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Summary of the issues covered in the 16th Report on Activities

Justice, Police, Security

The **Law on the Federal Police Information Systems** brings together the different rules that form the legal basis for the majority of federal police databases. All requests for access to files held on these databases are to be addressed directly to the Federal Office of Police (section 1.4.2).

The number of **requests for information concerning the ISIS information system** jumped significantly in 2008. For the first time, the FDPIC was able to give a satisfactory answer to some of the applicants about the existence of files concerning them. It would be even better if, as in the case now for the JANUS and GEWA databases, applicants were given the right of direct access to ISIS (section 1.4.4).

In his capacity as the data protection supervisory authority, the FDPIC carried out an **examination of the procedures applied by the Federal Office of Police** (fedpol). The Commissioner is now able to confirm that as far as the data that were the subject of the examination are concerned, data protection requirements were fully respected. The point at issue was the processing of DNA profiles which are used either in criminal proceedings or for the purpose of indentifying missing persons (section 1.4.6).

The FDPIC was invited to give an opinion on two aspects of the «**Security in Sports**» project. More specifically, he was asked to consider the use of biometrics and **facial recognition devices** at stadium entrance gates, and the linkage of video footage from the stadium with biometric and facial recognition technology. The use of facial recognition in stadiums does not raise any data protection concerns, provided that certain conditions are met (section 1.4.7).

Health

Databases that are used to store **patients' medical history records** must be subject to stringent data protection controls. This is particularly the case when the processing is done online. The functions of the data processing need to be described and the persons involved informed about the procedures. Appropriate measures must be taken to ensure that the privacy rights of patients is guaranteed (section 1.5.2).

On 27 June 2007, the Federal Council (Swiss government) adopted the national eHealth strategy. The goal is twofold: the establishment of **standards** which are required for the implementation of the project and the definition of an **eHealth architecture**. Work will now begin on the «standards and architecture» sub-project, and all ensuing recommendations will be used as a basis for other sub-projects. The FDPIC has therefore decided to participate actively in the «standards and architecture» work (section 1.5.3).

Insurance

The Federal Council has approved a message to the Federal Parliament (equivalent to a white paper) on the **total revision of the Insurance Policy Act**. The purpose of the revision is to improve on the existing pre-contractual duty of disclosure. A new provision has been introduced providing a cooling-off period or right of withdrawal applicable to all insurance



policies. The provisions covering data protection information have been taken over word for word. According to the draft bill, pre-contractual information must now be submitted to policyholders before they sign a binding letter of intent. The recommendations and explanations drafted by the FDPIC have to a large extent been taken on board (section 1.6.1).

Within the framework of his supervisory activities, the FDPIC, together with the Federal Office of Public Health (FOPH), has carried out a **survey on the data protection situation at all the recognized health insurers** (section 1.6.3). More detailed information on the subject can be found (in the German language) at <http://www.edoeb.admin.ch/aktuell/index.html?lang=de>.

The work environment

Health data on individuals joining a **pension fund** may only be collected for the supplementary benefits provided under an insurance policy that are **over and above the compulsory minimum**. For the compulsory insurance part, pension funds may not require such data, since insurance companies are required by law to accept all applicants (1.7.5).

Trade and Business Issues

The **publication of data from the companies registry by private individuals on the Internet** gives greater exposure to the registry, and therefore it has been declared lawful by the Swiss Federal Administrative Tribunal. The FDPIC, however, is of the opinion that giving the registry greater exposure and providing massive publicity are not the same thing. For this reason, the Commissioner suggests that private contractors who provide company registry data should take steps to tone down the publicity effect (section 1.8.2).

Internet

The **publication of a police arrest warrant on the Internet** is justified because it is in the public interest that the person be caught quickly and that offences be prevented. After a certain period of time has elapsed – at the latest after the offender has been arrested or the person has been found – that justification no longer exists and the corresponding personal data must be removed from the Internet (section 1.2.8).

The FDPIC has submitted his recommendation concerning a company that is active in combating copyright violations on **Internet file exchange networks** (peer-to-peer networks) to the Federal Administrative Court for decision. The Court dismissed the applications. The FDPIC is now considering an appeal to the Federal Supreme Court (section 1.3.1).

Minors may not sign a data protection declaration without the authorization of their legal representative. This can pose problems for the operators of websites, in particular when **young people register on those sites**. Assuming that the parents have implicitly granted their consent by granting a minor access to the Internet is problematic. The FDPIC recommends that operators require the authorization of the legal representatives (section 1.3.2).

