

Opinion on the notification for prior checking from the Data Protection Officer of the Committee of the Regions regarding the "reporting procedure for officials and other servants"

Brussels, 4 December 2007 (Case 2007-356)

1. Procedure

By e-mail received on 4 June 2007, a notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 was sent by the Data Protection Officer (DPO) of the Committee of the Regions (CoR) concerning the "reporting procedure for officials and other servants".

Questions were put by e-mail on 26 June 2007 and replies were provided on 5 September 2007. On 11 October 2007, the European Data Protection Supervisor's draft opinion was sent to the DPO for her comments. The DPO replied on 26 November 2007. Additional questions prompted by the Data Protection Officer's comments were sent on 28 November 2007 and replies were provided on 3 December 2007.

2. The facts

The reporting procedure meets the obligation to assess staff as laid down in Article 43 of the Staff Regulations of EC officials and Article 15(2) of the Conditions of Employment of other servants of the EC.

Under the terms of Article 43 of the Staff Regulations, the ability, efficiency and conduct in the service [of officials and other servants] are the subject of a periodical report made at least once every two years. The main data processed in the reporting procedure are the relevant qualitative and quantitative assessments (number of performance points awarded).

The CoR introduced a staff reporting procedure via Decision No 287/04¹ (hereinafter "*the Decision*"). Article 1 of the Decision provides that, in order to implement Article 43 of the Staff Regulations, each official must be the subject of a performance report once a year.

The purpose of the report is to enable the assessor to review, inter alia, the reportee's knowledge and ability, output, efficiency, work and conduct in the service. If necessary, it also provides an opportunity to make recommendations to improve the reportee's ability, efficiency and conduct in the service. In addition, reports are one of the instruments enabling the Appointing Authority to establish and compare the merits and abilities of officials and other servants to take on more important tasks and greater responsibilities, particularly in the context of the promotion, certification and attestation procedures.

¹ Decision No 287/04 adopting general implementing provisions on staff reports.

Merit is a dynamic concept which takes account of performance and effort over time and the merit points obtained over successive reporting periods are added to make up the "performance points total", a key element in the exercise of comparing merits in the promotion procedure. The reporting procedure thus gives the reportee and the assessor the opportunity to check the match between the job description in the vade-mecum and the tasks actually carried out by the reportee so that the vade-mecum can be updated where necessary. The reporting procedure also gives the reportee an opportunity to state a desire for professional mobility.

The reference periods for the last two reporting exercises at the CoR were of variable length (between four months and two years). As from 2008, reporting exercise 200n will in principle refer to work carried out over the previous year (200n-1).

Conduct of the assessment

A list of the names and hierarchical levels of the assessors and appeal assessors and a list of the officials and other servants to be reported on during the current reporting exercise are drawn up by the Secretary-General and are published as annexes to the "Instructions for assessors" (Article 3 of the Decision).

The **reporting process** comprises several stages:

- the assessor prepares a draft report which is then forwarded to the reportee (the reportee may be invited to help draft the factual material to be included in the draft);
- the assessor conducts an assessment interview with the reportee;
- the assessor draws up the final report;
- the report is delivered to the reportee who, in the event of disagreement, may refer it to the appeal assessor (in which case the Joint Reports Committee is invited to issue an advisory opinion).

The various **categories of data subjects** and persons involved in data processing in the context of the reporting procedure are as follows:

1. the reportees (all officials, temporary staff employed throughout the reference period and contract staff recruited on the basis of Article 3a of the CEOS who were employed throughout the reference period);
2. the assessors (depending on the reportee's grade, the report is drafted in principle by the Head of Unit or the Director);
3. appeal assessors (depending on the assessor, either the Director or the Secretary-General);
4. the reportee's direct hierarchical superiors (consulted, where appropriate, by the assessor in the context of the reporting procedure);
5. the members of the Reports Committee (called upon to issue an advisory opinion on reports referred to the appeal assessor);
6. the managers of the Careers Department and the Personal Files Department in the Personnel Unit (responsible for administrative management of the reporting procedure).

