



Opinion on a notification for prior checking received from the Data Protection Officer of the Court of Auditors on "COMPASS"

Brussels, 19 July 2005 (Case 2005/152)

Proceedings

In an e-mail dated 15 May 2005 the Court of Auditors' Data Protection Officer (Mr KILB) informed the Assistant European Data Protection Supervisor that the Court of Auditors was going to update its staff appraisal system, which is called "COMPASS". Referring to the wide-ranging prior check already made the previous year, when the system was introduced (case 2004/23), Mr KILB asked the Assistant EDPS whether formal notification was required.

By e-mail of the same date the Assistant EDPS informed the Court of Auditors' DPO that formal notification was required in this case, since new factors were involved.

Notification for prior checking of the Court of Auditors' staff appraisal system was sent to the Assistant EDPS by e-mail on 16 June 2005.

Facts

On 4 March 2004 the Court of Auditors adopted a Decision laying down general provisions for implementing Article 43 of the Staff Regulations. It was by this Decision that the COMPASS appraisal system was set up.

The new draft Decision of the Court of Auditors (CA 52/05) amending those rules was submitted for prior checking, together with a note (DEC 84/05) concerning the proposed amendments to the rules.

The decisions were accompanied by 3 documents entitled "COMPASS Guidelines" (how to prepare your self-appraisal, how to understand the performance scale categories used to appraise performance by criteria and competences, how to set your professional objectives) and a COMPASS IT Tool User Manual.

Appraisal

Pursuant to Article 43 of the Staff Regulations, a report on ability, efficiency and conduct in the service is to be drawn up each year for the period then ending. This report is called the "staff report".

The staff in active employment or on secondment that are concerned are officials, temporary staff and contract staff employed under Article 3a of the Conditions of Employment of Other Servants of the European Communities (CEOS) for a period of one year or more.

The appraisal is based on the requirements defined in the Court's job description for each function, on the objectives discussed and agreed between appraiser and appraisee before the start of the reference period and on the appraisal of competences, deliverables and performance.

There are two types of appraisal: annual appraisal and task- or project-related appraisals.

The appraiser

It is the responsibility of the appraiser to appraise staff performance and competencies, on the basis of which he is to draw up a draft staff report by 15 November n + 1 at the latest. For annual appraisals, appraisers must also discuss and set objectives at the beginning of the appraisal exercise as part of the interview with the appraisee. This is to be documented in a separate form (objective-setting form).

The reviewing appraiser

The reviewing appraiser is responsible for maintaining a standard level of comparability, consistency and objectivity at group or entity level and for verifying that the appraisal procedure has been carried out correctly.

The review is carried out on the basis of the draft annual staff report or the draft task-related appraisal completed by the appraiser. However, he may ask the appraiser to revise his overall approach. Where the appraiser does not follow up on this request, the reviewing appraiser may make written comments. The staff report is sent to the appraisee after it has been signed by the reviewing appraiser.

Appeal procedure

Appeals against annual staff reports are examined by an Appeals Committee comprising:

- the Director for Human Resources;
- another Director nominated by the Secretary-General;
- the President of the Staff Committee;
- (or their respective alternates).

The Appeals Committee decides on every appeal by 31 January n+2 at the latest. Any appeal by an appraisee must be submitted to the Appeals Committee in writing and must be duly substantiated. The Appeals Committee asks both the appraiser and reviewing appraiser to comment on the appeal, also in writing, within two weeks. If deemed necessary, the Appeals Committee may invite the officials concerned to submit additional information.

The Appeals Committee informs the Administration, the appraisee, the appraiser and the reviewing appraiser of its decision and then sends the final staff report to the Administration and a copy of it to the appraisee, the appraiser and the reviewing appraiser. In this case, the parties cannot correct the data once the procedure has been concluded.

The appeals procedure is not yet covered by the COMPASS system, but should be shortly. When the Appeals Committee has delivered the final staff report, it is placed in the appraisee's personal file. If necessary, the Appeals Committee has access to the staff member's personal file, but this access is confined to relevant factors, depending on the additional information received.

Placing of the staff report in the personal file

If no appeal has been lodged within the stipulated time limits, the staff report shall be considered final and placed by the Administration in the appraisee's personal file.

In the event of an appeal, the final staff report confirmed or modified by the Appeals Committee is placed by the Administration in the appraisee's personal file.

COMPASS procedure

The member of staff receives an e-mail informing him that he is going to be appraised. When the appraisal date is inserted by the appraiser, he receives another e-mail asking him to fill in his annual self-appraisal and his self-appraisal of future objectives. The member of staff clicks on the annual self-appraisal link and fills in the form.

