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Dear Mr Antoniou,

Please find below the comments of the EDPS on the draft implementing rules of Cedefop received on 19 March 2009.

The EDPS notes the Cedefop approach not to limit the implementing rules to the tasks, duties and powers of the Data Protection Officer, as foreseen in Article 24(8) of Regulation (EC) No 45/2001, but to develop them to cover also the role of controllers and the rights of data subjects.

The EDPS would suggest the following modifications:

1. Preamble: " *Adopting implementing rules concerning the Data Protection Officer pursuant to article 24(8) of Regulation (EC) 45/2001*". A less confined title would be preferred that would encompass the variety of matters dealt within the implementing rules; although such matters are closely connected to the Data Protection Officer, e.g. the data-subjects rights, they do maintain their own value. Therefore we would suggest the following drafting " *Adopting implementing rules concerning Data Protection at Cedefop*".
2. Article 3: This article not only provides for the appointment of the Data Protection Officer but also offers valuable information about his status. Therefore, the EDPS suggests amending the title of the article " *Appointment of the Data Protection Officer*" as follows: " *Appointment and Status of the Data Protection Officer*".

3. Article 3.2: In cases of part time DPOs, it is of high importance to mention that the selection of the DPO shall not be liable to result in a conflict of interests between his or her duty as DPO and any other official duties, in particular in relation to the application of the provisions of Regulation 45/2001 (Art 24 (3) Regulation 45/2001).
4. Article 4.1: Given that the draft implementing rules provide for "*delegated controllers*", it is recommended to explicitly add the "*delegated controllers*" among the people that may receive advice by the DPO.
5. Article 4.2: It should be explicitly specified that the Staff Committee can consult the DPO (cf. Point 2 of the Annex of the Regulation 45/2001). Moreover it should be specified that the DPO can be consulted without going through the official channels (cf. Point 2 of Annex of the Regulation 45/2001 and also Article 33 in relation to the EDPS).
6. Article 4.3: It should be explicitly stated that the Staff Committee can also request an inquiry. Furthermore, some words should be added in the article so as to be consistent with the wording of Point 1 of the Annex to the Regulation (EC) 45/2001. In particular the words that should be added are shown in italics as follows "*the DPO investigates matters.....directly relating to DPO's tasks which come to his or her notice..*" and "*..the DPO reports back to the person who commissioned the investigation or to the controller*".
7. Article 5.1: The wording of the article should be changed as follows "... on the issues concerning the *application of data protection provisions*".
8. Article 5, last paragraph: The EDPS suggests adding the words "*all offices,*" *before* "*all data- processing installations and data carriers*" so as to be consistent with Point 4 of the Annex to the Regulation (EC) 45/2001.
9. Article 6.4: It would be useful to provide for a transitional period (e.g. maximum half a year from the entry into force of the Decision) for the controllers to comply with the requirement of the Regulation concerning their duty to notify the already existing processing operations.
10. Article 6.6: it would be appropriate to add that the DPOs should immediately inform the EDPS about any changes affecting the information contained in the prior checking notification.
11. Article 8.1: It shall be explicitly stated, according to the Annex to the Regulation 45/2001, that the Staff Committee can request an inquiry.
12. The EDPS encourages Cedefop to add an article stating that "*Activities of the DPO shall be reported in Cedefop's annual activity report*".

It is highly recommended to develop further good practices, according to Cedefop's specific needs and circumstances. This has been the case, for instance, in other institutions whereby it was deemed appropriate to create links between the DPO and the particular institutions' IT departments. It is obvious that relevant provisions were seen as an effective supplement to a DPO's sources of information.

Furthermore, the EDPS welcomes the fact that, in several institutions and bodies, the documentation stored by the controller (which is afterwards transmitted to the DPO) may also include written requests from data subjects for the exercise of the rights mentioned in Articles 16 and 18 of the Regulation (EC) 45/2001. In a relatively small EU agency, such as Cedefop, Articles 13, 14 and 15 could also be included in this provision; the storage of requests implementing those Articles would probably not require the investment of a considerable amount of effort on the part of Cedefop. This documentation could then be used to conduct analysis and measure compliance with the Regulation. Thus, it would enable the DPO to spot the weaknesses of the systems.

We remain at your disposal for any further details you might want to discuss and would be grateful if you let us know the definite version approved by the Cedefop.

Best regards,

(signed)

Giovanni BUTTARELLI