

## **Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Food Safety Authority regarding "Assessment and reporting on probationary periods"**

Brussels, 6 May 2009 (Case 2009-0030)

### **1. Proceedings**

On 14 January 2009, the European Data protection Supervisor received by electronic mail a notification for prior checking from the Data Protection Officer (DPO) of the European Food Safety Authority (EFSA) on the "Assessment and Reporting on Probationary Periods".

The notification contained several annexes:

- notification to the Data Protection Officer under Article 25 of Regulation 45/2001
- the probationary report form
- description of workflow
- description of the human resources procedure related to the probationary period
- guide to the assessment of probationary staff.

On 6 March 2009, the EDPS requested further information; on 18 March 2009 he received the responses and additional documents (Draft Decision<sup>1</sup> of the Executive Director on Middle Management Staff with Annex I describing the "Abilities Required to Apply for a Middle Management Post" and Annex II "Probationary Assessment Sheet- Final Assessment of Management Capacities for the Job Title, Unit" and the template for the Intermediate Probationary Report).

Due to the added complexity, on 20 March 2009, the EDPS extended the deadline to issue his opinion for one month.

On 22 April 2009, the draft opinion was sent for comments to EFSA. The comments were received on 4 May 2009.

### **2. The facts**

The European Food Safety Authority **processes personal data** of its staff **related to probationary periods**.

**The purpose** of *processing the personal data* of staff members is to meet the requirements of Article 34 of the Staff Regulations and Article 14 and 84 of the Conditions of Employment of

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<sup>1</sup> Hereinafter as: "Draft Decision"

other Servants of the European Communities (CEOS) in order to confirm the engagement of the staff member or to terminate the contract or employment. The purpose is similar as to probationary middle managers (AD 9-12 grades) as it aims to measure their abilities on the basis of Article 6 of the Draft Decision and such assessment could result in confirming their engagement, extending their probationary period, re-assigning them in a non-management position or terminating their contract (only in the case of temporary agents and officials recruited via external competitions). The *probationary report* itself aims at providing an objective summary assessment of the staff member's performance, competences and conduct during the initial period of the engagement. According to EFSA requirements, the report should be detailed for a clear and precise assessment and should highlight potential weaknesses and /or areas of improvement for the probationer.

Staff members of EFSA are the **data subjects**: all officials, temporary agents and contracts agents whose contracts are concluded for minimum one year. In addition, staff engaged by the authority to occupy middle management position serve a management trial period of nine months in order to assess their management competences.

**The process to produce the probationary period report** can be summarised in the following way. On the first day in the service, the Reporting Officer (RO) convenes the "taking up duty dialogue" with the probationer. The job description and Part I of the form (see below) outlining the objectives/performance indicators and short -term personal development needs are agreed and signed.

An *intermediate report* is recommended<sup>2</sup> to be completed before the end of the third month. On the basis of a dialogue between the probationer and the RO, this report should give feedback on performance, competencies and conduct in relation to the job and providing appropriate details to support both positive and negative aspects. Once completed, the intermediate report should be signed by the Reporting Officer and the Probationer and the original document sent to the Human Resources Unit.

As to the *final probationary report*: The RO finalises the report following the assessment dialogue with the probationer and forwards it to the Countersigning Officer (CO). The CO adds any comments, signs and returns the form to the RO. The Reporting Officer provides the report to the Probationer for comments and signature, which the Probationer has to return within 8 days to the RO. The final report completed and signed by the RO and CO should be received by the probationer no later than one month before the end of the Probationary Period.

The RO forwards the report to the human resources (HR) for further processing, and the HR prepares the decision letter for the signature of the Executive Director.

Once HR has received the file back from the Executive Director, the letter is sent by the HR to the staff member concerned with putting in copy the reporting officer and countersigning officer to inform them of the outcome of the probationary period. The final report and a copy of the decision letter are then placed on the staff member's personal file.

Various **categories of personal data** are involved in the process. The confidential **probationary period report** consists of three parts:

- *Cover page information*: details of the probationer (name, personnel number, status, job title, directorate/unit, function group and grade); details of the Reporting Officer (name and

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<sup>2</sup> Part C of Guide to the Assessment of Probationary Staff

directorate/unit) and details of countersigning officer (name and directorate). The job description of the probationer should be attached to the report.

