

## **Opinion on a notification for prior checking received from the Data Protection Officer of the Council concerning "CASABLANCA (management of training courses)"**

Brussels, 25 January 2008 (Case 2007-584)

### **1. Procedure**

By letter received on 1 October 2007, the European Data Protection Supervisor (EDPS) received notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 from the Data Protection Officer (DPO) of the Council of the European Union (hereinafter "the Council") regarding "CASABLANCA (management of training courses)", on the grounds that CASABLANCA contains data concerning the evaluation of personal aspects relating to the data subject, including his or her ability, efficiency and conduct (Article 27(2)(b)).

A number of questions were put to the Council DPO in an e-mail dated 15 November 2007 and further questions asked by the same means on 23 November 2007. A single set of answers was provided on 11 December 2007. In an e-mail dated 12 December 2007, the EDPS, in accordance with Article 27(4) of the Regulation, extended the deadline for his opinion by one month on account of the complexity of the matter. In an e-mail dated 12 December 2007 the EDPS was informed of plans that participants in both Council and outside courses should be able to evaluate their trainers on-line, with course participants entering appraisals of their trainers directly into the CASABLANCA application. The EDPS agreed to this procedure in an e-mail dated 14 December 2007 subject to an express reservation that this was without prejudice to his judgment of the on-line form and the related recommendations and to the fact that the controller might have to modify the form. The DPO was given six days in which to comment on the draft EDPS opinion.

### **2. The facts**

The primary purpose of the processing operation is to enable the Learning and Development Unit (LDU) to manage training courses; another purpose is to keep track and a record of courses organised by the Unit and of their participants.

Data processing is both manual and automated: CASABLANCA is a data-processing application designed to enable the LDU to do its job of managing training courses. That work includes the following:

- A. planning training courses (which courses, when and where given and by whom); this task involves:
  - (a) defining the types of course (entering the course domain and course title, the number and length of the lessons, the maximum number of points and the minimum pass mark, plus, for the CV on-line system, entering the domains, levels,



- (d) producing overviews of the courses followed by a given department's members (analysis by individual and by course). Such overviews are produced at the department's request and are e-mailed to it. As a rule, the department concerned or its management is already familiar with the data provided in the overview (see B(b) and C(a) and (b) above).

CASABLANCA enables two types of statistical files to be produced from the evaluation reports submitted by course participants and entered in the system by the LDU:

1. A statistical file on the company (teacher), which for the review period specifies for each trainer:

- (i) the name of organisation and name of the trainer;
- (ii) the number of course participants and of evaluations received;
- (iii) the average evaluation for the three headings "content", "structure" and "teacher/trainer";

Trainers are clearly identified in this file.

2. A statistical file for the course, which for the review period specifies for each course:

- (i) the domain and name of the course;
- (ii) the number of course participants and of evaluations received;
- (iii) the average evaluation for the three headings "content", "structure" and "teacher/trainer";

In this file trainers cannot be identified.

Fields for which no evaluation has been entered in CASABLANCA remain empty.

These statistical files permit calculation of participants' satisfaction over a given period; this is computed as the average of the averages entered under the various headings across all courses.

The statistical files produced from evaluation reports entered in CASABLANCA are stored in the LDU's work stations or computer network.

These processes are partially automated.

The system provides for the processing of the evaluation questionnaires filled in by the participants, which include the latter's assessment both of their trainers (their knowledge, skills and interaction with the individual participant and the group) and of the LDU (help received, management); the assessments are graded (excellent/good/weak/insufficient). The questionnaire also allows scope for free text comments. It should be noted that these evaluation reports are sent by the LDU anonymously (without mention of the participant's name or other identifying data) (see C above).

At several points in the current paper form, there is a free-text "Comments" field for the participant to:

- substantiate any "weak" and "insufficient" ratings;
- suggest ways of improving the quality or organisation of the courses;
- make other comments.

Searches cannot be made in these fields.

The procedure whereby course participants enter evaluation reports directly on-line and submit them anonymously was introduced at the beginning of January 2008 (see above under Procedure); it is accompanied by information for the data subject.

