

This document provides a summary of the policy and procedure followed by the EDPS during the *standard inspection* procedure. The inspection procedure is based essentially on the existing legal framework, the general principles of EU law, and the good administrative practices common to the EU institutions and bodies.

### **Definition**

Among his powers to investigate, the EDPS can conduct on the spot inspections. The power to inspect is one of the tools of the EDPS as a supervisory authority to verify reality. The aim of an inspection is to collect facts on actual situations at the data controller or within a Community institution or body ("inspected institution"). Inspections can be conducted *ex officio* or in the framework of a complaint. Inspections are followed by appropriate feedback to the inspected institutions.

EDPS inspections take place with *prior announcement* as a rule, but "*surprise visits*" can be carried out in justified cases.

### **Legal basis for EDPS inspection powers**

Articles 41(2), 46(c) and 47(2) of Regulation (EC) No 45/2001 provide for broad powers of the EDPS to effectively perform his function as a supervisory authority.

- Article 41(2) stipulates: "The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and any other Community act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Community institution or body, and for advising Community institutions and bodies and data subjects on all matters concerning the processing of personal data. To these ends he or she shall fulfil the duties provided for in Article 46 and exercise the powers granted in Article 47."
- Article 46(c) provides: "The European Data Protection Supervisor shall: (a) [...] (c) monitor and ensure the application of the provisions of this Regulation and any other Community act relating to the protection of natural persons with regard to the processing of personal data by a Community institution or body with the exception of the Court of Justice of the European Communities acting in its judicial capacity"
- Article 47(2) provides: " The European Data Protection Supervisor shall have the power: (a) to obtain from a controller or Community institution or body access to all personal data and to all information necessary for his or her enquiries; (b) to obtain access to any premises in which a controller or Community institution or body carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there."

Further, Article 46(a) and (b) empowers the EDPS to hear and investigate complaints, conduct enquiries and inform the data subject within a reasonable period.

### **Inspection criteria**

The EDPS will decide to carry out an inspection, whenever he considers that **verifying** reality on the site is **necessary** for his supervisory task. Data controllers and institutions submitted to an inspection are selected on the basis of **relevant criteria** depending on the context. The EDPS is **selective** in choosing the best means for achieving his supervisory task: inspection only if it is most appropriate (“**proportionality**”).

- Examples: regular survey of institutions and bodies (“spring 2007” exercise) and its follow up; unclear or contradictory information on the facts of a case or on the implementation of an EDPS opinion; particular relevance for selected priority topic (“horizontal issue”).

A policy document on the role of inspections in supervision and on criteria for undertaking an inspection will be developed in due course.

### **Obligation to cooperate**

At the request of the European Data Protection Supervisor, controllers are obliged to assist the EDPS in the performance of his duties, in particular by providing the information referred to in Article 47(2)(a) and by granting access as provided in Article 47(2)(b) (Article 30 of Regulation 45/2001).

This *explicit cooperation* at request in the context of inspections includes that the data controller or institution submitted to an inspection should permit the staff members authorised by the EDPS to carry out the inspection. It should permit them to enter any premises during normal office hours. It should produce any books, documents, electronic files, personal data and any other information and records related to its data processing operations, irrespective of the medium on which they are stored, as required by the said staff members needed for their tasks. It should permit EDPS inspectors to examine the said books, documents, electronic files, personal data, other information and records in situ and make copies of them. It should immediately give on the spot oral explanations relating to the subject matter and purpose of the inspection as the EDPS inspectors may require. It should allow any representative or member of staff to give such explanations. It should allow that the explanations given are put down in the Minutes of the inspections.

### **Powers of inspectors**

The EDPS inspectors who carry out an on the spot inspection are acting as public authority while performing their tasks.

### **Main steps in an inspection procedure**

*Preparatory phase:* The preparatory phase covers internal preparations and usually involves external communications and initial contacts with the concerned institution.

- Sufficient time in advance before the actual on the site operations, the institution or the DPO may be requested to provide certain information and documents to the EDPS and can be requested to make practical arrangements to facilitate the on the site operations.
- *Announcing formally the inspection:* The formal announcement of an inspection is usually made a week before the planned inspection date to the top level hierarchy of the concerned institution. In exceptional situations, inspections can be conducted without

prior notice. This may be the case, for example, if a suspicion exists as to the risk of destroying, tampering or altering of evidence.

- *Composition of team:* As a rule, an EDPS inspection team consists of three inspectors having the specific expertise necessary for the particular inspection (in any case at least two inspectors form a team).
- *Presentation of mandates:* The on the spot inspection starts at top level hierarchy with presenting the decision of the EDPS (defines the subject matter, starting date, time and place, purpose, powers of EDPS, and recourse to the ECJ against the decision) and the mandates of the inspectors (their identity and capacity).
- *Operations on the spot:* Inspectors rely on the cooperation of the staff members and managers of the inspected institution to provide them with the requested information, data, documents and any access to premises. In particular cases, EDPS inspectors may search premises and any media actively themselves. This can be the case, for example, if there is a lack of adequate cooperation from the side of an institution or if competent staff is unavailable.
- *Documenting the procedure and facts:* the interviews, the inspection procedure and actions, and the documents obtained are recorded in the "Minutes" of the inspection. Once an interview is finished, the *interviewee(s)* have the opportunity, whenever possible, to verify his/her part before the Minutes are submitted to the top level hierarchy.

In case the competent authority or representative of the inspected institution refuses to sign the minutes, this will be expressly recorded in the minutes by the EDPS inspectors.

Documents obtained during the inspection are numbered by the EDPS inspectors and a list of documents is prepared. A copy of the list of documents and, if it is necessary, a copy of particular documents taken by the inspectors are left with the top level hierarchy of the inspected institution as an annex to the Minutes.

- *Inspection findings:* Upon concluding his analysis, the EDPS provides appropriate feedback to the inspected institution within reasonable time.
- *Follow up of an inspection:* The EDPS always monitors the implementation of his recommendations or decision. The EDPS may give a deadline and expects adequate feedback within the set time limit. In case of non-compliance, the EDPS can use the powers vested in him under Article 47 of the Regulation.

### **Role of Data Protection Officers of the European institutions**

According to Article 24(b) of Regulation No 45/2001, the DPO has the task of responding to requests from the EDPS and within the sphere of his or her competence, cooperating with the EDPS at the latter's request or on his or her own initiative. In the preparatory phase of an inspection, the Data Protection Officers of European institutions are useful contact points for practical arrangements and to provide the requested information to the EDPS. In principle, if the DPO wishes to do so, he/she can be admitted to participate during the on the spot inspection and may be able to contribute to the discussions. There may be justification for a different approach, in particular circumstances. If the DPO wishes, he/she can receive a copy of the minutes of the inspection.

### **Appeal against EDPS decision**

Actions against an EDPS decision related to an inspection may be brought before the Court of Justice of the European Communities in Luxembourg in accordance with Article 32(3) of Regulation (EC) No 45/2001.

### **Security measures**

The EDPS implements appropriate technical and organisational measures to secure any documents against security risks in the light of Article 22 of Regulation 45/2001.

### **Privacy policy**

The European Data Protection Supervisor will process all personal data accessed and obtained during the inspection in accordance with *Regulation (EC) No 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.

Personal data will only be *used for* documenting the EDPS findings made during the inspection and drawing appropriate conclusions in relation to the activities of the data controller/inspected institution in processing personal data.

*The personal data involved are:* name and function of staff members and/or manager of the institution, their statements and personal data contained in the accessed and obtained documents. The categories of data contained in documents may vary depending on the nature of an inspection.

Any refusal to respond to the questions of EDPS inspectors will be specifically put down in the inspection minutes (transcript).

The EDPS *will not transfer* any personal data further, except where the Court of Justice of the European Communities or the European Ombudsman would require so.

Data subjects have a *right of access* to the data concerning them and the right to rectify their personal data. These rights can be subject to certain restrictions if that is necessary to safeguard the investigation or the rights and freedoms of others (Article 20 of Regulation 45/2001).

*The processing operation is based* on Articles 30, 41(2), 46(c) and 47(2) of Regulation 45/2001. In the case of complaints and inquiries, Articles 46 (a) and (b) provide an additional legal basis.

Personal data will be *stored* for a period of five years, unless legal proceedings would require keeping them for a longer period as evidence. The starting day of the five year term is computed from the closing date of the inspection file.

Anyone can make *queries* at the functional mailbox of the EDPS: [edps@edps.europa.eu](mailto:edps@edps.europa.eu).