- *Part I*: objectives plan for the period: a) five key objectives; b) performance indicators and assessment criteria; c) personal development and training need (specific and general competences and skills and knowledge that were necessary to achieve the agreed objectives during the probationary period and training needs). The job description of the probationer prepared in advance by the Reporting Officer should be attached to the probationary period report.

- *Part II* consisting of four sub-sections:

A) *Reporting Officer's comments*: (i) efficiency in the achievement of key objectives and performance indicators (taking into regard working method, quality of work, productivity and resources management); (ii) demonstrated competences (considering oral and written communication skills (also languages), delivering results, organising work, analytical problem -solving and judgement skills, IT skills, people management and leadership; (iii) conduct in the service (working and collaboration with others, etc); (iv) overall summary of the probationary period (any additional comments can be added here) and(v) reporting officer's recommendation to either confirm the contract, or extend the probationary period (with an option assigning the person to another department) or not to confirm the contract/appointment.

B) *Countersigning officer's comments*, whose role is to ensure that the reporting standards have been maintained and the Reporting Officer has carried out a full and objective assessment of the probationer. By ticking a box yes/no should be indicated:

- Has the probationary period report been completed to agreed standards?

- Do you support the reporting officer's comments and recommendation?

- any additional comments can be added.

C) *Probationer's comments*: this section is an opportunity for the probationer to make any comments on the probationary period report.

D) *Executive Director's Comments and Decision*: a section is provided for free text for the Executive Director and the box should be ticked whether the contract is to be confirmed, the probationary period is extended (with option to assign the concerned person to another department) or not to confirm the contract.

The template for the **intermediate probationary period report** requires the same data fields to be filled in as the final probationary report.

For middle managers, in addition to the probationary period report, a **final assessment sheet** has to be filled in **on their management capacities**<sup>3</sup>. This draft template requests assessment of management competences in the following data fields:

- Management competences: leadership, management of people, working with others, fixing objectives, delivery of results and communication (assessing as good/average/insufficient)
- The RO and the CO (if applicable) should give an opinion whether the person concerned is successful of unsuccessful.

**Other personal data**: Due to the provision of the Staff Regulations, it is possible that more sensitive data may appear. Article 34 (1) of the Staff Regulations lay down that: " Where, during his probationary period, an official is prevented, by **sickness, maternity leave** under Article 58, or **accident**, from performing his duties for a continuous period of at least one

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<sup>3</sup> It is a draft document as the Draft Decision is under review currently on the basis of Article 110 of the Staff Regulations.

month, the appointing authority may extend his probationary period by the corresponding length of time".

The data controller gave more information to the EDPS related to the procedure to extend the deadline in such cases. In such cases, the report would normally be also checked by the Head of Legal & Policy unit. According to the data controller, comments in the report itself on sickness, maternity leave or accidents are unlikely, as those would be included in a separate letter.

The HR units checks for absences before sending out reminders to the Reporting Officers that the reports should be completed. In case, a staff member was out of office for a continuous period of one month or more due to sickness, maternity or accident, the HR officer liaises with the RO and a letter is prepared outlining the reasons for extension in line with CEOS. The RO ensures that new objectives are set as required and the final report is an assessment against these objectives. The period of absences, as the data controller informed the EDPS, does not tend to be referred to in the report, as that was already dealt with in the extension letter.

### **Information provided to the concerned staff member:**

The details of the assessment process are laid down in the **main policy document**, the Guide to the Assessment of Probationary Staff, made available to all staff on **EFSA Intranet**.

The Guide contains a section **on the processing of personal data related to probationary report**: "*All personal information on Probationers obtained for the purpose of the assessment of the probationary period will be processed by EFSA in line with Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 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. (DP Regulation).*"

*In compliance with Art. 11 of the DP Regulation, the following important aspects of the probationary period assessment as personal data processing operation are clarified in the present document:*

- *The purpose of the assessment of probationary staff;*
- *The contradictory character of the probationary period assessment procedure, shown in the following steps:*
  - o *Probationer's Acceptance of the Objectives Plan for the Period;*
  - o *Assessment dialogue with the Reporting Officer;*
  - o *Probationer's comment to the draft Report before the Decision of the Executive Director.*
- *The way the Probationer can rectify his/her personal data and exercise his/her right of access;*
- *The retention period and the time limits of storing of personal data contained in the probationary period assessment file.*

