



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Ms Maria Arsene  
Data Protection Officer  
European Economic and Social Committee  
(EESC)  
Rue Belliard , 99  
1040 BRUSSELS

Brussels, 3 March 2010  
GB/MV/ktl D(2010) 302 C **2009-0512**

Dear Ms Arsene,

Please find attached the final observations of the European Data Protection Supervisor regarding the draft regulation on recording activities at the EESC (Article 46(d) of Regulation (EC) No 45/2001).

In order to comply with the recommendations made in the observations attached, please inform the EDPS of the measures taken.

The EDPS awaits copy of the final version of the decision, as adopted by the Bureau of the EESC, and remains at your disposal should you require any further information on this matter.

Yours sincerely,

**(Signed)**

Giovanni Buttarelli

Annex: 1

Annex

## **Final observations of the EDPS regarding the draft regulation on recording activities at the EESC**

### **Procedure**

On 22 July 2009, the DPO of the European Economic and Social Committee (EESC) consulted the EDPS with regard to recording activities at the EESC (Article 46(d) of Regulation (EC) No 45/2001).

On 31 July 2009, the EDPS sent further questions relating to processing under analysis.

On 16 October 2009, the DPO presented the *Draft regulation on recording activities at the EESC* to the EDPS.

On 13 November 2009, the EDPS sent you his initial observations in a letter which he ended asking that clarification be given regarding compliance with Regulation (EC) No 45/2001 for the current draft. Meaning, in particular, that:

- the purpose of processing be clearly defined, in accordance with Article 4(1)(b) of the Regulation. Once the purpose had been defined, an evaluation of the principle of the quality of the data could be carried out;
- the period of storage of the data be defined in the instrument;
- clarification be given as to whether recordings would be transferred to other recipients;
- clarification be given regarding Article 9 of the draft;
- the draft include a reference to the obligation to provide information, and to the implementing rule(s).

On 27 November 2009, you sent an amended version of the draft regulation to the EDPS, taking into account the recommendations issued by him.

On 20 January 2010, the EDPS sent you further observations regarding this second version of the draft regulation. In this new version, the EDPS acknowledged that you had taken into account several of his recommendations; however he also noted that certain amendments were not sufficient with regard to Regulation (EC) No 45/2001. He used this opportunity to repeat some of his recommendations.

More specifically, the EDPS issued the following comments:

- the purpose of processing was still not sufficiently defined in this version of the decision;
- the EESC should update references to the Treaty made since the entry into force of the Treaty of Lisbon;

- the text should contain clarification regarding processing, distinguishing between recordings retained for historical reasons and recordings used for transcription purposes;
- the EESC could not just notify<sup>1</sup> in advance the person concerned, but also had to obtain their free and explicit consent;
- the EESC had to provide for evaluation on a case-by-case basis, on the basis of which Regulation (45/2001 or 1049/2001) it justified the right of access to the data in the cases specified in Article 9 of the draft;
- the EESC had to specify the third parties who could be authorised to access the data.

On 12 February 2010, you sent a final amended version of the decision on recordings to the EDPS.

## Remarks

The EDPS notes that the text of the *Draft regulation on recording activities at the EESC* has progressed since the first version, and that the recommendations have been taken into account.

With regard to the final version submitted for observations on 12 February 2010, the EDPS would like to issue the following final observations:

- the EDPS recommends that the EESC includes the 30-year retention period in the decision itself and not only in the recitals;
- Article 7 of the draft decision concerns the recording of general activities at the EESC. Article 7(6) lays down that data shall be recorded ‘*only for transcription purposes or, where necessary, as a means of proof*’ regarding certain acts provided for within the framework of disciplinary procedures (Article 7(2)(b) and certain acts carried out during the course of internal enquiries (Article 7(2)(c)). The Article continues by giving an explanation of why recordings are retained only for the time necessary to transcribe them. The EDPS recommends that the EESC clarify the situation regarding storage of recordings as means of proof, for example by mentioning the situations in which storage could take place.
- Article 10 relating to information to the data subjects concerned should include reference to any recipients or categories of recipients of the data.

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<sup>1</sup> Within the framework of acts performed as part of disciplinary procedures (Article 7(1)(b) and internal proceedings (Article 7(1)(c)).