The following factors ensure that on-line evaluation reports remain confidential and anonymous at the various stages of the procedure:

- On completing a course, participants receive an e-mail containing a link to an evaluation form.
- On each occasion the address of the form is unique.
- The algorithm that creates the address is highly complex, making it impossible for anyone to reconstruct the address sent to a colleague and to fill in the form in his or her place.
- The evaluation form ceases to be accessible once it has been sent back: the data entered by a colleague cannot therefore be consulted.
- After the evaluation form has been sent back, a confirmation page is generated reproducing the data entered by the form's author (this can be printed or stored if the participant so wishes): once closed, this page cannot be re-opened not even via the history log of the web browser.
- The data entered in the form are directly and automatically added to the CASABLANCA database (no human intervention).

On-line evaluation has no impact on the principle of processing as currently carried out: the evaluation data collected continue to be added to the CASABLANCA database and may, as before, be consulted and extracted by a clearly restricted number of persons in the form of statistical reports.

With regard to the manner of sending the data, evaluation reports are now entered directly by course participants and automatically added to the database, where formerly they were posted to the LDU for entry by an administrator. The Council regards on-line evaluation as a technical advance in this respect without any impact on the lawfulness of the processing operation, on its purpose or on the type of data being processed.

With regard to the detail of the data collected, there are now more headings, but course participants could already comment on all these questions on the earlier, paper form. In the view of the controller, the new headings do not alter the nature of the processing operation or expose data subjects to any greater risk.

The data subjects concerned are:

- participants in one or more training courses managed by the LDU;

In addition they are:

- individuals giving the courses (trainers),
- LDU administrators,
- the team of DGA 5 - ICS - Macintosh Solutions Unit.

The data provided are as follows:

- for the participants: family name and forename; staff number; category and grade; status; unit of assignment and head of unit's name; date of assignment; indication whether the person is regarded as active or not in CV online; task; address; telephone number; e-mail address; comments; training courses being followed/planned; whether on a waiting list for a specific type of course; applications for enrolment on outside training courses.
  - for each training course the following data may be entered: the administrator; the dates and times of the lessons; the room in which the lessons take place and the course teacher; participants' attendance at lessons (presence/absence); exam marks; participants who have transferred, withdrawn, dropped out or been

excluded and participants' evaluation reports on the course may also be entered in the system.

- for outside training courses, the data contained in the application forms submitted by the department or by the official may be entered.
- for evaluation reports submitted using the on-line form: name and forename; grade; unit of assignment; course; date; room; trainer; course description; how the participant heard about this course; data subject's main objectives; usefulness of the course; evaluation of course content; evaluation of trainer; evaluation of how the course was run; overall evaluation; suggestions for improvements and other comments.
- for the trainers: title (Mr/Ms); family name and forename; comments - this field is for factual information (e.g. date and language of course; home organisation) and for other data provided by trainers in connection with their services at the GSC (e.g. mobile phone number, car registration number for access to GSC garage); training organisation; courses given.
- for the administrators: log-in name; password; e-mail address; particulars used when issuing invitations and information notes (family name and forename, telephone number and address).

The following information is given to the data subjects: most trainers provide their services under contracts concluded between the GSC and the organisation which employs them; such contracts contain standard data protection provisions, including a reference to Regulation (EC) No 45/2001. This processing operation has been introduced without any express provision of information. Until very recently there was no assessment by the LDU of courses given by Council staff. Now, where appropriate, the immediate superior of an in-house trainer is asked by the LDU to inform the trainer that the course will be assessed by its participants and that the LDU will send the evaluation to the trainer's superior.

The standard data protection clause included in the general conditions of contracts concluded with training service providers is as follows:

"16.1. Any personal data included in this Contract will be processed in accordance with the requirements of Regulation (EC) No 45/2001 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 data will be processed only for the purposes of the performance, management and follow-up of this Contract by the Secretariat, without prejudice to possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Community law.

16.2. The Contractor may, upon written request, obtain the communication of its personal data and rectify any inaccurate or incomplete personal data. The Contractor shall address any queries concerning the processing of its personal data to the Secretariat department acting as data controller or to the Council's Data Protection Officer.

