TRAINING
FOR THE DATA PROTECTION OFFICERS

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17 April 2013
Brussels
AGENDA

- DUTIES OF THE DPO
- PRIOR CHECKING PROCEDURE
- GUIDANCE AVAILABLE AT THE EDPS WEBSITE
- COMPLIANCE MONITORING TOOLS
DUTIES OF THE DPO

- ensure the internal application of the provisions of Regulation 45/2001

- ensure that controllers & data subjects are informed of their rights and obligations

- cooperate with the EDPS

- keep a register of processing operations notified to them by the controller

- notify to the EDPS the processing operations likely to present specific risks in terms of Article 27 of Regulation 45/2001

(Article 24(1)(a), (b), (c), (d) & (e) of Regulation 45/2001)
PRIOR CHECKING PROCEDURE (I)

data 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

- data relating to health;
- data relating to (suspected) offences, criminal convictions or security measures;
- processing operations intended to evaluate personal aspects of the data subjects, such as their ability, efficiency and conduct;
- processing operations allowing linkages not provided for pursuant to national or EU legislation between data processed for different purposes;
- processing operations for the purpose of excluding individuals from a right, benefit or contract

(Article 27(1) & (2) of Regulation 45/2001)
PRIOR CHECKING PROCEDURE (II)

STAGES

- **NOTIFICATION FOR PRIOR CHECKING** to be submitted to the EDPS by the DPO in due time Before the actual processing is launched
- acknowledgement of receipt
- analysis of the facts provided in the notification & related documents
- **legal** analysis
- draft opinion sent to the DPO for eventual comments
- **OPINION** adopted by the EDPS with recommendations and sent to the controller
- **FOLLOW UP:** recommendations have to be implemented and the EDPS informed thereof
PRIOR CHECKING PROCEDURE (III)

DEADLINES

- for EDPS to adopt the opinion: **two months** after receipt of the notification, i.e. 61 calendar days

- for controller to implement recommendations provided in the EDPS opinion: **three months** after adoption of the opinion

- for DPOs to submit the outstanding “ex-post” notifications for prior checking: **30 June 2013**
  (cf. EDPS letter to the management of EU institutions & bodies of 5 July 2012)

- specific deadlines for DPOs to submit certain notifications can be set in relation with the EDPS thematic guidelines
PRIOR CHECKING PROCEDURE (IV)  
STAGES & DEADLINES

- **NOTIFICATION** by DPO
  - draft opinion
    sent to DPO for comments
- **OPINION**
  with recommendations
  adopted by the EDPS
- **FOLLOW UP**
  information about the
  implementation of the EDPS
  recommendations

  * two months*

  * three months

  * unless **SUSPENSION** for further information or comments on the draft **EXTENSION** due to the complexity of the matter

  **EX POST** prior checks after 30 June
PRIOR CHECKING PROCEDURE (V)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 20 APRIL 2005
CASE NUMBER: 2005-208
NOTIFICATION OF OJII

INFORMATION TO BE GIVEN

1/ NAME AND ADDRESS OF THE CONTROLLER
Identity of the Controller (service/department): Human Resources Department - Career and Development Sector
Identity of the Controller (Person): François Fabre, Head of Career and Development Sector

2/ ORGANIZATIONAL PARTS OF THE INSTITUTION OR BODY INTERESTED WITH THE PROCEEDINGS OF PRIOR CHECKING
The members of staff in Career and Development Sector dealing with appeals.

3/ NAME OF THE PROCESSING
Staff appraisals.

4/ PURPOSE OR PURPOSES OF THE PROCESSING
Drafting appraisal reports for members of staff in compliance with art. 43 of the Staff Regulations.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS
The officials and representative agents of the Office except grades A*16 and A+15 and Chairpersons and members of the Boards of Appeal.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (including, if applicable, special category of data (Article 6) or any origin of data)
Full name, grade, administrative address, staff member, status, seniority in grade, starting date in job department and staff post number, job title and overall purpose data of previous job assignments (department, service, sector, period concerned) and the names and job titles of the current and the past reporting officer, if any.

Please attach all necessary backup documents 04/05/2006

OPINION on a NOTIFICATION for PRIOR CHECKING received from the Data Protection Office of the Office for Harmonisation in the Internal Market (OHIM)
on 28 April 2005

Received, 28 July 2005 (Case 2004.259)

1. PREMISES

On 20 July 2004, the European Data Protection Supervisor (EDPS) sent a letter to all DPOs asking them to make an inventory of the cases likely to be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) 45/2001. The EDPS requested notification of all pending operations subject to prior checking, even those that started before the appointment of the EDPS and for which the Article 27 check could not be prior, but which had to be dealt with on an “ex-post” basis.

After receipt and analysis of the inventories, the EDPS identified certain priority themes and chose a number of processing operations subject to ex-post prior checking to be addressed. Staff appraisals is one of them.