For the three main parties (appraisee, appraiser and reviewing appraiser), appraisal via the COMPASS system involves the following personal data:

1. Administrative data
 - a. name
 - b. first name
 - c. personnel number
 - d. grade
 - e. situation of the post occupied
 - f. job name
 - g. status (official, temporary, auxiliary or contract staff)
2. Languages
 - a. active knowledge
 - b. passive knowledge
3. Type of report
 - a. appraisal period
 - b. time limits inserted by the appraiser
4. Activities covered by the staff report
 - a. on-going activities, audit tasks and projects
 - b. other activities in the interest of the Court.

For each activity, the length of time per week, the degree of independence, the degree of difficulty and the level of responsibility are given.

5. Appraisee performance according to criteria and competences
6. Qualitative assessment of the achievement of objectives, deliverables and overall performance.
7. Contribution to other activities in the interest of the Court
8. General evaluation of professional training and career development
9. Signature

Once the appraisal has validated the document (he is informed that he will not be able to amend it further), he has to fill in the objective-setting form. The following boxes have to be filled in:

1. Administrative data
2. Type of report
3. Activities
4. Definition of objectives for the new reference period (to be filled in jointly by the appraisee and the appraiser)
 - a. Professional and operational objectives
 - b. Managerial objectives (if applicable)
 - c. Personal development objectives
 - d. Training requested (once approved by the reviewing appraiser, this data is automatically sent to the training unit so that it can plan the training to be given to Court staff)
5. Appraisee's comments

When the appraisal has validated the document, an e-mail is sent to the appraiser to inform him that self-appraisal is complete, asking him to fill in the section reserved for the appraiser, which he cannot do until he has interviewed the appraisee.

When the annual appraisal has been validated by the appraiser, the appraisal receives an e-mail informing him of this and allowing him to see the appraiser's comments and make comments of his own. Once this document has been validated, it cannot be amended any more. Afterwards, the appraisee is asked to validate the document setting his objectives, where he can see the appraiser's comments. He may also add comments.

Once validation has been completed, an e-mail is sent to the appraiser informing him that the appraisee has validated his annual appraisal and that he will be informed when the reviewing appraiser has completed his review of the appraisal. Another e-mail is sent to the reviewing appraiser informing him that the annual appraisal has been validated by the appraisee and that he is required to review it.

When the reviewing appraiser has validated his comments on the annual appraisal, the appraisee is informed by an e-mail which allows him to see the reviewing appraiser's comments, to which he may add his own comments. However, the appraisee is not allowed to comment on the reviewing appraiser's comments on the objective-setting section. The appraisee must validate the document, which cannot be amended thereafter.

Once validation is complete, an e-mail is sent to the appraiser and the reviewing appraiser stating that the annual appraisal is finished, unless there is an appeal. They may open the document but not amend it.

An e-mail is also sent to the system administrator asking him to print the appraisal and place it on the appraisee's personal file; unless there is an appeal, this will be done.

The personal file exists only in paper form at the moment, but there are plans to digitalise all the documents contained in it, so that a computerised version can be created.

SYSPER contains a number of data which also come from the personal file. The data needed for the COMPASS application are automatically taken from SYSPER.

The procedure is almost identical to the appraisal procedure for directors and heads of division, service, unit and translation.

In addition, the COMPASS system administrator has access to the data so that he can make sure that the application is working properly.

The data is stored on-line for three years and then archived off-line for a further two years. The appraisal is placed in the appraisee's personal file.

Staff are not allowed to correct data fed into COMPASS themselves, but they are free to get it corrected by contacting the COMPASS system administrator, who is an official in the Human Resources Unit.

Security measures are as follows: the project team and the IT division have drawn up a series of specific measures linked to the Court of Auditors' IT system, to the Lotus Note environment and to the COMPASS application's own IT system. Access to the application is by a login and "enhanced" passwords. Unauthorised persons cannot connect to the application.

The system management checks compliance with access rights at regular intervals. The system administrators have access to the whole of the system, except to data "classified" within the system (limited, restricted or confidential). This means that the system administrators can only access the data necessary for the COMPASS application, with the classified data representing all the strictly personal data on the personal file, such as, for example, medical data, to which COMPASS system administrators naturally have no access.

The data is updated once a day. There is a system to ensure security between the paper version and the electronic version stored in the system. Conformity between the personal file and the COMPASS system is ensured by the IT system which uses an automatic look-up, with the possibility of correcting data where necessary.

Legal aspects

1. Prior checking

The notification received by email on 16 June 2005 relates to the processing of personal data ("any information relating to an identified or identifiable natural person" - Article 2(a)) and therefore comes within the scope of Regulation (EC) No 45/2001.

Also, the processing of personal data wholly or partly by automatic means is subject to Regulation (EC) No 45/2001 (Article 3(2)), which is the case here for the COMPASS application which involves automatic processing.

