

Annual Report

2010

Executive Summary



EUROPEAN DATA
PROTECTION SUPERVISOR



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INTRODUCTION

This is the Executive Summary of the 2010 Annual Report of the European Data Protection Supervisor (EDPS). The report covers 2010 as the sixth full year of activity of the EDPS as a new, independent supervisory authority, responsible for 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 EU institutions and bodies. It also covers the second 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 45/2001¹ (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**).

This year has once again been of major importance for the fundamental right to data protection. The Lisbon Treaty, ensuring a strong legal basis for comprehensive data protection in all areas of EU policy, has had an increasingly visible impact. The review process of the EU legal framework for data protection is taking shape and attracting more attention. Two key policy programmes, the Stockholm programme in the area of freedom, security and justice and the Digital Agenda – cornerstones for the Europe 2020 strategy – demonstrate that data protection is a crucial element of legitimacy and effectiveness in both fields.

The EDPS has been heavily involved in these different areas and will continue to be so. In addition, the role of the EDPS as an independent supervisory authority has been secured by exercising its authority in all main areas of activity and by ensuring that its organisation is fully adequate. This has led to significant progress, both in supervision of EU institutions and bodies when they process 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 2010

Most of the following main objectives, set in 2009, have been fully or partially realised.

- [Support of the network of data protection officers](#)

The EDPS continued to give strong support to data protection officers (DPO) and encouraged the exchange of expertise and best practices. Within the framework of their network, the DPOs developed a paper on 'Professional Standards for Data Protection Officers of the EU institutions and bodies working under Regulation (EC) No 45/2001'. The EDPS sent a letter to all heads of institutions and agencies, endorsing the standards and underlining the importance of the DPO's role in achieving compliance with data protection rules as set out in the Regulation.

- [Role of prior checking](#)

The EDPS has almost completed the prior checking of existing processing operations for most institutions and established bodies and has put increasing emphasis on the follow-up of recommendations. This year, 137 cases were closed. Prior checking of common processing operations in agencies received special attention, as did addressing these cases through joint opinions.

- [Horizontal guidance](#)

To help ensure compliance in EU institutions and bodies and streamline prior checking procedures, the EDPS published guidance on administrative enquiries and disciplinary proceedings and video-surveillance.

- [Inspection policy](#)

2010, the EDPS continued the follow-up of previous inspections. Additionally, the EDPS carried out an inspection at the Commission's Joint Research Centre in Ispra. In December 2010, the EDPS published a comprehensive policy on monitoring of compliance and enforcement of data protection rules in institutions and bodies.

- [Scope of consultation](#)

The EDPS issued a record number of 19 opinions and 7 sets of formal comments on proposals for new legislation, on the basis of a systematic inventory of relevant subjects and priorities and has ensured the adequate follow-up thereof. Special attention was given to the Action plan for the implementation of the Stockholm Programme.

- [Review of legal framework](#)

On a number of occasions, using different tools, the EDPS pushed for an ambitious approach in developing a modern, comprehensive framework for data protection, covering all areas of EU policy and ensuring effective protection in practice, which can deliver legal certainty for many years. The views of the EDPS were set forth in an opinion issued in January 2011.

- [Digital Agenda](#)

When dealing with consultations, the EDPS focused on the main challenges for the effective protection of personal data. This means ensuring a proper bal-

ance between the need for security and data protection, dealing with technological developments and addressing the effects of worldwide data flows. Special attention was given to the Commission's Digital Agenda in an opinion adopted in March 2010, further elaborating the principle of "Privacy by Design".

- **Information activities**

The EDPS continued to improve the quality and effectiveness of communication actions and information tools. A major development in this area was the introduction of German as a third language, in addition to English and French, in press and communication activities.

- **Internal organisation**

The Secretariat of the EDPS was reorganised in order to clarify responsibilities and ensure a more effective and efficient execution of the different roles and tasks. In the new organisational structure, the Director ensures the implementation of policies and horizontal coordination of activities taking place in the five different sectors. The new Organisation Chart is available on the website.

- **Resource management**

During the course of 2010, there was a substantial increase in the number of EDPS staff. Together with the internal reorganisation, new efforts in planning, internal procedures and budget implementation were required.