*Furthermore, this document determines the following roles in the data processing operation:*

- *The controller of the data processing operation: the Head of HR Unit and Career Development staff in HR Unit in direct reporting line to the HoU;*
- *The recipients of personal data related to the Probationary Period Report:*

- *as long as the appraisal file is “active” (i.e. throughout the different stages of the Probation), namely: the Probationer, the Reporting Officer, the Countersigning Officer, the controller of the data processing operation (HR staff mentioned in previous point);*
- *once the appraisal cycle is completed, the following controlling bodies can have access to the Probation file: Court of Auditors, Internal Audit, IAS, OLAF, Civil Service Tribunal.*

*Finally, Probationers are informed of the fact that they have at any time the right of recourse to the European Data Protection Supervisor (EDPS) with regard to the processing of their personal information in the context of the probationary period assessment.*

*1. Notification of the data processing operation & EDPS Opinion:*

- *The data controller (HR Career Development staff) has notified the Assessment of Probationary staff to the DPO, in compliance with art. 25 DP Regulation. Having received the Controller’s notification and considering the specific risks linked to probationary period assessment, the DPO proceeds with a notification of the data processing operation for prior checking to the European Data Protection Supervisor (EDPS), in accordance with art. 27 of the DP Regulation.*
- *The EDPS’ Opinion was issued on DD/MM/YYYY and is available to EFSA staff in annex to this guideline."*

Periodic **training** is foreseen for the Reporting Officers and Countersigning Officers on job descriptions, objective setting and probationary evaluations. The human resources representative gives **information on the probationary period** to newly recruited EFSA staff. The Guide to the Assessment of Probationary Staff is included in the **Induction Package** given to newcomers on their first day.

The Guide to the Assessment of Probationary Staff finds it essential that the probationer is informed in due time, verbally and if necessary in writing of improvements required in any specific areas before the engagement is to be confirmed.

**Rights of data subjects:** According to the DPO notification and prior checking notification, the rights of data subjects are built-in the procedure in the form of a dialogue between the Reporting Officer and probationer before the report is finalised. At the completion of the assessment cycle, the probationer can request a copy of the final version of the form.

**Data transfers:** Personal data may be processed in the assessment procedure by different persons and services. **The Executive Director** is responsible for all staff matters including the engagement and dismissal of staff. The **Reporting Officer** makes a recommendation as to whether to confirm the engagement, extend the probationary period or terminate the contract. The report is then sent to the **Countersigning Officer** for confirmation that it has been carried out to agreed standards, for endorsement of the Reporting Officer’s recommendation and for any additional comments. After the signature of the Probationer, the report is forwarded to the **Human Resources Unit** where a file is prepared for the signature of the Executive Director who takes the final decision on the confirmation of engagement, extension of probationary period or termination of contract.

In case, a staff member was **absent for a period of one month of more** during his/her probationary report, it is the responsibility of **the Reporting Officer to consult the HR unit**

before the completion of the report in order to ensure that all absences are dealt with in an appropriate way and all staff members are treated with equality.

Other **possible recipients** to whom data may be disclosed:

- disciplinary board (once such a body will be set up)
- EFSA internal auditor, Court of Auditors, OLAF, Internal Audit Service of the European Commission, Civil Service Tribunal;
- in case the probationary period of middle manager proves to be unsuccessful, the Joint Evaluation Committee<sup>4</sup> should become a data recipient as it should give its opinion on such proposals in 10 working days<sup>5</sup>;
- a HR representative acting as mediator in some cases where the probationary period is extended.<sup>6</sup>

**Data conservation:** The processing operation is currently manual. Automated solutions may be investigated and the controller noted that the EDPS will be informed in the case that these are implemented.

Part I of the *probationary period report* forms are scanned and are kept electronically in a folder accessible only to the human resources. The scanned copy of this part is deleted once the final probationary report has been received. The hard copy is filed in the personal file. At the end of the process, the final report is kept in the jobholder's personal file. The final probationary report is placed in the personal file and will remain there for a period of 2 years, except in the event of pending legal action if the jobholder is not confirmed in the post.

After signature by the probationer and the reporting officer, the *intermediate report* is kept in the personal file at the Human Resources Unit. It is kept there for two years, following the rules of the final probationary report.

