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Summary of the issues covered in the 14th Annual Report

Justice, Police, Security

Now that the entry into force of Article 17a of the Data Protection Act has been brought forward, the way has been paved for the introduction of a pilot project for a **national police index**. As a result, the Federal Data Protection and Information Commissioner (FDPIC) has given a positive opinion and has announced that he intends to make on-site inspections to ensure that users comply with the conditions established for this pilot project (Section 1.3.2).

In a decision of 31 August 2006, the Swiss Federal Data Protection and Information Committee came to the conclusion that the so-called **indirect right of access to information** did not satisfy the requirements of the European Convention on Human Rights. Particularly in cases where there is no threat to Switzerland's liberal democratic constitutional order or to the existence, independence and security of the country or cantons, individuals must be able to find out exactly how their data is being processed. The FDPIC has now modified its information practices to reflect this decision (Section 1.3.3).

Within the context of the Federal Council's report produced in response to a parliamentary initiative on the effectiveness of the fight against terrorism and organized crime, the FDPIC was asked for an opinion on a possible **extension of the storage of telecommunication data** from six to twelve months. He concluded that such a measure was disproportionate (Section 1.3.4).

A draft bill on a **police information system** is concerned with bringing the legal basis for existing police files under one regulatory framework. It introduces a single data processing system, i.e. the national police index, which is a directory of all existing databases. Although the remarks of the FDPIC have on the whole been taken into account, he nevertheless regrets that the law retains the system of the so-called "indirect right to information" (Section 1.3.7).

The Federal Office for Migration is currently preparing a number of **repatriation agreements** which incorporate data protection standards. As the form of these agreements can vary, the Federal Office is regularly asking the FDPIC for an opinion (Section 1.3.10).

Health

The FDPIC welcomes the introduction of a **clause in the constitution as well as a federal law on human research**. The preliminary draft establishes the principle of informed consent by the person concerned before any research activity may be carried out. The FDPIC has asked for certain adjustments to be made in order to increase the transparency of the data processing for the patient. Furthermore, he has expressed his reservations regarding the planned abolition of the Committee of Experts on Professional Secrecy in Medical Research and criticized the fact that his supervisory powers and his right to file complaints have been curtailed (Section 1.4.1).



Day-to-day activities in hospitals are becoming increasingly complex from an IT point of view and they raise important issues, e.g. regarding the imaging systems that require the storage of large amounts of data. In reply to a question from a private sector company, the FDPIC examined the legal framework conditions that apply to the **outsourcing of medical data to third parties by private hospitals** for the purposes of data backup and remote maintenance (Section 1.4.2).

In a modern **doctor's office**, the **IT infrastructure and especially patient data require practical and effective protection**. Questions addressed to the FDPIC, as well as the reactions of certain doctors at conferences on public health, show that there is a good deal of uncertainty about the appropriate measures that need to be taken. The FDPIC has thus decided to publish a catalogue describing minimum protection measures (Section 1.4.4).

Insurance

Over the last year, work has focused primarily on drawing up the basic technical principles as well as preparing the draft ordinance relating to the insurance card project. The introduction of the insurance card represents a major event for our health system. Hence the absolute necessity of ensuring full compliance with basic data protection requirements. Any mistakes made during the initial phase of the **health insurance card** roll-out would be expensive to correct and take up considerable organizational resources (Section 1.5.1).

The FDPIC has been consulted on the first stage of the revision of the **Federal Accident Insurance Act**. From a data protection perspective, it is important to prevent any deterioration in the transparency of data processing in the accident insurance sector. That would be the case if accident insurance companies were able to obtain information without the authorization of the person concerned (Section 1.5.2).

Work-related issues

Some transport companies routinely request information from the authorities to determine whether their employees have a **criminal record** in order to protect their own security interests and to meet international standards. The FDPIC, after considering whether such a measure complies with data protection requirements, has come to the conclusion that it is in principle justified. At the same time, he has drawn the attention of companies to the fact that this constitutes a severe encroachment on the private sphere of employees and that it is essential to ensure transparency and proportionality (Section 1.6.2).

Transport companies that use "**test customers**" to carry out a covert assessment of their employees must ensure that the protection of their personality rights is guaranteed. Thus, most of the working time should not be subject to monitoring. Moreover employees must have an opportunity to react to the assessment, and in the case of non-agreement, to raise the issues directly with the test customer concerned (Section 1.6.3).

The FDPIC has given his position on the draft ordinance implementing the law on measures to **combat undeclared work** within the framework of the interdepartmental (interministerial) consultation process. He pointed out that data protection standards had not been spelled out in sufficient detail, particularly those concerning information exchange between the authorities and their right of access (Section 1.6.5).



Trade and Industry

The FDPIC checked the procedures followed by four companies that are leading suppliers of **credit and economic information** to determine how data protection rights are respected. Although the overall assessment was positive, this does not mean to say that there are no problems for the data subjects. Often the interests of the information companies or their customers are diametrically opposed to those of data subjects (Section 1.7.1).

Finance

As a result of reports published in the media, it has become public knowledge that the US administration gained access to the transaction data of the Society for Worldwide Interbank Financial Telecommunication (**SWIFT**) as part of its efforts to combat terrorism. After discovering this, the FDPIC asked the main players in the Swiss banking industry to provide information on the matter and he has been in contact with various bodies in order to find a solution. But further action is still needed. A political solution must be negotiated which addresses the issue of combating terrorism whilst at the same time respecting the data protection regulations of all the countries concerned, including the Swiss Data Protection Act. Furthermore, Swiss financial service providers are duty bound to act when they have the power to do so to ensure transparency regarding the risk of third parties gaining access to information about international payments (Section 1.8.1).

Freedom of Information Principle

The Freedom of Information Act grants the FDPIC wide-ranging access to information and the right to inspect documents within the context of arbitration procedures. **Switzerland's Federal Criminal Court however refused him access to a report.** As a result, the FDPIC was unable to determine whether it fell under the provisions of the Public Information Act and thus whether access should be granted or not (Section 2.2.1).

The FDPIC considers that the list drawn up by the Federal Department of Foreign Affairs (FDFA) concerning the **early recognition of visa-related risks** should as a matter of principle be accessible. The FDFA followed the FDPIC's recommendation and authorized access (Section 2.2.3).

Miscellaneous

Mixing statistical and administrative requirements always raises a number of difficult issues from the perspective of protecting privacy and personal rights. Statistics rely on pseudonomized data from as many sources or registers as possible. The administrative authorities, by contrast, need personal data that are as precise as possible. The introduction of a **register-independent personal identification number** (in the form of the new social insurance number) facilitates the linkage of personal data from different registers. During the interdepartmental consultations and parliamentary debates on the relevant draft bills, the FDPIC did suggest an alternative solution, but in the final analysis neither of the two chambers of parliament felt inclined to follow his recommendation. After the adoption of the Register Harmonization Law and the Federal Old-Age And Survivors Insurance Act the FDPIC has, in cooperation with the cantonal data protection commissioners, published his opinion on the use of the new social security number in the cantons (Section 1.1.2).

All Federal Offices are entitled to disclose personal information, even without the assent of the person concerned, if within the context of **official public information**. However there is a proviso, namely that the information must be connected with the fulfilment of public duties and that the disclosure constitutes an overriding public interest. Compliance with general data protection principles, and in particular the principle of proportionality, must be guaranteed at all times (Section 1.1.3).



Decisions of the Federal Supreme Court of Switzerland (including the Federal Insurance Tribunal since the merger) dating back to 1954 are now **published on the Internet**. Not all the decisions have been anonymized and may contain sensitive personal data. In such cases, the person concerned should request the anonymization of the online publication (Section 1.1.6).

