



Maintenance obligations - Presentation by the EDPS at the Joint Public Hearing of LIBE and JURI, 11 September 2007

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EDPS Opinion 15 May 2006¹
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- Thanks for the invitation and for giving me the opportunity to present EDPS opinion.
- Brief presentation of EDPS. Consultation, supervision, cooperation (with special emphasis on advisory role and EDPS practice so far). EDPS is available to provide support with regard to data protection issues.
- EDPS welcomes this proposal, to the extent it aims at facilitating the recovery of cross-border maintenance claims within the EU.
- Main focus of the opinion: The opinion focuses on those provisions having an impact on personal data protection, in particular those relating to the cooperation and the exchange of information making it possible to locate the debtor and to evaluate his assets and those pertaining to creditor (chapter VIII and Annex V). EDPS aims at promoting the respect for fundamental right to protection of personal data while ensuring the efficiency of the proposed mechanisms.
- There is a variety of situations that fall within the scope of maintenance obligations, and many differences exist in Member States' legislations.

Relations with current data protection legal framework

- Directive 95/46 has harmonized data protection law in all Member States
- Purpose limitation principle (with regard to further processing of personal data collected by national authorities and administrations for various specific purposes): exceptions laid down by article 13 when processing is necessary to exercise an official authority (f) or the protection of data subjects or of the rights and freedoms of others (g). Exceptions shall be necessary and based on legislative measures. With

¹ OJ C 242, 7.10.2006, p. 20

regard to the latter, **the EDPS strongly recommends that the proposal lays down an explicit and clear obligation for relevant national administrations and authorities to provide national central authorities with requested information.**

- Legal grounds for processing by national central authorities: according to Article 7 of dir. 95/46 processing by central authorities would be necessary for compliance with the legal obligations (laid down by the proposal) to which national central authorities are subject (c) or the performance of a public task entrusted to them (e).

- Processing by judicial authorities: it falls, from the entry into force of Amsterdam Treaty, within the scope of directive 95/46 (including its exceptions). Therefore, it would be desirable to explicitly clarify the applicability of directive 95/46, by **adding a specific paragraph to Article 48** of the proposal, which currently addresses the relations and possible conflicts with other community instruments, but does not mention Directive 95/46/EC. The EDPS welcomes **Amendment 45 of the Draft Report**

Substantive points

- Purpose limitation: while central national authorities and national courts shall be allowed to carry out their tasks properly, by processing relevant information for the purpose of facilitating the enforcement of maintenance claims, this information shall not be used for incompatible purposes.

It is then essential that Articles 44 and 46 precisely and clearly **define the purposes for which personal data are processed**. This is in line with **Amendment 40 of the Draft Report**. With regard to this, the EDPS recommends to **clarify the concept of "locating the debtor"**, which is done in **Amendment 39 of the Draft Report specifying it as "the address of the debtor"**. Furthermore, the text should **specify the purposes for which personal data relating to the creditor are processed**: indeed, those data may be needed to quantify the pension amount.

- Necessity and proportionality of personal data processed: personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are collected or further processed.

Minimum v. maximum amount of data - The current proposal (Article 44.2) defines a minimum amount of information to which central authorities shall be given access, through a non exhaustive list of national administrations and authorities. First of all, the kinds of personal data that can be accessed according to the proposed regulation should be limited. **Article 44(2) should provide for a well-defined maximum - rather than just minimum - limit to the amount of information** that can be accessed. **Amendment 43** aims at that, with a general approach.

Limitation on kinds of data that can be accessed - Personal data held by authorities listed in the current proposal may broadly differ. A limitation is needed, especially with regard to sensitive data, which is the aim of **Amendments 11 and 42** of the Draft Report (but also with regard to DNA, biometric data, covered by **Amendment 41**).

Proportionality on a case-by-case basis - the principle of proportionality should determine on a case-by-case basis which personal data should be concretely processed within the scope of the potentially available information. Indeed, national central authorities and courts should be allowed to process personal data only to the extent that this is necessary in the specific case to facilitate the enforcement of maintenance obligations. The balance of interests at stake may vary according to the specific case. The EDPS welcomes **Amendment 40** of the Draft Report, which states such principle.

- Proportionality in storage periods - the principle is that personal data shall be kept for no longer than it is necessary for the purposes for which they were collected or further processed.

Storage by central authorities - Article 46.2 is ok (deletion after forwarding the information to the court).

Storage by competent authorities in charge of the service of documents or the enforcement of a decision (Article 46(2)) - EDPS suggests that **the words "made use of it" be substituted with a reference to the time necessary for relevant authorities to fulfil the tasks** connected to the purposes for which information was collected.

Storage by judicial authorities - In cases of maintenance obligations, the information in some cases is likely to be needed for quite a long period of time. , the EDPS prefers a flexible but proportionate storage period rather than a rigid *a priori* limitation of the storage period to one year (as currently proposed by Article 46(3), which can prove in certain cases too short for the envisaged purposes of the processing. Therefore, the EDPS proposes to **delete the maximum storage period of one year**: judicial authorities should be allowed to process personal data for as long as it is necessary in order to facilitate the recovery of the relevant maintenance claim. This is exactly the content of **Amendment 44** of the Draft Report.

- Information to debtor and creditor - The proposal creates a network for exchanges of information among different national administrations, central authorities and national courts.

Therefore, a **timely, comprehensive and detailed information notice** should properly inform the data subject about all the various transfers and processing operations to which his/her personal data are subject (example of Annex V). It is essential that adequate information is also provided to the creditor, in case personal data concerning him/her are exchanged.

Conclusion

- EDPS is available to answer questions and to provide further advice - if necessary - on future developments of this proposal, with regard to the aspects relating to the protection of personal data.

- He welcomes all improvements in the text as referred to in this brief analysis.