



Opinion on a notification for prior checking received from the Data Protection Officer of the European Commission on the "SYSPER 2: staff appraisal – CDR" system

Brussels, 15 December 2005 (Case 2005-218)

Procedure

On 20 July 2004 the European Data Protection Supervisor (EDPS) sent a letter to data Protection Officers asking them to contribute towards making an inventory of data processing that might be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) No 45/2001. The EDPS requested transmission of all processing operations subject to prior checking, including those that commenced before the Supervisor was appointed, for which checking could never be regarded as prior, but which would be subject to "ex post" checking.

On 28 September 2004 the Data Protection Officer of the European Commission presented the list of cases that should be subject to such ex post checking, including the "SYSPER 2: staff appraisal –CDR" system in particular, since it contains data relating to the evaluation of personal aspects relating to the data subject, including his or her ability, efficiency and conduct (Article 27(2)(b)).

The EDPS identified certain priority topics and selected a number of processing operations subject to notification for ex post checking. "SYSPER 2: staff appraisal – CDR" is among them.

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "SYSPER 2: staff appraisal – CDR" system was given by Mr Nico HILBERT, acting Data Protection Officer of the European Commission by e-mail on 30 August 2005. Attached to the e-mail is a notification on the general architecture of SYSPER 2 - not subject to prior checking. The attachment was sent as information on the general functioning of the system, and will be used if deemed relevant and necessary.

Questions were put to the acting DPO of the European Commission by e-mail on 16 September 2005. The replies were given on 11 November 2005.

The facts

As part of its administrative reform, the Commission has developed a new personnel management system, known as SYSPER 2, in order to manage the Commission's human resources and, inter alia, to appraise Commission staff. SYSPER 2 comprises a set of modules which each deal with precise and specific aspects, including in particular the periodical appraisal and promotion reports. These modules process personal data.

The "draft appraisal – CDR" module of SYSPER 2 is the IT tool used by the European Commission to manage the annual staff appraisal exercise, the production of probation reports and the attestation and certification procedures.

The legal bases for these processing operations are the regulations governing the institution's relations with its staff, including the Staff Regulations of Officials of the European Communities,

the Conditions of employment of other servants of the European Communities, the general provisions for giving effect to these regulations, Commission decisions and the internal management rules observed by Commission departments when performing the duties delegated to them by the Commission. More specifically, reference is made, inter alia, to the following articles of the Staff Regulations:

- Article 34 of the new Staff Regulations (which entered into force on 1 May 2004) provides that officials shall serve a nine-month probationary period before they can be established.
- Article 43 of the new Staff Regulations provides that each Commission official shall be the subject of a periodical report.
- Article 45a of the new Staff Regulations provides that, on certain conditions, and by way of derogation from Article 5(3)(b) and (c), an official from function group AST (former B and C grades) may, from grade 5, be appointed to a post in function group AD (former A grade).

Each year, a career development report is drawn up for each permanent or temporary official. The reporting process has several stages:

- preparation of a self-assessment by the permanent or temporary official, at the request of the reporting officer (immediate superior of the official);
- organisation of a dialogue between the reporting officer and the official, which covers three elements: the evaluation of the past year's performance, taking into account the self-assessment; the fixing of objectives for the current year; the agreement of a training plan;
- production of the career development report by the reporting officer and the counter-signing officer (immediate superior of the reporting officer);
- transmission of the report to the official, who then has two appeal pathways in the event of disagreement: a second dialogue with the counter-signing officer; an appeal to the CDR joint committee.
- The CDR report (including the self-assessment) is prepared by each of the persons involved on a PC. At each stage, the person involved is informed by means of a message in SYSPER 2 and an automatically generated message in Outlook reminding him/her of the next deadline for action. The staff appraisal module manages the transition from one stage to the next, records the changes made, and the agreement, objection or comments of each person.