On 20 April 2005, the EDPS received a notification for prior checking by the Data Protection Office of the Office for Harmonisation in the Internal Market (OHIM), concerning staff appraisal. The notification included several documents: the notification to the DPO as provided for in Article 25 of Regulations 45/2001, a Status OHIM appraisal report, Decision No A04-04-19 establishing the composition, procedure and powers of the joint Appraisal and Promotion Committee and Decision No A04-04-18 establishing provisions for implementing Article 43 of the Staff Regulations as regards the periodic appraisal report.

Additional information was requested by e-mail on 14 June 2005. The answer followed by e-mail on 21 July 2005. The 21 July is an official holiday in Belgium and the EDPS office was closed. The answer by e-mail was therefore received on 22 July 2005.

2. EXAMINATION OF THE MATTER

2.1. THE FACTS

2.1.1. The appraisal exercise

Article 43 of the Staff Regulations states:

“Staff shall be subject to a periodic report which, at least once every two years, shall be made by each staff member in accordance with Article 45. Each member of a service shall, after discussion, prepare a report on the right to...

1 Regulations and basic principles applicable to officials and staff covered by the Staff Regulations.

2005-2006
GUIDANCE AVAILABLE AT THE EDPS WEBSITE (I)
GUIDANCE AVAILABLE AT THE EDPS WEBSITE (III)

Data Protection Officer (DPO) is a role within the field of data protection within European Union. The "DPO corner" on our website is dedicated to this important role.

One of the aims of the DPO is to perform the functions of a DPO. The "DPO corner" on our website contains an overview of this function and offers a variety of templates and guidance materials for institutions.

An efficient DPO is of crucial importance, as data protection laws evolve at a great pace, and it is important to stay updated with the latest regulations. The "DPO corner" is regularly updated to reflect the latest developments in data protection laws.

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REGISTRY of the existing processing operations
(Article 26 of Regulation 45/2001)

INVENTORY
→ administrative procedures, e.g. selection & recruitment, evaluation, leave & flexitime, disciplinary & harassment, health data, public procurement & grants
→ core business procedures
→ security procedures, e.g. video-surveillance
→ IT procedures
→ support procedures, e.g. budget & document management
GUIDANCE AVAILABLE AT THE EDPS WEBSITE (V)

TEMPLATE of a NOTIFICATION to the EDPS
& Instructions on how to complete it

Thematic guidelines
- Staff recruitment (October 2008)
- Health data at work (September 2009)
- Video-surveillance (March 2010)
- Administrative inquiries & disciplinary procedures (April 2010)
- Anti-harassment procedures (February 2011)
- Staff evaluation procedures (July 2011)
- Leave & Flexitime (December 2012)
COMPLIANCE MONITORING TOOLS

- outlined in the EDPS Policy Paper on Monitoring and Ensuring Compliance with Regulation 45/2001 from 13 December 2010

→ SURVEYS: General Reports on Measuring Compliance with Regulation 45/2001 in EU institutions and bodies
- “Spring 2007” adopted on 14 May 2008,
- “Spring 2009” adopted on 22 June 2009,
- “Survey 2011” adopted on 23 January 2012,
- “Survey 2013” in progress

- all available at our website:
  www.edps.europa.eu/EDPSWEB/edps/Supervision/Inquiries
EDPS compliance tools

VISITS
- a compliance tool since September 2010
- Articles 41(2) and 46(c) of Regulation 45/2001 provide for monitoring and ensuring compliance
- a way for the EDPS to take targeted action with the following objectives:
  - raising awareness on data protection
  - raising the level of compliance through commitment of management
  - raising EDPS visibility
  - gaining better knowledge of agencies
  - developing better cooperation with the agencies
EDPS compliance tools

VISITS

- "A visit with courtesy but not a courtesy visit"
  - *nothing to inspect but stress the compliance problem:* Implementation of Regulation 45/2001 is not only a matter of time and resources, but also an organisational will!
  - *presence of the EDPS/AssEDPS with top and middle management* of the agency (Executive Director, Heads of Department)
  - *need to support the DPO’s mission and function*
  - *ROADMAP agreed between the EDPS and the agency*
EDPS compliance tools

ROADMAP

- a tool to ensure that the management of the agency commits to its obligations under Regulation 45/2001

- **focused on measurable data:** inventory, Article 25 and 27 notifications, specific processing operations on standard administrative procedures, implementing rules, DPO report of activities

- **focused on compliance procedures:** consolidate the DPO function, training policy, reporting mechanisms to escalate issues to senior level and develop mechanisms to keep the inventory up to date
EDPS compliance tools

12 VISITS since 2010

2010: EEA, EMSA

2011: GSA, ERA, EUROFOUND, CPVO

2012: ERCEA, ETF, EASA, ECDC, FRONTEX, REA
EDPS enforcement powers

The lack of compliance could result in the use of the EDPS enforcement powers under Article 47(1) of Regulation 45/2001

- ban of the processing operation in question (permanent or temporary),
- referral to the Court of the EU
- referral to the Commission, EP, Council …
THANK YOU FOR YOUR ATTENTION!

For more information:

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@EU_EDPS