Some key EDPS figures in 2010

→ **55 prior-check opinions adopted**, notably on health data, staff evaluation, recruitment, time management, security investigations, telephone recording, performance tools

→ **94 complaints received, 25 admissible**
Main types of violations alleged: violation of confidentiality of data, excessive collection of data or illegal use of data by the controller.

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

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

→ **35 consultations on administrative measures**. Advice was given on a wide range of legal aspects related to the processing of personal data by EU institutions and bodies

→ **1 on-the-spot inspection carried out**

→ **2 guidelines published** on administrative enquiries and disciplinary proceedings and video-surveillance

→ **19 legislative opinions issued** on initiatives relating to the area of freedom, security and justice, technological developments, international cooperation and data transfers, taxation and customs

→ **7 sets of formal comments issued** on, among others, the revision of the Frontex Regulation, open Internet and net neutrality, Internal Market Information System, security scanners, international data exchange agreements

→ **3 Eurodac Supervision Coordination Group meetings organised**, which resulted in the launch of a new coordinated inspection, as well as preparations for a full security audit

→ **12 new officials recruited**

SUPERVISION AND ENFORCEMENT

One of the main roles of the EDPS is to supervise in an independent manner, the 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 the main aspect of supervision during 2010, but the EDPS has also developed other forms of supervision, such as the handling of complaints, inspections, advice on administrative measures and 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 the subject of prior checking by the EDPS. The EDPS then determines whether or not the processing complies with the Regulation.

In 2010, the EDPS adopted **55 prior-check opinions** on standard administrative procedures, such as staff evaluation, recruitment and promotions, but also on core business activities such as the Early Warning Response System for the exchange of information on communicable diseases. These opinions are pub-

lished on the EDPS website and their implementation is followed up systematically.

Monitoring compliance

The **implementation of the Regulation** by institutions and bodies is also **monitored systematically** by regular stock taking of performance indicators, involving all EU institutions and bodies.

Following the general monitoring exercise launched in spring 2009, the EDPS has continued to monitor the implementation of data protection rules and principles by the institutions and bodies involved. The next general monitoring exercise (Spring 2011) will begin in early 2011.

Targeted monitoring exercises were also conducted where, as a result of his supervisory activities, the EDPS became concerned about the level of compliance at specific institutions or bodies. Some of these were correspondence-based, while others took the form of a visit to the body concerned. In 2010, the EDPS made two such visits. The EDPS also carried out an on-the-spot inspection at the Joint Research Centre of the Commission in Ispra to verify compliance on specific issues.

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 own initiative or on the basis of a complaint.

In 2010, the EDPS received **94 complaints**; of these **25** were found to be **admissible**. Many inadmissible complaints involved issues at national level for which the EDPS is not competent.

Most issues in admissible complaints involved alleged violations relating to access and rectification, misuse, excessive collection and deletion of data. In **11 cases**, the EDPS concluded that **data protection rules** had been **breached**.

Of the admissible complaints submitted in 2010, the majority (80%) were directed against the **European Commission, including OLAF and EPSO**. This is to be expected since the Commission conducts more processing of personal data than other EU institutions and bodies. The relatively high number of complaints related to OLAF and EPSO may be explained by the nature of the activities undertaken by those bodies.

Consultation on administrative measures

Further work was also done in consultation on administrative measures envisaged by EU institutions and bodies in relation to the processing of personal data. A variety of issues was raised, including international transfers of data, access to the identity of an informant, internal use of e-mails and e-monitoring,

Horizontal guidance

The EDPS also adopted **guidelines** on administrative enquiries, disciplinary proceedings and video-surveillance.

Compliance and enforcement policy

In December 2010, the EDPS adopted a policy paper entitled 'Monitoring and Ensuring Compliance with Regulation (EC) 45/2001'. The paper sets out the framework within which the EDPS monitors, measures and ensures data protection compliance in the EU administration. It explains the nature of the various **enforcement powers** available to the EDPS and outlines the drivers and triggers for any formal action that might be taken.

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 2010, the Commission made significant progress towards a new, **modernised legal framework for data protection in Europe**. The public consultation launched in 2009 was concluded and supplemented by further targeted consultations with a number of key stakeholders. In November 2010, the Commission issued its Communication laying down a comprehensive approach on personal data protection in the European Union, identifying the main priorities and key objectives for the review of the current rules.