The staff appraisal module is also the tool used in the attestation and certification procedures (which replace the old "passage de catégorie/change of category" competitions) for managing the applications, eligibility and official selection of candidates. The attestation procedure allows certain officials of the C* and D* categories in service before 1 May 2004 to become full members of the AST function group. The certification procedure is the new measure in the Staff Regulations whereby it is possible to switch from the AST function group to the AD function group. The module manages the transition from one stage to the next and records the agreement, objection or comments of each person involved.

The data subjects are:

- for appraisal: officials and temporary staff of the European Commission, the administrative agencies (PMO, OIB, OIL) and EPSO,

- for checking the professional experience and level of training of staff applying for the certification and attestation procedure: officials of the European Commission, the administrative agencies and EPSO.

The data required for the career development report are:

1. Staff number
2. Report details (type of report, reporting officer [surname, first name, staff number, function], countersigning officer [surname, first name, staff number, function]).
3. Personal details of the jobholder:
 - (a) current details:
 - (i) surname, first name
 - (ii) category + grade
 - (iii) address
 - (iv) tel., fax number
 - (v) location
 - (b) career history
 - (i) status
 - (ii) category + grade
 - (iii) DG/Service & Unit
 - (iv) period of appraisal (from... to...)
 - (c) history of appraisal results
 - (i) year
 - (ii) merit mark in previous reports
4. Job description
5. Initial dialogue (planning of objectives for the period)
 - (a) objectives in relation to the Unit Work Programme (agreed objectives, assessment criteria)
 - (b) personal development goals (agreed objectives, assessment criteria)
6. Self-assessment (achievement of objectives, contribution to other activities, personal development)
7. Assessment of the reporting period
 - (a) efficiency: outstanding, very good, good, sufficient, poor, insufficient
 - (b) abilities: outstanding to insufficient (essential competencies, management competencies, other job requirements)
 - (c) conduct in the service (very good to insufficient)
 - (d) overall summary (+ mark from 0 to 20)
 - (e) potential
 - (i) certification procedure under Article 45a of the Staff Regulations
 - (ii) attestation procedure pursuant to Article 10(3) of Annex XIII of the Staff Regulations
 - (f) additional duties
 - (i) Chairman/member of a competition selection board
 - (ii) assessor to a selection board/marker of competition papers

- (iii) Chairman/member of a joint committee

- 8. Final approval
 - (a) Reporting Officer's signature
 - (b) Countersigning Officer's assessment and signature
 - (c) signature of person under assessment
- 9. Further review
 - (a) Countersigning officer's further review and signature
 - (b) jobholder's signature

- 10. Appeal
 - (a) opinion of the Joint Evaluation Committee
 - (b) appeal assessor's decision and signature

The description of all the data included in the career development review is accessible and available at:

http://intracomm.cec.eu-admin.net/pers_admin/promotions/cdr/forms/forms_en.html

In the attestation and certification procedures, the fields used are:

- merit marks (resulting from the staff appraisal of officials);
- seniority in category or function group;
- work experience within the Institutions;
- work experience prior to entry into service in the Institutions;
- education/training.

The following information is given to the data subjects:

Firstly, a specific privacy statement is directly accessible on the "staff appraisal – CDR" module home page.

Pursuant to Articles 11 and 12 of Regulation (EC) No 45/2001, this statement informs the data subjects of the identity of the controller, the purpose and legal basis for the collection of data, their right to access and rectify their own personal data, the categories of people who have access to the data, the length of time for which their data will be stored and of the possibility of contacting personal data protection officers within the European institutions. Every official and member of temporary staff is given access to the staff appraisal module.

Data subjects are always entitled to consult their own career development reviews and their "attestation/certification" files. In the event of dispute, once the data subjects have acquainted themselves with the content of their reports they may take up the various internal channels for appeal as provided for by the legal provisions set out in point 11 and in Article 90 of the Staff Regulations.

The possibility of appealing to the European Data Protection Supervisor is mentioned in the specific privacy statement.

