



Opinion on a notification for prior checking received from the Data Protection Officer of the European Parliament on data processing in the context of disciplinary files

Brussels, 21 March 2005 (Case 2004-198)

1. Proceedings

On 20 July 2004, the European Data Protection Supervisor sent a letter to all DPOs asking them to make an inventory of all cases likely to be subject to prior checking by the European Data Protection Supervisor as provided for by Article 27 of Regulation (EC) 45/2001. The European Data Protection Supervisor requested notification of all processing operations subject to prior checking, even those that started before the appointment of the EDPS and for which the Article 27 check could never be prior, but which had to be dealt with on an "ex-post" basis.

On 10 September 2004, the DPO of the European Parliament listed the case of disciplinary files and administrative investigations as a case for ex-post prior checking notably since it included data relating to suspected offences or offences (Article 27 (2) a).

The European Data Protection Supervisor identified certain priority themes and chose a number of processing operations subject to ex-post prior checking to be addressed. The case of disciplinary files and administrative investigations is among these cases.

On 21 December 2004, a notification for prior checking of a data processing operation in the sense of Article 27(1) was received from Mr. Jonathan STEELE, Data Protection Officer of the European Parliament. Attached were:

- the original notification of the processing operation to the DPO dated 27 November 2002;
- the acknowledgment of this notification dated 5 December 2002;
- a decision of Secretary General changing the controller of 18 March 2003;
- a notification summary;
- the texts of the implementing provisions concerning disciplinary proceedings of 18 May 2004.

On 18 January 2005, an informal meeting was held between S.LOUVEAUX, staff of the EDPS and Mr. Jonathan STEELE in which further information was requested.

On 26 January 2005, Mr. Jonathan STEELE sent further information on a list, in the form of an Excel file which contains information disciplinary cases.

In accordance with Article 27 (4), in view of the complexity of the case, the DPO was informed on 17 February 2005 that the time frame within which the EDPS should render his opinion was extended for a month.

2. Facts

According to Article 86 of the Staff Regulations, "any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action". Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX to the Staff Regulations.

Articles 49, 50, 50a and 119 of the Conditions of employment of other servants apply the same regime to temporary and contractual staff.

According to Article 2.3 of Annex IX to the Staff Regulations, "the institutions shall adopt implementing arrangements for this Article, in accordance with Article 110 of the Staff Regulations". The Secretary General has adopted general implementing provisions (GIP) governing disciplinary proceedings and administrative investigations as concerns disciplinary proceedings applicable as from the 1 May 2004. Disciplinary proceedings prior to 1 May 2004 shall be governed by former rules.

Depending on the facts at issue, recourse to disciplinary proceedings may be proposed by the Director General or head of autonomous unit of the official concerned, or by the Directorate General for Personnel or by the Appointing Authority (Article 1.1. GIP).

Before initiating disciplinary proceedings, directors-general and heads of autonomous units may ask the Appointing Authority to launch an administrative investigation. The Appointing Authority may also launch such an investigation of its own initiative. The decision launching the opening of an administrative investigation shall specify the object and scope of the enquiry.

According to Article 2.1 GIP, an official concerned by an administrative investigation shall be kept informed, provided this is not harmful to the investigation

In cases of alleged financial fraud for which OLAF has launched an enquiry or intends to do so, the Appointing Authority may postpone the launch of an administrative investigation and/or where appropriate, disciplinary proceedings until OLAF has completed its enquiry (Article 1.4 GIP).

The official responsible for conducting the investigation shall exercise his powers independently. He shall be empowered to obtain documents or requested information from any person he sees fit to question. When the investigation is complete, the official responsible for conducting it shall submit a report to the Appointing Authority. The report shall set out the facts and circumstances in question; shall establish whether the rules and procedures applicable to the situation were respected; it shall take note of any aggravating or mitigating circumstances; it shall detail the extent of the damage suffered by the Institution; and it shall put forward a recommendation on action to be taken. Copies of all relevant documents and records of any hearings shall be attached to the report.

