

Opinion on a notification for prior checking received from the Data Protection Officer of the European Parliament concerning the "Financial Irregularities Panel"

Brussels, 12 June 2007 (Case 2007-139)

1. Proceedings

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001, concerning the case "Financial Irregularities Panel", was given by the Data Protection Officer (hereafter: DPO) of the European Parliament on 5 March 2007.

Questions were put to the European Parliament's DPO by e-mail on 15 March 2007 and replies received on 2 April 2007. Further points were raised on 12 April 2007, to which replies were received on 7 May 2007. The draft opinion was sent to the DPO on 29 May 2007 for comments, which were received on 4 June.

2. Examination of the case

2.1. Facts

In accordance with the Financial Regulation¹ and the detailed rules for its implementation², a Financial Irregularities Panel (hereafter: the Panel) was established at the European Parliament by a decision of its Bureau dated 10 March 2004³, of which staff were informed in a note dated 30 May 2005⁴.

The Bureau's decision lays down the rules governing the establishment of the Panel and its composition. It also specifies the Panel's competences and mode of functioning. Lastly, the decision concerning the Panel lays down provisions concerning referral to the Panel and its proceedings, as well as the scope and consequences of its decisions.

¹ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, Articles 60(6) and 66(4). OJ L 248, 16.9.2002.

² Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, Articles 74 and 75(2). OJ L 357, 31.12.2002.

³ Decision of 10 March 2004 establishing a specialised Financial Irregularities Panel (PE 339.506/BUR); Bureau decision of 3 May 2004 specifying its internal composition (PE 343.326/BUR); note from the Secretary-General informing members of the Bureau of the choice of an external expert, following a tendering procedure (PE 356.078/BUR).

⁴ D(2005)24058.

The role of the Panel, which functions independently, is to issue to the Appointing Authority – or, where appropriate, to the authority empowered to conclude contracts of employment (AECE) – opinions evaluating, in cases which have been referred to the Panel, whether financial irregularities have occurred, how serious they are and what their consequences might be (Article 75(1) of the implementing rules). These opinions are sent to the AECE, to the internal auditor and to the officials or other member of staff directly concerned.

In accordance with Article 4 of the Bureau's decision, the Panel consists of a chairman and four members, one of whom is external within the meaning of Article 75(2) of the implementing rules and approved within the meaning of Directive 84/253/EC⁵. The chairman and members are appointed by the Bureau, on a proposal by the Secretary-General, for a term of two years, which is renewable. The Bureau also appoints substitute members, who satisfy the same conditions as to qualifications and/or professional experience as the full internal members.

The Financial Regulation authorises the referral of cases to the Panel. The procedure is laid down in Article 2 of the Bureau's decision:

- Article 2.1: Where the Appointing Authority or, where appropriate, the Authority Empowered to Conclude Contracts of Employment is required to refer a matter to the Panel pursuant to Article 66(4) of the Financial Regulation⁶, it shall inform the secretary of the Panel who shall, without delay, forward the information in his or her possession to the chairman of the Panel and to its members, as well as to the internal auditor.
- Article 2.2: Where a member of staff is required to refer a matter to the Panel pursuant to Article 60(6) of the Financial Regulation, he or she shall inform the secretary of the Panel who shall, without delay, forward the information in his or her possession to the chairman of the Panel and to its members, as well as to the Appointing Authority or, where appropriate, to the AECE and to the internal auditor.

When a matter is referred to the Panel, a file detailing the history of the case is passed to its secretariat. This initially forms the main element in the case-file. The file also contains the name of the data subject.

Should the Panel take the view that it is not sufficiently well informed about the alleged acts or about the circumstances in which they were committed, it may ask the Appointing Authority or, where appropriate, the AECE to supply it with the requisite information. It may also ask to hear any official or other servant who might be able to help it to establish its position. It has access to all the documents in the possession of the European Parliament's General Secretariat in compliance with the applicable rules on access to documents and handling of confidential documents. The Appointing Authority or, where appropriate, the AECE may grant the Panel a reasonable period of time within which to complete its work.

The Panel also invites the officials or other member of staff concerned by the facts in the cases referred to it to submit their observations orally and/or in writing, in compliance with the provisions of Article 5 of the European Parliament decision concerning the terms and

⁵ Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents, OJ L 126, 12.5.1984, p. 20.