The **personal data processed** in the context of the reporting procedure are as follows:

- the reportee's surname and first name;
- the reportee's status, category and grade
- department(s) to which the reportee was assigned during the reference period;
- duties carried out by the reportee during the reference period;

- linguistic and technical skills demonstrated or acquired by the reportee during the reference period;
- assessment (by the assessor and, where appropriate, by the appeal assessor) of the reportee's ability, output and conduct in the service;
- general assessment (by the assessor and, where appropriate, by the appeal assessor) of the reportee's merits;
- merit points obtained by the reportee;
- any targets set for the subsequent reporting period;
- any comments by the reportee.

Information supplied to data subjects: Prior to each reporting exercise, staff are informed of the purpose of and arrangements for the reporting procedure. As the procedure progresses, specific messages are sent to those concerned to remind them of the steps to be taken, their rights (right to an assessment interview, right to accept or contest the report by referral to the appeal assessor, etc.) and the deadlines to be met by the various parties involved.

Reportees are also informed of their current performance points total prior to promotion exercises in the course of which they are eligible for promotion and are invited to inform the Personnel Unit of any errors so that they can be corrected. As from 2008, reportees will be able to consult their points total at any time via the internal human resources management application, CENTURIO.

Rights of data subjects: The following specific privacy statement is available on the Intranet pages relating to reporting:

"Any personal data processed in the context of the reporting procedure will be processed in accordance with the requirements of Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data.

The purpose of this data processing is carry out periodic assessments of the ability, output and conduct in the service of officials and other servants at the Committee of the Regions.

The personal data processed in the context of the reporting procedure are divulged (in whole or in part) only to the following:

- *the officials and other servants who are the subject of a performance report and their assessors and, where appropriate, their direct hierarchical superiors and/or their appeal assessors;*
- *the members of the Joint Reports Committee called upon to issue an advisory opinion on reports referred to the appeal assessor;*
- *the managers of the Careers Department and the Personal Files Department in the Personnel Unit who are responsible for administrative management of the reporting procedure.*

Staff members have the right to obtain access to their personal data and the right to obtain rectification of inaccurate or incomplete personal data.

Should you require any information about the processing of your personal data in this context, please put your questions to the Careers Department. Staff may also e-mail the Committee of the Regions Data Protection Officer ([data.protection\(at\)cor.europa.eu](mailto:data.protection@cor.europa.eu)) or the European Data Protection Supervisor (http://www.edps.europa.eu/01_fr.presentation.htm)."

Staff notes on reporting will contain a direct link to those pages. This specific privacy statement informs data subjects of the purpose of data collection, their right of access and

their right to correct their personal data, the categories of persons with access to the data and the possibility of contacting data protection officers in the CoR or at European level.

Data subjects are always entitled to consult their own performance reports and, in the event of dispute, they may take up the various internal channels for appeal as provided for in the reporting procedure (referral to the appeal assessor) or in Article 90 of the Staff Regulations. Both when the reporting exercise is launched and in the course of it, staff members are informed of the reporting procedures and the deadlines to be met.

Recipients of the data: Reportees have access only to information relating to them. Assessors (appeal assessors) and, where appropriate, reportees' direct hierarchical superiors have access only to data relating to their own reportees. The members of the Reports Committee have access only to data relating to staff who have referred their reports to the appeal assessor. The managers of the Careers Department and the Personal Files Department responsible for administrative management of the reporting procedure have access to performance reports and data relating to all reportees.

It should be noted that where an official or other servant is transferred to another institution [or agency] performance reports are transferred to the relevant departments in the other Community institution or agency. They may also be sent to the Court of First Instance, if it so requests, in the context of proceedings brought before it.

Information collected via the performance reports may not be divulged to third parties (inter alia, the CoR legal service) except insofar as may be necessary to meet the objectives set out above. In duly substantiated, exceptional cases performance reports may also be used in other internal CoR procedures, such as disciplinary proceedings under Annex IX to the Staff Regulations.

Other information arising from the notification

Automated/manual processing: Up to now data processing in the context of the reporting procedure has been manual. Only the headings in the performance report showing the surname, first name, status, category and grade of the reportee and the departments to which he is assigned are currently generated automatically using the internal human resources management application, CENTURIO (currently being developed).