The Appointing Authority shall inform the official concerned of the conclusion of the investigation and shall communicate to him the conclusions of the investigation report and, on request and subject to the protection of the legitimate interests of third parties,

all documents directly related to the allegations made against him (Article 2.3 GIP and Article 2(2) of Annex IX to the Staff Regulations).

On the basis of the investigation report, after having notified the official concerned of all evidence in the files, a preliminary hearing the official concerned shall be held. The record of the hearing shall be forwarded to the official concerned by registered letter with acknowledgement of receipt, for signature. The official shall forward his signed record and/or his comments and remarks within 15 calendar days from receipt. Failure to do so within that period shall result in the record being considered as approved.

According to Article 3 of Annex IX to the Staff Regulations, on the basis of the investigation report, after having notified the official concerned of all evidence in the files and after hearing the official concerned, the Appointing Authority may:

- (a) decide that no case can be made against the official, in which case the official shall be informed accordingly in writing; or
- (b) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a warning to the official; or
- (c) in the case of failure to comply with obligations within the meaning of Article 86 of the Staff Regulations:
 - (i) decide to initiate the disciplinary proceedings, or
 - (ii) decide to initiate disciplinary proceedings before the Disciplinary Board.

If the Appointing Authority decides that no case can be made against the official concerned (a), it shall inform the latter by registered letter with acknowledgement of receipt. The official may request that a copy of this letter be inserted in his personal file (Article 4 GIP).

If the Appointing Authority decides to take no disciplinary action or to address a warning to the official concerned, the latter shall be informed by registered letter with acknowledgement of receipt. A copy of this letter shall not be inserted in the official's personal file (Article 5 GIP). A list in the form of an Excel file has been set up which contains information on the fact that a warning has been sent to an official (see below). This list is used to check the previous disciplinary history of the official against whom proceedings are undertaken. Only one official at present has access to this list which is maintained in a secure directory on the DG Personnel network.

The Appointing Authority may decide on the penalty of a written warning or reprimand without consulting the Disciplinary Board (Article 11 of Annex IX of the Staff Regulation). The decision shall be inserted in the official's personal file. A copy of the decision will be forwarded to the official concerned by registered letter with acknowledgement of receipt (Article 6 GIP).

If the Appointing Authority decides to initiate disciplinary proceedings before the Disciplinary Board, it shall do so by means of a report submitted to the chairman of the Board. A copy of the report shall be forwarded to the official concerned and to the Legal Service.

If, in the presence of the Chairman of the Board, the official concerned acknowledges misconduct on his part and accepts unreservedly the report referred to in Article 12 of Annex IX, the Appointing Authority may, withdraw the case from the Board. Where a case is withdrawn from the Board the Chairman shall deliver an opinion on the penalty considered. The official concerned shall be informed before acknowledging his misconduct of the possible consequences of such acknowledgement. The original of the Appointing Authority's decision shall be inserted in the official's personal file. (Article 7.3 GIP).

On receipt of the opinion of the Disciplinary Board and after hearing the official concerned, the Appointing Authority shall decide on the disciplinary penalty. The original of the decision shall be inserted in the personal file of the official concerned.

An official against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The Appointing Authority shall decide whether to grant this request (Article 27 of Annex IX to Staff Regulation). In any case, the information is kept in the disciplinary file and in the Excel files mentioned above during the whole career of the person concerned.

Three types of files are relevant to disciplinary procedures: disciplinary files, personal files and a list in the form of an Excel file for all disciplinary cases.

The disciplinary file itself contains any relevant information collected in the frame of a disciplinary case and the final decision on the case.

The personal file is the file referred to in Article 26 of the Staff Regulations which contains all documents concerning the administrative status of the official and all reports relating to his ability, efficiency and conduct and any comments by the official on such documents.

The personal file will include any decision taken in the frame of a disciplinary action except for any decision of the Appointing Authority not to take any disciplinary action or any warning addressed to the official.

The Excel files provide information on (not every element will be present in every case) name, personnel number, dates of various steps in the procedure (appointing authority mandate, initial letter to the staff member concerned, preliminary hearing, reference to Disciplinary Board, opinion of Disciplinary Board, appointing authority decision) as well as a general indication of the offence in question, the recommendation of the Disciplinary Board and any sanction decided on.

The following prior check concentrates on disciplinary files and the Excel files. It applies to personal files only to the extent that these files include disciplinary measures.

3. Legal Aspects

3.1. Prior checking

Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks.

Disciplinary files qualify for prior check on various grounds. They may contain data relating to suspected offences, offences, criminal convictions or security measures as foreseen in Article 27 (2) a. Furthermore, the documents are intended to evaluate personal aspects relating to the data subject and notably his/her conduct (Article 27 (2) b).

The prior check concerns the processing of disciplinary files as from 1 May 2004 under the new general implementing rules adopted by the Secretary General. This does not prevent the EDPS from giving an opinion on disciplinary proceedings prior to May 1 2004 in the frame of a complaint for example.

The prior check concerns processing of personal data in the context of a disciplinary procedure. It does not intend to give an opinion on the actual disciplinary procedure in itself.

The notification was received by the EDPS on 21 December 2004. According to Article 27 (4) the present opinion was to be delivered within a period of two months that is before 21 February 2005. Taking into consideration the complexity of the case, an extension period of one month was requested thereby extending the delay until 21 March 2005.

3.2. Lawfulness of the processing

Disciplinary files are clearly within the scope of Regulation (EC) 45/2001 since they involve the processing of personal data whether or not by automatic means. The actual content of the file will depend on the case, but invariably they contain personal data relating to an official.

The Director of Personnel and Social Affairs has been qualified as controller of the processing of data in disciplinary files by a decision of the Secretary General of 18 March 2003.

As to the lawfulness of the processing of such data, it is justified by Article 5 (a) of Regulation (EC) 45/2001 to the extent that it is necessary for the performance of the legitimate exercise of the official authority vested in the European Parliament, as a Community institution and only to this extent. In this case the lawfulness results from the performance of a task carried out in the public interest on the basis of Article 86 of the Staff Regulations and Annex IX to the Staff Regulations. Article 86 provides: "Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action." Article 86.3 goes on "Disciplinary rules, procedures and measures and the rules and procedures covering administrative

investigations are laid down in Annex IX"¹. On the basis of Article 2.3 of Annex IX of the Staff Regulations, General Implementing Provisions governing disciplinary proceedings and administrative investigations have been adopted by the Secretary General on 18 May 2004.

Disciplinary files contain data relating to offences or criminal convictions which may only be processed if authorised by other legal instruments in accordance with Article 10(5) of Regulation (EC) 45/2001. Article 12 of the Staff Regulations ("An official shall refrain from any action or behaviour which might reflect adversely upon his position") and Article 86 of the Staff Regulations must be seen as an authorisation to process such data.

If in the course of an investigation, personal data revealing political opinions or trade-union membership is processed in a disciplinary case and is relevant to the case and/or to the way the case is being handled, then Article 10 (2) b will apply. Article 86 of the Staff Regulation could serve as a base for the processing of such data.

3.3. Transfer of data within or between Community institutions or bodies

Article 7 of the Regulation provides for rules to be respected both by the controller and by the recipient when data are transferred within or to other Community institutions or bodies.

Personal data may in the course of an investigation be transmitted to OLAF as evidence of fraud. Furthermore, in the event of a consultation of the Disciplinary Board, a copy of the report shall be forwarded to the Legal Service for advice. The definition of a "recipient" given in Article 2.g of the Regulation makes it necessary to examine whether this transmission of information is to be considered as a transfer of data within or between Community institutions or bodies as foreseen in Article 7 of the Regulation (EC) 45/2001.

Indeed, Article 2.g of the Regulation provides that recipient "shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients".

Any transfer of information must be considered as "in the framework of an inquiry" and to this extent the persons to whom the data are communicated are not to be qualified as recipients. Article 7 does not therefore apply to transfers envisaged in the frame of disciplinary proceedings.

3.4. Information to be given to the data subject

3.4.1. Duty to inform

Articles 11 and 12 of Regulation (EC) 45/2001 specify that the controller must provide information to the data subject. When the information is collected directly from the data subject, Article 11 provides that it must be provided at the time of collection. If the data are not directly collected from the data subject, then it must be

¹ Article 49, 50, 50a, and 119 of Conditions of employment of other servants provide that this regime also applies as concerns temporary or contract staff.

provided either at the time it is recorded or, if a disclosure to a third party is envisaged, no later than the time the data are first disclosed.

Article 20 of the Regulation provides for certain restrictions to this obligation notably where such a restriction constitutes "a measure necessary to safeguard: a) the prevention, investigation, detection and prosecution of criminal offences; ... c) the protection of the data subject or the rights and freedoms of others."

Personal data contained in disciplinary files may be collected from the data subject, but also from third parties. Information must therefore be given either at the time of collection of the data or before it is first recorded or transmitted to a third party.

Article 2.1 §4 of GIP provide: "An official concerned by an administrative investigation shall be kept informed, provided this is not harmful to the investigation".

Furthermore, the Annex IX to the Staff Regulations provides certain restrictions to the obligation to inform the data subject in cases where a parallel investigation by OLAF takes place:

Article 1.1 "Whenever an investigation by OLAF reveals the possibility of the personal involvement of an official, or a former official, of an institution, that person shall rapidly be informed, provided this is not harmful to the investigation." This presumably refers to the case where an investigation by OLAF could lead to the undertaking of disciplinary measures. In such a case the person must be informed of his personal involvement unless this proves "harmful to the investigation".

The terms "not harmful to the investigation" include exceptions such as the "protection of the data subject or the rights and freedoms of others" or "the prevention, investigation, detection and prosecution of criminal offences", but have a much broader scope than these exemptions.

Indeed it may be necessary not to inform the data subject for the purpose of protecting persons giving testimony (rights and freedoms of others), but also for the smooth continuation of the investigation. If this is not an investigation into a criminal offence, the exception is not provided for in the terms of Article 20 of the Regulation (EC) 45/2001 *sensu stricto*.

Having said this, the EDPS considers that Article 20 has to be interpreted in the light of the *ratio legis* of the provision so as to provide for certain restrictions to the duty to inform the data subject in the course of a disciplinary investigation. This is supported by the fact that Article 13 of Directive (EC) 95/46 provides for exemptions and restrictions to certain rights "when such a restriction constitutes a necessary measure to safeguard ...d) the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for regulated professions". Article 13.d. of the Directive is far reaching and extends from the prevention, investigation, detection and prosecution of criminal offences to breaches of ethics for regulated professions. Therefore, although not explicitly mentioned, there is no reason to believe that disciplinary offences by public sector agents are not also included in this restriction. Regulation (EC) 45/2001 must be read in the light of Directive 95/46/EC. Indeed, paragraph 12 of the recitals of the Regulation promotes "consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data". Furthermore Article 286 of the Treaty requires the application to the Community institutions or bodies of the

Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data.

There do not seem to be any reasons therefore preventing the application of a similar restriction to the duty to inform and the corresponding right of access during a disciplinary investigation.

The withholding of information during the investigation period is also supported by the fact that no information needs to be provided as concerns the "recipients" of the information during a particular inquiry (see above).

It should be underlined that the terms "not harmful to the investigation" suggest that the actual need to withhold this information must be clearly demonstrated and that the withholding of the information can only last for a defined period. As soon as no longer harmful for the investigation, the information must be given to the data subject.

Furthermore, fair processing of personal data in a disciplinary proceeding implies the exercise of the right of defence. In order to exercise this right, the official normally must be in a position to know when a case is opened against him. Any exception must therefore be strictly limited.

3.4.2. Content of the information

Information to be provided includes the identity of the controller, the purposes of the processing operation for which the data are intended, the recipients or categories of recipients and the existence of a right of access to and the right to rectify the data. Further information may also be provided insofar as this information is necessary to guarantee fair processing in respect of the data subject. Measures must be adopted so as to ensure that this information is addressed in clear terms to the officials concerned.

A point of particular attention as concerns this further information is the time-limits for the storing of the data. According to Article 27 of Annex IX to the Staff Regulations: "An official against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The Appointing Authority shall decide whether to grant this request". Officials must be informed that despite the removal of the information from the personal file, the information is kept in the disciplinary file during the whole career of the person concerned.

If restrictions to right of access and the right to rectify exist, the data subject must be informed of this and of right to have recourse at any time to the EDPS.

3.5. Right of access

According to Article 13 of Regulation (EC) 45/2001, "*the data subject shall have the right to obtain without constraint and at any time within three months from the receipt of the request and free of charge from the controller:*

- a) Confirmation as to whether or not data related to him or her are being processed;*
- b) Information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients to whom the data are disclosed;*

- c) Communication in an intelligible form of the data undergoing processing and of any available information as to their source;*
- d) Knowledge of the logic involved in any automated decision process concerning him or her."*

A general right of access by the official to his personal file is granted in Article 26 of the Staff regulations according to which "An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them". Furthermore during the disciplinary procedure, an official is granted with a right to access to all evidence in the file (Article 3 of Annex IX of Staff Regulations) and "On receipt of the report, the official concerned shall have the right to obtain his complete personal file and take copies of all documents relevant to the proceedings, including exonerating evidence" (Article 13 of Annex IX of Staff Regulations).

Restrictions to the right of access are envisaged in Article 20 of the Regulation (EC) 45/2001 notably if this restriction constitutes a necessary measure to safeguard "the prevention, investigation, detection and prosecution of criminal offences; ... the protection of the data subject or the rights and freedoms of others".

Article 1.2 of Annex IX to the Staff Regulation provides that: "In cases that demand absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the official to comment may, in agreement with the Appointing Authority, be deferred. In such cases, no disciplinary proceedings may be opened before the official has been given a chance to comment." This restriction is compliant with Article 20 since national judicial authorities are competent in the frame of criminal procedures (see recitals to the Regulation §18).

3.6. Quality of the data

Article 4 of Regulation (EC) 45/2001 provides for certain requirements as concerns the quality of personal data.

Personal data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed" (Article 4.1.c). Article 2.1 §3 of the GIP concerning the administrative investigation provides "the decision launching the opening of an administrative investigation shall specify the object and the scope of the enquiry". This is determinant for the data which is to be collected and kept in the course of the enquiry.

Personal data must also be accurate and where necessary kept up to date. The Regulation further provides that "every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified" (Article 4.1.d).

There are no systematic rules as concerns the type of data put in a disciplinary file. The data will very much depend on the case. Having said this, rules must be established as concern the criteria to place evidence or data in a disciplinary file, such as only relevant data may be kept. Staff handling disciplinary files must be made aware of these rules and must act accordingly.

The GIP provide for the rules as concern the decisions which must be inserted in the personal file of the official concerned. There are no equivalent provisions as concerns disciplinary files. Rules should notably provide that a copy of all the decisions taken by the Appointing Authority must be placed in the disciplinary file. Any subsequent modifications or rectifications must also be inserted.

3.7. Conservation of data

Regulation (EC) 45/2001 provides that the personal data may only be kept in a form which permits the identification of the data subjects for no longer than is necessary for the purposes for which the data are collected or for which they are further processed.

Data relating to disciplinary proceedings within the institution are kept in various files: the personal file, the disciplinary file and in an excel file.

- Data conservation in the official's personal file

According to the GIP, the personal file will include any decision taken in the frame of a disciplinary action except for any decision of the Appointing Authority not to take any disciplinary action (unless an official requests otherwise) or any warning addressed to the official.

The institution justifies the conservation of this data in the personal file during the career of an official on the basis of Article 10h and i of Annex IX to the Staff Regulations according to which "the severity of the disciplinary penalties imposed shall be commensurate with the seriousness of the misconduct. To determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed, account shall be taken in particular of: ... (h) whether the misconduct involves repeated action or behaviour, (i) the conduct of the official throughout the course of his career".

According to Article 27 of Annex IX of the Staff Regulation, an official against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The Appointing Authority shall decide whether to grant this request. Certain information may therefore be removed from the personal file, but this is to the discretion of the Appointing Authority. The data subject is therefore not granted with an automatic removal of the data after a certain laps of time.

However, data protection rules imply that the Appointing Authority justifies the need for conservation of the data and justifies any refusal to erase the data if an official requests for erasure under Article 27 of the Staff Regulations.

Article 10 h and i also serve as a basis for the conservation of disciplinary data in the personal file after the end of the career of the official which means that in practice the only limit to the conservation of the data after the career of the official ends is when the right to a pension or any other right terminates.

- Data conservation in disciplinary files

The data in the disciplinary files are kept, whether or not they have been erased in the personal file or not. In most cases, this implies a duplication of information, and the Court of First instance has already condemned the existence of parallel files².

- Data conservation in Excel files

The Excel files include all the data concerning disciplinary issues of any official, including those data that are not even kept in the disciplinary files or the personal files, namely the warnings (Article 3(b) of Annex IX). Apart from this purpose of having an instant full picture of the disciplinary status of the official concerned, the excel files afford consistency in decisions and sanctions. Article 4(1) e of the Regulation provides that the Community institution or body may provide that the personal data may be kept for longer periods for statistical use providing they are kept in an anonymous form or with the identity of the person encrypted. The EDPS believes that the purpose of affording consistency could also be reached with data kept on an anonymous basis, and therefore the conservation in a form which permits the identification of the data subject is not justified when the only purpose for keeping the data is consistency in decisions and sanctions. As to the purpose of providing a full picture of the disciplinary status of the official, it seems in apparent contradiction with the prohibition of the Court of First instance as concerns parallel files.

Taking into account the present state of legislation, there are no time periods for removing data concerning the facts of the case, nor as concerns the decision itself. This poses problems in relation to the principle of limited data conservation of Article 4(1)e of Regulation (EC) 45/2001 which in itself is a specific application of a fundamental human right. Therefore, the introduction of periods of prescription as concerns the conservation of data relating to disciplinary measures or facts leading to those measures would serve to reduce the tension between the Staff Regulations and the data protection Regulation.

3.8. Security

According to Article 22 of Regulation (EC) 45/2001, adequate security measures must be implemented to ensure a level of security appropriate to the risks presented by the processing and to the nature of the data.

Such measures shall in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

We are here in the presence of particularly sensitive data which call for adequate security measures.

These measures offer a relative level of security which seem adequate since we are here in the presence of paper files.

² See *Baltsavias v Commission*, T-39/93 and T-553/93

Conclusion

The processing operation under review does not seem in breach of any provision for Regulation (EC) 45/2001 provided that the aforementioned considerations are taken fully into account. This implies in particular:

- Should information be withheld on the grounds that providing this information is harmful to the investigation, the actual need to withhold this information must be examined closely. In any event as soon as this information is no longer harmful for the investigation, it must be given.

- Measures must be adopted so as to ensure that information on the processing of personal data in the frame of disciplinary proceedings is addressed in clear terms to the officials concerned. Officials must notably be informed that despite the removal of the information from the personal file, the information is kept in the disciplinary file and in a control Excel file during the whole career of the person concerned. If restrictions to the right of access and right to rectify exist, the data subject must be informed of this and of the right to have recourse at any time to the EDPS.

- Rules must be established as concern the criteria to place evidence or data in a disciplinary file, such as only relevant data may be kept. The rules should also provide that a copy of all the decisions taken by the Appointing Authority must be placed in the disciplinary file and that any subsequent modifications or rectifications must also be inserted. Staff handling disciplinary files must be made aware of these rules and must act accordingly.

- As to the Excel files, once the data on an official has no other purpose than affording consistency in decisions and sanctions, data can only be kept in an anonymous form.

Done at Brussels, 21 March 2005

The European Data Protection Supervisor

Peter HUSTINX