According to the Draft Decision on Middle Management Staff, for officials and temporary agents already in the service, the final assessment of their probationary period should be attached to the next Career Development and Appraisal Cycle Report provided for in Article 43 of the Staff Regulations<sup>7</sup> and Article 15 of CEOS respectively.<sup>8</sup>

**Security of information:**

[...]

### **3. Legal analysis**

#### **3.1. Prior checking**

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 (hereinafter referred to as "the Regulation")

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<sup>4</sup> This Joint Evaluation Committee is referred to in the EFSA Decision on general provisions for implementing Article 43 of the Staff Regulations as approved by the European Commission on 29. 07.2008.

<sup>5</sup> Draft Decision on Middle Management Staff

<sup>6</sup> Point H of Guide to the Assessment of Probationary Staff

<sup>7</sup> Article 43 provides for: "The ability, efficiency and conduct in the service of each official shall be the subject of a periodical report made at least once every two years as provided for by each institution in accordance with Article 110. "

<sup>8</sup> Article 6 (2) of Draft Decision on Middle Management Staff

applies to personal data processing activities by Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1) of the Regulation).

The Regulation applies to the data processing activities by EFSA in the context of the assessment and reporting on probationary period for the reasons enumerated below.

**Personal data are defined** as any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity. EFSA processes personal data in the above sense, including data on one's administrative data (personnel number, status, job title, etc) and demonstrated competences in the light of set objectives. Those therefore qualify as personal data under Article 2(a) of the Regulation.

The processing of probationers' personal data is carried out by EFSA, an agency in its staff management activity which clearly **falls under Community law**. Article 3(1) of the Regulation therefore applies.

While the processing activity is manual, involving filling in templates and **filing them in the personal file** of the concerned staff or middle manager of EFSA, Article 3(2) of the Regulation applies, as this processing forms part of a filing system.

Article 27 (1) of Regulation (EC) 45/2001 subjects to **prior checking by the EDPS** 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. Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risk, including processing operations which are intended to **evaluate personal aspects relating to the data subjects, including their ability, efficiency and conduct** (Article 27(2)(b) of the Regulation). The evaluation of probationary staff, including middle managers clearly falls under this provision of the Regulation, as the reporting process aims at measuring staff performance during the probationary period as to their capacities and competences against list of objectives, performance indicators and criteria.

**Ex-post prior checking and partly proper prior check:** Probationary reports for EFSA staff members have already been established, but the Decision of the Executive Director on Middle Management Staff is under way at the European Commission for approval under Article 110 of the Staff Regulations. This aspect is a proper prior checking.

The EDPS emphasizes that his recommendations made in the present opinion have to be implemented by EFSA regardless whether the processing operations have already been established or only are on the way.

The notification of the DPO was received on 13 January 2009. According to Article 27(4) the present opinion must be delivered within a period of two months that is no later than the 14 March 2009. The prior checking procedure was suspended with information request for a period of 12 days + 12 days for comments on the draft opinion, and was extended for one month. The opinion should therefore be issued no later than the 7 May 2009.

### **3.2. Lawfulness of the processing**

Article 5 of the Regulation provides criteria for a data processing operation being lawful. The personal data processing operations in the context of reporting of the probationary period and making an assessment of probationers' performance serves a **public interest** needed for the management and functioning of the institution (Recital 27 of the Regulation). The processing operation is based on Article 34 of the Staff Regulations and Article 14 and 84 of the Conditions of Employment of Other Servants of the European Communities (CEOS) and on the Draft Decision of EFSA Executive Director.

In addition, Article 44 (2) of Staff Regulations for middle managers provides for a legal basis in these terms: "(...) *If an official is **appointed head of unit, director or director-general** in the same grade, and provided that he has **performed his new duties satisfactorily during the first nine months**, he shall retroactively benefit from advancement by one step in that grade at the time the appointment comes into effect. This advancement shall lead to an increase in his basic monthly salary corresponding to the percentage between the first and the second step in each grade. If the increase is less or if the official at that time is already in the last step of his grade, he shall receive an increase in basic salary ensuring the increase between the first and second step until his next promotion comes into effect.*"

Evaluating probationary staff under the above legal basis confirms the lawfulness of the processing operation under Article 5(a) of the Regulation: the processing operation is necessary for the performance of a task carried out in the public interest on the basis of legal instruments adopted on the basis of the Treaties establishing the European Communities.

### **3.3. Processing of special categories of data**

Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health or sex life is prohibited (Article 10)(1) of the Regulation. Any exceptions under Article 10 of the Regulation should be narrowly tailored.

It can be possible under Article 34 (1) of the Staff Regulations that in some specific cases, data *on sickness or maternity leave or on accident* may appear in the processing operation, when the appointing authority extends the probationary period with the corresponding length of time to these events (see more details, above in facts part). Article 10(2)(b) of the Regulation permits processing health related data if it is necessary for the purposes of complying with specific rights and obligations of the controller in the field of employment law insofar as authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof.

Depending on the particular case it may be justified in line with Article 34(1) of the Staff Regulations if data on sickness, maternity or on accident appears in the processing operation. Having in mind the purposes of that provision, such data should be limited to the minimum information necessary and should be adequate and not excessive in relation to the purposes (see below in part 3.4)

### **3.4. Data Quality**

Article 4(1)(c) of the Regulation requires that personal data must be **adequate, relevant and non excessive** in relation to the purposes for which collected and/or further processed.

The **data fields** required in the intermediate and final probationary reports and in the template assessing management capacities seem to be adequate and relevant and not excessive for the



purposes of the processing operation, as those are largely administrative by nature or performance indicators which are necessary either to identify the concerned person and to make an assessment of his/her abilities and competences.

The EDPS nevertheless would like to stress that the adequacy and relevance of the **data involved in the procedure, put in the reports and the template** should always be considered carefully by the Reporting Officer and the countersigning officer and any other parties who are involved in the probationary procedure (for example: Joint Evaluation Committee in the case of unsuccessful probationary report for a middle manager, or in the case when a HR representative acts as a mediator in the process of extending the probationary period<sup>9</sup>).

Special care need to be taken if **data on sickness, maternity or accident** are involved in the processing operation. The EDPS finds it an appropriate policy that, in principle no such information would be included in the probationary report, but would be included in a separate letter explaining the reason to extend the probationary period. This procedure ensures that only adequate, relevant and not excessive data are entered in the probationary report itself. The EDPS advises that whenever personal data on sickness, accident or maternity are processed, special care is taken by the data controller.

**Data accuracy and completeness of data:** Article 4(1)(d) of the Regulation requires that personal data must be “accurate and, where necessary, kept up to date” and “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 of probationers’ data constitutes largely subjective judgement by the reporting officer and countersigning officer against specified criteria as to their performance. It is therefore difficult to assess the accuracy of evaluation data. In any case, the fact that the probationer has a possibility to make any comments on the probationary period and granting the rights of access and rectification at any moment can ensure the accuracy of the data processed and ensures that the file can be as complete as possible (see more about the right of access and rectification in point 3.7 below). This also makes it possible to ensure the quality of data.

**Fairness and lawfulness:** Article 4(1) (a) of the Regulation provides that personal data must be processed fairly and lawfully. The lawfulness has already been examined in part 3.2 above and fairness will be addressed in relation to the information provided to data subjects (see below in part 3.8).

### **3.5. Conservation of data and retention period**

According to the general principle of Article 4(1)(e) of the Regulation, personal data should be kept in a form which permits identification of data of data subjects for no longer than is necessary for the purposes for which the data are collected and/or further processed.

EFSA set a clear **time limit of two years for storing intermediate and final probationary** report to be stored in the personal file of the concerned person at the Human Resources Unit. A pending legal action may be the only exception from this rule. The EDPS notes that a retention period for probationary period reports is established.

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<sup>9</sup> Point H of Guide to the Assessment of Probationary Staff

As to the **storage period of middle managers probationary report**, who were already in the service, the EDPS observed that the final report of middle manager's probationary period will **form an annex to** their next Career Development and Appraisal Cycle Report. The EDPS already prior checked the data processing operations in the framework of the "Career Development and Appraisal Cycle."<sup>10</sup> The storage period for the Career Development and Appraisal Cycle reports was established for a period of five years, after which they will be destroyed. This five year storage period deviates from the generally established two year retention period for probationary reports.

Thus, the controller is requested to reconsider -and give a justification on that to the EDPS- as to the necessity to keep middle managers probationary assessment reports as part of the Career Development and Appraisal Cycle reports for a period of five years.