⁶ For an overview of Articles 60(6) and 66(4) of the Financial Regulation, see below, p. 5.

conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests⁷.

The Panel's opinion is a reasoned opinion submitted to the Appointing Authority or, where appropriate, to the AECE and to the internal auditor. The opinion is also sent to the official(s) and other member(s) of staff directly concerned, in compliance with the provisions of Article 5 of the decision referred to above⁸. The Panel takes care to ensure that the information taken into account when drawing up its opinion is brought to the knowledge of the data subject, who also has the right to consult, in situ, all the contents of the file compiled by the Panel's secretariat.

The institution decides whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation, in accordance with the second subparagraph of Article 66(4) of the Financial Regulation. If the Panel detects systemic problems, it sends a report with recommendations to the authorising officer and to the authorising officer by delegation, provided the latter is not the person involved, as well as to the internal auditor.

In addition, pursuant to the second subparagraph of Article 75(1) of the Regulation on the implementing rules, should the Panel's analysis suggest that the case referred to it is a matter for OLAF, it returns the case-file without delay to the Appointing Authority or the AECE and informs OLAF at once. To date, no case which comes within OLAF's remit has occurred. If such a case were to occur, the Panel would promptly inform OLAF, close its own case-file and notify the Appointing Authority.

In accordance with Article 3(5) of the Bureau's decision, the Appointing Authority or, where appropriate, the AECE is required to inform the Panel of the action taken on its opinion.

The data subjects are the members of staff of the European Parliament who submit information to the Panel in accordance with Article 60 of the Financial Regulation and staff who may be involved in a financial irregularity.

The data collected relate to possible violations in respect of financial management and to checks on operations resulting from an action or omission by an official or other member of staff.

According to Article 7 of the Bureau's decision, "*the Panel shall be competent only in respect of facts established after 1 January 2003*". The Panel held its first meeting on 11 May 2005 and has been operational since that date. No case occurring between 1 January 2003 and 11 May 2005 was referred to the Panel either before or after 11 May 2005.

The retention period for documents relating to the Panel's proceedings is not specified in the Bureau's decision. The controller considers it appropriate, however, to specify a period in line with Article 49(d) of the implementing rules for the Financial Regulation, i.e. at least five years from the date on which the European Parliament grants a discharge for the budgetary year during which the Panel delivers its opinion.

Lastly, measures to ensure security and confidentiality have been adopted.

According to the note sent by the controller to the DPO, in accordance with the Bureau's decision establishing the Panel, the latter's proceedings are confidential. Article 5 of the

⁷ Annex XI to the European Parliament's Rules of Procedure.

⁸ *Ibid.*

Bureau's decision specifies that the chairman and members, as well as the substitute members, are bound to observe secrecy as regards the Panel's deliberations and its preparatory work. In addition, the Panel's opinions, agendas, minutes, files and other preparatory documents are considered as confidential documents within the meaning of Article 4(2) or, where appropriate, Article 4(1) of Regulation No 1049/2001 regarding public access to documents⁹. The note to staff also emphasises that the Panel's documents and proceedings are confidential and therefore recommends sending referrals to the secretariat enclosed in two envelopes, with the inner envelope marked "confidential".

The secretary of the Panel is also responsible for processing the data concerned, which are securely archived in its office in Luxembourg. The same note also specifies that documents relating to the Panel's proceedings are not to be listed in the European register of references.

2.2. Legal aspects

2.2.1. Prior checking

Regulation (EC) No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1)). This case involves the processing of data by the Panel established by a European institution, namely the European Parliament, and a processing operation in the context of first-pillar activities, which consequently falls within the scope of Community law.

Regulation (EC) No 45/2001 applies *"to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system"*. The processing operation in question here falls within the scope of Regulation (EC) No 45/2001 since it involves the processing of personal data which form part of a filing system or are intended to form part of a filing system (Article 3(2) of the Regulation).