As from the 2007 reporting exercise (organised in 2008), some of the data processing (management of performance points, calculation of point totals and consultation of that information by the reportee) will be carried out using the internal human resources management application, CENTURIO. However, the main part of the reporting procedure (establishment of the performance report, etc.) will continue to be done manually.

Data storage medium: At the end of the reporting procedure, the original of the performance report is stored in the reportee's Personal File. At his request, the reportee may obtain a true copy of the original.

Data storage: As they are an integral part of the data subject's Personal File, the originals of officials' and other servants' performance reports are stored by the Personnel Unit throughout the data subject's career at the CoR. Once the data subject has left the service, the Personal File is stored in the Personnel Unit's archives until such time as there are no further beneficiaries (a deceased official's heirs, for example).

Moreover, the period of storage of data in the CENTURIO database will vary depending on the reportee's seniority in the grade. The performance points balance is reset at zero when the person is promoted. Until such time as the person is promoted, the points obtained in successive reporting exercises in the current grade are stored in the CENTURIO database. Once the person is promoted, that information is deleted and gradually replaced by the new points obtained in the higher grade until the next promotion and so forth.

Blocking and erasure: Only comments and/or complaints entered by the reportee within the period of 10 working days stipulated in the report appeal procedure can be taken into consideration. Once the reporting procedure has closed, the information contained in the performance report can no longer be altered, even at the request of the data subject and/or of the assessor.

As from the 2008 promotion exercise, reportees will be able to consult their performance points at any time via the internal human resources management application, CENTURIO, and, if necessary, inform the Personnel Unit of any errors. Any corrections to the data entered will be made within 10 working days of the request for rectification.

As it is an integral part of the data subject's Personal File, the information in the performance report may not be deleted.

Security measures: Prior to the reporting exercise, the Personnel Unit forwards the report forms directly to the assessor concerned (by e-mail) and informs him that they are confidential. At their request, assessors may also obtain a copy of their reportees' most recent performance reports. Once completed and signed by the assessor and countersigned by the reportees, the originals of the report forms are returned to the Personnel Unit either by hand or in a sealed envelope marked "confidential".

During the reporting procedure, performance reports are stored in locked safes in the offices of Careers Department managers. Once the reporting procedure has closed, the reports are stored in the Personal Files (in Rotomat safes).

All processing of data from performance reports, such as the calculation of performance point totals, is carried out on Careers Department managers' computers protected by personal passwords. Careers and Personal Files Department managers' offices are systematically locked when the managers are absent.

When reports are referred to appeal assessors and to the Reports Committee and when appeal files are forwarded to the Appointing Authority, they are sent under confidential cover. Under the appeal procedure, copies of disputed reports are made available to the members of the Reports Committee for the duration of the Committee meeting. These copies are then recovered and destroyed after the meeting of the Reports Committee.

The Reports Committee's opinion is forwarded to the Administration under confidential cover and the reportees and assessors concerned are informed of the Reports Committee's opinion on them under confidential cover.

As indicated in relation to blocking and erasure, as from 2008 all officials and other servants will be able to consult their performance points total directly via CENTURIO. The application will not allow them to consult other staff members' points.

Under the promotions procedure, copies of the three most recent reports of all staff eligible for promotion in each grade are also made available to the members of the Joint Promotion Committee for the duration of the Committee meeting.

Finally, performance reports may also be made available to the members of the Certification Committee and of the Attestation Committee when they are dealing with appeals under the certification and attestation procedures. These copies are then recovered and destroyed after the meeting of the Certification Committee/Attestation Committee.

3. Legal aspects

3.1. Prior checking

The notification received on 4 June 2007 constitutes processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a) of the Regulation). Processing of personal data includes collection, storage, consultation and erasure. The data processing in question is carried out by an institution in the exercise of activities which fall within the scope of Community law (Article 3(1)). The notification relates to the reporting procedure. It does not relate to the promotion procedure (2007-354), the attestation procedure (2007-352) or the certification procedure (2007-353) which are the subject of separate notifications to the EDPS.

The processing of files under scrutiny remains manual for the time being, but the processed data form part of a filing system. Nevertheless, such processing may be carried out by automatic means in the near future. Article 3(2) is thus applicable in this case. The processing therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes "*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*" subject to prior checking by the European Data Protection Supervisor.