As regards the processing of personal data of the Contractor and/or its personnel, the Contractor shall have the right of recourse at any time to the European Data Protection Supervisor. *The following paragraph is used if the Contractor processes the personal data on behalf of the Secretariat:*

16.3. To the extent that this Contract requires the processing of personal data, the Contractor must only act on instruction from the data controller of the Secretariat, notably as concerns the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights. The data is confidential within the meaning of Regulation (EC) No 45/2001. The Contractor shall limit access to the data to staff strictly necessary for the performance, management and follow-up of this Contract.

The Contractor undertakes to adopt technical and organisational security measures appropriate to the risks of the processing and the nature of the personal data concerned. *These measures are essentially those listed in Article 22 of Regulation (EC) No 45/2001.*

An infringement by the Contractor or its personnel of the provisions set out in this paragraph shall constitute a breach of contract entitling the Secretariat to terminate the Contract with immediate effect at the Contractor's expense and shall make the latter liable for damages, with interest, for any resulting loss."

The procedures guaranteeing the data subject's rights under Section 5 of the Council Decision of 13 September 2004<sup>1</sup> are as follows: right of access, right of rectification, right of blocking, right of erasure, right to object, right not to be the subject of automated individual decisions, and the possibility that the controller may restrict rights to the extent that legitimate reasons (Article 20 of the Regulation) clearly justify such a step.

The data are stored on hard disks and back-up copies on cassette (magnetic tape) and DVD.

The recipients of the data are:

- Certain departments of DGA 1A Human Resources such as the Careers and Skills Development Unit and Human Resources Reporting: they receive various non-named statistics (e.g. number of courses per year, by training type, by DG), including statistics on the evaluation reports (by training body (trainers) and by type of course), compiled by the LDU, which constitute a source of information for the development and monitoring of human resources policy.
- Participants in training courses: they receive invitations to attend, information on transfers, failure to attend, abandonment or elimination.
- Administrative Assistants (AA) or the like in the DGs dealing with the monitoring and planning of training courses for staff of their DG and participants' superiors: they receive the notes informing them of the planned participation, on transfers, failure to attend, abandonment or elimination as well as attendance at lessons.
- Training coordinators (COFOs): they are to be informed of various aspects of training courses, for example the number and nature of the courses attended by members of the coordinator's department, attendance rates, participants' satisfaction rates.
- Trainers: they receive the attendance lists with the participants' names. Outside training bodies, GSC in-house trainers (officials, other staff, etc.), as well as their superiors, and
- Language teachers contracted to the Council: they receive evaluation reports in anonymous form (with no indication of the participant's name or any other data

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<sup>1</sup> Decision (296/644/EC) adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 296, 21.9.2004, p.20).

enabling him to be identified).

The system is principally for LDU management but it has been acknowledged that some of the data entered in CASABLANCA is also useful for the CV on-line (CVO). To avoid double encoding and the inherent risk of errors, a decision has been taken to provide a link between the two systems. CASABLANCA therefore supplies the CVO with data on the training courses attended by the individuals included in the system. For each course the following information is supplied: name of the course; domain (as defined in CASABLANCA); length of course; qualification obtained and the year; level (as defined in the CVO); indication of whether or not the course involved academic training; sub-domains (as defined in the CVO); name, country and locality of the training establishment; dates of the first and last lesson; number of lessons in the course and number of attendances recorded for each participant and/or maximum number of marks and minimum number of marks to pass, as well as the the number of marks obtained by each participant. In addition, CASABLANCA updates itself on the basis of certain information found in the individual's CVO: name and first name; personal number; category and grade; status; e-mail address; office address; office telephone number; unit and date of assignment; indication of whether or not the person is considered to be active in the CVO. The data exchange between the two systems is based on the personal number as the individual's identifier.

The data storage period is as follows: for participants who are not included in CV-Online or who are registered there as being non-active and who have not attended a training course during the last five years, the files will be made anonymous, which entails deletion of the following data: name and first name, personnel number, address, telephone, e-mail address, comments. For trainers who have not given a training course during the last five years, the files will be made anonymous, which entails deletion of the following data: title (Mr/Mrs/Miss), name and first name, comments.

The above anonymisation has not yet come into effect. At present data are stored in CASABLANCA for an indefinite period.