During the first six months of 2006, the FDPIC took part in a multidisciplinary exchange of views on the subject of **pervasive computing** which brought together data protection experts, representatives of consumer protection associations, universities and private organisations and companies. Thanks to the cooperation of a large number of people from different walks of life it was possible to establish a set of general guidelines covering the use of pervasive computing technologies. It would be highly desirable to pursue these efforts in the future (Section 1.2.1).

The Federal Council has approved the **use of reconnaissance drones** as well as helicopters fitted with infrared systems for use by the border police. The legal basis for the use of military equipment for civilian applications must now be established (Section 1.2.2).

The Federal Council has launched the consultation process on the draft law on **military information systems**. Most of the FDPIC's comments have been taken on board, although there are still considerable differences of opinion regarding the use of surveillance systems (Section 1.2.3).

Biometric data are by definition personal data that require specific protection measures. Hence the importance of a law which stipulates exactly which biometric data can be processed by an authority and the purpose of such use. Within the framework of the **revision of the customs ordinance**, the FDPIC has ensured that biometric data as well as admissible processing modalities be at least spelled out in detail in the implementing decree (Section 1.2.4).

The Swiss Federal Gaming Board (SFGB) asked the FDPIC whether, and to what extent, a **casino might collect, store and use information on persons visiting their establishment** with a view to facilitating the early detection of persons likely to suffer from a gambling addiction. The FDPIC believes that current legislation does not allow data processing for such purposes, but that a legal basis would be desirable in principle. However, casinos could invoke another lawful excuse and argue the existence of an overriding private or public interest. In any case, a data protection concept should be foreseen (Section 1.2.7).

The 28th International Data Protection and Privacy Commissioners' Conference was held in London on 2- 3 November 2006. The main theme was the dangers posed by a surveillance society. Data protection commissioners observed that the surveillance society was already a reality and stressed the importance of the right to data protection in such a context. Furthermore, they adopted a resolution on data protection and search engines (Section 1.9.1).

The **Conference of European Data Protection Authorities** was held in Budapest from 24 to 25 April 2006. European data protection representatives adopted a unanimous declaration on the principle of data availability, as part of the co-operation between police and judicial authorities at EU level (Section 1.9.2).

At the **40th Meeting of the International Working Group on Data Protection in Telecommunications in Berlin**, discussions focussed on the subject of trusted computing, digital rights management as well as internet telephony (VoIP – voice over IP) (Section 1.9.4).



At the end of 2003, the Federal Council decided to **harmonize the visual identity of all federal offices**. The aim of this measure was to strengthen the identity of the federal administration, increase trust in the State and to contribute to the credibility and security of public services. The FDPIC has also adapted its visual identity to the new requirements and, amongst other things, has redesigned his website (Section 3.1).

On the occasion of the 1st European Data Protection Day, the FDPIC co-organized with the Europa Institute of the University of Zurich a podium discussion on the subject of “**Are we taking data protection too far?**” which took place on 26 January 2007. Speaking in front of a large audience, the Federal Data Protection and Information Commissioner, Hanspeter Thür, engaged in a round-table discussion with three guests on topical issues relating to data protection (Section 3.4).

New Publications from the FDPIC

Last year, the FDPIC decided to continue to expand the **range of information available on his website**. For example, he addressed the subject of ticketing in ski resorts as well as the opening of emails by employers in the event of a suspected criminal action by an employee (Section 3.3).

In July 2006, the **Freedom of Information Act (BGÖ)** came into effect. The law is intended to increase transparency in the federal administration and grants far-reaching rights allowing both private citizens and companies to gain access to official documents. The law gives the FDPIC new responsibilities, as a result of which he has provided additional documentation on his website (Section 3.2).

The full annual report can be found in German or French on the internet (www.edoeb.admin.ch). Alternatively, it may be ordered from BBL, Vertrieb Publikationen, 3003 Bern:
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