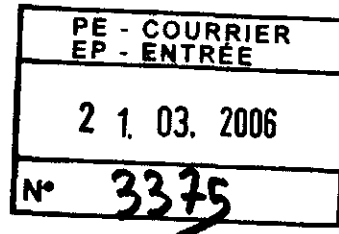




PETER HUSTINX
SUPERVISOR



Mr Jean Marie CAVADA
President of the LIBE-Committee
of the European Parliament
BRU - ASP 09G206

Brussels, 20 March 2006
PH/BH/ab/D(2006) 260 C 2005-0059

Dear Mr Cavada,

I am writing to you in relation to recent developments regarding SIS II. At a meeting of the Mixed Committee held on 21 February 2006, the Council concluded that the best solution for the management of the SIS II during an interim period would be for the Commission to delegate management to the appropriate Member States, i.e. France for the central unit and Austria for the back-up central unit. It added that the management of the information technology in the JHA field should be looked at in a long-term perspective, and the Council invited the Commission to present proposals on these issues.

Although I understand that these developments are at a very early stage and concern an interim period only, I would like to draw your attention to some potential consequences these developments may entail, mainly as regards the effective supervision of the system.

Let me underline in the first place that the arrangements provided for the interim period should fully take into account the perspective and requirements of the definitive system, in order to ensure continuity and consistency of, *inter alia*, data protection.

The proposed legal instruments for the SIS II put forward by the Commission - and on which I issued an opinion on 19 October 2005 - laid down a differentiated system of supervision of the SIS II, involving at different levels the EDPS (for the C-SIS) and national data protection authorities (for national parts). The aim of this system is to fully ensure a comprehensive supervision of the SIS II at both national and central (Community) levels, providing, where necessary, for coordination between the different supervisors. The system of supervision as proposed by the Commission has been further discussed by the different stakeholders including the European Parliament, who have come up with amendments in this regard, meeting the agreement of all involved supervisors and providing for a workable arrangement for comprehensive and effective supervision of the SIS II.

As to the delegation of the management of the SIS II, I take the following view. A delegation of the Commission's management task - even for the interim period - to whatever institution, agency or Member State should under all circumstances respect the limits set by the institutional system laid out in the Treaty. It is in this respect of the utmost importance that delegation does not adversely affect any effective control mechanism under Community law, be it by the Court of Justice, the Court of Auditors or the EDPS.

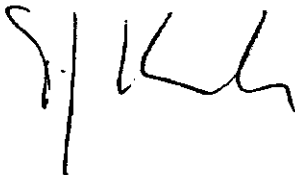
As far as my function of ensuring that the principles of data protection are respected by the Community institutions and bodies is concerned: delegation of the management of the SIS II would only be acceptable if the EDPS could fully exercise his task as supervisor of the C-SIS.

Therefore, the legal framework providing for the delegation should include all appropriate provisions concerning not only the unaffected principle of supervision of the C-SIS by the EDPS, but also the enforcement thereof, including the possibility to carry out checks on the spot or to exercise, to the extent necessary, any other powers endowed to the EDPS by Article 47 of 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.

I am at your disposal to discuss possible options in this regard.

Finally, I would like to inform you that I have sent a similar letter to the President of the Council and Mr Frattini, Vice President of the Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Hustinx', with a vertical line extending downwards from the first letter.

Peter HUSTINX

cc. Mr C. Coelho, Rapporteur on Proposals on SIS II

ROMEI Santina

From: European Data Protection Supervisor
Sent: 20 March 2006 17:49
To: CAVADA Jean-Marie
Cc: COELHO Carlos Miguel
Subject: letter sent by regular mail
Attachments: 06-03-20 Letter Cavada 2005-0059 D-260.PDF

Dear Mr Cavada,

Please find attached a pdf copy of a letter sent by regular mail today.

Best regards,

EDPS Secretariat

European Data Protection Supervisor

Contrôleur Européen de la protection des données

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