Article 27 of Regulation (EC) No 45/2001 makes subject to prior checking by the EDPS all processing operations likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) contains a list of processing operations that are likely to present such risks, such as *"processing of data relating to health and to suspected offences, offences, criminal convictions or security measures"* (Article 27(2)(a)) or *"processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct"* (Article 27(2)(b)). Both these provisions apply in this case, which involves both personal data processed with a view to evaluating personal aspects of data subjects (their conduct, in particular) and personal data processed in the event of suspected offences. This case consequently falls within the scope of the prior checking procedure.

In principle, checks by the European Data Protection Supervisor (EDPS) should be carried out prior to the data processing operation. In this case, the processing operations have been carried out from May 2005 onwards. As the EDPS was notified after the procedure was put in place, the check necessarily has to be performed *ex-post*. However, this does not alter the fact that it would be desirable for the recommendations issued by the EDPS to be implemented.

⁹ OJ L 145, 31.5.2001, p. 43.

The notification from the European Parliament's Data Protection Officer was received on 2 March 2007. A request for information was sent by e-mail on 15 March 2007. In compliance with Article 27(4) of the Regulation, the two-month period within which the EDPS has to deliver his opinion was suspended. Replies were sent by e-mail on 2 April 2007. Additional questions were put on 12 April and replies sent on 7 May.

The procedure was suspended on 29 May 2007 pending receipt of the DPO's comments. These were received on 4 June 2007. The EDPS will deliver his opinion by 25 June 2007 (6 May + 43 days' suspension + 7 days for comments).

2.2.2. Lawfulness of processing

The lawfulness of processing must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which stipulates that the processing can only be carried out if it is "*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*".

The procedures for determining whether financial irregularities have occurred, which involve collecting and processing personal data relating to actions or omissions by officials or other members of staff, come within the framework of legitimate exercise of official authority vested in the institution.

The legal basis for the processing of data consists of Article 60(6) and Article 66(4) of the Financial Regulation and Articles 74 and 75(5) of the rules for its implementation, the provisions of which were endorsed by the Bureau's decision of 10 March 2004 establishing the Panel.

In particular, under Article 60(6) of the Financial Regulation "*Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the panel referred to in Article 66(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.*"

The EDPS wishes to emphasise that the legal analysis should also take account of the amendments made to the Financial Regulation and the rules for its implementation, since the entry into force of the Bureau decision, affecting the articles which form the legal basis of the processing operation.

As regards the Financial Regulation, the first subparagraph of Article 66(4), in the version in force on the date when the Panel was established, stipulated that: "*Each institution shall set up a specialised financial irregularities panel which shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be.*" Since that text entered into force, the Financial Regulation has been amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006¹⁰, which replaced the first subparagraph of Article 66(4) with the following provision: "*Each institution shall*

¹⁰ Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 390, 30.12.2006, pp. 1-26.

set up a specialised financial irregularities panel or participate in a joint panel established by several institutions. The panels shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be."

The amendments made to the implementing rules should also be emphasised¹¹. A new third subparagraph has been introduced in Article 75(1), authorising any financial actor to submit a case to the Financial Irregularities Panel if it considers that a financial irregularity has occurred and has reasons to believe that it will incur any liability. The purpose of this new subparagraph is to enable financial actors to defend themselves against any unjustified allegation by obtaining a decision from the Financial Irregularities Panel.

The amendments do not alter the legal basis of the processing operation and it is therefore legitimate for the European Parliament to establish a Financial Irregularities Panel. The legal basis is consequently valid.

2.2.3. Quality of data

Personal 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) of the Regulation). In this case, there is no systematic rule for the type of data which can appear in a case-file concerning financial irregularities. Such data largely depend on the case involved. However, it is important that the data collected are relevant and adequate for the purpose of the referral to the Panel.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a)). The lawfulness of the processing has already been examined in point 2.2.2 of this opinion. As for the fairness, this is linked to the information which must be supplied to the data subject (see point 2.2.7 below).

Finally, under Article 4(1)(d) of the Regulation, personal data must also be "*accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*".

In accordance with Articles 2(5) and 3(2) of the Bureau decision, officials or other members of staff are invited to submit their observations to the Panel orally and/or in writing and the Panel's opinion is also addressed to them. The contradictory nature of the procedure put in place is in itself the best guarantee of the quality of the data processed and of the information on which the Panel bases its opinion. For the sake of completeness, the EDPS considers that under the system it must be possible to ensure that all the elements which have been validly presented are included. It therefore goes without saying that information which is validly obtained and collected should be contained in the case-file. The data subject's rights of access and rectification should therefore also be safeguarded so as to make the case-file as complete as possible. They constitute the second possibility for guaranteeing the quality of data. See point 2.2.6 regarding the two rights of access and rectification.

¹¹ Commission Regulation (EC, Euratom) amending Commission Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, C(2007) 1862 final.

The EDPS recommends that the relevance and adequacy of the data collected for the purpose of the referral to the Panel be ensured. In addition, the EDPS considers that under the system it must be possible to ensure that all the elements which have been validly presented are included in the case-file. As the EDPS has already pointed out in other prior checking operations concerning Financial Irregularities Panels, he recommends that the Panel act as a filter for the quality of the data for forthcoming processing operations in order to guarantee that the information collected is adequate, relevant and not excessive, in accordance with the provisions of Article 4 of the Regulation.

2.2.4. Conservation of data

Article 4(1)(e) of Regulation (EC) No 45/2001 posits the principle that 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* "

According to the note from the data controller to the DPO of the European Parliament, which was attached to the notification forwarded to the EDPS, the Bureau's decision does not indicate how long documents relating to the Panel's proceedings should be kept. The data controller thinks it advisable to envisage a period similar to that laid down by Article 49(d) of the detailed rules for the implementation of the Financial Regulation, viz. at least five years from the date on which the European Parliament grants a discharge for the budgetary year during which the Panel delivers its opinion.

The EDPS takes the view that a five-year period for the conservation of data, together with the reasons for requiring such a period, seem adequate, but that this period of conservation should be notified to staff.

Moreover, the EDPS would like to draw attention to a particular aspect of data conservation. In connection with its opinion¹² on the amendment of the Regulation laying down detailed rules for the implementation of the Financial Regulation, the EDPS addressed the particular issue of the conservation by authorising officers of supporting documents which may contain personal data (Article 49 of the implementing rules) and in particular of the link between the conservation requirement contained in that Article and the specific rule requirement contained in Article 37 of Regulation (EC) No 45/2001¹³ on the conservation of traffic and billing data in the context of internal communications networks, as defined by Article 34 of Regulation (EC) No 45/2001. The conclusion of the EDPS regarding the balancing of interests is that the personal data contained in supporting documents should be erased as soon as possible when such data are no longer necessary in the context of the budgetary discharge. In all instances Article 37(2) of Regulation (EC) No 45/2001 must be respected with regard to traffic data. This position of the EDPS was reflected in the new version of the Regulation laying down detailed rules for the implementation of the Financial Regulation by the addition of a paragraph in Article 49.

The prospect of data being kept for statistical, historical or scientific reasons seems to be excluded. Nevertheless, if the Panel finds it useful to keep a record of certain data, in order to draw up statistics in this area or to ensure consistency of opinions, the EDPS recommends that data be kept in a form which makes them anonymous, in accordance with Article 4(1)(e) of the Regulation.

¹² Opinion available on the EDPS site: <http://www.edps.europa.eu>.

¹³ 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.

2.2.5. Transfer of data

Processing must also be viewed in the light of Article 7(1) of Regulation (EC) No 45/2001. Processing as referred to in Article 7(1) concerns transfers of personal data within or to other Community institutions or bodies *"if necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

We are dealing with a transfer to other Community bodies, in particular to the European Anti-Fraud Office (OLAF), the Appointing Authority (AA) or the authority empowered to conclude contracts of employment (AECE) and, in the case of systemic problems, to the authorising officer and to the authorising officer by delegation concerned (if the latter is not involved), and to the internal auditor.

In its relations with OLAF, there has not yet been a case within OLAF's remit. However, if such a case were to occur, the Panel would inform OLAF and would close the case-file at its level and would inform the Appointing Authority.

It therefore has to be ensured that the conditions of Article 7(1) are complied with. This is the case since the data collected are necessary for the processing to take place and, in addition the data are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*. On the subject of these transfers, it should be remembered that only relevant data must be transferred. This transfer is therefore legitimate to the extent that the purpose is covered by the competences of the recipients. Article 7(1) is complied with.

