

Opinion on the notification for prior checking received from the Data Protection Officer of the European Economic and Social Committee on the invalidity procedure

Brussels, 19 November 2008 (Case 2008-555)

1. Procedure

On 17 September 2008 the Data Protection Officer (DPO) of the European Economic and Social Committee (EESC) submitted a notification under Article 27(3) of Regulation (EC) No 45/2001 by post to the European Data Protection Supervisor (EDPS), concerning the invalidity procedure.

On 10 November 2008, the EDPS's draft opinion was sent to the DPO for comments. He replied on 17 November 2008.

2. The facts

Article 59(4) of the Staff Regulations of Officials of the European Communities provides that *"The Appointing Authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than 12 months in any period of three years"*.

Based on that Article, the EESC has established a procedure to obtain a decision from the Invalidity Committee as to whether the official concerned should be granted invalidity or should resume professional activities. In fact the procedure concerns not only officials but also temporary and contract staff.

1. Process to launch an invalidity procedure

The decision to launch an invalidity procedure is taken by the Appointing Authority on the basis of information forwarded by the leave and overtime section of the Staff Support Services Unit (SSP). The process to launch the procedure begins following examination of a report established using the personnel management tool "CENTURIO", which indicates the number of days of sick leave accumulated over a three year period, and following consultation of the institution's Medical Officer. The launch of the invalidity procedure may be initiated when the person has taken more than 365 days of sick leave over a three year period (in accordance with Article 59 of the Staff Regulations).

The information forwarded to the Appointing Authority is as follows:

- List from CENTURIO stating the name, grade, department, dates of periods of sick leave with and without a certificate, number of days in each period and in total over the last three years on the date on which the check is made.

- The medical grounds are never included. Anything which relates to medical information remains protected by medical confidentiality. Only the doctors involved may have access to that information.

2. Decision to launch an invalidity procedure

On the basis of the information forwarded, the Appointing Authority is responsible for the decision to refer the case to an Invalidity Committee (under Article 59(4) of the Staff Regulations).

3. Appointment of a doctor to represent the person within the Invalidity Committee

When the person concerned is sent the decision to refer the case to the Invalidity Committee, he is also asked to appoint a doctor to represent him. If a doctor has not been appointed within fifteen working days from the date of receipt of the letter making the request, a reminder is sent. If there is no response to the reminder, then a doctor will automatically be appointed by the President of the Court of Justice of the European Communities.

4. Invalidity Committee

The Invalidity Committee consists of three doctors, appointed as follows:

- the first by the institution (either the institution's Medical Officer, or a doctor appointed from outside);
- the second by the person concerned;
- the third by agreement between the first two doctors.

In the event of failure to agree on the appointment of a third doctor within two months of the appointment of the second doctor, the third shall be appointed by the President of the Court of Justice of the European Communities (Article 7 of Annex II to the Staff Regulations). When a date has been set for the meeting of the Invalidity Committee, the Medical Service sends requests to appear to the doctors and to the person concerned.

The proceedings of the Invalidity Committee are secret and are covered by medical confidentiality.

The Invalidity Committee has a threefold task:

- to determine whether or not the person is fit to work;
- to determine the causes of unfitness to work;
- to indicate whether follow-up examinations are required and how frequently they should be carried out.

5. Decision of the Invalidity Committee

At the end of its proceedings, the Invalidity Committee may decide either:

- that the person concerned fulfils the conditions for recognition of "invalidity" under the Staff Regulations, in which case
 - the Medical Service sends the leave and overtime section of the Staff Support Services Unit a copy of the conclusions of the Invalidity Committee. That document gives the surname, first name, personnel number and date of birth;
 - The leave and overtime section of the Staff Support Services Unit sends the invalidity decision, signed by the Appointing Authority, to the official address

(as communicated by the person concerned to the Personnel Files department)
by recorded delivery with acknowledgement of receipt; or

- that the person concerned does not fulfil the conditions for recognition of "invalidity" under the Staff Regulations, in which case
 - in agreement with the doctor representing the institution, the leave and overtime section will determine the date on which work must be resumed, and any necessary arrangements;
 - the decision that work is to be resumed and the arrangements for this, signed by the Appointing Authority, will be sent by recorded delivery with acknowledgement of receipt to the official address of the person concerned.

Adoption of the conclusions: a member of the Invalidity Committee may not block the adoption of conclusions by the Invalidity Committee, either by abstaining or refusing to sign. In the event of disagreement, the conclusion representing the opinion of the majority is valid under the Staff Regulations, with all legal consequences. The medical considerations which led to the conclusions of the Invalidity Committee are recorded in a medical report which is filed in the medical file of the person concerned; it is not forwarded to the administration.