Data on paper are stored in the archives of the unit for a variable period, then transferred to the GSC archives. The data are stored in the archives of the unit for a "variable" period, depending on the purpose for which they are required: contractual (e.g. quality of contract performance), financial (e.g. proof that services have been provided), administrative (e.g. provision of certificates on training courses followed by an individual) or management of human resources (e.g. training statistics). The data are not destroyed because it may be necessary to consult them several years after the end of the training which gave rise to the data processing in question (e.g. to provide certificates).

The system does not have any function for blocking data on a given individual. Every night a security copy of the whole database is made and this backup is kept for at least a month. It is therefore possible to ask the system administrator to keep a back-up copy for purposes of proof.

Security measures have been adopted.

### **3. Legal aspects**

### **3.1. Prior checking**

The notification received on 1 October 2007 constitutes processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)). The processing operation presented is carried out by an institution, in the exercise of activities which fall within the scope of Community law (Article 3(1)).

Processing of the procedure for the management of training courses through the CASABLANCA database is partly by automatic means, insofar as some stages of the various aspects of the management (planning, enrolment, monitoring and analysis of courses) are done on paper. The data are also kept on paper in the Human Resources Department. In addition, the data on the evaluation of trainers by data subjects will be fed into CASABLANCA directly, whereas they have been on paper until now. Article 3(2) therefore applies in this case.

Consequently, such processing comes under Regulation (EC) No 45/2001.

Under Article 27 of Regulation (EC) No 45/2001, processing operations that present specific risks to the rights and freedoms of data subjects are subject to prior checking by the EDPS. Article 27(2) contains a list of processing operations that are likely to present such risks. Article 27(2)(b) describes as processing operations 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*". In this case, personal data are being processed in order to evaluate certain aspects of the applicant's professional position (to enter and monitor the data subject's training) and the trainer's personal data are processed in order to evaluate the services provided.

Checking by the EDPS should take place prior to processing. In the present case processing began before the EDPS was consulted and the checking is therefore ex-post. This in no way reduces the desirability of introducing the recommendations submitted by the EDPS.

Official notification was received by letter on 1 October 2007. In accordance with Article 27(4) of the Regulation, the EDPS should therefore have delivered his opinion by 2 December 2007. In view of the 26-day suspension and the extension of one month and six days granted to enable the DPO to comment on the draft opinion, the EDPS will deliver his opinion by 4 February 2008 at the latest.

### **3.2. Legal basis and lawfulness of the processing operation**

The lawfulness of the operation needs to be considered in the light of Article 5(a) of Regulation (EC) No 45/2001, which provides that "*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 other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution*".

The procedure for managing the training of officials and other staff comes within the legitimate exercise of official authority vested in the institutions, notably maintaining appropriate staff skills in the interests of the service. The proposed processing operation is therefore lawful.



The legal basis for the processing can be found in Article 24a of the Staff Regulations: "The Communities shall facilitate such further training and instruction for officials as is compatible with the proper functioning of the service and is in accordance with its own interests. Such training and instruction shall be taken into account for purposes of promotion in their careers."

Since the legal basis is to be found in the Staff Regulations of Officials of the European Communities, it is compliance and supports the lawfulness of the processing operation.

### **3.3. Controller and processor**

Article 2(d) of the Regulation states that the controller is "the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data". The controller is required to ensure that the requirements of the Regulation are met (information for the data subject, guarantee of the data subject's rights, choice of processor, notification of the data protection officer, etc.). The processor is the "natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller" (Article 2(e)).

Pursuant to Regulation (EC) No 45/2001, Council DG 1A is the controller for the procedure for the management of vocational training.

Trainers (outside training bodies, in-house GSC trainers and language teachers under contract to the Council) are considered to be processors at two different levels:

- Firstly, they are required to provide training for data subjects.
- They manage the administrative aspects of the personal data processing on behalf of the GSC; this aspect of their work is linked to the CASABLANCA application. For example, trainers supply data on attendance, absence, exam results and evaluations.

The actual role of the various processors is to help the Council provide training for the data subjects. Article 2(e) therefore applies.

### **3.4. 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 assess training requirements and then evaluate the training given officials and other employees. The data contained in the on-line evaluation form may also be regarded as adequate, relevant and not excessive. 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 data subjects. See point 3.10 below on this point.

Under Article 4(1)(d) of the Regulation, "*data must be accurate and, where necessary, kept up to date*". Furthermore, "*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 system itself ensures that the data are accurate and up to date, since the interconnection of the CVO and CASABLANCA databases allows data to be exchanged between the two systems on the basis of the personnel

number, which helps to keep data up to date. The data subject also has the right to access and the right to rectify data, so that the file can be as comprehensive as possible. These rights provide a way of ensuring that data on the data subject are accurate and up to date. See point 3.9 below on the dual rights of access and rectification.

### **3.5. Data storage**

Article 4(1)(e) of Regulation (EC) No 45/2001 establishes 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*".

The data storage period is as follows:

- a. for participants not included in CV-Online or who are registered there as non-active and who have not taken part in a training course during the last five years, the files will be made anonymous, which entails the deletion of the following data : name and first name, personnel number, address, telephone, e-mail address, comments;
- b. for trainers who have not given a training course during the last five years, the files will be made anonymous, which entails the deletion of the following data: title (Mr/Mrs/Miss), name and forename, comments;
- c. data on paper are stored in the archives of the unit for a variable period depending on the requirements they have to satisfy (see above).

The abovementioned anonymisation has not yet come into effect. At present data are stored in CASABLANCA for an unlimited period. Since the evaluation data contained in the on-line evaluation, forms are fed into the CASABLANCA application directly, this unlimited storage period also applies.

The EDPS considers the storage period for the data mentioned in points a) and b) above to be reasonable.

Data stored in the CASABLANCA application may not be stored for an indefinite period as provided for in Article 4(1)(e) of the Regulation. The EDPS recommends that the Council lay down a time limit for the storage of the data to be fed into CASABLANCA. The anonymisation (destruction of data involving names) or the encryption (to prevent access to data involving names) of the files must also come into effect.

Data on paper stored in the unit archives may be stored for a variable period as provided for above. Nevertheless, an appropriate time limit in relation to each purpose must be determined. The period needed to draw up certificates must be determined, as well as that necessary for the purposes of financial verification, and so on in keeping with each objective pursued. The data must be capable of being destroyed after these precise time limits have been determined.

Furthermore, a set period for storing data must also be fixed for persons regarded as active within the CASABLANCA database. The five-year period could be applicable. The EDPS recommends that the Council reconsider and determine the period for storing data on active persons.

Lastly, in connection with the aspects of the work performed by CASABLANCA, section D (see above – facts) draws up a list of all the series of statistics produced from the database. Depending on the type, the data are or are not rendered anonymous. Statistics produced with the data rendered anonymous fulfil the conditions laid down in Article 4(1)(e). The data used for the statistics concerning trainers, in particular, are not real statistics but rather averages of

the evaluations. In that sense they are personal data and must be stored for a set period as provided for in Article 4(1)(e) of the Regulation. The EDPS recommends that the time limit determined for the storage of these particular data be that mentioned three paragraphs above.

### **3.6. Change of purpose/Compatible use**

Data are extracted from or fed into the personnel databases (CVO – CASABLANCA). The exchange of data between the two systems is based on the personnel number as an identifier of persons. The processing operation in question does not involve a general change of the purpose envisaged for personnel databases, since the procedure for managing training is only one part of them. This implies that Article 6(1) of Regulation (EC) No 45/2001 does not apply in the case in point and that Article 4(1)(b) of the Regulation is complied with.

### **3.7. Data transfer**

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

We are faced with a transfer within one and the same institution. In particular, the recipients of the processing are the heads of human resources in the DGs/departments of the Council, the training coordinators (COFO) and the Council's DPO. It follows that the transfer is in accordance with Article 7(1) since the data collected are needed to carry out the processing operation and since, moreover, the data are "*necessary for the legitimate performance of tasks covered by the competence of the recipient*".

We are also dealing with a transfer between institutions since OLAF, the Ombudsman, the EDPS and the internal auditor can also be recipients of these data. Lastly, the European Union Civil Service Tribunal can receive files in connection with proceedings and the CFI<sup>2</sup> in connection with appeals.

These transfers are legitimate in the case to hand since they are necessary for the legitimate performance of tasks covered by the competence of the recipient. As for the hierarchical superior, the latter must be in a position to know whether his subordinates are or have been present or absent from their work, with training forming an integral part of the work. He must therefore be informed of his subordinates' presence at and absence from training courses.

In the case to hand, Article 7(1) of Regulation (EC) No 45/2001 is complied with.

Article 7(3) of Regulation (EC) No 45/2001 stipulates that "*the recipient shall process the personal data only for the purpose for which they were transmitted*". Nevertheless, the EDPS would also like the human resources departments to be reminded of this condition as well as the hierarchical superior who has the possibility of using these data as part of an evaluation. The EDPS recommends that the HR departments and hierarchical superiors of the data subjects be reminded of Article 7(3).

Lastly, transfers of data to persons outside the institutions concern the relevant contractors (in the case of training followed outside, in particular). In the case of contracts concluded with providers of training services, the reference is clearly inserted in the standard clauses. This

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<sup>2</sup> The European Union Civil Service Tribunal, established by Decision of the Court of Justice of 2 November 2004 (2004/752/EC, Euratom), has jurisdiction instead of the Court of First Instance, which is the appeal body.

processing operation must be examined in the light of Article 8 ("*transfers of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC*"). In the case in point, these transfers are covered by Article 8(a) where "*the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority*" to the extent that the contractor is acting on behalf of the GSC.

### **3.8. Processing including the identifying number**

Under Article 10(6) of Regulation (EC) No 45/2001, the EDPS "*shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body*".

The official's or other agent's personal number is collected and processed in the course of training and it should consequently be noted that Article 10(6) is applicable. The use of an identifier is, in itself, only a means - legitimate in the case in point - of assisting the controller of personal data with his work; however, this use may have major consequences. This is moreover what induced the European legislator to define the use of identifying numbers in Article 10(6) of the Regulation, which provides for the intervention of the EDPS. The aim here is not to establish the conditions under which the Council may process the personal number, but to draw attention to this point of the Regulation. In this case it is reasonable for the Council to use the personal number since the use of this number is a means of facilitating the processing work, i.e. in connection with the procedure for managing and evaluating training.

### **3.9. Right of access and rectification**

Article 13 of Regulation (EC) No 45/2001 provides that there should be right of access – and procedures therefor – at the request of the data subject. In the case to hand, the data subject has access to his training file for the purpose of completing all the headings required for the smooth conduct of the procedure.

Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification. Just as the data subject has right of access, the latter may also modify directly or have modified personal data if necessary.

These rights are, in the case in point, guaranteed by section 5 of the Council Decision of 13 September 2004 "*adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*"<sup>3</sup>.

Section 5 of the Council Decision relates to the procedure for data subjects to exercise their rights and specifies the general conditions and the rights of access, rectification, blocking, erasure and objection extended to data subjects.

As these provisions apply to the processing operation in question, the EDPS consequently considers that the conditions of Article 13 and Article 14 of Regulation (EC) No 45/2001 are clearly fulfilled.

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<sup>3</sup> Published in Official Journal L 296, 21 September 2004.

### **3.10. Information to be provided to the data subject**

Articles 11 and 12 of Regulation (EC) No 45/2001 concern the information to be provided to the data subject in order to ensure that his personal data are treated transparently. These articles list a series of compulsory and optional items. The latter apply insofar as, having regard to the specific circumstances of the processing operation concerned, they are necessary to guarantee fair processing in respect of the data subject. In the present case, some of the data are obtained directly from the data subject and some from other persons.

In the case in point the provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) apply as the data subjects fill in their training requirements themselves so that they can receive the training.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) also apply in this case since data are provided by the Council's human resources departments concerning planning, registration of applications, monitoring and analysis of training courses. Article 12 also applies to trainers, who are evaluated by the people attending the training courses.

For the record, the information provided to the data subjects is the following: most trainers provide training services under contracts concluded between the GSC and the body they work for; such contracts contain standard data protection provisions and in particular a reference to Regulation (EC) No 45/2001. No explicit information has been provided in connection with the processing operation. Until very recently, the Learning and Development Unit did not evaluate the training provided by Council staff members. At present, the Learning and Development Unit asks the in-house trainer's immediate superior, where appropriate, to inform him that the training provided will be evaluated by the participants and that this evaluation will be forwarded by the Learning and Development Unit to the superior and the trainer concerned.

There is thus no information (within the meaning of Articles 11 and 12 of Regulation (EC) No 45/2001 – the memo "GSC training strategy 2007-2011" and Vade Mecum 2000 meet the requirements of Articles 11 and 12, except for the legal basis mentioned in Vade Mecum 2000) given to data subjects such as the recipients of training, or to trainers concerning the evaluations of them by people attending the training courses.

The EDPS recommends that a staff note be drawn up setting out all the provisions of Articles 11 and 12 and that a note be drawn up for all trainers (whether in-house or outside) informing them of the arrangements put in place for evaluating them, containing in particular all the provisions of Article 12. These notes should also mention, in relation to the rights of access and rectification, the Council Decision of 13 September 2004 setting out the rights available to staff concerned.

As regards the draft staff note concerning the on-line evaluation of training at the Council and outside, forwarded to the EDPS on 14 December 2007, the EDPS recommends that that note set out all the provisions of Article 11 of Regulation (EC) No 45/2001, as provisions relating to Article 11(1)(a), 11(1)(c) and 11(1)(f) were missing.

### **3.11. Processing of personal data on behalf of controllers**

Where a processing operation is carried out on behalf of a controller, Article 23 of the Regulation states that the controller shall choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The

carrying out of a processing operation by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor shall act only on instructions from the controller and that the obligations with regard to confidentiality and security relating to the processing of personal data shall also be incumbent on the processor.

In this instance the Council has fulfilled its obligation since the terms of reference of contracts concluded with training service providers specify an obligation for the contractor to ensure the confidentiality of personal data processed by the contractor for the sole purpose of executing the contract, in accordance with the provisions of Regulation (EC) No 45/2001 (Article 22(2)).

Article 23(2)(b) of Regulation (EC) No 45/2001, on the processing of personal data on behalf of controllers, should also be mentioned. The EDPS recommends that it be explicitly stated in the contract between the GSC and the contractor that the latter must be in compliance with the provisions of his own national law implementing Articles 16 and 17(3) of Directive 95/46/EC on confidentiality and security measures.

A confidentiality note should also be drawn up and forwarded to in-house trainers informing them of the need to comply with the provisions of Regulation (EC) No 45/2001 regarding the protection of personal data. That note should be returned, dated and signed, by each in-house trainer.

### **3.12. Security**

In accordance with Article 22 of Regulation (EC) No 45/2001 on the 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"*.

The organisational and technical measures are to be taken to ensure maximum security for the processing operation.

In relation to these measures as a whole, the European Data Protection Supervisor considers that they can be regarded as satisfactory within the meaning of Article 22 of Regulation (EC) No 45/2001.

### **Conclusion**

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

- set a time limit for storing the data entered in CASABLANCA (data relating to the data subjects and data relating to trainer evaluations made by the data subjects)
- set a time limit for storing paper data kept in the archives according to each intended purpose. At the end of that period the data must be destroyed.
- set a time limit for storage for persons considered to be active in the CASABLANCA database
- set a time limit for storing the averages (rather than the statistics as such) for trainer evaluations which are also personal data such as that envisaged in the first bullet point above
- draw the provision in Article 7(3) of the Regulation (*the recipient shall process the*

*personal data only for the purposes for which they were transmitted*) to the attention of HR departments and to data subjects' superiors

- draw up a staff note setting out all the provisions of Articles 11 and 12 and a note to all trainers (whether in-house or outside) informing them of the arrangements put in place for evaluating them, including in particular all the provisions of Article 12. These notes should also mention, in relation to the rights of access and rectification, the Council Decision of 13 September 2004 setting out the rights available to staff concerned.
- incorporate in the draft staff note concerning on-line evaluation of training courses attended at the Council and outside, forwarded to the EDPS on 14 December 2007, all the provisions of Article 11 of Regulation (EC) No 45/2001, as provisions relating to Article 1(1)(a), 11(1)(c), 11(1)(d) and the whole of 11(1)(f) were missing
- draw up and forward to in-house trainers a confidentiality note informing them of the need to comply with the provisions of Regulation (EC) No 45/2001 on the protection of personal data. That note should be returned, dated and signed, by each in-house trainer.

Done at Brussels, 25 January 2008

(signed)

Peter HUSTINX  
European Data Protection Supervisor