

EDPS Video-surveillance Guidelines, Section 15.2: Summary of preliminary recommendations in nine prior checking procedures

14 July 2010

Introduction

As anticipated in Section 15.2 of the EDPS Video-surveillance Guidelines issued on 17 March 2010¹, to assist further the compliance efforts of EU institutions and bodies, on 8 July 2010 the EDPS issued brief recommendations in nine ex-post prior checking procedures where the notifications were submitted prior to the publication of the Guidelines.² To ensure transparency and facilitate comparison of best practice, the EDPS hereby publishes a summary of these recommendations.

The EDPS welcomes the progress made at this stage in some relevant institutions and bodies and encourages them and all other entities interested in the implementation of the Guidelines to continue their efforts in view of achieving *full* compliance by 1 January 2011 when they should inform the EDPS about their compliance status pursuant to Section 15 of the same Guidelines. Compliance with the preliminary EDPS recommendations provided cannot be considered as a substitute of an institution's or body's own in-depth internal analysis of the Guidelines, its practices, and its compliance status. With that said, the EDPS hopes that the comments will assist the institutions and bodies concerned in focusing their attention to some of the key items that need to be addressed.

Summary of EDPS Recommendations

References are made to the relevant Sections of the EDPS Video-surveillance Guidelines of 17 March 2010. The order also follows that of the Guidelines.

Using privacy-friendly technology (Section 3.4)

The EDPS welcomed that at least one institution's notification confirmed that its cameras which are capable of panning, tilting and zooming are equipped with masking technology. This helps ensure that in those cases where it is inevitable that some private areas come into the field of vision of cameras, no images from those areas could be captured. The EDPS encouraged other institutions and bodies to upgrade their systems accordingly³ and in general, to make better use of privacy-friendly technologies. This also includes the use of image-editing software to allow an organization to edit-out images of third parties when giving access to data subjects.

Consultation of staff and other stakeholders (Section 4.2)

¹ The Guidelines are available on our website at <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/Guidelines>. The webpage also contains a set of "frequently asked questions" on prior checking.

² The nine cases involved the following nine institutions or bodies: Commission (EDPS ref 2007-271), JRC in Ispra (EDPS ref 2007-333), CoR-EESC (EDPS ref 2007-368), Council (EDPS ref 2007-427), JRC IE in Petten (EDPS ref 2008-134), JRC-IT in Karlsruhe (EDPS ref 2008-135), ECJ (EDPS ref 2009-288), FRA (EDPS ref 2009-381, as well as revised notification 2009-848).

³ Unless they can otherwise guarantee that no private areas are monitored (see Section 6.1 of the Guidelines).

The EDPS welcomed as good practice that one organization's notification confirmed that the organization consulted its staff when developing its video-surveillance policy. The EDPS encouraged all other institutions and bodies to also follow the EDPS Guidelines in this respect.

Purposes of the surveillance (Section 5)

The EDPS welcomed that each of the nine institutions or bodies concerned outlined in their notifications, at least in a summary form, the purposes of the surveillance. Further efforts are necessary to ensure that the purpose is defined with sufficient clarity and specificity and that the surveillance efforts are sufficiently selective and targeted. In this respect, the EDPS emphasized that a thorough and specific risk assessment may greatly facilitate the accurate definition of the purposes of the system.

Each institution and body should also verify whether - beyond more general security purposes - it also uses video-surveillance for additional purposes for which an impact assessment and prior checking may be necessary (e.g. employee monitoring or investigations, see Sections 5.8 and 5.9).

One organization's notification already made progress towards specifying and limiting the purposes of surveillance. The EDPS particularly welcomed that this notification (as well as the notice provided to data subjects) clearly stated that the video-surveillance will not be used for monitoring the work of employees. This is recommended to all institutions and bodies in Section 5.1.3.

Camera locations and viewing angles (Section 6.1)

The EDPS welcomed that two organizations confirmed to the EDPS that their DPOs assessed the proportionality of each camera location on the premises. The EDPS recommended that this verification should be carried out by each organization, in the framework of a formal audit (Section 13.2).