Article 27(2) of the Regulation sets out a list of processing operations likely to present such risks, such as "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" (Article 27(2)(b)). Clearly, the reporting procedure involves the processing of personal data intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct, and is therefore subject to prior checking by the EDPS.

In principle, since the checking carried out by the European Data Protection Supervisor is meant to prevent situations likely to present certain risks, the EDPS's opinion should be delivered before the processing begins. In this instance, the reporting procedure follows the adoption of a decision in November 2004 and the first procedure conducted covers the period 01.09.04-31.08.05. The EDPS should therefore have been notified at that time. However, the processing has in fact already taken place. The checking therefore necessarily becomes ex-post. 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 Committee of the Regions DPO's notification was received by post on 4 June 2007. Questions were put to the Committee of the Regions DPO by e-mail on 26 June 2007. Answers were given on 5 September 2007. On 11 October 2007, the EDPS's draft opinion was sent to the DPO for her comments. The DPO replied on 26 November 2007. Additional

questions relating to the Data Protection Officer's comments were sent on 28 November 2007 and replies were made on 3 December 2007.

The EDPS will therefore deliver his opinion by 7 December 2007 (2 months + the month of August + 44 days' suspension + 46 days for comments).

3.2. Lawfulness of the processing operation

The lawfulness of the processing operation must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which provides that processing must 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*".

All the personal data in the performance reports are either generated directly via the internal human resources management application, CENTURIO (for instance: the reportee's status, grade, category and the department to which he is assigned) or provided by the reportee (for example, reportee's comments) or by the assessor or appeal assessor (assessments of the reportee's ability, output and conduct in the service, for example).

That information is processed solely in the context of the reporting procedure and the other career progression procedures (promotion, certification and attestation procedures) in accordance with each procedure's purposes and objectives.

Furthermore, it is stated in the preamble to the Regulation (recital 27) that processing "*includes the processing of personal data necessary for the management and functioning of those institutions and bodies*". Since the reporting procedures involving the collection and processing of personal data relating to officials are necessary for the legitimate exercise of the Appointing Authority's activity, processing is lawful.

The main legal basis for data processing in the context of the reporting procedure comprises the following:

- Article 43 of the Staff Regulations
- Article 15(2) and Article 87 of the Conditions of employment of other servants of the European Communities, as implemented by the general implementing provisions on staff reports;
- Decision No 287/04 of 8 November 2004 adopting general implementing provisions on staff reports.

Other detailed implementing rules are set prior to each reporting exercise in the "Instructions for assessors" signed by the Secretary-General and the "Good advice for assessors" signed by the Director of the Administration.

The legal basis, particularly Article 43 of the Staff Regulations and the Decision of the Committee of the Regions of 8 November 2004, thus supports the lawfulness of the processing.

3.3. Data quality

The data must be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (see point 3.2 above). Fair processing means having the information forwarded to the data subjects (see point 3.8 below).

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) of Regulation (EC) No 45/2001). The processed data described at the beginning of this opinion must be regarded as fulfilling these processing conditions. The data required are administrative in nature and are necessary to assess the work of officials/temporary staff/contract staff. The EDPS considers that Article 4(1)(c) of Regulation (EC) No 45/2001 complied with in this connection.

Article 4(1)(d) of the Regulation stipulates that data must be "*accurate and, where necessary, kept up to date*". The Regulation also 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*".

The assessment carried out by the assessors is subjective by nature and it is therefore difficult to determine its accuracy. Nevertheless, the fact that staff have the opportunity to consult their personal files and are invited to exercise their right of access, rectification and appeal against the assessment does guarantee data accuracy and allow data to be updated. These rights are the second means of ensuring data quality. See point 3.7 below on these two rights of access and rectification.

3.4. Data storage

Article 4(1)(e) of the Regulation states 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 were collected or for which they are further processed*".

Since the report forms are stored in staff members' personal files and are an integral part of the data subject's file, the rules on the storage of personal files are applicable.

As they are an integral part of the data subject's personal file, the originals of officials' and other servants' performance reports are stored by the Personnel Unit throughout the data subject's career at the CoR. Once the data subject has left the service, the Personal File is stored in the Personnel Unit's archives until such time as there are no further beneficiaries (a deceased official's heirs, for example). That being the case, Article 26 of the Staff Regulations applies, more specifically: "*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*". This is therefore long-term storage from the date on which the member of staff or his legal successors are entitled to claim pension rights or from the date of the last pension payment. The EDPS would stress the need to set a specific time limit for storage of such data in order to ensure uniform application of the storage rules throughout Community institutions and bodies. The EDPS therefore wishes to have the period of storage specified and regards ten years, to run from the date on which the staff member leaves the service or from the last pension payment, as a reasonable period.

Since the data are to be stored in the data subject's personal file over a long period, the appropriate guarantees must be provided. The data stored are personal. The fact that they are archived for long-term storage does not divest them of their personal nature. For that reason, data stored over a long period must be covered by adequate storage measures, like any other personal data.

The period of storage of data in the CENTURIO database will vary depending on how long reportees serve at a particular grade. The performance points total is reset at zero when the

person is promoted. Until such time as the person is promoted, the points obtained in successive reporting exercises in the current grade are stored in the CENTURIO database. Once the person is promoted, that information is deleted and gradually replaced by the new points obtained in the higher grade until the next promotion and so forth. The EDPS considers that this system meets the requirements of Article 4(1)(e) of the Regulation.

There are no plans to store data for historical, statistical or scientific use pursuant to Article 4(1)(b) of the Regulation.

3.5. Change of purpose / Compatible use

Article 4(1)(b) of the Regulation provides that personal data must be "*collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes*".

As stated above, the purpose of the processing is staff reporting. Data are retrieved from or entered in the staff databases. The processing under consideration does not involve any overall change in the stated purposes for which data are collected and processed, the reporting procedure being only one aspect. Accordingly, Article 6(1) of the Regulation is not applicable to the case in point and the requirements of Article 4(1)(b) are complied with.

3.6. Transfer of data

Pursuant to Regulation No 45/2001, data transfers between or within Community institutions or bodies must meet the conditions set out in Article 7(1). Personal data may be transferred only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient. The recipient may process personal data only for the purposes for which they were transmitted.

As stated earlier, data are transferred to the reportee's assessors and, where appropriate, to his/her hierarchical superiors as well as to the managers of the Careers Department and the Personal Files Department responsible for administrative management of the reporting procedure and to the Reports Committee if there is an appeal. In duly substantiated exceptional cases, performance reports may also be used in other internal CoR procedures, such as disciplinary proceedings under Annex IX to the Staff Regulations. Such transfers are legitimate since they are necessary for the management of human resources or for disciplinary or legal proceedings.

In addition, the European Ombudsman, the EDPS and the Committee's internal auditor and DPO may also receive those data. Finally, the European Union Civil Service Tribunal and the Court of First Instance may receive these files in the context of legal proceedings.² In this instance the transfers are justifiable because they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

It should be noted that where an official or other servant is transferred to another institution [or agency] performance reports are transferred to the relevant departments in the other Community institution or agency. Where staff members are transferred between Community institutions or agencies, it is legitimate to transfer the performance reports stored in their

² Jurisdiction lies with the European Union Civil Service Tribunal, set up by Council Decision of 2 November 2004 (2004/752/EC, Euratom), instead of with the Court of First Instance. **The Court of First Instance is the appeal body.**

personal files. The transfer of such reports is necessary for the legitimate performance of tasks covered by the competence of the recipient.

Lastly, Article 7(3) of the Regulation provides that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". For that reason, the EDPS recommends that those receiving and processing data in the context of the reporting procedure be informed that they may not use them for other purposes.

The notification also indicates that information collected via the performance reports is not to be divulged to third parties except where necessary to meet the objectives set out above. The third parties involved include, for example, the CoR Legal Service where it is required to deal with a formal complaint under Article 90(2) of the Staff Regulations relating to assessments made in the official's performance report. Article 7 is therefore complied with.

3.7. Right of access and rectification

Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source. In connection with the performance report, Article 43 of the Staff Regulations of EC officials also provides that "*the report shall be communicated to the official. He shall be entitled to make any comments thereon which he considers relevant.*"

Article 14 of the Regulation provides that "*the data subject shall have the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data*".

The EDPS considers that access to a performance report in preparation (Article 8(2) of Decision No 287/04), the right to make comments on it and the right to appeal to the appeal assessor (Article 9 of the Decision) as described above constitute guarantees of compliance with Articles 13 and 14 of the Regulation. The Staff Regulations also lay down a right of access for the data subject to documents in his personal file.

The right of rectification is partly covered by Article 26 of the Staff Regulations which stipulates that *the personal file of an official shall contain any comments by the official on such documents*. In the reporting procedure, the reportee should be authorised not only to add comments but also to be certain that the report is complete. To ensure full compliance with Article 14 of Regulation No 45/2001, the Committee should ensure that the data subject has the right (for instance in the event of an appeal) to have incomplete reports in his personal file rectified by the controller.

It is difficult to verify the accuracy of the data since they are the result of a subjective evaluation of the data subject. Nevertheless, making sure that the report is complete is an additional way of ensuring compliance with Article 14 of the Regulation. The EDPS notes that the decision on reporting stipulates that the report and any appeal report are to be filed in the personal file.

In order to prevent any unauthorised access, accidental or unlawful destruction or accidental loss, or alteration of performance reports (or of other documents in personal files), officials may consult their personal files only under the supervision of a manager from the Personnel Unit's archives department.

3.8. Information to be given to the data subject

Articles 11 and 12 of Regulation (EC) No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of compulsory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subject and others from other persons.

The main sources of information for CoR staff are Decision No 287/04 of 8 November 2004 adopting general implementing provisions on staff reports and the specific privacy statement available on the Intranet.

Members of Staff are informed of the purpose of and arrangements for the reporting procedure prior to each reporting exercise. As the procedure progresses, specific messages³ are sent to those concerned to remind them of the steps to be taken, their rights (right to an assessment interview, right to accept or contest the report by referral to the appeal assessor, etc.) and the deadlines to be met by the various parties involved. The report form refers to Article 43 of the Staff Regulations, which sets out the purposes of the processing operation for which the data are intended (Article 11(b) of Regulation No 45/2001) and the categories of recipients of the data (Article 11(c)).

The privacy statement informs data subjects of the purpose of data collection, their right of access and their right to correct their personal data, the categories of persons with access to the data and the possibility of contacting data protection officers in the CoR or at European level.

However, the EDPS considers that the statement should set out all the information required to meet the requirements in Articles 11 and 12, including the identity of the controller, the purposes of the processing, the legal basis and the time-limits for storing the data. The EDPS recommends that the statement be expanded to that effect.

3.9. Security

In accordance with Article 22 of Regulation (EC) No 45/2001, the controller is required to 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. These security measures must in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and prevent all other forms of unlawful processing.

Where information on the forms is exchanged or where forms are transferred (electronically, for instance), security measures must be adopted to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and prevent all other forms of unlawful processing, whether during or after transmission.

Having examined the security measures adopted in detail, the EDPS considers that, apart from the recommendation made above, the measures are appropriate in the light of Article 22 of Regulation (EC) No 45/2001 since throughout the reporting procedure the performance

³ These specific messages comprise the Staff Notes and the messages to assessors regarding the reporting exercises.

reports are stored in locked safes in the offices of the Careers Department managers, and once the reporting procedure has been completed the reports are stored in personal files.

Conclusion

The proposed processing operation does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. That means, in particular, that the Committee of the Regions should:

- in the interests of uniform application of the storage rules throughout Community institutions and bodies, set the storage period for data in the personal file at 10 years from the date on which the member of staff or his legal successors are entitled to claim pension rights or from the date of the last pension payment.
- inform all those receiving and processing data in the context of the reporting procedure that they may not use them for other purposes;
- see to it that the reportee is authorised not only to add comments but also to make certain that the report is complete, as emphasised in point 3.7;
- expand the specific privacy statement to include all the information referred to in Articles 11 and 12 of the Regulation;
- where information on the forms is exchanged or where forms are transferred (electronically, for instance) ensure that security measures are implemented in full to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and prevent all other forms of unlawful processing, whether during or after transmission.

Done at Brussels, 4 December 2007

(signed)

Peter HUSTINX
European Data Protection Supervisor