Secondly, before an evaluation, attestation or certification exercise commences, DG ADMIN publishes an administrative notice on the Commission's Intranet that states the purpose of the procedure, the practical arrangements of SYSPER 2, the timetable and way in which data will be processed.

Lastly, an administrative notice was published in 2004¹ that stipulates how personal files are managed as a result of the introduction of the staff appraisal module.

At every stage in the appraisal procedure that requires action by officials or temporary staff, they are so informed by means of a message in SYSPER 2 and by a message generated by Outlook reminding them of the next deadline.

The right to rectification

The jobholder may also contest:

1. the content of the career development report at two separate stages in the evaluation procedure, either by requesting a second dialogue with the countersigning officer (i.e. the hierarchical superior of the reporting officer) or by lodging an appeal with the Joint Evaluation Committee);
2. the decision regarding the admissibility and recruitment of officials, in the context of attestation and certification procedures, via a Joint Committee.

Procedures for automated and/or manual processing:

Automated processing

While "workflow" is an automated process, the content of the specific phases, on the other hand, is not. This is a system that feeds other systems. The agreement or refusal of one person automatically triggers the transition to the next phase in the procedure and messages are automatically generated for the next person concerned.

The merit marks in the career development report are incorporated into each official's promotion dossier and converted into "merit points" (promotion depends on the number of points accumulated, merit points being only one factor).

NB: promotions are not the result of automated processing and are managed by a dedicated module within SYSPER 2.

On the strength of the information provided by the officials (training and professional experience) it is possible to determine whether they are eligible for the attestation or certification procedure, and to draw up a priority list of eligible applicants.

Manual processing

For those officials and/or temporary staff who do not have access to SYSPER 2, career development reports or applications for attestation or certification procedures can be drawn up in hard copy. These reports and applications are transcribed into the staff appraisal module (SYSPER 2's evaluation page) in the form of a PDF file. The merit marks given in the paper version are also entered into SYSPER 2. The data subject is notified by letter that the material has been transcribed and receives a copy of the PDF file. The paper copy of the CDR is destroyed four months after the acknowledgement of receipt of the letter is received.

Storage

¹ Administrative Notice No 22-2004 of 01/04/2004 on the rules for implementing Article 26 of the Staff Regulations.

Relational databases are stored on the Commission's Data Centre servers with individual access via a browser.

Possible recipients of the data

Recipients

Career development reviews are transferred to other Community institutions and agencies if officials or other staff are transferred, or apply for a transfer, to another institution. They may also be sent to the Court of First Instance, if it so requests, in the context of proceedings brought before it ².

Under the certification procedure, the list of officials authorised to follow mandatory training as established by the Appointing Authority is sent to the European Administrative School (EAS), which is attached to EPSO. At the end of the course EPSO sends the Appointing Authority the list of officials who have successfully completed the training programme.

Categories of recipients

The staff appraisal module is used by:

- jobholders (officials and temporary staff at the Commission);
- reporting officers (the jobholder's hierarchical superior);
- countersigning officers (reporting officer's hierarchical superior);
- appeal assessors (usually the Director-General or Head of Service);
- members of the joint evaluation committees;
- members of the promotion committees;
- members of the Joint Committee on Attestation;
- members of the Joint Committee on Certification;
- human resources managers within a service;
- Appointing Authority managers at central level;
- personal file managers;
- recruitment procedure managers for appointments to managerial posts;
- officials responsible for examining appeals pursuant to Article 90 and cases brought before the Court of First Instance;
- officials in charge of inquiries and disciplinary proceedings;
- persons to whom access rights have been delegated by a right holder.

Retention of data

Career development reviews, attestation and certification dossiers are stored in SYSPER 2 until the official or his beneficiaries have exhausted all channels of appeal after termination of service within the meaning of Article 47 of the Staff Regulations.

The administrative notice of 1 April 2004 on the rules for implementing Article 26 of the Staff Regulations (the article on the personal file of the official) states the following: "*Commission staff are informed that their career development reviews and individual promotion files securely stored in SYSPER 2 will not be printed for inclusion in their personal files.*"

² The European Union Civil Service Tribunal, established by the Council Decision of 2 November 2004 (2004/752/EC, Euratom) is competent instead of the Court of First Instance. The latter is the appeal instance.

This means that, for a transitional period, the personal files of all officials and other staff will consist of two parts:

- a personal file on paper comprising the documents referred to in Article 26 of the Staff Regulations, including staff reports for the period before 1 July 2001 and any other documents or items which cannot be stored in the SYSPER 2 computer application;*
- the career development reviews and promotion file stored electronically in SYSPER 2. Of course, all officials and other staff can use their user ID and password to access their career development reviews and promotion file. In addition, a computer terminal providing access to SYSPER 2 will be installed in the offices where the personal files are located."*

In due course, it is intended that the Commission will scan all the personal files of officials and other staff so that the whole personal file, including SYSPER 2, can be managed electronically in a secure computer environment.

The hard copies of applications are stored by the Directorate-General for Personnel and Administration's Management Unit until the official has exhausted all the appeal channels for the annual reporting exercise in question.

Locking and deleting data

The module works on a cumulative basis: the parties involved add elements sequentially. Each element is locked as soon as its author has signed it electronically.

As regards the CDR:

1. the human resources manager is able to go back a step, i.e. remove the last contribution made by a party. This option applies only while the CDR is still ongoing.
2. The Appointing Authority has this option even once the CDR has been completed, in particular to allow for judgements of the Court of Justice or the Court of First Instance³ requesting deletion of certain entries in the CDR.

In both cases, these amendments are tracked in SYSPER 2. The parties involved, in particular the jobholder, have access to a screen that indicates who has amended the report, which part of the report has been amended, on what date and for what reason.

Historical, statistical and scientific purposes seem to be excluded.

Data may not be transferred to third countries or international organisations.

Security measures

Both technical and administrative security measures are taken to guarantee secure processing. Access to personal data is protected by the fact that the right to access data is granted on a "need to know" basis depending on the duties of the people allowed access.

³ cf. footnote 2.

Access is gained by means of an individual login and password. An audit trail system ensures that the jobholder can find out who has consulted his or her appraisal data, exactly which data have been consulted and when. All access, including by third parties, is logged.

Legal aspects

1. Prior checking

The notification received on 30 August 2005 relates to processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)) and therefore falls within the scope of Regulation (EC) No 45/2001.

Processing of the appraisal procedure is entirely automatic. However, for officials and/or temporary staff without access to SYSPER 2, career development reviews and applications for the attestation or certification procedures may be made on paper. These reviews and applications are entered in the computerised staff appraisal system in the form of PDF files. This processing is done manually but the content is intended to form part of a filing system. Regulation (EC) No 45/2001 (Article 3(2)) therefore applies in this instance.

Under Article 27 of Regulation (EC) No 45/2001, processing operations likely to present specific risks to the rights and freedoms of data subjects are subject to prior checking by the European Data Protection Supervisor. Article 27(2) contains a list of processing operations likely to present such risks including, in Article 27(2)(b), "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". The procedure for appraising officials and temporary staff of the European Commission is an operation for the processing of personal data covered by Article 27(2)(b) and, as such, is subject to prior checking by the European Supervisor.

In principle, checks by the European Data Protection Supervisor should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was set up (the CDR system was introduced in January 2003), the check necessarily has to be performed *ex post*. However, this does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

The formal notification was received by e-mail on 30 August 2005. An e-mail requesting additional information was sent on 16 September 2005. In accordance with Article 27(4) of the Regulation, the two-month period within which the European Data Protection Supervisor must deliver an opinion was suspended. Replies were sent by e-mail on 11 November 2005. The European Data Protection Supervisor will deliver his opinion by 3 January 2006.

2. Legal basis and lawfulness of the processing operation

The legal basis for the data processing operation in question is to be found in:

- Article 34 of the Staff Regulations (report issued at the end of the probationary period) and Article 14 of the Conditions of Employment of other servants,

- Article 43 of the Staff Regulations (appraisal). Article 15(2) of the Conditions of Employment of other servants applies the provisions of Article 43 to temporary staff by analogy. Under Article 43, *"the ability, efficiency and conduct in the service of each official shall be the subject of a periodical report made at least once every two years as provided for by each institution in accordance with Article 110"*,
- Article 45a of the Staff Regulations (certification procedure),
- Article 10 of Annex XIII to the Staff Regulations (attestation procedure),
- the general implementing provisions for Articles 43 and 45a of the Staff Regulations,
- the Commission Decision on the rules relating to the appraisal and promotion of staff working in the Commission's External Services⁴,
- the Commission Decision laying down the rules for implementing the attestation procedure⁵.

The legal basis is sufficiently clear and calls for no particular comment.

As well as the legal basis, the lawfulness of the processing must also be considered. Article 5(a) of Regulation (EC) No 45/2001 stipulates that the processing shall be *"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 ..."*.

Report procedures which involve collecting and processing personal data relating to officials or other servants fall within the legitimate exercise of official authority vested in the institution. The legal basis found in the Staff Regulations of officials of the European Communities supports the lawfulness of the processing.

Moreover, data relating to trade union membership are designated as "special categories of data" in Article 10 of Regulation (EC) No 45/2001.

3. Processing of special categories of data

The reference in point 7.f above on the structure of the career development report (assessment of the reporting period – additional duties) to membership of a joint committee may reveal the fact that the data subject belongs to a trade union. The Joint Evaluation Committee is composed of a Chairman and 4 members, including two representatives of the staff designated by the Staff Committee.

There are other joint committees on which officials may sit. These are the promotion committees set up by the general provisions for implementing Article 45 of the Staff Regulations, the Joint Certification Committee set up by Commission Decision C(2005) 1940 of 22 June 2005 laying down the general provisions for implementing Article 45a of the Staff Regulations and the Joint Attestation Committee introduced by Commission Decision C(2004) 1318 of 7 April 2004.

Article 10(2)(a) applies in this case: *"Paragraph 1 (prohibition on processing data relating to trade union membership) shall not apply where the data subject has given his or her express consent to the processing of those data ..."*.

Article 10(2)(d) also applies: *"Paragraph 1 (prohibition on processing data relating to trade*

⁴ Decision C(2002) 4867/5 of 27 December 2002 amended by Decision C(2004) 844 of 20 February 2004.

⁵ Decision C(2004) 1318 of 7 April 2004.

union membership) *shall not apply where the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims*".

The processing operation is therefore in conformity with Article 10(2)(a) and (d) of Regulation (EC) No 45/2001.

4. Data quality

Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001). The processed data described at the beginning of this opinion should be regarded as satisfying these conditions as regards processing. The data required are administrative in nature and necessary to appraise the work of officials. The EDPS considers that Article 4(1)(c) of Regulation (EC) No 45/2001 has been fulfilled in this respect.

The data must also be processed "*fairly and lawfully*" (Article 4(1)(a) of Regulation (EC) No 45/2001). The lawfulness of the processing has already been discussed (see point 2 above). As regards fairness, this relates to the information given to the persons concerned. See point 10 below on this point.

Under Article 4(1)(d) of the Regulation, "*data must be accurate and, where necessary, kept up to date*". The system itself ensures that they are accurate and kept up to date. The data subject has the right to access and the right to rectify data, so that the file can be as comprehensive as possible. This also makes it possible to ensure the quality of data. See point 9 below on the dual rights of access and rectification.

5. Data retention

Article 4(1)(e) of Regulation (EC) No 45/2001 sets forth the principle that "*personal 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 are collected or for which they are further processed.*"

Appraisal reports, attestation files and certification files are kept in SYSPER 2 until the official or his or her dependents have no further avenues for action following termination of service (Article 47 of the Staff Regulations).

