



EUROPEAN DATA
PROTECTION SUPERVISOR



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SPEECHES AND PUBLICATIONS



NEW DATA PROTECTION OFFICERS

- HIGHLIGHTS -

> EDPS: responsibility in the Cloud should not be up in the air



On 16 November 2012, the European Data Protection Supervisor (EDPS) adopted his Opinion on the Commission Communication on "Unleashing the potential of Cloud Computing in Europe". The EDPS Opinion not only reacts to the Communication but also highlights the data protection challenges created by cloud computing and how the proposed Data Protection Regulation will tackle them when the reformed rules come into effect.



Cloud computing can bring enormous benefits to individuals and organisations alike but it must also provide an adequate level of protection. Currently, many cloud customers, including members of social media, have little influence over the terms and conditions of the service offered by cloud providers. We must ensure that the cloud service providers do not avoid taking responsibility and that cloud customers are able to fulfil their data protection obligations. The complexity of cloud computing technology does not justify any lowering of data protection standards. ” Peter Hustinx, EDPS

The EDPS highlights the need for enhanced accountability to avoid a serious lack of personal data protection in practice. The risk that no one takes full responsibility for data protection in this complex environment is of real concern.

Furthermore, standard commercial terms and conditions that respect data protection requirements could address the imbalance of power between cloud customers and cloud service providers. This together with the proposed Data Protection Regulation that provides clear rules on accountability will guard against data protection responsibilities from being up in the air and evaporating in the cloud.

☞ EDPS Press release ([pdf](#)) and Opinion ([pdf](#))

☞ EDPS [FAQs on cloud computing](#)

> Greater accountability of EU institutions and bodies and involvement of DPOs for better data protection



On 23 November 2012, the European Data Protection Supervisor (EDPS) adopted a Policy on Consultations in the field of Supervision & Enforcement which provides guidance to EU institutions and bodies and Data Protection Officers (DPOs) on consulting the EDPS when drawing up measures or internal rules which involve the processing of personal information in compliance with the Data Protection Regulation (EC) No. 45/2001.



In order to effectively respect the fundamental right to data protection of staff and citizens, EU institutions and bodies must ensure accountability when developing and implementing internal measures from the outset, seek the expert advice of their Data Protection Officer. If the DPO needs guidance, for example in cases of complexity or when related to appreciable risks to the rights and freedoms of data subjects, the DPO or the institution may refer a consultation to the EDPS. ”

Giovanni Butarelli, Assistant EDPS

☞ EDPS Press release ([pdf](#)) and Policy ([pdf](#))



> Data Protection Reform Process: an update

The ongoing work on one of the largest legislative dossiers in recent years - the two proposals for reforming the EU data protection framework - is the subject of intense speculation and interest to stakeholders at national, European and international level.

In the European Parliament the two rapporteurs - Mr. Albrecht for the proposed Regulation and Mr. Droutsas for the proposed Directive for law enforcement - and their teams are working hard to finalise the respective draft reports for the LIBE Committee in December. Other EP Committees (IMCO, ITRE and JURI) have already issued draft reports on the proposed Regulation.

Progress in the Council is slower, despite numerous DAPIX working party meetings held under the Cyprus presidency. On the proposed Regulation, the working party is almost half way in their article-by-article discussion. The discussion on the proposed Directive, on the other hand, lags behind and there are clear signs that Member State representatives are less than enthusiastic about the proposed Directive.

In parallel to the article-by-article approach, the Cyprus Presidency has organised separate meetings on three general themes related to the proposed Regulation:

- the rather numerous delegated and implementing acts foreseen;
- ways to further reduce administrative burdens and compliance costs and
- whether more flexibility for the public sector ought to be permitted.

On 3 December, the Cyprus Presidency published a progress report. Conclusions on the first and third points listed above have been postponed until after completion of the first examination of the proposal. As to the administrative burden, there is support for reinforcing a risk-based approach.

The EDPS is in close contact with the Commission, the Council and the European Parliament and is readily available to offer further advice. In addition, the EDPS has participated actively in the contributions of the Article 29 Working Party to the discussion on the proposals.

