

ABOUT THE ISSUE SHEETS

AN INTRODUCTION BY PROF. DOUWE KORFF

The Draft EU Data Protection Regulation that will replace the main EC Data Protection Directive (Directive 95/46/EC) is in the process of being adopted. The Regulation will have a major impact on the digital environment for citizens, businesses and public bodies. [EDRI and its 35 member organisations in 21 European countries are concerned that any weakening of the European data protection rules and principles will undermine the rights and freedoms of European citizens, both within the EU and internationally, due to the EU's leading role on privacy issues.](#) The ongoing PRISM/Tempora/Etc. scandals shows how crucial high-level data protection rules are for individual citizens, non-governmental organisations and companies.

The Issue Sheets seek to provide Members of the European Parliament in particular with simple clarifications of the main issues; they are kept to one page on each topic.

There is one issue we should stress in this cover note: [the wide "national security" exemptions in the main EU treaties.](#) It should be stressed that these are not absolute, and do not grant Member States total exemption from scrutiny in this regard. The EU Charter on Fundamental Rights, which explicitly demands full protection of personal data, cannot be simply ignored.

Ultimately, it is for the European Court of Justice to determine the scope of the exemption. It is already clear that the activities of the United States' NSA are manifestly not limited to national security as defined in international law, and it would seem that the same applies to the activities of some EU

agencies, such as the UK's GCHQ. [Activities by Member States' "national security agencies" that are not strictly limited to national security as defined in international law are not covered by the EU treaties' exemptions, and this should be made clear in the Regulation.](#)

Secondly, we urge the European Parliament to stress that any [disclosure](#) of personal data that are within the scope of EU data protection law, such as airline passenger data or data on individuals' financial transactions, to any national security agency is and will remain subject to the EU rules on the processing of personal data: disclosure is expressly mentioned as a form of processing in both the current Data Protection Directive and in the Draft Data Protection Regulation, and is subject to these instruments. Even if the processing of such data by national security agencies after such a disclosure may be outside EU law (provided it is indeed for strictly-defined national security purposes), the disclosure itself is not: it is and must remain subject to the fundamental principles of European data protection law, including purpose-specification and -limitation, transparency, and transborder data flows. Moreover, the activities of EU Member States's national security agencies' activities must still always conform, at the very least, to the minimum European standards on State surveillance, adduced by the European Court of Human Rights (as set out in an Annex to a recent EDRI/FREE submission on the matter, available at: http://www.edri.org/files/submission_free_edri130801.pdf