



27th PLENARY MEETING OF THE T-PD Recent Developments in the data protection field in Spain

Activity and news

A new director for the AEPD

Mr. José Luis RODRÍGUEZ ÁLVAREZ has been appointed, on June 2011, as the new Director of the Spanish Data Protection Agency (AEPD). He is lecturer in Constitutional Law at the Complutense University of Madrid and has worked as a fellow at the Max-Planck Institute for Comparative Public Law and International Law, University of Heidelberg.

Before joining the Agencia, Mr. Rodríguez Álvarez served in the Spanish administration as head of the office of the secretary of state for relations with parliament, as general director of legal coordination and as director of the office of the Minister of Justice. He has been appointed for the next four years.

The “right to be forgotten” on the Internet: an emerging demand

The so called “right to be forgotten” on the Internet has become one of the most hotly discussed topics in the area of new Internet services. In this context, the public is ever more vehement in calling for the ability to exercise control over their personal data, including the right not to appear on the Net. The increase in the number of enquiries into how to disappear from the Internet and in the exercise of the rights to erase and to object is evidence of the strength of this demand. Given that other rights and liberties could be affected, each complaint is subject to a case-by-case analysis, based on the balance of interests rule.

The Agencia holds the view that webmasters are responsible in the first instance for the content they publish. However, in those cases in which they are obliged or entitled to keep some information posted on the Internet, the Agencia may also address a decision to those services facilitating access to this content (i.e. search engines).

The complaints received relating to services rendered by multinationals have been dealt with by taking the view that to offer such services these companies make use of equipment in Spanish territory and specifically target users living in Spain. Appeals against some of the resolutions have been brought before the Audiencia Nacional (Spanish central court), though no decisions have yet been announced.

Moreover, the Agencia has recommended the reviewing of the notification procedures for administrative resolutions provided for by law, specially in those case in which decisions have to be published in an official gazette. The purpose of this recommendation is creating notification procedures which facilitate reconciling the obligation to identify the addressees with the safeguarding of their privacy.

Publications

With the occasion of the celebration of the “Internet Day”, the AEPD called the Internet companies to adopt strong commitments to make their processing operations more transparent. In addition, a minisite was created offering information related to the protection of personal data on the Internet. The site is intended to explain the traces left by people when surfing the Internet, both focusing on the voluntary submission of data and the surreptitious collection of information by cookies and other tracking techniques. A guide with information and tips on the right to data protection, aimed at individuals, was also published in the context of the Data Protection Day.

A guide on "Security and privacy of RFID technology" was published jointly with the National Communications Technology Institute (INTECO). Given the risks of the RFID technologies, the guide includes several recommendations and best practices addressed at both companies using RFID technology (i.e. as anti-theft or identification systems) and suppliers, to ensure their correct use and that avoid risky situations.

Finally, and in view of the importance of health data, the AEPD took the initiative of drawing up a "Report on data protection compliance in hospitals". The discovery of alarming cases of infringements of the Spanish Data Protection Act (LOPD), mainly linked to breaches of the duties of security and secrecy, triggered the decision. The assessment was carried out by sending a questionnaire to more than 600 centres included in the national register of hospitals, which was answered by 92% of them. Important weaknesses with regard to the implementation of security measures were found, as well as deficiencies with regard to the information given to the data subjects. A set of recommendations and best practices was sent to all health centres, as well as to the national and regional health authorities.

Legal certainty as the prime objective

The AEPD has carried on working towards the objective of achieving greater legal certainty by means of prior checking, by delivering compulsory reports on draft regulations related to data protection. Reports were issued on 97 draft regulations, including the Sustainable Economy Bill, the Civil Registry Bill, the Consumer Credit and Gambling Regulation Bill, as well as draft Royal Decrees, such as that approving prison regulation.

Enforcement actions

The AEPD has periodic meetings with the main Internet service providers to exchange information and suggestions which increase user guarantees. In this context, the Agencia has continued to have contact with social networking sites such as Tuenti and Facebook, to improve their privacy policies and prevent minors under the age of 14 from gaining access to such networks. But this policy cannot prevent an appropriate reaction when red lines are crossed, or citizens demand the rights and guarantees granted by law.

International issues have to be tackled with from an international approach. Indeed, reality shows the need for the data protection and privacy commissioners to adopt coordinated initiatives when dealing with global services. In this period, the Agencia, working together with other authorities, has made a commitment to taking a step forward in the protection of Internet users and opened a sanctioning procedure against Google, and performed audits on companies such as Facebook, MySpace and Sony.

With regard to the total amount of fines imposed, some figures are shown below:

	2008	2009	2010	% VAR. 2009/2010
TOTAL	22.013.632,57 €	24.872.979,72 €	17.497.410,02 €	-29,65

Other news

- The General Data Protection Registry reached 2.5 million inscribed files.
- The number of consultations raised to our helpline, by phone, in person or in writing, exceeded the figure of 100,000 in 2010. Our website received 2.5 million visitors.
- Over 800 experts on data protection attended the 3rd Open Annual Session organized by the Agencia.

- The Agencia signed a statement of protocol with the General Judicial Council for promoting compliance with data protection and establishing mechanisms to carry out audits in judicial venues.

Legislative developments

Amendments to the Data Protection Act penalty system

The Spanish Data Protection Act has been amended by the Sustainable Economy Act, which came into force on March 2011. It amends, through its fifty-sixth final provision, articles 43, 44, 45, 46 and 49 of the Data Protection Act, referring to the penalty system, with the aim of providing greater legal certainty and more precision in the application of the law.

Amendments introduce an updated list of infringements, and clarify the criteria to be applied to quantify and adjust fines depending on the seriousness of the infringement and the varying circumstances. The possibility to send a warning to the offender instead of a fine has been also foreseen, as an exceptional measure.

Cooperation with third countries

The Ibero-American Data Protection Network: definitive consolidation

The last year must be thought of as a milestone in the framework of the Ibero-American Data Protection Network on account of the regulatory advances which took place in Latin American countries with regard to data protection. The influence of European law and the international standards of the Madrid Resolution can be found in these new regulations.

The network has continued to undertake initiatives to promote the protection of personal data. Two Conferences and three seminars were held in this period, in Colombia, Mexico and Guatemala. One example of the growing importance of the Ibero-American Data Protection Network at the international level is the designation of the Mexican Federal Data Protection Authority (IFAI), which currently chairs the Network, as organiser of the 33rd International Conference of Privacy and Data Protection Authorities, which successfully took place in November 2011.

Twinning program with Croatia

In June 2009 the AEPD was awarded to lead a Twinning project to be developed in Croatia. This project is being carried out right now, and through it we are having the opportunity to work together with our colleagues from the Croatian Personal Data Protection Agency to prepare its entry into the EU. It is funded by the EU 1,350,000 Euros.