🔗 [Further reading](#)



CONSULTATION

> Data Protection in the context of historical archives

The Commission Proposal for an amendment of the Archives Regulation as regards the deposit of the historical archives of the institutions at the European University Institute (EUI) in Florence.



In his Opinion of 10 October 2012, the EDPS appreciates the attention for some key data protection concerns. He was particularly pleased that the issues of applicable law, the determination of the supervisory authority, the specification of the role of EUI as a processor and the requirement to adopt implementing rules to address practical data protection issues were addressed.

The EDPS recommends that the proposed amendment specify the key objectives and minimum content of the implementing rules as



well as the procedure for their adoption, clarify the applicable rules for the security of personal information held in the historical archives and implement safeguards for the private archives held by EUI.

↪ EDPS Opinion ([pdf](#))

> Towards openness and accountability on the net

DG CNECT public consultation on specific aspects of transparency, traffic management and switching in an open internet



In his response of 15 October 2012 to the public consultation, the EDPS points out that internet traffic management practices raise data protection concerns, as highlighted in the details of his Opinion on Net Neutrality ([7 October 2011](#)). Among other things, many data protection principles - such as the principles of purpose limitation, proportionality, accountability - should guide the deployment of alternative, less privacy intrusive methods. The EDPS also suggests ways in which internet service providers could improve transparency for end users to their Internet traffic management practices.

↪ EDPS Comments ([pdf](#))

> Making personal information on the net more secure

DG CNECT public consultation on improving network and information security (NIS) in the EU

As the results of the public consultation will help the Commission to define a strategy on NIS, the EDPS highlights in his comments of 10 October 2012, the particular importance of considering data protection when developing the strategy. He emphasises

- issues relating to the exchange of information between private actors and public bodies;
- the need for a clear definition of the specific cyber-security threats to be tackled in the strategy;
- the principle of *privacy by design* to guide the design of new internet applications and/or mobile devices;
- the reporting of cyber-security incidents;
- the need for raising awareness on cyber-security, and
- the need to regularly evaluate the adequacy of the security measures and to update them where necessary.



↪ EDPS Comments ([pdf](#))

> Hosting illegal content

DG MARKT public consultation on procedures for notifying and acting on illegal content hosted by online intermediaries



In his response of 13 September 2012, the EDPS states that the EU should provide detailed harmonised rules on the functioning of notice and action procedures. He stresses the need to provide clearer definitions for the notion of "hosting" and of the illegal content that must be reported under the e-commerce directive. He also recommends that further reflection is needed to classify the types of notice identifying which organisation is best placed to deal with them (for instance ISPs, law enforcement bodies, other public bodies). Finally, he emphasised the need for procedures on reporting illegal content that fully respect data protection law.

↪ EDPS Comments [\(pdf\)](#)

> CAP: becoming more transparent

Commission proposal on the publication of information on beneficiaries of the Common Agricultural Policy (CAP)

The European Court of Justice's ruling in the Schecke case in 2010 gave very clear guidance to EU institutions and bodies on their obligations in balancing two fundamental rights, privacy and transparency. Following this judgment, the Commission has outlined its proposal to publish information on (natural and legal) persons who receive CAP funds above a certain threshold.

In his Opinion of 9 October 2012, the EDPS welcomes the efforts of the Commission in striking a balance between the two fundamental rights. However, he recommends that information on legal persons below the threshold should also be published in addition to improving the information for beneficiaries on their rights. Furthermore, the preamble of the proposal should include better justification on the duration of the retention period for beneficiary information and why other less privacy intrusive measures would not fulfill the purpose of transparency.



↪ EDPS Opinion [\(pdf\)](#)

> Inspiring confidence in eTrust Services

Commission proposal for a Regulation on trust and confidence in electronic transactions in the internal market



The aim of the proposed Regulation, which will replace the current legal framework on e-signatures, (set forth in Directive 1999/93/EC), is to enhance trust in pan-European electronic transactions and to ensure cross-border legal recognition of electronic identification, authentication, signature and related trust services.

In his Opinion of 27 September 2012, the EDPS emphasises that compliance with data protection law is required for all data processing activities taking place under the Proposal, in particular by:

- providing users of eTrust services with appropriate information on the processing of their personal data;
- specifying the types of personal information processed for cross-border identification;
- promoting the use of privacy by design techniques in electronic services, that allow the disclosure of no or less personal information (e.g. pseudonymisation);
- defining a common set of security requirements in relation to trust services and identification schemes; and
- ensuring that the data breach obligations introduced in the Proposal are consistent with those foreseen in other data protection legislation (ePrivacy Directive and the proposed Data Protection Regulation).

↪ EDPS Opinion ([pdf](#))

> Consumer protection in financial services: important issues need to be clarified



On 23 November 2012, the EDPS published an Opinion on three Commission proposals regarding key information documents for packaged retail investment products, Insurance Mediation and protection for those who buy investment funds.

The main data protection concerns raised by the EDPS relate to the need for clarification on the investigatory powers of the competent authorities, the establishment of a database by the European Insurance and Occupational Pensions Authority (EIOPA), the publication of administrative sanctions including the identity of those responsible and the reporting of breaches (so called whistle-blowing schemes).

↪ EDPS Opinion ([pdf](#))



> Helping to protect volunteers

Commission proposal for a Regulation establishing the European Voluntary Humanitarian Aid Corps

While the objective of the proposal is not to process personal information but to deploy trained EU volunteers in humanitarian projects worldwide, it will nevertheless require such processing; for instance, listing the personal information of volunteers in the register of EU Aid Volunteers, as well as the possible posting of the personal information of volunteers or third parties on the IT network for online interactions.

In his Opinion of 23 November 2012, the EDPS recommends that the aims of the processing, the categories of information to be included in the register, as well as the recipients of such information should be clearly outlined in the proposal. The EDPS also supports the creation of data protection policies and provided guidance on developing them.

🔗 EDPS Opinion ([pdf](#))



> COURT PROCEEDINGS

> Commission v. Austria: Court of Justice says Austrian data protection authority is not sufficiently independent

On 16 October 2012, the Court of Justice of the European Union ruled that the Austrian Data Protection Authority, the Datenschutzkommission (DSK), does not fulfil the requirements of complete independence as outlined in the European Data Protection Directive.

In particular, the Court said that the DSK's functional independence from the Government as provided for under Austrian law was not sufficient and that its close ties with the Federal Chancellery prevent the DSK from being above all suspicion of partiality.

The Court criticised the central role in the DSK of the managing member who is a career official within the Federal Chancellery, that the staff of the DSK are civil servants of the Federal Chancellery and that the Chancellor has the right to be informed of all the activities of the DSK. However, the Court did not comment on the activities of the DSK as such.

Further to his intervention in the case, the EDPS welcomes that the Court, in a second case, attaches such importance to the independence of data protection authorities. By referring to the EU Charter of Fundamental Rights, the Court has highlighted that truly independent data protection authorities are intrinsic to the work carried out in the data protection field.

🔗 EDPS Press release ([pdf](#))



SUPERVISION

> News on EDPS prior checking of personal data processing

Processing of personal data by the EU administration that is likely to result in specific risks for the people concerned is subject to a prior check by the EDPS. This procedure serves to establish whether the processing is in compliance with the Data Protection Regulation (EC) No 45/2001, which lays down the data protection obligations of Community institutions and bodies.

>> Privacy and transparency: a fine balancing act by the ECDC

Notification for Prior Checking from the Data Protection Officer of the European Centre for Disease Prevention and Control (ECDC) regarding Annual Declarations of Interest



The ECDC notified the EDPS on a procedure established to safeguard its independence from the influence of industry particularly when developing opinions, guidance, advice and recommendations on the emerging threats of infectious diseases to human health.

A system of annual declarations of interest (ADoI) and specific declarations of interest (SDoI) has been put in place for the Members of the Management Board and Advisory Forum, as well as for all experts, seconded national experts and staff members (from AST 5 and above).

In his Opinion of 19 July 2012, the EDPS recommended that the ECDC carefully consider how it balances the two fundamental rights, privacy and public access to documents, by justifying the need to extend the procedure on declarations of interest (DoI) to all ECDC staff members, to clarify the policy on publishing DoIs and the potentially public nature of personal information collected through SDoIs.

In relation to the publication of ADoIs and the possible public disclosure of SDoIs, the EDPS also recommended that the ECDC be proactive, for example, by informing and asking for the consent of the individuals concerned prior to the possible public disclosure of SDoIs in the event of a request and making them aware of their rights under the Data Protection and Public Access regulations.

In its follow up letter, the ECDC justified the use of DoIs for all staff members citing their possible involvement in evaluation committees and scientific panels. With regards to the publication of DoIs, the ECDC policy has been updated and the right to object has been included in the information aimed at those concerned.

↪ EDPS Opinion ([pdf](#))

>> CEDEFOP sets the bar for internet monitoring

Notification for prior checking from the Data Protection Officer of the European Centre for the Development of Vocational Training (CEDEFOP) related to internet monitoring (processing of data in connection with a Proxy system)

The Opinion of 15 November 2012 is the second the EDPS has issued on the subject of internet monitoring. His first was in November 2008 for the Court of Auditors (ECA) and the EDPS is pleased to note that CEDEFOP's notification seems to have been inspired by the guidelines outlined in the ECA Opinion.

The EDPS welcomes CEDEFOP's methodology for monitoring internet use, which is based on the main pillars of transparency and prior information, a gradual approach to e-monitoring and the rights of staff.



In particular, he was pleased that CEDEFOP has set a general threshold for identifying excessive internet usage (twice the standard deviation from average staff usage) and a methodology that enables staff to see the level of their internet usage in real time.

The EDPS considers the CEDEFOP and ECA cases as useful benchmarks of what is acceptable, even good practice, in internet monitoring and he will elaborate on this in an upcoming paper on e-monitoring.

↪ EDPS Opinion ([pdf](#))

> Consultations on administrative measures

>> OLAF: anti-fraud model contractual clauses need to be reinforced

Consultation on the European Anti-Fraud Office (OLAF) revised Model Data Protection Contractual Clauses to be used in Administrative Cooperation Agreements (ACAs) concluded with third country authorities or international organisations



In his Opinions of 3 April and 16 July 2012, the EDPS recognises that OLAF's potential to share information with third country authorities and international organisations is an important element in combating international fraud. Nevertheless, any exchange of personal information has to be in conformity with the existing legal framework governing trans-border transfers of personal data by EU institutions and bodies, namely Article 9 of Regulation (EC) 45/2001.

The EDPS urges OLAF to reinforce the substantive safeguards, compliance and redress mechanisms in place. Among other things, the EDPS recommends that:

- OLAF should carefully select its partners and make a preliminary assessment of their capacity and willingness to respect the clauses of the ACA and its annexes;
- OLAF should put in place the necessary measures to verify, to the extent possible, the correct implementation of the agreement by its ACA partners and periodically report to the EDPS;
- Should a problem arise, OLAF and its partners should do their best to find a solution, including where appropriate and necessary, make specific concessions to data subjects;
- Should such efforts fail, OLAF must bear responsibility in accordance with Article 32 for any damage suffered by the data subject as a result of a violation of the Clauses, including for violations committed by its partners in cases where the data subject was not able to reasonably obtain redress from the partners.

↪ EDPS Opinion of 3 April 2012 ([pdf](#)) and of 16 July 2012 ([pdf](#))

> News on data processing not subject to EDPS prior checking

>> Staff satisfaction survey at the European Agency for Competitiveness and Innovation (EACI) not subject to prior checking

Notification on the processing operations relating to a survey on staff satisfaction at the EACI.



The Executive Agency for Competitiveness and Innovation (EACI) submitted a notification relating to its survey on staff satisfaction in the workplace as the processing operations for the study would include an assessment of the hierarchy and EACI by staff falling within general Article 27.1 of the data protection Regulation.

In his response of 19 October 2012, the EDPS concludes that the processing is not subject to prior checking. Furthermore, the EDPS points out that while the processing of some staff replies to the study could, under other conditions, be considered the processing of personal information related to health, in this specific case, several measures (staff not obliged to participate in the study, use of aggregated data for analysis, publication of general results only, and so on) had been taken.

Nonetheless, the EDPS makes some recommendations, in order to ensure the correct implementation of Regulation 45/2001 including some directed at the retention of raw data in the tool used for conducting the satisfaction survey, modifications to the privacy statement, notifying the legal basis of the processing to staff and the method for compiling the aggregated information.

↪ EDPS Response ([pdf](#))



COOPERATION

> VIS Supervision Coordination meeting

On the morning of 21 November 2012, the EDPS hosted the first meeting of the Visa Information System (VIS) Supervision Coordination Group.

During the meeting, the Commission presented the latest VIS developments to the group, such as the planned roll out of the system to regions and the handover of the management of VIS to a new IT Agency.



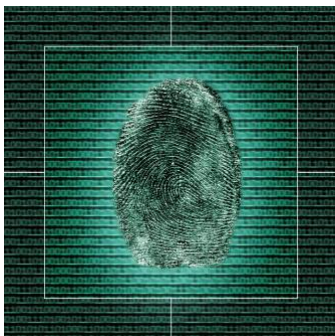
On 11 October 2011, the system became operational in North Africa. Rolling out the system in this region was strategic as the potential for visa shopping in the area is high. As part of the pre-agreed gradual roll-out, VIS has since been implemented in two other regions, the Near East on 10 May 2012 and the Gulf Region on 2 October 2012.

The group also discussed the VIS Working Programme for the next two years which will be focused primarily on sharing national experiences and the consideration of undertaking joint studies such as on the outsourcing of some common tasks to external providers.

Peter Hustinx, EDPS also presented his follow up to the VIS inspection of 2011 to the group. The inspection report listed 45 recommendations divided into high priority and medium priority points. Of these, 14 recommendations have been fulfilled, 19 not yet fully implemented while the remaining 12 have so far not been addressed. Close cooperation in the coming months with the new IT Agency should ensure full implementation of all recommendations.

The next meeting of the VIS Supervision Coordination Group will be held in Spring 2013.

> 17th Eurodac Supervision Coordination meeting



On the afternoon of 21 November 2012, the EDPS hosted the 17th meeting of the EURODAC Supervision Coordination Group. The group took stock of the latest legislative developments in the Eurodac Recast, the move of the management of the system to a new IT Agency foreseen for the end of 2012 and the follow up of the EDPS inspection of February 2012. The group also discussed the results of an ongoing exercise "failure to enrol" and adopted a common methodology for security audits. The next meeting of the Eurodac Supervision Coordination Group will be convened in Spring 2013.



EVENTS

> International Conference of Data Protection Commissioners

23-26 October 2012, Uruguay



The 34th International Conference of Data Protection Commissioners took place on 23-24 October, in Punta del Este, Uruguay, on *Privacy and Technology in Balance*. The list of 90 distinguished speakers from across 40 countries (DPAs authorities, academics, NGOs, representatives from industry, lawyers, IT experts), included Peter Hustinx, EDPS, Giovanni Buttarelli, Assistant EDPS, as well as Christopher Docksey and Veronica Perez Asinari representing the EDPS staff.

This was the first time for a South American country to host the International Conference and it was particularly momentous for Uruguay. The European Commission recently adopted an adequacy decision on Uruguay's level of data protection, making it the second country in the region to have been declared adequate by the European Commission (Argentina was the first). At the same time, the country is preparing for accession to the Council of Europe's Convention 108.

Three pre-conference events took place on 22 October. The first was a meeting of the Iberoamerican Data Protection Network (Red Iberoamericana de Protección de Datos) where members met to discuss and exchange experiences on the status of national laws on data protection, to explore recent developments at EU level such as the data protection reform package, and to present a case law database of the member countries.

The second was a Civil Society conference on *Privacy Rights are a Global Challenge*, organised by *The Public Voice*, one of the aims of which was to measure the impact of the Madrid Declaration.

The third was an event on Convention 108: a global response to global challenges, which enabled an exchange of views on the potential of Convention 108 and the landmark accession of Uruguay, as the first non-European country to join a community of 44 countries.

The closed session of the conference took place on 25-26 October and resulted in a Resolution on Cloud computing, a Resolution on the future of privacy and the Uruguay Declaration on profiling being adopted.

🔗 Read [more](#)

> Data Protection in the Area of European Criminal Justice Today - Reform or status quo?

Conference organised by ERA and EDPS, Trier, 5-6 November 2012



The EDPS, in cooperation with the Academy of European Law (ERA), organised two seminars on the Commission proposals for reforming the current data protection rules. The first seminar, reported in [newsletter 34](#), took place on 20-21 September in Trier and concentrated on the proposed general data protection Regulation. The second seminar took place on 5-6 November and focused on the proposed Directive for data protection rules for the law enforcement sector. The first day was dedicated to a discussion on the need and feasibility of replacing the current data protection rules for law enforcement, as well as on the new features of the proposal and their effectiveness. On the second day, the different stakeholders discussed specific

issues including law enforcement access to Eurodac, the transfer of PNR data and the data retention Directive in light of the proposal. The seminar concluded with a lively panel discussion on the new challenges for data protection in the Union.

☞ Conference programme ([pdf](#))

> Privacy Study Day 2020: What vision for the protection of personal data in the future?



Commission Nationale de l'Informatique et des Libertés

On 30 November 2012, the first study day was organised by the CNIL in France with researchers, academics, legal professionals and representatives of associations taking part. The study day was the beginning of a joint endeavour to build an ethical framework of the digital future.

Society has changed significantly over the years, in particular, as a result of technological developments and new applications (social networks, geo-location, mobile internet and so on). As technology continues to develop, what data protection concerns are there likely to be by 2020? What about privacy? In an age of global connectivity, what will our digital freedoms be? And what controls should we put in place to meet these new challenges?

These key questions were also posed at various workshops organised by the CNIL between Autumn 2011 and Spring 2012. Forty experts from various backgrounds were invited to take part: sociologists, economists, philosophers, lawyers, historians, researchers in communication sciences, engineering and IT, representatives from the business world and associations active in the field of digital rights.

A summary of these very enlightening sessions is published in the first edition of a new publication by the CNIL, *Innovation & Foresight*.

More [information](#).



SPEECHES AND PUBLICATIONS

- "Implementation of Data Protection law - Ensuring consistency and efficiency", ([pdf](#)) speech of Peter Hustinx delivered at the Inter-parliamentary Committee Meeting: "The Reform of the EU Data Protection framework - Building trust in a digital and global world", European Parliament, Brussels (10 October 2012)
- "Establishment of 'Eurodac' for the comparison of fingerprints", ([pdf](#)) speech delivered by Peter Hustinx at the Committee on Civil Liberties, Justice and Home Affairs (LIBE), European Parliament, Brussels (11 October 2012)
- "The Relationship between the proposed Data Protection Regulation and the e-Privacy Directive", ([pdf](#)) speech given by Peter Hustinx at the GSMA-ETNO Seminar "The Data Protection Reform - The Consumer Perspective", Brussels (16 October 2012)
- "Latest developments in data protection", ([pdf](#)) presentation given by Giovanni Buttarelli at the meeting of the Heads of Agencies, Stockholm (19 October 2012)
- "Accountability in the proposed Regulation", ([pdf](#)) speech given by Peter Hustinx at IAPP Europe KnowledgeNet, Brussels (3 December 2012)
- "What role for EU and international policymakers in ensuring global interoperability?", ([pdf](#)) speech of Peter Hustinx at the 3rd Annual European Data Protection & Privacy Conference, Brussels (4 December 2012)
- New: Read our factsheet on your [Data Protection Rights](#).



NEW DATA PROTECTION OFFICERS

Each European institution and body has to appoint at least one person as a Data Protection Officer (DPO). These officers have the task of ensuring the application of the data protection obligations laid down in Regulation (EC) No 45/2001 in their institution or body in an independent manner.

> Recent appointments

- Mr. Bo **Balduyck**, European Chemicals Agency
- Mr. Bruno **Mastantuono**, Cleansky

➤ See full list of [DPOs](#).





About this newsletter

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;
- cooperate with similar authorities to ensure consistent data protection.

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