2.2.6. Right of access and rectification

In accordance with Article 13 of Regulation (EC) No 45/2001 concerning right of access, data subjects have the right to obtain confirmation as to whether or not data relating to them are being processed; information at least as to the purposes of the processing operation, the categories of data concerned and the recipients or categories of 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 of Regulation (EC) No 45/2001 gives the data subject right of rectification. Just as the data subject has right of access, he can also have his personal data modified if necessary.

The EDPS considers that Articles 13 and 14 of the Regulation are complied with, given that the data subjects are invited by the Panel to submit their observations (Article 2 of the Bureau's decision). In the context of an objective right of rectification, this therefore covers the possibility for data subjects to put forward their point of view and to have it added to the case-file.

In addition, the Panel may ask the Appointing Authority or, where appropriate, the AECE, to supply it with the requisite information if it takes the view that it is not sufficiently well informed about the alleged facts or about the circumstances in which they were committed. The Panel may also ask to hear any official or other member of staff who might be able to help it to establish its position.

However, it is also important to note that the Panel acts as an advisory and not as an investigating body. These two rights (access and rectification) may not therefore be restricted under Article 20 of the Regulation, which provides in particular that such a restriction

constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences¹⁴.

In the application of Article 20, a distinction should therefore be made between two situations in connection with the Panel's activities:

- Article 20(1)(a) of Regulation (EC) No 45/2001 does not apply to the Panel, which is an advisory body, when no other circumstances have to be taken into consideration. This means that when the Panel gives its opinion outside the confines of an OLAF investigation, the rights of the data subjects cannot be restricted by the abovementioned article. This is consistent with Article 2(5) of the Bureau's decision.
- On the contrary, in instances where the Panel considers that a case comes within OLAF's remit, as referred to in Article 75 of the rules implementing the Financial Regulation, it returns the case-file without delay to the Appointing Authority and informs OLAF at once. Only in this connection is Article 5 of Annex XI to Parliament's Rules of Procedure, to which Article 2(5) of the Bureau decision implicitly refers, applicable. Article 5 of Annex XI lays down that, in cases necessitating the maintenance of absolute secrecy for the purposes of the investigation, the obligation to invite the official or member of staff to give his views (and hence to inform him) may be deferred in agreement with the Secretary-General. This means that there may be exceptions to the right of access and rectification because it might affect OLAF's future investigations. This interpretation is consistent with the restriction provided for in Article 20(1)(a), not because of the fact that the Panel is conducting an investigation but because OLAF is doing so and because it is up to it to decide whether or not to maintain this restriction.

It is nevertheless possible to envisage the application of another restriction based on Article 20, when considering, for example, the safeguarding of the rights and freedoms of others.

2.2.7. Information to be given to data subjects

Articles 11 and 12 of Regulation No 45/2001 concern the information to be supplied to the data subject in order to guarantee transparent processing of his personal data. These articles list a series of compulsory and optional items of information. The latter are applicable to the extent that, bearing in mind the particular circumstances of the processing involved, they are necessary to guarantee fair processing of the data in respect of the data subject. In the case to hand, some of the data are collected directly from the data subject and some from other persons.

In the present case, the provisions of Article 11 on the information to be given to the data subject (*Information to be supplied where the data have been obtained from the data subject*) are applicable where the data subjects themselves supply information to the Panel pursuant to Article 60(6) of the Financial Regulation. The Staff Note of 30 May 2005 and the Bureau's decision of 10 March 2004 refer to the provisions mentioned in points (a) (identity of the controller) (b) (purposes of the processing operation), (c) (the recipients or categories of recipients of the data) and (e) (existence of the right of access to, and the right to rectify, the data concerning him or her) but does not contain any clear provisions regarding point (d) (whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply). It is important to note that the provisions of Article 11 are

¹⁴ The EDPS's interpretation also concerns administrative enquiries and disciplinary cases.

also applicable to persons involved in a case of financial irregularity, where they avail themselves of their right to make comments.

In addition, the provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) apply to persons who are involved in a case of financial irregularity.

Consequently, the EDPS recommends that when updating general information for staff, a procedure be laid down to guarantee that staff members are fully informed of the principles enshrined in Articles 11 and 12 of Regulation (EC) No 45/2001 (both obligatory and optional, as the latter ensure fair treatment and do not entail any additional work for the data controller), and in particular with regard to whether replies to the questions are obligatory or optional as well as the possible consequences of failure to reply, the time-limit for storing the data on the data subject and the right to have recourse at any time to the EDPS. For the EDPS, this aim would also be achieved if the information were specifically given at the time the information was collected from the data subject.

In addition, Article 75(1), fourth indent, of the implementing rules provides that where the Panel is directly informed by a member of staff in accordance with Article 60(6) of the Financial Regulation it shall not only transmit the file to the Appointing Authority or to the AECE as appropriate, but shall also inform the member of staff by whom it was informed. The informing of the official is not provided for in the Bureau's decision as it stands. The EDPS advises that the Bureau's decision be amended on this point and the staff notified of the amendment.

The effect of Article 2(g) also needs to be analysed. Article 2(g) of the Regulation states that "however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients". Article 2(g) is an exception to the right of information (Articles 11 and 12) and, as an exemption from the right of information, must be strictly interpreted as covering specific inquiries. This relates typically to authorities receiving personal data in the course of particular investigations and not the authorities conducting these investigations or conducting audits in general. Authorities such as OLAF receiving data in the course of a particular inquiry will come under the exception in Article 2(g) and no information will therefore be given. This means that the Panel will not be under any obligation to tell the data subjects that data have been communicated to OLAF. No case falling within OLAF's remit has occurred hitherto. Should such a case occur, the Panel would inform OLAF thereof, close the file at its level and inform the Appointing Authority. In the proceedings under examination, the data communicated to OLAF fall under the exception in Article 2(g).

This does not mean however that institutions/bodies must not mention the fact of a possible transmission of personal data to such authorities by way of general information. Furthermore, this would be without prejudice to OLAF's informing the data subjects, depending on whether or not Article 20 applied.

2.2.8. Security

Article 22 of Regulation (EC) No 45/2001 provides that 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. These security measures are intended in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss or alteration, and to prevent all other unlawful forms of processing.

In the light of these measures, the EDPS considers that the security measures adopted are appropriate in terms of Article 22 of the Regulation.

Conclusion

The proposed processing does not appear to be in breach of the provisions of Regulation (EC) No 45/2001 provided the following comments are taken into account. This means in particular, that:

- the relevance and accuracy of the data collected for the purpose of the referral to the Panel must be ensured. In addition, the EDPS considers that the system must be such as to ensure that all elements that have been validly submitted are included in the file. The EDPS therefore recommends that the Panel act as a filter for the quality of the data for forthcoming processing operations, so as to guarantee that the information collected is adequate, relevant and not excessive, in accordance with the provisions of Article 4 of the Regulation;
- an additional provision should be inserted if processing for historical, statistical or scientific use is envisaged in the future. Such a provision should stipulate that the Panel will ensure that the data are rendered anonymous in compliance with Article 4(1)(e);
- the time-limit for storing the data must not exceed five years as at present laid down, unless documented reasons are given;
- when updating general information to staff, a procedure must be laid down to ensure that staff members are fully informed of the principles enshrined in Articles 11 and 12 of Regulation (EC) No 45/2001, in particular with regard to whether replies to the questions are obligatory or optional and the possible consequences of failure to reply, the time-limit for storing the data on the data subject and the right to have recourse at any time to the EDPS. For the EDPS, this aim would also be fulfilled if the information were specifically given at the time the information was collected from the data subject;
- Article 2(2) of the Bureau's decision must be amended to include an obligation on the Panel, as provided for in Article 75(1), fourth indent, of the implementing rules of the Financial Regulation, to ensure that the staff member is informed of the transmission of the file to the Appointing Authority, or where appropriate the AECE, in application of Article 60(6). In addition, staff should be informed of this change;
- the interpretation of Article 2(5) of the Bureau's decision and of Article 5 of Annex XI to Parliament's Rules of Procedure should be reviewed in the light of the restrictions required by OLAF.

Done at Brussels, 12 June 2007

Joaquín BAYO DELGADO
Assistant Data Protection Supervisor