At the request of the Federal administration, and following a number of requests received from private citizens, the FDPIC analyzed the data protection conditions that must be met when **evaluation tools are used to determine the number of people visiting a website**. The use of such tools to compile website access statistics should, in his view, be subject to a number of conditions. In particular, users should be told via a data protection declaration what data concerning them are being collected and to whom they will be transferred (including the name of the country). If the data are to be transferred to a country which does not have the required level of protection, guarantees must be negotiated with the supplier of the evaluation tools to ensure that a sufficient level of protection will be respected (section 1.3.5).



Miscellaneous

The FDPIC was asked to draft a set of **guidelines** as quickly as possible laying down the criteria that must be fulfilled by a **product within the context of a certification procedure**. His **guidelines on the minimum requirements for a data protection management system**, together with their annexes, already came into effect on 1 September 2008. They are to a large extent based on existing international standards, however there has been a shift in focus from information security towards data protection (sections 1.1.1 and 1.1.2).

With regard to the preparatory work that is being carried out for the **national population census in 2010**, the Commissioner has cooperated with the Swiss Federal Statistical Office (SFSO) and has outlined his position with regard to the draft proposals modifying the ordinance on the implementation of statistical surveys carried out by the Federal authorities. The has also announced its intention to prepare a draft bill covering the introduction of a new **company identification number** (CIN). The FDPIC believes that the CIN still poses a number of problems in the B2B (business to business) sector (sections 1.1.3 and 1.1.4).

A new agreement has been concluded between Switzerland and the USA regarding **the transfer of passenger data to the US authorities** by airline companies. The FDPIC has criticized the fact that the new agreement has dropped the data protection clause in favour of a simple reference to US law (section 1.1.5).

The FDPIC has prepared a **guide** for developers and operators of **biometric recognition systems**. One of the subjects covered in the guide is the data protection requirements that such systems must satisfy. The **KSS Sports Centre** refused to follow the recommendations issued by the FDPIC on biometric access systems. As a result, the Commissioner has submitted the case to the Federal Administrative Tribunal for decision (sections 1.2.3 and 1.2.4).

In its endeavour to respect the principles of the Data Protection Act and to distinguish itself from less serious companies that are active in the area of direct marketing, the **Swiss Association for Market and Social Research** has referred a number of data protection issues to the Commissioner for clarification. For example, the Association wanted to know if its methods and documentation were actually in conformity with Swiss law. The FDPIC answered these questions and suggested that the industry introduce a number of improvements. These recommendations have been acted upon, and the Association's internal regulations and instructions have been amended accordingly (section 1.2.5).

The range of digital films now available on the Internet or via a broadband connection is constantly increasing. The traditional form of terrestrial broadcasting allowed viewers watching TV programmes and films to remain anonymous. **Digital television** or **IPTV**, however, provides a broadband return channel, which in theory makes it possible to collect information about consumers' viewing habits. These new technologies are extremely useful to advertisers because they can be used to personalize advertising messages. In his explanations, the FDPIC analyzes the risks and dangers, and offers service providers and consumers a number of tips on how to handle the digital media (section 4.1.3).

Personal data do not stop at national borders. In order for data protection to be made more effective, it is imperative that **national data protection authorities cooperate** and play an active role at the international level. The FDPIC is thus very much involved in the work of the Council of Europe, the European and International Conference of Data Protection Commissioners, the Francophone Association of Data Protection Authorities and the joint Schengen and Eurodac supervisory bodies (section 1.9.3).

The issues addressed by the **International Data Protection Working Group in Telecommunications** last year included, in particular, the problem of social networking



services on the Internet, cases of copyright infringement on file sharing networks, as well as assessment platforms on the Internet (section 1.9.4).

After updating the **declaration of files collected by the Federal authorities**, the FDPIC sent a copy of the declarations to private individuals and companies who carry out tasks on behalf of the authorities asking them to verify the accuracy of those declarations, and where necessary to make the necessary corrections. The Commissioner has now corrected the declarations and extended the Internet part by introducing a module that makes it possible for the numerous external federal bodies to declare their own files. The application can be used not only for **online registration**, but also for viewing and printing out the registration forms of the declared data files (section 3.1).

New Publications from the FDPIC

The FDPIC's website is an important instrument for informing the public of his work. During the period under review, the Commissioner continued to expand the information that is made available and has published the results of his work. The new publications include, *inter alia*, the «US-Swiss Safe Harbor Framework», explanations on «pay-as-you drive»-systems, social networks and other Internet platforms, as well as a guide to biometric recognition systems (section 3.3).

The full version of the annual report can be obtained on the Internet at www.derbeauftragte.ch or a hard copy may be ordered from BBL, Vertrieb Publikationen, 3003 Bern: Art. No. 410.016

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