

Opinion on the notification for prior checking received from the Data Protection Officer of the European Commission on the "Disciplinary Board" case

Brussels, 21 September 2009 (Case 2009-0087)

1. Procedure

Notification within the meaning of Article 27 of Regulation (EC) No 45/2001 concerning the "Disciplinary Board" case was given by the Data Protection Officer (DPO) of the European Commission by email received on 2 February 2009.

Further information was requested from the DPO on 10 March 2009. A reply was sent on 18 August but due to the suspension clause in August, the reply was counted as received on 1 September 2009. On 8 September 2009 the opinion was sent to the DPO for his comments. The comments were received on 18 September 2009.

2. The facts

According to Article 86 of the Staff Regulations of officials of the European Communities, "any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action". Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX to the Staff Regulations.

Articles 49, 50, 50a and 119 of the Conditions of Employment of Other Servants of the European Communities lay down a similar mechanism for temporary and contract staff members.

Disciplinary proceedings before the Disciplinary Board

- The Appointing Authority shall submit a report to the Board, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose, including any aggravating or extenuating circumstances. The report shall be communicated to the official concerned and to the chairman of the Board, who shall bring it to the attention of the members of the Board.
- On receipt of the report, the official concerned shall have the right to obtain his complete personal file and make copies of all documents relevant to the proceedings, including exonerating evidence. The official concerned shall have not less than 15 days from the date of receipt of the report initiating the disciplinary proceedings to prepare a defence. The official concerned may be assisted by a person of his or her choice.
- If, in the presence of the Chairman of the Board, the official concerned acknowledges misconduct on his part and accepts unreservedly the report referred to in Article 12 of

this Annex, the Appointing Authority may, in accordance with the principle of proportionality between the nature of the misconduct and the penalty being considered, withdraw the case from the Board. Where a case is withdrawn from the Board the Chairman shall deliver an opinion on the penalty considered.

- Under this procedure the Appointing Authority may, by derogation from Article 11 of Annex IX, impose one of the penalties provided for in Article 9(1)(a) to (d) of the aforementioned Annex. The official concerned must be informed before acknowledging his misconduct of the possible consequences of such acknowledgement.
- Before the first meeting of the Board, the chairman shall give one of its members the task of preparing a general report on the matter and shall inform the other members of the Board accordingly.
- The official concerned shall be heard by the Board; at the hearing, he may submit observations in writing or orally, whether in person or through a representative. He may call witnesses. The institution shall be represented before the Board by an official mandated by the Appointing Authority to this effect and having rights equivalent to those of the official concerned. The Board may hear investigating officials from OLAF in cases where an investigation was initiated by the Office.
- If the Board does not consider that it has sufficiently clear information on the facts complained of or the circumstances in which they arose, it shall order an investigation in which each side can submit its case and reply to the case of the other side. The chairman or a member of the Board shall conduct the investigation on behalf of the Board. For the purposes of the investigation, the Board may call for any documents relating to the matter before it. The institution shall comply with any such request within the time limit, if any, set by the Board. Where such a request is addressed to the official, note shall be taken of any refusal to comply.
- After consideration of documents submitted and having regard to any statement made orally or in writing and to the results of any investigation undertaken, the Board shall, by majority vote, deliver a reasoned opinion as to whether the facts complained of are established and as to any penalty to which those facts should give rise. This opinion shall be signed by all the members of the Board. Each member may attach to the opinion a divergent view. The Board shall transmit the opinion to the Appointing Authority and to the official concerned within two months of the date of receipt of the report of the Appointing Authority, provided that this time limit is commensurate with the degree of complexity of the case. Where an investigation has been held at the Board's initiative, the time limit shall be four months, provided that this period is commensurate with the degree of complexity of the case.
- The chairman of the Board shall not vote on matters before it, except as regards matters of procedure or where votes are tied. The chairman shall ensure that the decisions of the Board are implemented and shall bring all information and documents relating to the case to the attention of each of its members.
- The secretary shall draw up minutes of meetings of the Disciplinary Board. Witnesses shall sign the minutes recording their evidence.
- After hearing the official, the Appointing Authority shall take its decision as provided for in Articles 9 and 10 of this Annex within two months of receipt of the opinion of the Board. Reasons must be given for the decision. If the Appointing Authority decides to close the case without imposing any disciplinary penalty, it shall so inform the official concerned in writing without delay. The official concerned may request that this decision be inserted in his personal file.