The appraisal reports in SYSPER 2 are not placed in the personal file of the official or other staff member. They can be consulted by means of a user ID and a password. Files relating to attestation and certification procedures are also kept in SYSPER 2. The more general question therefore arises of the conservation of data in SYSPER 2, on which point the following is stated: "*In general your personal data is stored until the end of your activity for the Commission. Certain data need to be conserved for a longer period if they are related to subsisting rights and obligations, i.e. pension rights. Personal data concerning applications for jobs are regularly deleted after the deadline for complaints has expired*".

Data are thus conserved for a long, but unspecified period. The European Data Protection Supervisor considers that a period during which data may be conserved needs to be set. In a similar case⁶, the EDPS considered that it was reasonable to fix the conservation period at 10 years, starting from the moment when the staff member leaves or after the last pension payment. The EDPS also considers that data of a purely informative nature no longer necessary for

⁶ Case 2004/274 – Staff Appraisal – European Central Bank.

administrative reasons can be disposed of after a minimum retention period of 5 years.

This long-term data conservation will have to be accompanied by appropriate guarantees. The data conserved are personal. The fact that they are archived for long-term conservation does not divest them of their personal nature. For that reason, data conserved over a long period must be covered by adequate measures for transmission and conservation, like any other personal data.

According to the notification, the possibility of the data being conserved for statistical, historical or scientific purposes would appear to be ruled out.

The paper version of the CDR is kept for 4 months in the case of officials and/or temporary staff without access to SYSPER 2. It is transcribed in the form of a PDF file. The person in question receives a copy of this PDF file. The European Data Protection Supervisor considers this 4-month period to be reasonable. For the electronic version, the conditions for conservation mentioned above apply.

6. Change of purpose/Compatible use

Data are retrieved from or entered into the staff databases. The processing operation under review involves no general change to the stated purpose of staff databases, of which appraisal is only one aspect. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) are fulfilled

7. Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

The data will be circulated to various persons within the Commission. Personal data can only be transferred if necessary for the legitimate performance of tasks covered by the competence of the recipient.

In this particular case, the transfer to reporting officers, countersigning officers, members of the different joint committees, the various management units (Human Resources, personal files, Appointing Authority, selection procedures), officials responsible for looking into complaints or for investigations and disciplinary procedures and persons authorised by holders of access rights is consistent with the legitimate performance of the tasks of the various parties.

Career development reports may also be transferred to other institutions or agencies in connection with transfers and applications to work in other institutions. The Court of First Instance⁷ (CFI) may be sent these files, upon request, in the context of proceedings before it⁸. Such transfers are legitimate as they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

Lastly, Article 7(3) of Regulation (EC) No 45/2001 stipulates that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". It must be explicitly guaranteed that any person receiving and processing data in the context of the annual appraisal

⁷ See footnote 2.

⁸ See footnote 2.

exercise at the Commission may not use them for any other purpose. The Commission states in the Specific Privacy Statement (on the SYSPER 2 home page) that "*it will not divulge your personal data for direct marketing purposes*". However, that could mean that they might be used for purposes other than appraisal. The European Data Protection Supervisor wishes the following point to be made: personal data will be processed only within the strict context of appraisal and the related report.

8. Processing including a personal number or identifying number

The Commission uses personal numbers in staff reports. The use of the personal number may have the consequence of allowing interconnection of data processed in different contexts. This is not the place in which to determine the conditions under which the Commission may process a personal number (Article 10(6) of the Regulation), but it is appropriate here to emphasise the attention that must be paid to this aspect of the Regulation. In the case in point, the Commission's use of the personal number is reasonable as it is used for the purposes of identifying the person and keeping track of the file. The EDPS considers that this number may be used in the context of the staff report.

9. Rights of access and rectification

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. In the case in point, data subjects have access to their appraisal files so that they can complete all the sections required for the procedure to take its course.

Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification. In the same way that the data subject has a right of access, he or she may also directly change personal data or have them changed, if necessary.

These provisions, taken overall, fulfil all the conditions of Articles 13 and 14 of Regulation (EC) No 45/2001.

10. Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and others from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be given to the data subject applies in this case. Inasmuch as the official or staff member personally fills in the data required of him or her, the data subject provides the data himself or herself.

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 also applies in this case, since the information is collected from the different participants in the process (reporting officers, countersigning officer, committees etc.).

In this case, the data subject is informed by means of three instruments:

1. the Specific Privacy Statement accessible from the home page of the "Appraisal - CDR"

- site on SYSPER 2,
2. an Administrative Notice published by DG ADMIN before each appraisal, attestation or certification exercise,
 3. the Administrative Notice (No 22-2004) published in 2004 giving details of how personal files would be managed following the introduction of the computerised staff appraisal system.

The data subject must be notified of the information specified in Article 11(a) (identity of the controller), (b) (purposes of the processing operation) (c) (recipients or categories of recipients of the data), and (e) (existence of the right of access to, and the right to rectify, the data concerning him or her). The same goes for point (f), which stipulates the following: *legal basis of the processing operation, time-limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*. It guarantees that processing is carried out completely fairly.

However, point (d) (whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply) is not mentioned. The European Data Protection Supervisor recommends that this point be included in the various documents providing information on the appraisal, attestation and certification procedures.

The data subject must be notified of the information specified in Article 12(a) (identity of the controller), (b) (purposes of the processing operation), (c) (categories of data concerned) (d) (recipients or categories of recipients), (e) (existence of the right of access to, and the right to rectify, the data concerning him or her) and (f) (*legal basis of the processing operation, time-limits for storing the data, right to have recourse at any time to the European Data Protection Supervisor*).

The conditions of Article 12 of Regulation (EC) No 45/2001 are fulfilled.

11. Security

Under Article 22 of Regulation (EC) No 45/2001 on security of processing, "*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*".

SYSPER 2 can only be accessed by entering a user name followed by a specific password. Access is restricted, and depends on the job held by the data subject. The SYSPER 2 system guarantees data integrity since validated data cannot be changed subsequently, even by the data subject, once they have been electronically signed by the author (for exceptions, see point 9 on "rights of access and rectification").

Access to personal data may be delegated. Access to personal data is protected by management of access rights which are strictly limited according to the "need to know" principle, taking into consideration the responsibilities of the applicant for an access right. But every holder of an access right has the possibility to delegate his or her rights to a person of confidence.

That delegation is transparent and reversible. The responsibility lies with the person who delegates the access right. As the delegation is related to a function of a job and not to a person, the delegation expires when the person quits the job. Audit trail techniques enable every access and manipulation of data in SYSPER 2 to be identified. Only data to which a person has an access right can be visualised, printed and saved.

Human resources managers periodically check the validity of delegations. They ensure that data processing operations carried out by themselves and by any other person to whom they have entrusted data processing tasks comply with the requirement of confidentiality.

Data stored in the Commission's data centre in Luxembourg are therefore protected by the numerous protective measures instituted by the Directorate-General for Informatics to protect the integrity and confidentiality of the institution's electronic systems.

Other organisational and technical measures are taken to ensure maximum security of data processing.

In the light of all these measures, the European Data Protection Supervisor considers that they can be considered as adequate within the meaning of Article 22 of Regulation (EC) No 45/2001.

Conclusion

The proposed processing operation does not seem to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. This means in particular that the European Commission should:

- fix a specific time-limit for the conservation of data,
- establish, in the context of long-term conservation, adequate measures for the transmission and conservation of personal data,
- state explicitly that personal data will be processed only in the strict context of the appraisal procedure and the related report,
- insert a reference to the obligatory or optional nature of replies to questions, and the possible consequences of failure to reply, in the various documents giving information regarding the appraisal, attestation and certification procedures.

Done at Brussels, 15 December 2005

Peter HUSTINX
European Data Protection Supervisor

Follow-up Note

20 October 2006

All acting measures have been taken on 2 October 2006.

The European Data Protection Supervisor