### **3.6. Transfer of data**

Article 7 of the Regulation, permits personal data transfers within or to other Community institutions or bodies *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient can process the data *"only for the purposes for which they were transmitted"* (paragraph 3).

As mentioned above, the data are transferred to the hierarchical superiors of EFSA staff and to certain members of the Human Resources Department.

On an abstract level, the EDPS considers that all these transfers are necessary for the legitimate performance of the tasks covered by the given recipient. In principle, the data contained in the reports and to be transmitted can be seen as necessary for the human resources management, as well as for the performance of the respective tasks of the superiors. Article 7 (1) of the Regulation is therefore being complied with.

EFSA has underlined that Reporting Officers and Countersigning Officers are routinely informed of their obligation not to use the data received for any other purposes than the one for which they are transmitted. It is an adequate measure in light of Article 7(3) of the Regulation.

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

Article 13 of the Regulation provides for a right of access to personal data being processed and Article 14 of the Regulation provides for a right to rectification without delay of inaccurate or incomplete data.

A few provisions in the staff rules provide more details of these rights. Articles 34(3) of the Staff Regulations states that the probationary report shall be communicated to the person concerned who shall have right to submit his comments in writing. Articles 14 and 84(3) of CEOS states that the Report shall be communicated to the concerned temporary agent or contract staff respectively who shall have right to submit his comments in writing. Article 26 of the Staff Regulations provides for a right of access to all documents contained in the

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<sup>10</sup> Opinion of 25 January 2008 on a notification for prior checking concerning "Career development and appraisal cycle" (Case 2007-585). Available at: [www.edps.europa.eu](http://www.edps.europa.eu)

statutory agents' personal file even after leaving the service. Articles 11 and 81 CEOS makes this provision applicable by analogy to temporary and contract staff.

As indicated in the facts part, there are **dialogues in the different stages** of the probationary assessment process, during which the concerned staff members are given access to the information related to them. According to the Guide to the Assessment of Probationary Staff, this is the case when:

- the **draft version** of the report has been prepared: it should be sent to the probationer a few days in advance of the assessment dialogue in order for the probationer to prepare for the dialogue itself<sup>11</sup>, and
- the probationer should receive the **final report** and has 8 days to comment on it<sup>12</sup>
- the probationer can request a copy of the final version of the form.

To sum it up, the above rules lays down pro-active access to the information contained in the report (draft report) and access can also be obtained by requesting it explicitly from the data controller. This scheme seems to be in compliance with Article 13 of the Regulation.

Regarding the right to rectification, probationers are asked to add their comments directly on the intermediate and final probationary reports. These comments are clearly visible in the reports for the hierarchical superior of the probationer and/or the Executive Director who must decide on the result of the probationary period.

The EDPS notes that probationers concerned are allowed to add comments related to his evaluation data, which by nature are subjective, provided by his hierarchical superior.

### **3.8. Information to the data subject**

Article 12 of Regulation 45/2001 provides for certain information to be supplied where the data processed have not been obtained from the person concerned (unless he or she already is in possession of such information).

The Guide to the Assessment of Probationary Staff contains a section **on the processing of personal data related to probationary report** (see text above). The Guide is distributed to newcomers and it is available on EFSA Intranet. Reporting Officers and countersigning officers are trained for this task. The Guide highlights that the EDPS prior checking opinion will be available for EFSA staff in annex to this guide.

The EDPS notes these measures taken by EFSA with a view to ensure compliance with Article 13 of the Regulation.

### **3.9. Security measures**

According to Article 22 of Regulation (EC) No 45/2001, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented 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 to prevent all other unlawful forms of processing"*.

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<sup>11</sup> Point E (3) of Guide to the Assessment of Probationary Staff

<sup>12</sup> Point E (7)(8) *ibid.*

#### **4. Conclusion**

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations expounded above are fully taken into regard. In particular, EFSA should:

- ensure that only adequate, relevant and not excessive data are included in the probationary reports and are involved in the procedure, and special care is taken in this regard as to data on sickness, maternity or accident;
- reconsider and give a justification to the EDPS as to the necessity to keep middle managers probationary assessment reports as part of the Career Development and Appraisal Cycle reports for a period of five years;
- consult the EDPS prior to automated solutions being introduced.

Done at Brussels, 6 May 2009

(signed)

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor