includes consultation on proposals for legislation and monitoring new developments that have an impact on the protection of personal data (**consultation**);

- cooperate with national supervisory authorities and supervisory bodies in the former “third pillar” of the EU with a view to improving consistency in the protection of personal data (**cooperation**).

2009 has been of major importance for the fundamental right to data protection. This is due to a few key developments: the entering into force of the Lisbon Treaty, ensuring a strong legal basis for comprehensive data protection in all areas of EU policy; the start of a public consultation on the future of the EU legal framework for data protection; and the adoption of a new five year policy programme for the area of freedom, security and justice (“Stockholm Programme”) with considerable emphasis on data protection as a crucial element for legitimacy and effectiveness in this area.

The EDPS has been strongly engaged in these fields and is determined to pursue this course in the near future. At the same time, it has made sure that the role of an independent supervisory authority is exercised in all regular areas of activity. This has led to significant progress, both in supervision of EU institutions and bodies when they are processing personal data, and in consultation on new policies and legislative measures, as well as in close cooperation with other supervisory authorities to ensure greater consistency in data protection.

(1) Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p.1.

# RESULTS IN 2009

The Annual Report 2008 mentioned that the following main objectives had been selected for 2009. Most of these objectives have been fully or partially realised.

- [Support of the DPO network](#)

The EDPS continued to give strong support to data protection officers, particularly in recently established agencies, and encouraged an exchange of expertise and best practices among them, in order to strengthen their effectiveness.

- [Role of prior checking](#)

The EDPS has nearly completed prior checking of existing processing operations for most institutions and long standing bodies, and has put increasing emphasis on the follow up of recommendations. Prior checking of common processing operations in agencies has received special attention.

- [Horizontal guidance](#)

The EDPS has published guidelines on staff recruitment and health data at work, and draft guidelines on video-surveillance which were the subject of a consultation. These guidelines are designed to help ensure compliance in institutions and bodies and to streamline prior checking procedures.

- [Complaint handling](#)

The EDPS adopted a manual for staff on the handling of complaints and published its main lines on

the website to inform all parties involved about relevant procedures, including criteria on whether or not to open an investigation on complaints presented to him. A complaint form is now also available on the website.

- [Inspection policy](#)

The EDPS has continued to measure compliance with Regulation (EC) No 45/2001, with different kinds of checks, for all institutions and bodies, and executed a number of inspections on the spot. A first set of inspection procedures has been published to ensure a more predictable process.

- [Scope of consultation](#)

The EDPS has issued a record number of 16 opinions and 4 sets of formal comments on proposals for new legislation, on the basis of a systematic inventory of relevant subjects and priorities, and ensured adequate follow-up. All opinions and comments as well as the inventory are available on the website.

- [Stockholm programme](#)

The EDPS has given special attention to the preparation of the new five-year policy programme for the area of freedom, security and justice, adopted by the Council at the end of 2009. The need for effective data protection has been recognised as a key condition.

- Information activities

The EDPS has improved the quality and effectiveness of the online information tools (website and electronic newsletter) and has updated other information activities (new information brochure and awareness-raising events), where necessary.

- Rules of procedure

Rules of procedure for the different activities of the EDPS will be adopted soon. They will mostly confirm or clarify present practices and will be available on the website.

- Resource management

The EDPS has consolidated and further developed activities relating to financial and human resources and given special attention to the recruitment of staff by means of an EPSO competition in data protection. The first successful candidates are expected in the course of 2010.

### Some EDPS key figures in 2009:

→ **110 prior-check opinions adopted** on health data, staff evaluation, recruitment, time management, security investigations, telephone recording, performance tools

→ **111 complaints received, 42 admissible.** Main types of violations alleged: violation of confidentiality of data, excessive collection of data or illegal use of data by the controller

- **12 cases resolved** where the EDPS found no breach of data protection rules

- **8 declared cases of non-compliance** with data protection rules

→ **32 consultations on administrative measures.** Advice was given on a wide range of legal aspects related to the processing of personal data conducted by the EU institutions and bodies

→ **4 on-the-spot inspections carried out** in various EU institutions and bodies

→ **3 guidelines published** on recruitment, health data and video-surveillance

→ **16 legislative opinions issued** on large-scale information systems, terrorists' lists, future framework for data protection, public health, taxation and transport

→ **4 sets of formal comments issued** on public access to documents, universal service and e-privacy and, EU-US negotiations on new SWIFT agreement

→ **3 Eurodac Supervision Coordination Group meetings organised**, which resulted in a second coordinated inspection report on information to data subjects and assessment of the age of young asylum seekers

# SUPERVISION

*One of the main roles of the EDPS is to supervise in an independent manner processing operations carried out by European institutions or bodies. The legal framework is the Data Protection Regulation (EC) No 45/2001, which establishes a number of obligations for those who process data, along with a number of rights for those whose personal data are processed.*

*Prior checking of processing operations has continued to be an important aspect of supervision during 2009, but the EDPS has also developed in other forms of supervision, such as the handling of complaints, inspections, advice on administrative measures and the drafting of thematic guidelines.*

## Prior checks

Regulation (EC) No 45/2001 provides that all processing operations of personal data likely to present specific risks to the rights and freedoms of data subjects are to be subject to prior checking by the EDPS. The EDPS then determines whether or not the processing complies with the Regulation.

In 2009, the EDPS adopted **110 prior checking opinions**, mainly covering issues such as health data, staff evaluation, recruitment, time management, telephone recording, performance tools and security investigations. These opinions are published on the EDPS website and their implementation is followed up systematically.

Out of the various consultations from data protection officers on the need for prior checking by the EDPS, several cases were declared subject to prior

checking, such as hearings of Commissioners designate at the European Parliament, ergonomical assessment of work environments in the European Parliament and senior staff appointments at the European Parliament.

## Monitoring compliance

The implementation of the Data Protection Regulation by institutions and bodies is **monitored systematically** by regular stock taking of performance indicators, involving all EU institutions and bodies. Following the “spring 2009” exercise, the EDPS published a report showing that EU institutions have made good progress in meeting their data protection requirements, but a lower level of compliance is observed in most of the agencies

In addition to this general monitoring exercise, the EDPS carried out four on-the-spot **inspections** in various institutions and bodies. These inspections are followed up systematically and will be undertaken more frequently in the near future. In July 2009, the EDPS adopted an inspection procedure manual and published the key elements of this procedure on his website.

## Complaints

One of the main duties of the EDPS, as established by the Data Protection Regulation, is to hear and investigate complaints as well as to conduct inquiries either on his or her own initiative or on the basis of a complaint.

Both the **number and complexity** of complaints received by the EDPS are **increasing**. In 2009, the

EDPS received 111 complaints (an increase of 32% compared to 2008). Of these, about two third were inadmissible as they involved issues at the national level for which the EDPS is not competent. The remaining complaints required more in depth inquiries.

Most issues in admissible complaints involved alleged violations of confidentiality, excessive collection of data or illegal use of data by the controller, access to data, right of rectification, and erasure of data. In eight cases, the EDPS concluded that data protection rules had been breached.

Of the admissible complaints submitted in 2009, the majority was directed against the European Commission, including the European Anti-Fraud Office (OLAF) and the European Personnel Selection Office (EPSO). This is to be expected since the Commission conducts more processing of personal data than other EU institutions and bodies. The high number of complaints related to OLAF and EPSO may be explained by the nature of the activities undertaken by those bodies.

## Administrative measures

The EDPS continued to provide advice on administrative measures envisaged by European institutions and bodies in relation to the processing of personal data. A variety of issues was raised, including transfers of personal data to third countries or international organisations, processing of data in case of a pandemic procedure, data protection in the Internal Audit Service, and implementing rules of the Data Protection Regulation.

## Thematic guidelines

The EDPS adopted guidelines on the processing of personal data for **recruitment** and on **health data** in the workplace. In 2009, the EDPS also held a public consultation on video-surveillance guidelines, among others emphasizing “Privacy by Design” and accountability as key principles in this context.

# CONSULTATION

*The EDPS advises the European Union institutions and bodies on data protection issues in a range of policy areas. This consultative role relates to proposals for new legislation as well as other initiatives that may affect personal data protection in the EU. It usually takes the shape of a formal opinion, but the EDPS may also provide guidance in the form of comments or policy papers. Technological developments having an impact on data protection are also monitored as part of this activity.*

## Major trends

In 2009, a number of significant activities and events helped bring the prospect of a **new legal framework for data protection** closer. Realising this prospect will be a dominant item on the EDPS's agenda over the coming years.

At the end of 2008, a general **legal framework for data protection in the area of police and judicial cooperation** was adopted at EU level for the first time. Although not fully satisfactory, it was an important step in the right direction.

In 2009, as second major development was the adoption of the revised **E-privacy directive** as part of a larger package. This was also a first step in the modernisation of the legal framework for data protection.

The entry into force of the **Lisbon Treaty** marks a new era for data protection. It not only resulted in the Charter of Fundamental Rights becoming binding on institutions and bodies, as well as on Member States when acting in the scope of EU law, but also in the introduction of a general basis for a comprehensive legal framework in Article 16 of the Treaty on the Functioning of the European Union (TFEU).

In 2009, the Commission also launched a public consultation on the future of the legal framework for data protection. The EDPS has worked closely with colleagues in order to ensure an adequate joint input to this consultation and has used various occasions to highlight the need for more comprehensive and more effective data protection in the European Union.

## EDPS opinions and key issues

The EDPS has continued to implement his general **consultation policy** and issued a record number of legislative opinions on different subjects. This policy also provides for a pro-active approach, involving a regular inventory of legislative proposals to be submitted for consultation, and availability for informal comments in the preparatory stages of legislative proposals. Most EDPS opinions were followed up in discussions with Parliament and Council.

In the area of freedom, security and justice, the EDPS followed with particular interest the develop-

ments concerning the **Stockholm Programme** and its vision on the next five years in the area of justice and home affairs. The EDPS advised on the development of the programme and took part in the preparatory work for the European Information Model.

Other work in this area related to the review of the **Eurodac and Dublin Regulations**, the setting up of an Agency for the operational management of large-scale IT systems, and a coherent approach to supervision in this field.

In the context of E-privacy and technology, apart from the general review mentioned above, the EDPS was involved in issues relating to the Data Retention Directive, the use of RFID tags or intelligent transport systems, and the RISEPTIS report on "Trust in the Information Society".

In the context of **globalisation**, the EDPS was involved in the development of global standards, the transatlantic dialogue on data protection and law enforcement data, as well as in issues around restrictive measures with regard to suspected terrorists and certain third countries.

Other areas of substantial EDPS interest have been **public health** – including cross border healthcare, e-health and pharmaco-vigilance – and **public access to documents** – such as the revision of public access Regulation (EC) 1049/2001 and various court cases about the relation between public access and data protection.

## New developments and priorities

A number of perspectives for future changes, which will serve as the agenda of main priorities for the EDPS, have been identified. They include **new technological trends** raising critical data protection and privacy concerns, such as "smart" CCTV, developments taking place under the concept of "the Internet of things" and on-line behavioural advertising.

Important developments in **policy and legislation** will also determine the context for the EDPS' consultation activities in 2010. In addition to the review of the legal framework for data protection already mentioned above, the EDPS will give special attention to the Commission's digital agenda in which privacy and data protection are necessary preconditions. Significant developments which will allow the EU and its Member States to deal more effectively with the external dimension of data protection are also taking place, not only in relation to the United States, but also on a wider scale through the further development of global standards.