However, although COMPASS is an automatic processing system for staff evaluation, the substance of decisions made is not itself processed by automatic means since the final documents are drawn up by the various persons involved. This is why the system does not come within the scope of Article 19 of the Regulation.

Article 27(1) of Regulation (EC) No 45/2001 subjects "any 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" to prior checking by the EDPS.

The processing operation is also covered by the provisions of Article 27(2)(b): "the following processing operations are likely to present such risks: processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct," as in the current case.

Notification was received from the Court of Auditors' DPO on 16 June 2005. Questions were asked by email on 30 June 2005. Replies were provided on the same day. Information was requested by telephone on 7 July 2005 and the replies were supplied at once.

The EDPS will therefore deliver his opinion by 17 August 2005 at the latest, as laid down in Article 27(4) of the Regulation.

2. Legal basis and lawfulness of processing

The legal basis for the data processing stems from Article 43 of the Staff Regulations of Officials of the European Communities on the ability, efficiency and conduct in the service of each official. The first paragraph of that Article refers to Article 110 of the Staff Regulations, which states that "*the general provisions for giving effect to these Staff Regulations shall be adopted by each institution*". That is the purpose of the Decision adopted by the Court of Auditors on 4 March 2004 and amended by the draft Decision which is the subject of this prior check.

Article 43 of the Staff Regulations also refers to Article 90(2) as regards making an appeal before lodging a complaint. The legal basis is therefore correct.

The analysis of the legal basis in relation to Regulation (EC) No 45/2001 is accompanied by the analysis of the lawfulness of the processing operation. Article 5(a) of Regulation (EC) No 45/2001 states that personal data may be processed only if "*processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities ..or in the legitimate exercise of official authority vested in the Community institution*".

Staff evaluation, which involves the collection and processing of personal data concerning officials or other servants, comes within the legitimate exercise of official authority vested in the institution, and hence such processing is lawful. The legal basis in the Staff Regulation of Officials of the European Communities (Article 43) supports the lawfulness of this processing.

3. Data quality

Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001) in relation to the purposes for which it is collected. The data being processed as described at the beginning of this opinion, must be regarded as fulfilling these conditions for processing.

Data must also be "*processed fairly and lawfully*" (Article 4(1)(a) of Regulation (EC) No 45/2001). The issue of lawfulness has already been considered. As for fairness, this must receive a great deal of attention in this sensitive context. It relates to the information which has to be transmitted to the data subject (see section 8 below).

Finally, the data must be "*accurate and, where necessary, kept up to date; 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) of the Regulation). While staff may have their personal data corrected by contacting the administrator of the COMPASS system in the Human Resources Division (see section 9 below), the role of the data controller must also be mentioned. The data controller must ensure that the data entered is accurate and updated where necessary. Either the data is introduced manually by the appraisee and may be corrected by the system administrator, or the data is imported automatically from SYSPER to COMPASS. The system administrator has a particular duty of care. Article 4(1)(d) of the Regulation is therefore well complied with in this case.

4. Conservation of data

Article 4(1)(e) of Regulation (EC) No 45/2001 sets out the principle that data must be *"kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed"*.

Data on the appraisal are kept online for three years and are then archived for two more years. These time-limits are wholly reasonable given the intended purpose. Article 4(1)(e) is complied with in this case.

It is not intended that data will be kept for historical, statistical or scientific purposes (Article 4(1)(b)).

5. Change of purpose/compatible use

Most of the data is extracted from the staff databases. The processing under consideration here does not involve any general change in the purpose of those staff-related databases and is not incompatible with that purpose. This means that Article 6(1) of Regulation (EC) No 45/2001 does not apply in this case and that Article 4(1)(b) is complied with.

6. Transfer of data

Processing must be examined in the light of Article 7(1) of Regulation (EC) No 45/2001. Processing under Article 7(1) concerns transfers of personal data within or between Community institutions or bodies *"if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

The current case concerns transfers within one institution (in the case of an appeal, the data is transferred to the Director for Human Resources, another Director nominated by the Secretary-General, and the President of the Staff Committee, who are the members of the Appeals Committee).

It must therefore be ensured that the conditions in Article 7(1) are observed, which is the case here since the data collected are necessary for processing to be carried out and also the data are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*. In this case the task is part of the competence of the institution itself and Article 7(1) is therefore well complied with.

7. Processing including the personnel number or identifying number

The Court of Auditors uses personnel numbers. The use of an identifier is in itself merely a means - a legitimate one, in this case - to facilitate the work of the personal data controller; however, this use may have significant implications. This is why the European legislator

regulated the use of identifiers in Article 10(6) of the Regulation, which provides for the involvement of the EDPS. In this case, the use of the personnel number may have the consequence of making it possible to interconnect the data being processed in different contexts. The issue here is not to establish the conditions under which the personnel number may be processed by the Court of Auditors, but to stress the attention which must be paid to this aspect of the Regulation. In this case, the use of the personnel number by the Court of Auditors is reasonable since its use is a means of facilitating the task of processing.

8. Information to the data subjects

The staff of the Court of Auditors are provided with information by means of the three sets of Guidelines and the COMPASS IT Tool User Manual made available to them. In the case of the personal data mentioned during the appraisal procedure, such data may be regarded as a copy or reproduction of some of the data in the official's personal file. The other data is provided directly by the data subject or provided by the other participants in the appraisal process.

Hence the provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject are applicable in this case. The provisions mentioned in paragraph 1 of the Article, (a) (the identity of the controller), (b) (the purposes of the processing operation), (c) (the recipients or categories of recipients of the data), (d) (whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply), and (e) (*"the existence of the right of access to, and the right to rectify, the data concerning him or her"*) are well complied with.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject are also applicable in this case, since the personal information comes from the personal file. The provisions mentioned in paragraph 1 of the Article, (a) (the identity of the controller), (b) (the purposes of the processing operation), (c) (the categories of data concerned), (d) (the recipients or categories of recipients), and (e) (*"the existence of the right of access to, and the right to rectify, the data concerning him or her"*) are well complied with.

However, paragraph (1)(f) of these two Articles on information which it is not obligatory to provide (*the legal basis of the processing operation, the time-limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*) is not fully reproduced. The EDPS would like information indicating the possibility of recourse to him to be mentioned, so that the transparency of the processing operation is fully complied with.

Given these considerations, the EDPS would like all the information mentioned in point (f) of Articles 11(1) and 12(1) of the Regulation to be stated by any appropriate means.

9. Right of access and rectification

Article 13 of Regulation (EC) No 45/2001 provides for a right of access at the request of the data subject, and the form it should take. Article 14 of Regulation (EC) No 45/2001 provides a right to rectification for the data subject.

During self-appraisal, in the first box "Administrative data", it is possible to correct data through the COMPASS system administrator.

All other data supplied by the data subject is provided in the context of an appraisal exercise, where the subject may have access to and correct data at several stages of the process.

In the context of the appeals procedure, the procedure ensures that the data subject has the opportunity to correct his data, whether administrative data or data inherent to the appraisal. This possibility takes the form of exchanges and requests for additional information. A copy of the appraisal considered as the final report is inserted in the personal file.

All these provisions mean that all the conditions of Articles 13 and 14 of Regulation (EC) No 45/2001 are fulfilled.

On the other hand, as regards access to personal files by members of the Appeals Committee, it is necessary to ensure that only the relevant data is accessible. For example, data relating to health which has no direct link with the appraisal should not be accessible. The EDPS recommends that the procedure should make explicit that access for the Appeals Committee is restricted to the relevant data only, and that a procedure guaranteeing this restriction should be put in place.

10. Security

Article 22 of Regulation (EC) No 45/2001 on security of processing states that *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected"*.

The specific security measures relating to the Court of Auditors' IT system, to the Lotus Note environment and to the COMPASS application's own IT system seem to be adequate in respect of Article 22 of the Regulation. This also applies to access by a login and "enhanced" passwords which limit access to only the data subjects. The system guarantees the integrity of the data, since once validated the data cannot subsequently be amended, including by the person who entered them. The system management checks conformity of access to the system at regular intervals.

However, the security system in connection with the sending of emails throughout the appraisal procedure could be strengthened by the use of the term "confidential" when such emails are sent, and by ensuring that the email really has been read by the addressee.

There is a system to ensure security between the paper version and the electronic version stored in the system. Conformity between the personal file and the COMPASS system is ensured by the IT system which uses an automatic look-up (automatic data import) with the opportunity to correct data where necessary.

Finally, it is absolutely necessary that adequate security measures should be established as regards access to the personal files of staff by the members of the Appeals Committee (where needed).

Conclusion

The proposed processing operation as described does not seem to involve a breach of the provisions of Regulation (EC) No 45/2001, as long as account is taken of the observations below. This means in particular that the Court of Auditors:

- should mention the whole of the information set out in point (f) of Articles 11(1) and 12(1) of Regulation (EC) No 45/2001, by any appropriate means;

- should strengthen the security system in connection with e-mails sent and exchanged during the appraisal procedure;
- should make explicit that access by the Appeals Committee is restricted to only the relevant data, and put in place a procedure to guarantee this restriction.

Done at Brussels, 19 July 2005

Peter HUSTINX
European Data Protection Supervisor