The EDPS gave special attention to the review process throughout 2010 and conveyed his views in a number of ways. In particular, the EDPS held an *ad hoc* press conference immediately after the publication of the Communication to express his views publicly on the new legal framework. On this occasion, the EDPS emphasised the importance of the review, which he

considered very timely and gave his perspective on the main points of the new framework.

In 2010, the Commission also devoted significant efforts to the implementation of the **Stockholm Programme** — an open and secure Europe serving and protecting the citizen, adopted by the European Council in December 2009. The Programme defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice and focuses on the interests and needs of citizens.

The publication of the Commission's Communication on a **Digital Agenda for Europe** was also a significant development in 2010, with the objective of setting EU priorities in the field of the Internet and digital technologies. Many of these information technology initiatives are drivers for smart growth under the Europe 2020 Strategy. These and other initiatives relating to technological developments have significant relevance for data protection and were closely monitored by the EDPS.

EDPS opinions and key issues

The EDPS continued to implement his general **consultation policy** and issued a record number of **19 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 by discussions with the Parliament and the Council.

In the **area of freedom, security and justice**, the EDPS closely followed several initiatives directly connected with the implementation of the **Stockholm Programme**. Among others, the EDPS dealt with critical data protection issues relating to the EU Internal Security strategy, information management, the EU Counter-Terrorism Policy, Frontex and Eurodac Regulations. All in all, the developments concerning the Stockholm Programme have been a dominant item in the EDPS agenda and will continue to be so in the coming years.

The **interface between privacy and technological developments** was also an area in which the EDPS intervened significantly. In March 2010, the EDPS adopted an opinion on 'Promoting trust in the information society by fostering data protection and privacy' as his input to the EU Digital Agenda. He also intervened in various ways on initiatives relating to the Internet and net neutrality, the review of the Data Retention Directive, the e-Waste Directive, the ENISA Regulation and e-justice.

The EDPS was consulted on various initiatives in the field of **international cooperation on security and law enforcement**, such as the EU-US international agreement on personal data protection and information sharing for law enforcement purposes and the agreement on the exchange of financial data for the purposes of the Terrorist Finance Tracking Program (TFTP II). He also intervened with regard to the Anti-Counterfeiting Trade Agreement (ACTA) and agreements on the exchange of Passenger Name Records (PNRs).

The EDPS intervened in other areas, such as **taxation and customs** (including administrative cooperation in the field of taxation and international customs cooperation), large-scale data exchanges taking place in the context of the **Internal Market Information System**, the use of **security scanners** at airports and various court cases about the relation between **public access and data protection**.

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 Data Protection 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 Article 29 Working Party have cooperated effectively on a range of subjects, in particular on the implementation of the Data Protection Directive and on the interpretation of some of its key provisions. The EDPS has contributed actively in a number of areas, such as the opinions on the concepts of ‘controller’ and ‘processor’, the principle of accountability and applicable law.

The EDPS also participated in the meetings and activities of the **Working Party on Police and Justice**, an advisory group dealing with former third pillar issues.

One of the most important cooperative tasks of the EDPS involves **Eurodac**, where the responsibilities for supervision are shared with national data protection authorities. In 2010, the Eurodac Supervision

Coordination Group started working on the preparation of the full security audit to be carried out by the data protection authorities, both at national and central (EU) level. A new coordinated inspection was launched at the end of 2010, the results of which are expected in 2011.

As regards the supervision of the **Customs Information System (CIS)**, the CIS Supervision Coordination Group adopted the Rules of Procedure which will govern its future work and discussed possible actions to be taken in the course of 2011-2012 to ensure comprehensive data protection supervision of the System.

The EDPS continued to cooperate closely with the authorities established to exercise **joint supervision on EU large-scale IT systems**.

Cooperation in **other international forums** continued to attract attention, especially the European and International Conferences of Data Protection and Privacy Commissioners held in Prague and Jerusalem, respectively.

