

The European Data Protection Supervisor

# Securing Europe's Rights and Borders

Brussels, 18 March 2016

Executive Summary of the Opinion

The European Data Protection Supervisor (EDPS) says he supports the EU's efforts to manage migration and reinforce internal security and offers his advice on the data protection implications of the EU's recent proposal regarding the management of its external borders. In his Opinion<sup>1</sup> on the proposed European Border and Coast Guard Regulation, he outlines his recommendations to make the proposal clearer and more workable.

Giovanni Buttarelli, EDPS, said: "I fully understand that Europe must urgently put in place meaningful measures to deal with migration and to combat cross-border crime. The legislative proposal aims to serve these two purposes but in the rush to elaborate the text, they have not been treated separately, thus diluting their justification. The 'mixing' of objectives may have legal and practical consequences so we urge the EU legislator to deal with the two purposes more clearly and specifically."

Migration and security are two complex matters for the EU and the proposal reflects this complexity. The EDPS regrets that, despite the pressing political agenda of the European Commission, he was not consulted at an earlier stage of the legislative process since this proposal has clear data protection implications. His recommendations address his main data protection concerns and can help make the proposal more robust to withstand legal scrutiny.

The EDPS recommends that the proposal's two aims need to be approached separately since different areas of data protection law apply; a distinct assessment of the necessity and proportionality of proposed actions is essential. Clear compliance with data protection principles will make the proposed Regulation more robust and efficient.

The scale and scope of personal data collection must be clarified since the current proposal implies that the new European Border and Coast Guard Agency will turn into a personal data hub where massive amounts of personal information is to be processed for border management.

While the EDPS understands that personal data processing is required to manage migration and combat cross-border crime, this proposal could be a serious intrusion into the rights of migrants and refugees, a vulnerable group of people in need of protection. The EDPS is pleased that several safeguards for fundamental rights have been included in the proposal. In the interests of clarity and transparency, the EDPS recommends that the extent of the processing be outlined in the proposal.

The EDPS also recommends that the division of responsibilities between the new Agency and the EU Member States is made clearer so that there is no diffusion of accountability in the data protection obligations of each.

Europe is today faced with a pressing migration crisis and increased terrorist threats. The EU therefore wants to strengthen management of its external borders. In that context, the proposed European Border and Coast Guard Regulation aims to establish general principles of European integrated border management and will reinforce the mandate of the Frontex agency.

The EDPS recognises this need for more effective manage of migration and for reinforcing internal security, which requires processing of personal data. However, the Commission's Proposal could also create a serious intrusion into the rights of migrants and refugees, a vulnerable group of people in particular need of protection.

This Opinion address the five main data protection concerns and calls for further improvements of the proposed text to ensure full compliance with data protection principles. The EDPS considers that such compliance will be a key to the success of the initiative and its ability to withstand legal scrutiny. We specifically recommend:

- ♦ on the purposes of the Proposal, separate assessments of the necessity and proportionality of the measures for meeting the two identified aims of migration and security, noting that the aims will trigger the application of different data protection rules;
- ♦ on the collection of personal data, clarification of the scale and scope of processing activities by the Agency, since the current Proposal implies that the new Agency will turn into a personal data hub where massive amounts of personal information would be;
- ♦ clear delineation of responsibilities between the new Agency and the EU Member States so that there is no blurring of accountability in the data protection obligations of each controller;
- ♦ clarifications on transfers of personal data to third countries and international organisations, bearing in mind that such transfers must be based either on an adequacy assessment or on the use of appropriate safeguards;
- ♦ on the respect for fundamental rights of migrants and refugees, guarantees on the ground that migrants and refugees are informed of their rights in way that they can reasonably understand and exercise those rights.

Overall, the new Agency must be sufficiently equipped and capable of discharging its responsibilities for complying with data protection rules and safeguarding the interests and rights of individuals to whom the personal data being processed relates.

<sup>1</sup> [https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2016/16-03-18\\_EBCG\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2016/16-03-18_EBCG_EN.pdf)