# COOPERATION

*The EDPS cooperates with other data protection authorities in order to promote consistent data protection throughout Europe. This cooperative role also extends to cooperation with supervisory bodies established under the former EU “third pillar” and in the context of large scale IT systems.*

The main platform for cooperation between data protection authorities in Europe is the **Article 29 Working Party**. The EDPS takes part in the activities of the Working Party, which plays an important role in the uniform application of the Data Protection Directive.

The EDPS and the Working Party have cooperated in good synergy on a range of subjects, but especially on the implementation of the Data Protection Directive and on challenges raised by new technologies. The EDPS also strongly supported initiatives taken to facilitate international data flows.

Special mention should be made of the joint contribution on the “Future of Privacy” in reply to the consultation of the European Commission on the EU legal framework for data protection, and the consultation of the Commission on the impact of “body scanners” in the field of aviation security.

One of the most important cooperative tasks of the EDPS involves **Eurodac** where the responsibilities for supervision are shared with national data protection authorities. The Eurodac Supervision Coor-

dination Group – composed of national data protection authorities and the EDPS – met three times and concentrated on the implementation of the work programme adopted in December 2007.

One of the main results was the adoption in June 2009 of a second inspection report focusing on two issues: the right to information for asylum seekers and the methods for assessing the age of young asylum seekers.

The EDPS continued a close cooperation with data protection authorities in the former “third pillar” – the area of **police and judicial cooperation** – and with the Working Party on Police and Justice. This cooperation included in 2009 contributing to the debate on the Stockholm Programme and evaluating the impact of the Council Framework Decision on data protection.

Cooperation in other **international forums** continued to attract attention, especially the 31st International Conference of Data Protection and Privacy Commissioners in Madrid, which led to a set of global standards for data protection.

The EDPS also organised a workshop on “Responding to security breaches” in the context of the “London initiative” launched at the 28th International Conference in November 2006 to raise awareness of data protection and to make it more effective.

# MAIN OBJECTIVES FOR 2010

The following main objectives have been selected for 2010:

- **Support of DPO network**

The EDPS will continue to give strong support to data protection officers, particularly in recently established agencies, and encourage an exchange of expertise and best practices, including the possible adoption of professional standards, in order to strengthen their effectiveness.

- **Role of prior checking**

The EDPS will put stronger emphasis on the implementation of recommendations in prior checking opinions and ensure adequate follow up. Prior checking of processing operations common to most agencies will continue to receive special attention.

- **Horizontal guidance**

The EDPS will continue to develop guidance on relevant issues and make it generally available. Guidelines will be published on video-surveillance, administrative inquiries and disciplinary procedures, and implementing rules concerning the tasks and duties of data protection officers.

- **Inspection policy**

The EDPS will publish a comprehensive policy on the monitoring of compliance and enforcement of data protection rules in institutions and bodies. This will involve all appropriate means to measure and ensure compliance with data protection rules and encourage institutional responsibility for good data management.

- **Scope of consultation**

The EDPS will continue to issue timely opinions or comments on proposals for new legislation and ensure adequate follow up, in all relevant fields. Special attention will be given to the Action plan for the implementation of the Stockholm Programme.

- **Review of legal framework**

The EDPS will give priority to the development of a comprehensive legal framework for data protection, covering all areas of EU policy and ensuring effective protection in practice, and contribute to the public debate where necessary and appropriate.

- **Digital Agenda**

The EDPS will give special attention to the Commission's Digital Agenda in all areas with an obvious impact on data protection. The principle of "Privacy by Design" and its practical implementation will be strongly supported.

- **Information activities**

The EDPS will further improve its online information tools (website and electronic newsletter) to better meet visitor's demands. New publications ("fact sheets") will be developed on thematic issues.

- **Internal organisation**

The EDPS will revise the organisational structure of his Secretariat in order to ensure a more effective and efficient execution of the different roles and tasks. The main lines of the new structure will be published on the website.

- **Resource management**

The EDPS will further develop activities relating to financial and human resources, and enhance other internal work processes. Special attention will be given to the need for additional office space and the development of a case management system.



The European Data Protection Supervisor

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