In cooperation with the European University in Florence, the EDPS also organised a workshop on **‘Data Protection in International organisations’**. The workshop addressed various challenges faced by international organisations trying to ensure a good level of data protection in sometimes difficult contexts and without a clear legal basis.

MAIN OBJECTIVES FOR 2011

The following objectives have been selected for 2011.

Supervision and Enforcement

- Raising awareness

The EDPS will continue to invest time and resources in giving advice and guidance on data protection matters. This awareness raising will take the form of guidance papers on selected themes and workshops or interactive seminars whereby the EDPS presents his position in a particular field.

- Role of prior checking

Given that the backlog of *ex-post* prior checks has almost been cleared, the EDPS will concentrate on analysing the consequences related to new processing operations. The EDPS will continue to place strong emphasis on the implementation of recommendations in prior check opinions and ensure adequate follow up.

- Monitoring and reporting exercises

The EDPS will continue to monitor the implementation of data protection rules by the EU institutions and bodies, by launching both a general monitoring exercise (Spring 2011) and targeted monitoring exercises where the level of compliance at specific institutions and bodies is a cause for concern.

- Inspections

On-the-spot inspections will be launched in those cases where the EDPS has serious grounds to believe

that the compliance mechanism is being blocked. These will be viewed as the final stage before formal enforcement action. Inspections and audits will also be launched in the field of large-scale IT systems falling within the remit of the EDPS.

Policy and Consultation

- 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 review of the EU legal framework for data protection, the implementation of the Stockholm Programme and initiatives in the area of technology.

- Review of the EU legal framework for data protection

The EDPS will give priority to the development of a comprehensive EU legal framework for data protection. He will issue a legislative opinion on the Commission Communication on a comprehensive approach to personal data protection, as well as on any other ensuing legislative proposals and will contribute to the debate where necessary and appropriate.

- Implementation of the Stockholm Programme

The EDPS will continue to give special attention to various initiatives relating to the further implementation of the Stockholm Programme in the areas of freedom, security and justice, such as the setting up

of an entry-exit system and the Registered Traveller Programme, the anticipated Directive on the use of passenger name records for law enforcement purposes and the introduction of a European Terrorist Finance Tracking Programme.

- **Initiatives in the area of technology**

Initiatives in the area of technology which are likely to have an impact on privacy and data protection will also be closely considered by the EDPS. In particular the EDPS will continue monitoring the implementation of the information technology components of Europe 2020 foreseen under the Digital Agenda, such as RFID, cloud computing, eGovernment and online enforcement of intellectual property rights.

- **Other initiatives**

The EDPS will focus on all other initiatives that may significantly affect data protection, for example in the area of **transport** (e.g. use of body scanners at airports, e-Mobility package) and large-scale data exchanges that might take place in the **Internal Market Information system**.

- **Cooperation with data protection authorities**

The EDPS will continue to contribute actively to the activities and success of the Article 29 Data Protection Working Party, influencing its work programme in line with EDPS priorities, ensuring consistency and synergies between the Working Party and the positions of the EDPS and maintaining constructive relationships with national data protection authorities. As rapporteur for specific files, the EDPS will steer and prepare the adoption of the Working Party's opinions.

- **Coordinated supervision**

Coordinated supervision is required by EU law for Eurodac, the Customs Information System and – from mid 2011 – the Visa Information System. An important objective for the EDPS will be to provide the data protection authorities involved in coordinated supervision with an efficient secretariat. As supervisor for large-scale IT systems, the EDPS will also participate actively in their coordinated supervision and carry out regular security audits.

Other fields

- **Information and communication**

The EDPS will prepare the ground for a review of his Communication Strategy, in particular through a consultation of the main stakeholders. This general exercise will be supplemented by more targeted assessments of the impact of key information and communication tools.

- **Internal organisation**

The main objectives for 2011 will be the completion of the internal reorganisation, renewed efforts on performance management within the context of a strategic review and the development and implementation of new IT tools. Particular focus will also be given to internal control and procedures, better allocation of resources and improved budget implementation.

- **Resource management**

The EDPS will continue investing resources in the development and implementation of a case management system. Priority will also be given to the completion of Service Level Agreements with the European Commission for the deployment of IT applications in the field of human resources (e.g. Syslog Formation, Sysper and Mission Processing Systems).

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