Other information arising from the notification

The purpose of the processing operation is the preparation of Disciplinary Board meetings; to inform Members of the Board of the facts complained of concerning the official in order for the Disciplinary Board to give an opinion; to keep the case available to the Appointing Authority, the Legal Service and the Court of Justice after proceedings have been completed, in case of an appeal.

The data subjects are those facing a disciplinary procedure during which the Appointing Authority has referred the case to the Disciplinary Board. This could involve all staff of the Commission, and only the Commission, as the agencies are not concerned. Should the need arise; they should establish their own Disciplinary Board.

The data collected are of a disciplinary nature and are related:

- 1) to the conduct, the action or inaction of persons who are subject to a disciplinary procedure;
- 2) to the legal classification of the facts reviewed under 1) in the light of obligations under the Staff Regulations;
- 3) to the penalties proposed by the Disciplinary Board.

Information: The data subject receives from the Appointing Authority a copy of the report submitted to the Disciplinary Board. At the beginning of the hearing before the Disciplinary Board, the data subject receives the privacy statement as under Article 12 of Regulation No 45/2001.

Rights are dealt with as follows: in accordance with Article 13 of Annex IX to the Staff Regulations, the official concerned has the right to make a copy of the entire file. He may request the addition of comments or documents to his file but cannot request the deletion of data. He may not have access to documents that reflect the deliberations or the proceedings of the Disciplinary Board, which are secret. Should access be refused, the EDPS may verify that the data are processed correctly under Article 20(4). Article 8(2) of Annex IX to the Staff Regulations limits the data subject's right of access to the proceedings and deliberations of the Disciplinary Board. Data subjects may request that data presumed erroneous be blocked while their accuracy is being verified. The data are corrected if necessary.

Processing is manual (compilation of files): in the context of disciplinary proceedings, in accordance with Annex IX to the Staff Regulations, the Disciplinary Board receives a report from the Appointing Authority with a view to putting forward an opinion on the events in question and on any disciplinary penalty. The referral report is sent to the secretary of the Disciplinary Board and then transferred, after files are put together on paper, to the members. The deliberations and proceedings of the Disciplinary Board are secret under Article 8(2) of Annex IX to the Staff Regulations. Also, the secretary of the Disciplinary Board sets up an electronic list (Word) of cases that are in progress or closed.

Individual files are stored on paper, documents are stored electronically.

The recipients are the Appointing Authority as well as authorised persons from the Commission and the person concerned (including their legal advisor). Authorised persons are members of the Disciplinary Board (cf. Article 5 and 6 of Annex IX to the Staff Regulations), the secretary and the assistant secretary (the latter are assigned to Unit ADMIN.B.1). The other staffs of Unit ADMIN.B.1 (including the head of unit) do not have access to Disciplinary Board files.

Data from an investigation in which each side submits its case and replies to the case of the other side, remain in the Disciplinary Board file; if the results of the investigation are pertinent to the case, they form part of the opinion that is sent to the Appointing Authority and therefore form part of the disciplinary file.

The maximum storage time is 20 years. The data being stored is:

- the IDOC report (IDOC data, i.e. the complete file relating to the administrative investigation carried out by the IDOC)
- data concerning the organisation of the Disciplinary Board meeting,
- the result of the Disciplinary Board meeting (the opinion given, and the record drawn up by the secretary).

The Disciplinary Board archives its files.

The data are not subject to statistical processing.

Security measures are as follows [...]

3. Legal aspects

3.1. Prior checking

The notification received on 2 February 2009 relates to the processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a) of Regulation (CE) No 45/2001 hereinafter "the Regulation") by a Community body in the exercise of activities all or part of which fall within the scope of Community law. The management of data by the Board for disciplinary proceedings involves the collection, recording, organisation, storage, retrieval, consultation, etc. of personal data (Article 2(b) of the Regulation). The processing is carried out by a European Institution, in the exercise of activities all or part of which fall within the scope of Community law ¹ (Article 3(1) of the Regulation). Those activities constitute manual processing of data which form part of a filing system within the meaning of Article 3(2). The data processing therefore falls within the scope of Regulation No 45/2001.

Article 27(1) of Regulation No 45/2001 requires prior checking by the EDPS of 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 likely to present such risks. Disciplinary files must be subject to prior checking for several reasons. They may contain data relating to suspected offences, offences, criminal convictions or security measures, within the meaning of Article 27(2)(a). Furthermore, these documents are intended to be used to evaluate personal aspects relating to the data subjects, including in particular their conduct (Article 27(2)(b)).

The prior checking carried out below is only focussing on the processing operation carried out by the Board. The part relevant to the administrative investigations and disciplinary procedures in themselves has already been the subject of an opinion by the EDPS².

¹ In the context of administrative investigations carried out by OLAF in particular, the Regulation is applicable, regardless of the fact that this might lead to a criminal investigation conducted by national judicial authorities.

² Opinion of the EDPS dated 20 April 2005, Case 2004-187 relating to internal administrative inquiries and disciplinary procedures within the European Commission.

In principle, checks by the EDPS should be performed before the processing operation is introduced. 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 2 February 2009. Under Article 27(4) of the Regulation, the EDPS should have delivered his opinion within two months. Questions were raised on 10 March 2009, the replies were provided on 18 August 2009, but due to the suspension clause in August, the reply was counted as received on 1 September 2009 (175 days). On 8 September 2009, the EDPS' draft opinion was sent to the DPO to allow him to add his comments. They were received on 18 September (10 days). The EDPS will issue an opinion on 5 October 2009 at the latest (7 March 2009 + 175 days' suspension + 10 days for comments).

3.2. Lawfulness of the processing

The lawfulness of the processing operations must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which provides that processing must be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities (...) or in the legitimate exercise of official authority vested in the Community institution*".

It therefore needs to be determined whether the processing operation is carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments on the one hand, and whether that operation is necessary in order to perform that task on the other.

According to Article 86 of the Staff Regulations, "any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action." Article 86(3) provides that "Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX"³. With Article 5 of Annex IX to the Staff Regulations, the Disciplinary Board is actually defined within the Staff Regulations and has to be established in each institution. The processing operation is therefore based on a task in the public interest as provided for in the Staff Regulations and is necessary for the performance of that task.

The lawfulness of the processing operation is therefore assured and the legal basis (Article 86 and Annex IX to the Staff Regulations) supports this.

3.3. Processing of special categories of data

The processing of 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 in principle pursuant to Article 10(1) of the Regulation.

It is not possible to exclude the possibility that special categories of data within the meaning of Article 10 of the Regulation are processed, when information is sent to the Disciplinary Board. In this case the EDPS would stress that the processing operation must be provided for under one of the exceptions in Article 10(2) of the Regulation, derogating from the processing prohibition. Article 10(2)(b) provides that the prohibition on processing sensitive data does

³ Articles 49, 50, 50a, and 119 of the Conditions of Employment of Other Servants of the European Communities provide that these provisions also apply to temporary and contract staff.

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. Processing of sensitive data in connection with an administrative investigation or disciplinary procedure may be based on Article 86 of the Staff Regulations and thus qualify for the exemption provided for in Article 10(2)(b) on condition that proof is provided that the data in the context of that investigation or procedure which are sent to the Disciplinary Board are necessary. It is advisable to remind members of the Disciplinary Board of the particularly sensitive nature of the data.

Processing of data is also covered by Article 10(5) of the Regulation insofar as the data may relate to offences. However, such processing is permitted only by virtue of the fact that it is based on a legal obligation as referred to in Article 86 of the Staff Regulations.

3.4. Quality of the data

Article 4 of Regulation No 45/2001 sets out a number of obligations regarding the quality of personal data.

The data must be *"processed fairly and lawfully"* (Article 4(1)(a)). The lawfulness of the processing has already been discussed (see point 3.2 above). Fairness relates to the information given to the data subjects (see point 3.9 below).

The 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)). The EDPS recognises that it is difficult to determine in advance which are the pertinent data with regard to the subject of the investigation, since not only does the Disciplinary Board receive the Appointing Authority report, which already includes a large amount of data, but it is also capable of conducting its own inquiry if it does not feel sufficiently informed as to the facts. However, a general instruction should ensure that caution is shown in this respect.

Article 4(1)(d) of the Regulation stipulates that data must be *"accurate and, where necessary, kept up to date"*. The procedure itself must ensure that data are accurate. For this reason the EDPS is pleased that the data subject receives a copy of the report submitted to the Disciplinary Board. On receipt of this report he can obtain his complete personal file and all documents relating to the procedure. He is also heard by the Board, when he can present his comments. All these points help to ensure that the data are accurate and up-to-date (see also 3.8 "Rights of access and rectification").

3.5. Storage of data

Under Article 4(1)(e) of the Regulation, personal data must be *"kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed"*.

Data relating to an investigation carried out by the Disciplinary Board, or received from the IDOC, are stored in the investigation file for a maximum of 20 years. Data concerning the organisation of the Disciplinary Board meeting are also stored, as well as the result of the Board meeting (the opinion given and the record drawn up by the secretary). The Disciplinary Board archives its files.

The EDPS is pleased with the storage period fixed by the Disciplinary Board. The data are not transferred to the personal file, but if the results of the investigation are relevant to the case then they form part of the opinion that is sent to the Appointing Authority, and therefore of the disciplinary file. The data are stored in the disciplinary dossier for a period decided by the IDOC⁴.

Traffic data should also be subject to a retention policy. Article 37(1) provides for specific rules as regards storage of traffic data, i.e. data relating to calls and other connections on telecommunications networks. In principle, these data must be erased or made anonymous upon termination of the call or connection.

If a member of the Disciplinary Board had to process data relating to Internet connections and the use of e-mail or the telephone in the course of the Board's administrative investigation, he would have to do so in accordance with Article 37 of Regulation (EC) No 45/2001.

Article 20 of the Regulation provides for exemptions from the principle of erasing data at the end of the connection or call as provided for in Article 37(1), in particular when the storage of data constitutes a necessary measure to safeguard "the prevention, investigation, detection and prosecution of criminal offences" or "the protection of the data subject or of the rights and freedoms of others". The EDPS interprets the restriction constituting "a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences" (Article 20(1)(a)) as applying to administrative investigations and disciplinary measures⁵. That provision therefore allows traffic data to be stored if necessary during an investigation carried out by the Disciplinary Board.

Finally, the EDPS recommends that the Disciplinary Board should set a time limit for its storage of archives. Such storage must be carried out in accordance with Article 4(1)(e) of Regulation No 45/2001, which 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"*.

3.6. Compatible use / Change of purpose

Data are retrieved from or entered into staff member files. The processing operation under review involves no general change in the stated purpose of staff databases; investigations, in the context of disciplinary proceedings, in which each side submits its case and replies to the case of the other side, are an aspect of the management of the official or other servant's career. Accordingly, Article 6(1) of the Regulation does not apply in this instance and the conditions of Article 4(1)(b) of the Regulation are fulfilled.

3.7. Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001 relating to the transfer of personal data within or to other Community institutions or bodies. Personal data may not be transferred unless they are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

⁴ See Case 2004-187, published on the EDPS website.

⁵ See EDPS opinion of 21 March 2005 on data-processing in the context of European Parliament disciplinary files (2004-0198).

The recipients are the Appointing Authority, authorised persons from the Commission [members of the Disciplinary Board (cf. Articles 5 and 6 of Annex IX to the Staff Regulations), the secretary and the assistant secretary (the latter are assigned to Unit ADMIN.B.1); the remaining staff in Unit ADMIN.B.1 (including the head of unit) do not have access to the Disciplinary Board files]. They may also be communicated to the people being investigated; to OLAF; to the Civil Service Tribunal. Where data are transferred within or between Community institutions or bodies, Article 7 is applicable.

That being so, the EDPS is satisfied that the transfers are necessary for the legitimate performance of tasks covered by the competence of the recipients.

Transfer to the data subject's legal advisor should be examined in the light of Article 8(b) of the Regulation insofar as the legal advisor could be a lawyer working under the national law of the Member States. Article 8(b), under which personal data are only transferred to recipients subject to the national law adopted for the implementation of Directive (EC) 95/46, is applicable only if *"the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced"*. As the transfer of data to the legal advisor chosen by the data subject is carried out as part of his task of defending the data subject's interests, the transfer appears to be necessary and contributory to the effective safeguarding of the data subject's legal interests. It therefore complies with Article 8(b) of the Regulation.

It should be noted that parties such as OLAF or the EDPS to whom the data are transmitted are not recipients within the meaning of Article 2(g): they may receive data in the framework of a particular inquiry and are therefore covered by the exemption provided for in that Article. All transfers of data must be regarded as taking place *"in the framework of an inquiry"*. However, put back in its context, Article 2(g) is to be understood as an exception to the right to information rather than as an exception to the application of Article 7 (see point 3.9 "Information to the data subject").

Finally, Article 7(3) of Regulation (EC) No 45/2001 stipulates that *"the recipient shall process the personal data only for the purposes for which they were transmitted"*. There must be an explicit guarantee that no-one receiving and processing data in the context of a Disciplinary Board investigation, in which each side submits its case and replies to the case of the other side, can use them for other purposes. The EDPS recommends that particular attention be paid to the fact that personal data are only processed within the strict context of Disciplinary Board investigations.

It seems out of the question that it should be possible for data to be sent to the relevant national authorities in the case of an infringement of national legislation, since, according to the controller, the Disciplinary Board is an internal body of the Commission whose proceedings are secret (Article 8(2) of Annex IX to the Staff Regulations). Consequently there is no need to analyse such transfers in the light of the provisions of Regulation (EC) No 45/2001.

3.8. Rights of access and rectification

Under Article 13 of Regulation 45/2001, *"the data subject shall have the right to obtain without constraint and at any time within three months from the receipt of the request and free of charge from the controller [...] information at least as to the purposes of the processing operation, the categories of data concerned, the recipients [...] to whom the data are disclosed [and] communication in an intelligible form of the data undergoing processing"*

and of any available information as to their source". Article 14 provides that "the data subject shall have the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data".

The rights of access and rectification are granted under Regulation (EC) No 45/2001 to any data subjects concerned by the personal information within the limits of possible exemptions set out in Article 20. In the context of disciplinary proceedings these rights are therefore accorded not only to the person called before the Disciplinary Board ("the suspect") but also to every other person whose personal data are processed in the context of the investigation conducted by the Disciplinary Board.

The EDPS therefore requests that right of access, as provided for by Regulation No 45/2001, be explicitly granted to the data subject, within the limits of the exemptions set out in Article 20. The EDPS is pleased that the official concerned has the right to obtain the complete file concerning him/her and to copy all documents relevant to the proceedings, including exonerating evidence (Article 13 of Annex IX to the Staff Regulations).

Nonetheless, the EDPS underlines that the right of access should also be recognised in respect of any other person mentioned in the Disciplinary Board report (witnesses produced by the person concerned and heard by the Disciplinary Board, representative of the data subject, official representing the Institution, OLAF investigators) within the exceptions allowed by Article 20. Limiting the right of access with a view to protecting third parties is in accordance with Article 20 of Regulation (EC) No 45/2001, which allows the right of access to be restricted in order to protect interests, especially if such a restriction constitutes a necessary measure to guarantee the protection of the data subject or of the rights and freedoms of others. It must, however, be balanced against the person's right of access in relation to his right of defence.

As regards the right of rectification, the data subject has the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data (Article 14 of Regulation (EC) No 45/2001). The EDPS notes that, in the context of an "evaluation of conduct", it is hard to establish whether personal data are "inaccurate" or not. The Board transmits the opinion to the Appointing Authority and to the official concerned within two months of the date of receipt of the report of the Appointing Authority. After hearing the official, the Appointing Authority takes its decision as provided for in Articles 9 and 10 of Annex IX to the Staff Regulations within two months of receipt of the opinion of the Board. These two points constitute a method of guaranteeing the right of rectification. The right of rectification for the interested party is therefore respected in the case in point. The EDPS recommends that other persons involved in the investigation should, as far as possible, be granted the right to rectify their personal data.

3.9. Information to the data subject

Under Articles 11 and 12 of the Regulation, whenever personal data are processed, the data subjects must be provided with sufficient information about the operation. This information should usually be given at the latest when the data are collected from the data subject if the data subject has not already been informed (Article 11). If the data are not collected directly from the data subject (Article 12), the information must be provided as soon as the data are recorded or, if the data are to be communicated to a third party, when the data are first communicated, at the latest.

Personal data in Disciplinary Board investigation file can be obtained not only from the data subject but also from third parties. The information must therefore be provided either when the data are collected or before they are recorded or forwarded to third parties, except if Article 20 applies.

According to the notification received, data subjects receive the privacy statement under Article 12 of Regulation No 45/2001 at the beginning of proceedings before the Disciplinary Board. The EDPS considers that, while the fact of receiving this statement does contribute to compliance with the obligation to inform provided for in Regulation (EC) No 45/2001, it is not entirely satisfactory since not all the headings specified in Article 11 (which is also applicable) and in Article 12 are mentioned.

Information on the transfer of data to the authorities acting in the context of a particular inquiry does not have to be given to the person concerned, on the basis that it does not concern recipients within the meaning of Article 2(g) of the Regulation but it is all the same desirable that this general information be given in order to ensure the transparency of the procedure.

Also the right of rectification should apply (since it is operative) to the data subjects, together with the information mentioned in Article 11(1)(d) (consequence of a refusal to reply to the Disciplinary Board).

The EDPS therefore recommends that the information provided in the context of the privacy statement with a bearing on the processing of personal data should be supplemented in accordance with the recommendations above.

3.10. Security measures

The security measures as described appear to comply with the Regulation. However, the EDPS would point out that, under 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"*.

Conclusion

The proposed processing operation does not seem to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. This means in particular that:

- a general instruction should be adopted to ensure that only adequate and necessary data are processed in the course of administrative investigations and disciplinary proceedings;
- members of the Disciplinary Board should be reminded of the particularly sensitive nature of the data;
- the Disciplinary Board should set a time limit for storage of the archives that it keeps;

- every person receiving and processing data in the context of an investigation carried out by the Disciplinary Board should process the data only within the strict framework of that investigation;
- the right of access should be granted to all persons mentioned in the Disciplinary Board investigation report, within the limits of the exemptions set out in Article 20;
- the right of rectification should be granted to other persons involved in the investigation, as far as this is possible;
- the information provided in the context of the privacy statement with a bearing on the processing of personal data should be supplemented in accordance with point 3.9 above.

Done at Brussels, 21 September 2009

(Signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor