

TRAINING FOR THE DATA PROTECTION OFFICERS

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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



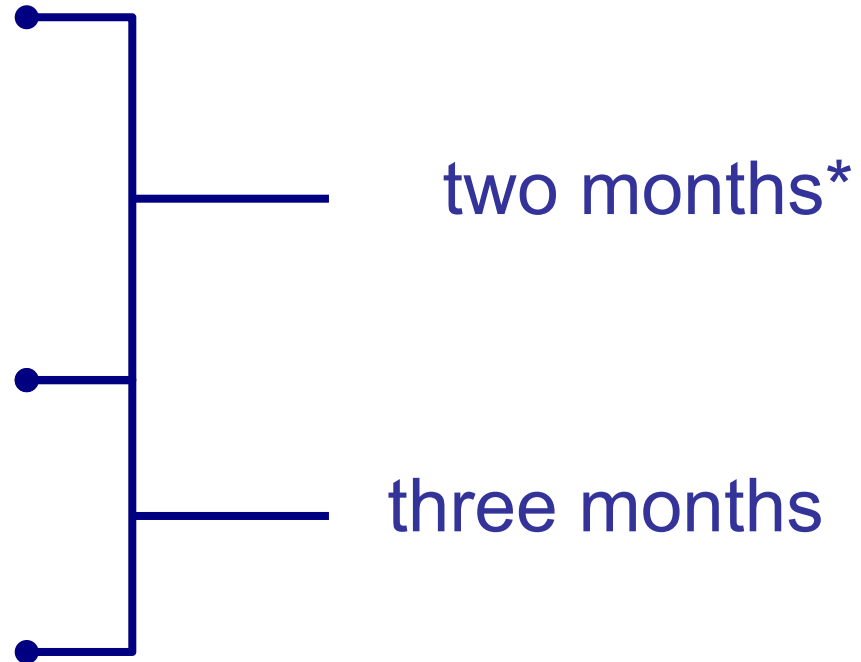
PRIOR CHECKING PROCEDURE (IV) STAGES & DEADLINES

- **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



* 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)

REGISTER NUMBER: 18

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 20 APRIL 2005
CASE NUMBER: 2004-280
NOTIFICATION OF: OHIM
LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45 / 2001⁽¹⁾

INFORMATION TO BE GIVEN²

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 Femia, Head of Career and Development Sector

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA
The members of staff in Career and Development Sector dealing with appraisals.

3/ NAME OF THE PROCESSING
Staff appraisal

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 temporary 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 categories of data (Article 10) and/or origin of data).
Full name, grade, administrative address, staff number, status, seniority in grade, starting date in job department and budgetary 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.

¹ Cf. L. 8, 12.01.2001.
² Please attach all necessary backup documents

001.8.2004-203 1



 **EDPS - European Data Protection Supervisor**
CEPD - Contrôleur européen de la protection des données

OPINION on a NOTIFICATION for PRIOR CHECKING received from the Data Protection Officer of the Office for Harmonization in the Internal Market (OHIM) on 20 April 2005

Brussels, 28 July 2005 (Case 2004/293)

1. Proceedings

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 processing operations subject to prior checking, even those that started before the appointment of the EDPS and for which the Article 27 check could never 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 evaluation is one of these priority themes.

On 20 April 2005, the EDPS received a notification for prior checking by the Data Protection Officer of the Office for Harmonization 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 Regulation 45/2001, a blanc OHIM appraisal report, Decision n° ADM-04-19 establishing the composition, procedure and powers of the Joint Evaluation and Promotion Committee and Decision N° ADM-04-18 establishing provisions for implementing Article 43 of the Staff Regulations as regard the periodical appraisal report.

Additional information was requested by e-mail on Tuesday 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 Regulations¹ states:

"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. Each institution shall lay down provisions conferring the right to

¹ Regulations and Rules applicable to officials and other servants of the European Communities
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Tel. : 02-283 19 00 - Fax : 02-283 19 50



GUIDANCE AVAILABLE AT THE EDPS WEBSITE (I)



The screenshot shows the EDPS website interface. The browser title is "The EDPS - Microsoft Internet Explorer provided by European Parliament". The address bar shows "http://www.edps.europa.eu/EDPSWEB/edps/EDPS?lang=en". The website header includes the EDPS logo and the text "EUROPEAN DATA PROTECTION SUPERVISOR The European guardian of personal data protection". Navigation tabs include "THE EDPS", "SUPERVISION", "CONSULTATION", and "COOPERATION". A sidebar on the left contains a menu with items like "Members & Mission", "Data protection", "Press & News", "Publications", "Events", "Human Resources", "Data Protection Officer", "Contact", "Links", and "Legal notice". A blue arrow points to the "DPO Corner" link in this sidebar. The main content area features a welcome message, profiles of M. Peter Hustinx (Supervisor) and M. Giovanni Buttarelli (Assistant Supervisor), and a "News Room" section with recent updates dated March 2013.



GUIDANCE AVAILABLE AT THE EDPS WEBSITE (II)



The screenshot shows the 'DPO Corner' page on the EDPS website. The browser title is 'DPO Corner - Microsoft Internet Explorer provided by European Parliament'. The address bar shows the URL: http://www.edps.europa.eu/EDPSWEB/edps/Supervision/dpo_corner. The page content includes the EDPS logo, a search bar, and navigation tabs for 'THE EDPS', 'SUPERVISION', 'CONSULTATION', and 'COOPERATION'. The 'SUPERVISION' tab is active. The main content area is titled 'DPO Corner' and contains the following text:

Home > Supervision > DPO Corner

DPO Corner

Data Protection Officers (DPOs) play a fundamental role in helping to ensure a high level of data protection within EU institutions and bodies. So we at the EDPS have created a dedicated 'DPO corner' on our website for you, the people entrusted with this function to support you in this important role.

One of the aims of the DPO corner is to provide informative documents focused on the role and missions of a DPO. These useful reference documents are designed to give you a clear overview of this function. In addition, we have created a kit that you will also find in the DPO corner, which contains some tools to support you in carrying out your tasks. This kit includes a variety of templates and presentations, which may help you to raise awareness in your institution.

An efficient DPO is of course a well-informed DPO and because the Data Protection field is evolving at a great pace, a selection of [materials covering recent developments](#), have been included in the DPO corner. These tools have been carefully selected by EDPS staff for their relevance and presented in the form of summaries to give you an overview of the current state-of-play in the Data Protection arena.

At least 57 other people share your function, so the [network of DPOs](#) section has been designed for you to identify your peers and we encourage you to make contact with them to share know-how and best practices.

To complete this DPO corner, a section has been created that is devoted to the [events](#) (either trainings or meetings) that you can attend to improve your knowledge or skills and that provide all the necessary tools to allow you to carry out your tasks as smoothly as possible.

Dear DPOs, this corner is yours, feel free to drop in whenever you can.

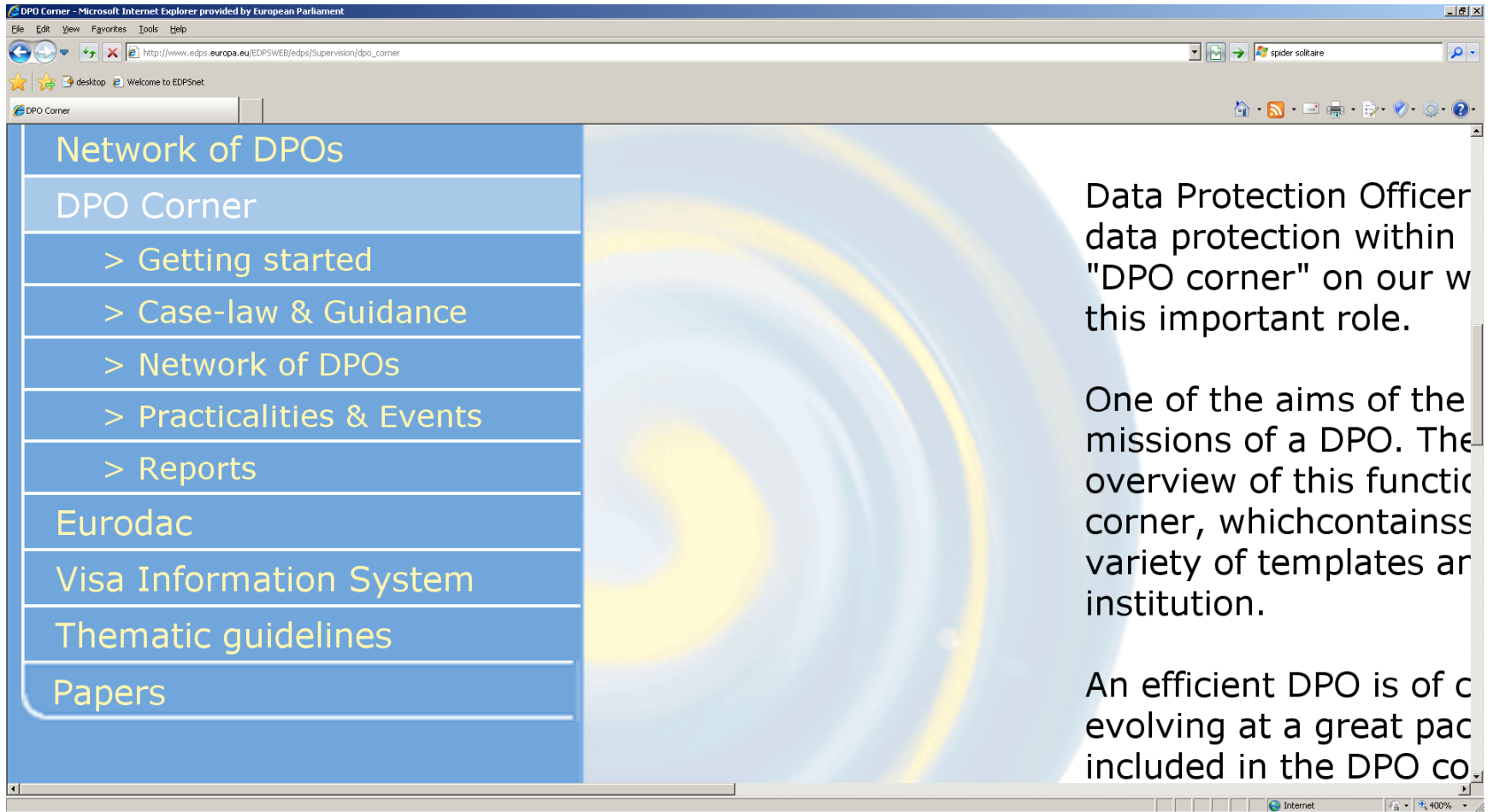
The left sidebar contains a navigation menu with the following items: Prior checking, Complaints, Administrative measures, Inquiries, Network of DPOs, DPO Corner (with sub-items: Getting started, Case-law & Guidance, Network of DPOs, Practicalities & Events, Reports), Eurodac, Visa Information System, Thematic guidelines, and Papers. Below the menu is a 'NEWS' section with three entries:

- 27 March 2013: Read our [Opinion on the Communication from the Commission on 'aHealth Action Plan 2012-2020 - Innovative healthcare for the 21st century'](#).
- 27 March 2013: Read our [Opinion on the Commission proposal for a Regulation amending Council Regulation \(EC\) No 1346/2000 on insolvency proceedings](#).
- 20 March 2013: EDPS: Enormous energy put into reforming data protection rules must deliver strong and effective protection for EU citizens. Please read our [press release](#) and the [EDPS comments](#).

The footer of the browser window shows the date '15 March 2013' and the status bar 'Done'.



GUIDANCE AVAILABLE AT THE EDPS WEBSITE (III)



The screenshot shows a Microsoft Internet Explorer browser window displaying the 'DPO Corner' page. The page has a blue sidebar with a navigation menu and a main content area with a large blue and yellow circular graphic. The navigation menu includes: Network of DPOs, DPO Corner (with sub-items: > Getting started, > Case-law & Guidance, > Network of DPOs, > Practicalities & Events, > Reports), Eurodac, Visa Information System, Thematic guidelines, and Papers. The main content area contains two paragraphs of text.

Network of DPOs

DPO Corner

- > Getting started
- > Case-law & Guidance
- > Network of DPOs
- > Practicalities & Events
- > Reports

Eurodac

Visa Information System

Thematic guidelines

Papers

Data Protection Officer data protection within "DPO corner" on our w this important role.

One of the aims of the missions of a DPO. The overview of this func corner, which contains variety of templates an institution.

An efficient DPO is of c evolving at a great pac included in the DPO co



REGISTER 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



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:

www.edps.europa.eu
edps@edps.europa.eu



@EU_EDPS