Special categories of data (Section 6.7)

None of the notifications (apart from a brief reference to demonstrations in two notifications) mentioned that any "special categories of data" might be processed at all. An impact assessment - focusing on this particular issue - should be carried out and a prior checking notification should be submitted to the EDPS when any demonstrations or protests are regularly held in the vicinity of the buildings and demonstrators/protestors may come within the field of vision of the cameras.

Areas under heightened expectations of privacy (Section 6.8)

None of the institutions or bodies discussed in their notifications that they would operate video-surveillance equipment in areas under heightened expectations of privacy (such as in individual offices). This should be verified and clearly confirmed in the organization's video-surveillance policy.

Covert surveillance (Section 6.11)

Apart from one organization, no institution or body reported that it has or it plans to avail itself of covert surveillance. The EDPS welcomed that the majority of institutions and bodies, thus, appear not to engage in covert monitoring. With that said, the EDPS recommended that each organization should verify whether they always install the cameras in such a way and provide sufficient notice in such a way that their practices will not constitute "covert surveillance" as defined in Section 6.11. This may be the case, for example, if cameras are placed in areas under heightened expectations of privacy (such as an individual's office) without appropriate notice even if the person(s) occupying that area consented to (or requested) the placement.

The EDPS also recommended to the organization that announced its plans to operate covert surveillance to carry out an impact assessment and if - based on such an impact assessment - it should chose to resort to covert surveillance, to submit its plans to the EDPS for prior checking.

Retention period (Section 7)

The EDPS welcomed that five of the nine institutions and bodies concerned established relatively short retention periods (between three days and one week).

Three other institutions or bodies established 30 days, whereas one other established 12 week as retention period. Finally, one organization argued that for "extremely sensitive nuclear areas" it needs to retain data for an undisclosed period of time.

The EDPS recommended that the latter institutions or bodies should reconsider their decisions. Unless they provide sufficient justification and adequate safeguards, they should reduce the retention period to seven days or less, as recommended in the Guidelines.

Register of recordings retained beyond the retention period, register of transfers and disclosures (Sections 7.2 and 10.5)

None of the institutions or bodies indicated in their notifications that they would keep such registries. The EDPS recommended the adoption of these tools to help ensure transparency and good administration.

Access rights, security measures, transfers and disclosures (Sections 8, 9 and 10)

The EDPS welcomed that each of the nine institutions or bodies concerned outlined in their notifications, at least in a summary form, who has access to the images and to whom transfers or disclosures can be made, within and outside the organization (such as local police). Further efforts are necessary to ensure that a consistent policy is established in this regard, that the policy is implemented, and that it is effectively communicated to data subjects. The EDPS specifically emphasized the need to implement a reliable logging system to ensure that a designated third party within the institution can check at any time who accessed the system, when and which actions were performed.

Information to the public (Section 11)

The EDPS welcomed that all nine institutions and bodies provide some form of an on-the-spot notice (combination of a logo and a short text) at least at the main entrances to their buildings. The EDPS also welcomed that most institutions and bodies also provide a more detailed data protection notice on their intranet and/or internet sites or in other forms. Further efforts should be made in each case to ensure that the information is more easily available to everyone and provided in a more user-friendly format. This should include, in all cases, the publication of the institution's or body's video-surveillance policy both on the organization's internet and intranet sites.

Accountability (Section 13)

Finally, the EDPS welcomed that the controllers in each institution or body concerned submitted a notification to their DPOs, and in turn, to the EDPS, which addressed, in a summary form, many of the key data protection issues. This is significant progress. With that said, it is clear that further progress is needed. In addition, it is also apparent that based on the documents submitted alone, the EDPS is not always in a position to determine the extent of compliance by the institutions or bodies concerned. To ensure transparency, and also to enable the EDPS to effectively carry out his supervisory role, the EDPS encouraged all institutions and bodies concerned to adopt a comprehensive video-surveillance policy, carry out an audit, and report to the EDPS on their compliance status by 1 January 2011, as provided in the Guidelines.