6. Periodic examination - return to work

It is not, in principle, impossible that the state of health of a person who has been recognised as unfit to work might improve. The Staff Regulations therefore allows the official the right to return to work if he no longer fulfils the conditions for receipt of an invalidity allowance. For this reason, the institution's Medical Officer carries out periodic medical examinations. Under Article 15 in Chapter 3 of Annex VIII to the Staff Regulations, the institution may also have him medically examined periodically without the Invalidity Committee so requesting.

The Invalidity Committee is invited to indicate whether, in its opinion, such medical examinations are necessary, and if so how often they should take place. The examinations are carried out by the institution's Medical Officer. If he feels that it would be appropriate, the Medical Officer may also accept a report from a doctor where the person concerned lives.

Persons who have to be examined receive a letter in which they are asked to present themselves for examination to the Medical Officer of the institution. On the basis of that medical examination, the Medical Officer may decide to extend the invalidity, in which case he indicates when any further examination should take place. If the Medical Officer finds that the person concerned is now fit to work, the administration is informed and the person concerned is sent a letter to setting a date for his return to work.

Confidentiality of the processing of the invalidity file

The proceedings of the Invalidity Committee are secret. The joint medical report is signed by the three Invalidity Committee doctors at the end of their deliberations, and is filed in the medical file of the person concerned. Only those doctors who took part in the Invalidity Committee may keep a copy.

Information and access to the medical file

At all stages of the procedure, the person concerned may contact the leave and overtime section (as regards the administrative file about the launching of the procedure) and the Medical Officer of the institution, if they need information. They have access to their medical file in the context of conclusions 221/04 of the Heads of Administration defining access to medical documents, by sending a written request to the institution's Medical Officer.

Updating the file

Any justified and legitimate changes (additional information, correction of mistakes, etc) to the content of the file of the person concerned are made within 15 working days following the date on which the head of the Staff Support Services Unit receives the written request.

Period for which the data is kept

The administrative files are kept by the leave and overtime section of the SSP Unit for as long as a person is in active employment. The files are then kept in the archives with the medical file for 30 years (originals of letters, copies of the decision of the Invalidity Committee - the original is in the medical file in the institution's Medical Service). Processing relating to the invalidity procedure is under the responsibility of the Director for Human Resources of the EESC.

Appeals

The data subject has the right to contact the Data Protection Officer of the EESC (data.protection@eesc.europa.eu) and the European Data Protection Supervisor at any time.

Other information arising from the notification

Categories of data: surname, first name and grade of the official/staff member concerned, and the number of days of sick leave over a three-year period on the basis of information provided by the person concerned to his Unit (absence indicated in the Unit's presence list) and the Medical Service (medical certificate handed in to the institution's Medical Officer), as well as the conclusions of the Invalidity Committee (is/is not unfit to work).

Information for data subjects: privacy statement on the invalidity procedure with details of the procedure and the confidentiality of the processing operation. This text is attached to the registered letter sent to the person concerned, informing them of the decision to launch the procedure.

Automated/manual processing: a list drawn up by means of CENTURIO (computerised personnel management tool) of the days of sick leave recorded by the Medical Service (if with certificate) or by the Unit where the person works, in the case of sick leave without a certificate. These lists, the letter and any documents on the launching of the procedure, as well as the conclusion of the Invalidity Committee, are kept on paper and on the drive of the leave and overtime section of the SSP Unit. Medium on which data are stored: paper, filed in the working conditions section.

Recipients: members of the staff of the leave and overtime section, recruitment section (administrative file only), Medical Service, Medical Officer and members of the Invalidity Committee. If the person is declared unfit to work, the decision is sent to the pensions section and the Recruitment Unit and officially published.

Access to administrative data relating to the invalidity procedure is strictly limited to the Appointing Authority, the Head of the Staff Support Services Unit and members of the leave and overtime section. At no time do they have access to data which is strictly medical. The person concerned may at any time seek information about their file from the Staff Support Services Unit, leave and overtime section, from Ms Anna Redstedt and/or Ms Elizabeth Reid.

If it is decided that the person concerned is not fit to work, the decision is forwarded to the Recruitment Unit and the pensions department. As with any other decision concerning the career, the decision is also published.

Statistical purpose: for the statistics on absenteeism drawn up every year, the number of persons leaving on invalidity during the previous year is calculated manually, without those persons being identified. The data are stored for 5 years.

Security measures: [...]

3. Legal aspects

3.1. Prior checking

The notification received on 17 September 2008 relates to processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a) of Regulation (EC) No 45/2001, hereinafter referred to as "the Regulation"). 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 processing for the invalidity procedure is both manual (the launching of the procedure) and automatic (production of the lists of the number of days of sick leave), and the results of the procedure are entered by the working conditions section of the SSP Unit. Article 3(2) therefore applies.

Accordingly, the processing falls within the scope of Regulation (EC) No 45/2001.

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

Article 27(2)(a) of the Regulation states that the processing of data relating to health is subject to prior checking by the EDPS, which is the case here as the data fall within the scope of "data relating to health" and medical data.

In principle, checks by the EDPS should be performed before the processing operation is implemented. Otherwise the checking necessarily becomes *ex post*. This does not make it any the less desirable that the recommendations issued by the EDPS be implemented.

The DPO's notification was received on 17 September 2008. Under Article 27(4) of the Regulation, the EDPS had to deliver his opinion within two months. On 10 November 2008, the EDPS's draft opinion was sent to the DPO for his comments. He replied on 17 November 2008. Taking into account the 7-day suspension, the EDPS had to deliver his opinion by 25 November 2008 at the latest (18 November 2008 plus 7 days for comments).

3.2. Legal basis and lawfulness of the processing operation

The lawfulness of the processing operation should be scrutinised in the light of Article 5(a) of Regulation (EC) No 45/2001. Article 5(a) provides that personal data may be processed only if processing is "*necessary for the performance of a task carried out in the public interest on the*

basis of the Treaties establishing the European Communities (...) or in the legitimate exercise of official authority vested in the Community institution".

The procedure to obtain the conclusions of the Invalidity Committee, which involves the collection and processing of personal data concerning officials and other staff so as to grant them the invalidity allowance or to return them to professional activity, 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 legislative acts adopted on the basis of those Treaties.

The legal basis for the data processing is Article 59(4) and Article 78 of the Staff Regulations, and Articles 7, 8 and 9 of Annex II to the Staff Regulations. For contract staff and temporary staff, the legal bases are respectively Article 102 and Article 33 of the Conditions of Employment. The invalidity procedure organised by the EESC is therefore lawful. The legal basis is in compliance and supports the lawfulness of the processing operation.

3.3. Processing of special categories of data

Data relating to health are among the data which Article 10 of Regulation (EC) No 45/2001 classes as "special categories of data". Article 10(1) of Regulation (EC) No 45/2001 prohibits the processing of personal data concerning health, unless grounds can be found in Articles 10(2) and (3).

In this case, Article 10(2)(b) applies: *"Paragraph 1 [prohibiting the processing of data relating to health] shall not apply where: processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof ..."*. Here, the EESC as employer is complying with Article 10(2)(b) by performing these data processing operations so as to comply with the provisions of the Staff Regulations.

Moreover, in this case, certain health-related data are forwarded to the doctors on the Invalidity Committee. Owing to the very nature of the health-related data, Article 10(3) of Regulation (EC) No 45/2001, which relates to special categories of data, applies in this instance. It states: *"Paragraph 1 [prohibiting the processing of data relating to health] shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy"*. Because of their duties, the doctors are acting to establish a medical diagnosis. Moreover, the doctors are subject to the obligation of professional secrecy and are the sole recipients of this data. In this instance, Article 10(3) of the Regulation is duly complied with.

3.4. Data quality

Article 4 of Regulation (EC) No 45/2001 lays down certain obligations as regards the quality of personal data. Personal data must be *"adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed"* (Article 4(1)(c)). It should therefore be checked whether the data correspond to the purposes of the processing operation.

The EDPS considers that the processed data described at the beginning of this opinion must be regarded as satisfying these conditions in the light of the purposes of the processing operation explained above.

Moreover, the data must 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 3.2 above). Given the sensitivity of the subject, fairness is an issue which warrants considerable attention. It relates to the information given to the data subjects. See point 3.10 below on this point.

Lastly, the data must be *"accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified"* (Article 4(1)(d) of the Regulation).

Invalidity is an inability to work for a fixed or indeterminate period. Depending on the case, the Invalidity Committee may decide to set a special timetable for the re-evaluation of the person's situation (unfit/fit to work), given that it must be re-examined periodically in any case (Article 15 of Annex VIII to the Staff Regulations).

The procedure in place gives sufficient cause to believe that the system itself ensures the quality of the data. The data subject has the rights of access and rectification, to make the file as complete as possible. This also makes it possible to ensure the quality of the data. See point 3.9 below on the dual rights of access and rectification.

3.5. Data retention

Article 4(1)(e) of Regulation (EC) No 45/2001 lays down 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 medical considerations which led to the conclusions of the Invalidity Committee are recorded in a medical report which is filed in the medical file of the person concerned; it is not forwarded to the administration.

The administrative files are kept by the leave and overtime section of the SSP Unit for as long as a person is in active employment. The files are then kept in the archives with the medical file for 30 years (originals of letters, copies of the decision of the Invalidity Committee - the original is in the medical file in the institution's Medical Service).

The fact that the data are archived for long-term storage does not divest them of their personal nature. Accordingly, even where long-term storage is concerned, appropriate transmission and storage measures must be applied when handling this data, as is the case for all sensitive information.

The EDPS finds the current storage period for medical data to be adequate.

Article 4(1)(e) of Regulation (EC) No 45/2001 also stipulates: *"the Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes"*.

The principle is, therefore, that data should be kept only for the period necessary for the purposes for which they were collected. If they are kept for historical, statistical or scientific

purposes they must be kept in anonymous form or encrypted. For the statistics on absenteeism drawn up every year, only the number of persons leaving on invalidity during the previous year is stated, without it being possible to identify those persons in any way. The data are stored for 5 years. The EDPS finds the period for which the data are kept for statistical purposes to be reasonable.

3.6. Change of purpose/Compatible use

The processing operation under review here involves no change of the specified purpose of the staff databases and is not incompatible with that purpose. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) of the Regulation are fulfilled.

3.7. Transfer of data

In the case of the planned procedure, the processing should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. Article 7(1) relates to 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"*.

According to the notification, the recipients are members of the staff of the working conditions section, the Recruitment Unit (only the administrative file), the Medical Service, and the institution's Medical Officer. If the person is declared unfit to work, the decision is sent to the pensions section and the Recruitment Unit and officially published. This constitutes transfer within the institution. There is also a transfer of personal data between institutions, since personal data are also transferred to the members of the Invalidity Committee, which is an ad hoc inter-institutional committee established by the Staff Regulations of Officials of the European Communities.

Care should therefore be taken to ensure that the conditions of Article 7(1) are fulfilled; this is indeed the case, since the data collected are needed to carry out the processing and, furthermore, are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*. In this case, the task is covered by the competence of the various EESC departments and the Invalidity Committee. As regards the transfers, only relevant data must be transferred. The transfer in this case is therefore indeed lawful insofar as the purpose is covered by the competences of the recipients. Article 7(1) is therefore duly complied with.

Article 7(3) of Regulation (EC) No 45/2001 provides that *"the recipient shall process the personal data only for the purposes for which they were transmitted"*. It must be ensured that any person involved in the EESC's invalidity procedure who receives and processes data is informed that they may not use them for other purposes.

In the context of the invalidity procedure, the data are also communicated to the doctor representing the official and to the doctor chosen by mutual agreement between the examining doctor and the official's doctor.

If either of these doctors is in a country which has adopted legislation transposing Directive 95/46/EC, Article 8 of the Regulation applies, which does not give rise to any problems as regards the transfer.

If the official's doctor or the doctor chosen by mutual agreement between the examining doctor and the official's doctor is in a country not covered by Directive 45/96/EC, Article 9 of the

Regulation applies. Under Article 9, transfer may only take place to a country offering an adequate level of protection. If the level of protection is not adequate, the data subject must give his consent to the transfer in accordance with Article 9(6)(a).

Finally, the EDPS would point out that the Court of Justice, the Ombudsman and he himself may be considered data recipients under Regulation (EC) No 45/2001. This should be reflected in the information given to data subjects (see point 3.10 below on information to be given to the data subject).

3.8. Processing including the personal or identifying number

The EESC uses the staff number. While the use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the data controller's task, such use may have significant consequences. This is why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the European Data Protection Supervisor. In the case in point, use of the staff number may allow the linkage of data processed in different contexts. Here, it is not a case of establishing the conditions under which the EESC may process the staff number, but rather of drawing attention to this point in the Regulation. In this instance, the EESC's use of the staff number is reasonable because it is a means of facilitating the processing task, in particular archiving.

3.9. Right 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. 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.

The notification states that the privacy statement covers the information required by Articles 11 and 12, including the rights of access and rectification.

