



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Markus GRIMMEISEN
Data Protection Officer
European Foundation for the
Improvement of Living and
Working Conditions
(EUROFOUND)
Wyattville Road, Loughlinstown
IRL-DUBLIN 18

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Dear Mr. Grimmeisen,

Please find below the comments of the European Data Protection Supervisor (EDPS) on the draft implementing rules of Eurofound received on 16 January 2009.

The EDPS notes the Eurofound approach not to limit the implementing rules to the tasks, duties and powers of the Data Protection Officer, as foreseen in Article 24(8) of Regulation (EC) No 45/2001 (the Regulation), but to develop them to cover also the role of controllers and the rights of data subjects.

In order to complete the selected approach, the EDPS would suggest the following modifications:

- 1) Article 3 of the draft decision could include a reference to the DPO's personal and professional qualities and in particular to his knowledge of data protection in reference to Article 24 (2).
- 2) The EDPS welcomes the references to the DPO's independence and to the nomination of a Deputy. The draft decision should include the fact that the deputy should have the same guarantees of independence as those foreseen for DPO.
- 3) Article 4.4 should be more explicit and add the sentence "*without going through official channels*" in compliance with point 2 of the Annex.
- 4) Article 5.5: The EDPS suggests adding the words "*all offices,*" before "*all data-processing installations and data carriers*" so as to be consistent with Point 4 of the Annex to the Regulation (EC) 45/2001.

5) In Article 6.3, it could be useful to provide for a transitional period (e.g. maximum half a year from the entry into force of the Decision) for controllers to comply with the Regulation concerning their duty to notify the already existing processing operations.

The EDPS warmly welcomes Article 9 of the draft decision which states that "*Activities of the DPO shall be reported in Eurofound's annual activity report*". Indeed, the annual report is a good opportunity to raise awareness on data protection aspects among Eurofound staff.

In the same way, the EDPS encouraged other good practices developed by other institutions. For instance, in some cases links between the DPO and the institution's IT bodies have been created. This provision is an effective supplement to the DPO's sources of information.

The EDPS had also welcomed the fact that in some institutions the documentation stored by the controller (and transmitted afterwards to the DPO) includes written requests from data subjects for the exercise of a right referred to in Articles 16 and 18 of the Regulation. In a small EU body like Eurofound, Articles 13, 14 and 15 could be included in this provision as the storage of requests implementing those Articles would probably not involve a disproportionate amount of effort on the part of Eurofound. This documentation can then be used to conduct analysis to measure compliance with the Regulation and allow the DPO to see where the weaknesses of the systems are.

We remain at your disposal for any further details you might want to discuss and would be grateful if you let us know the definite version approved by Eurofound.

Sincerely yours,

(signed)

Giovanni BUTTARELLI