The EDPS believes that it is necessary for the following clarifications to be added: by dint of Conclusion 221/04, the file must be consulted on the premises of the Medical Service of the institution, in the presence of a person designated by the Medical Service. The indirect access provided for in that decision covers psychiatric and psychological reports, where direct access might prove harmful to the data subject. Therefore, to that end indirect access by a doctor appointed by the data subject is provided for. The designated doctor does not necessarily have to be a doctor who took part in the Invalidity Committee's deliberations.

However, it is laid down that officials or other staff may not have access to personal notes by doctors if, under the terms of Article 20(1)(c) of Regulation 45/2001 and on the basis of a case-by-case examination, this is necessary to guarantee the protection of the data subject or the rights and freedoms of others. The EDPS welcomes the fact that this access is subject to examination on a case-by-case basis in accordance with the principle of proportionality. The above limitation must not be allowed to result in a general refusal of access to the personal notes of doctors in the medical file. This restriction must be brought to the attention of the data subject.

Regarding the right of rectification provided for in Article 14 of Regulation (EC) No 45/2001, the privacy statement also provides for a procedure for updating information, phrased as follows: *"Any justified and legitimate changes (correction of mistakes, additional information,*

etc) to the factual content of your file must be made within 15 working days following the date on which the head of unit of Staff Support Services receives your written request". The EDPS welcomes the fact that this procedure is referred to in the privacy statement. The addition of information, insofar as it is covered by the right of rectification, means the possibility of adding any document to the file. Article 14 of Commission Regulation (EC) No 45/2001 is complied with.

The EDPS recommends that the rights of access should be set out in more detail, to fulfil the conditions of Article 13 of Regulation (EC) No 45/2001.

3.10. 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 of information. 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 notification refers to the privacy statement provided to the data subject when the letter informing them about the decision to launch the procedure is sent.

The procedure and the privacy statement provide that the person concerned is also informed of the conclusions of the Invalidity Committee and the Appointing Authority's decision (sent by recorded delivery with acknowledgement of receipt).

The EDPS finds that details of the procedure, including the privacy statement, could be published on the EESC intranet.

The provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be supplied to the data subject apply in this case. In fact, insofar as the data subjects are heard by the three Invalidity Committee doctors, they provide the data themselves.

The EDPS would draw particular attention to the absence of explicit references to the following, in the procedure and the privacy statement:

- the recipients or categories of recipients of the data (Article 11(1)(c)), adding to the list indicated in point 3.7 above;
- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply (Article 11(1)(d));
- arrangements for access must be clarified as provided for in point 3.9 above.

It must be ensured that the data subject is fully informed on these three points. The exhaustive list of all recipients should be found in the privacy statement. Regarding Article 11(1)(d), the obligation could be reflected by informing the data subject of the consequences of refusal to provide the medical certificates needed for the procedure before the Invalidity Committee. The EDPS welcomes the fact that the privacy statement on the invalidity procedure covers the points referred to in Article 11(1)(f): *the legal basis of the processing operation, the time-limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*, which show that the fairness of the processing operation is fully respected. The exact e-mail address of the EDPS could usefully be provided (edps@edps.europa.eu).

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also apply in this case because information may be obtained from doctors outside the institutions. The clarification about the recipients of the data (Article 12(1)(d) of Regulation (EC) No 45/2001) also applies in this case.

The EDPS recommends that all this information be supplied to data subjects, by whatever means necessary. This might be achieved by adding the points highlighted above to the privacy statement on the invalidity procedure.

3.11. Security

In accordance with 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"*.

Appropriate security measures are provided for with respect to consultation of the file by the data subject and storage of such files. Article 22 of the Regulation is therefore complied with.

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. This means in particular that:

- where long-term storage is concerned, appropriate transmission and storage measures must as always be taken for sensitive data;
- any person involved in the EESC's invalidity procedure who receives and processes data must be informed that they may not use them for other purposes;
- in the event of a transfer of data to a doctor in a country not covered by Directive (EC) No 45/96, and where that country does not provide an adequate level of protection, the data subject's consent to the transfer must be obtained by virtue of Article 9(6)(a).
- the Court of Justice, the Ombudsman and the EDPS must also be considered data recipients under Regulation (EC) No 45/2001;
- details of the procedure, including the privacy statement, should be published on the EESC intranet;

- all the information described in point 3.9 must be supplied to data subjects, by whatever means necessary;
- rights of access should be set out in more detail, to fulfil the conditions of Article 13 of Regulation (EC) No 45/2001.

Done at Brussels, 19 November 2008

(signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor