



- ACTIVITY REPORT FOR 2011 & 2012 -

Introduction

Regulation No 45/2001 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 has been complied with at the ECA since 2002.

Article 24 of the Regulation requires that each Community institution or body appoint at least one Data Protection Officer (DPO). Since June 2010 Mr Johan Van Damme has been the Data Protection Officer appointed by the Court.

This report describes the main activities of the DPO in 2011 and 2012.

Implementing rules

New implementing rules were created in 2011 based on the European Data Protection Supervisor's (EDPS) guidelines for the "Tasks, duties and powers of the Data Protection Officer", issued in July 2010. After having updated the draft implementing rules to take account of the EDPS's recommendations in 2011 and obtained a positive opinion from the EDPS, the Court adopted the new DPO implementing rules on 1 February 2012.

Notification System

Article 25 of Regulation No 45/2001 requires controllers to notify the DPO of any data processing operation. Controllers are the Secretary-General, the directors and the heads of unit. All controllers have appointed delegated controllers.

The computerised notification system was abandoned to simplify the notification process and replaced by a set of spreadsheets. This simplification was welcomed by all controllers and reduced the administrative burden imposed on them.

For three years the DPO requested that the audit units, before starting an audit, should implement a mechanism to verify whether personal data would be processed; as a result, since 2012 the audit units have been required to evaluate, at the audit planning

stage, whether personal data will be processed during an audit and, if this is the case, to notify the DPO. Without this notification an audit can no longer pass the validation process. This is a clear enhancement of the guarantee to the DPO that audits which process personal data are notified, and this then permits the DPO to verify whether all the data protection obligations have been complied with throughout the entire audit.

The DPO's Register

All the data processing operations notified by the controllers become part of the Register that is kept by the DPO and is available on the ECA's Internet/Intranet.

In 2011 and 2012, 20 and 7 new notifications respectively were received and entered in the DPO's Register. This brought the total number of notifications to 157, an increase of 27 % in two years.

All the notifications that required a prior checking notification to the EDPS were made except for two: medical data and the personal data handled by the Financial Irregularities Panel. These prior checking notifications must be made before the end of June 2013, the date that the EDPS has set as the deadline for all prior checks requested by the EU Institutions, Agencies and Bodies.

Key Performance Indicator 1: The number of notifications made to the DPO was set at 100 %. In 2011 there were 17 DPO notifications missing, which resulted in a notification rate of 89 %.

In 2012 only two DPO notifications were missing, bringing the rate to 99,7 %.

Key Performance Indicator 2: The number of missing prior checks was set at 0.

In 2011 and 2012 the KPI remained unchanged at 2.

Data protection awareness

The information issued to staff in 2002 on the processing of personal data and explaining the key elements of Regulation No 45/2001, including rights and obligations, is still valid and is available on the DPO's page on the ECA's Intranet.

The DPO's page was used to disseminate awareness campaigns, best practices, guidelines and general information on data protection matters, including videos from national data protection authorities used during their national data protection awareness campaigns.

Newly recruited staff are briefed about the Data Protection Regulation applicable at the EU Institutions during a mandatory seminar organised by the ECA's professional training unit.

Key Performance Indicator 3: The number of newcomers trained within three months of recruitment was set at 100 %. In 2011, 41 newcomers were trained, which represented a training rate of 71 %.

In 2012, 45 newcomers were trained, resulting in a training rate of 87 %.

The reason why the target was not reached is that some newcomers are unable to attend the presentations, which are only offered on specific dates even though they are mandatory.

To increase the training rate for newcomers an e-learning presentation was set up that will be used from 2013 onwards. As this e-learning module will be available at any time from any workplace it will offer a higher possible training rate compared with training sessions only held on specific dates.

For some categories of staff (those in Members' Private Offices, contract staff employed for less than a year, national experts and trainees) the training is not compulsory even though Data Protection Regulation No 45/2001 applies to all staff and data processors. The ECA should make the data protection training compulsory for all staff.

On European Data Protection Day in 2011 a quiz was organised to test the data protection knowledge of the ECA's staff and in 2012 the EDPS poster was used for raising awareness about the correct treatment of personal data within the Court.

Meetings with controllers, inspections and audits

The DPO continued to visit at regular intervals to discuss specific and general data protection issues with certain controllers, mainly in the Human Resources domain. Ad-hoc informal meetings were held with Court staff at their request.

In 2012 the DPO paid special attention to the processing of personal data during evaluations:

First of all, the annual or biennial evaluations of staff reports but also declarations of conflicts of interests, disciplinary procedure files, etc. Special emphasis was placed on data retention periods, which were clearly fixed in 2012 for administrative investigations and disciplinary procedures and communicated to the staff.

In 2011 secure bins were installed, as a pilot project, in addition to the paper shredders, to extend the possibilities for destroying personal data securely. Dumpster diving activities continued to be carried out at regular intervals and proved that most controllers and data processors destroyed personal data very well. However, in 2012, before all ECA staff moved to the new building, several documents were found in the paper containers during a number of checks. Together with the Library a complete data destruction procedure was set up and communicated to all staff and an information campaign was launched on what to do with waste paper and who to call for assistance if data on a digital support or large volumes of paper were involved. Many archives, especially from audit units, were purged of personal data that had been kept outside the specific retention period.

An inspection was carried out concerning the way OLAF treated personal data during investigations and evaluations related to ECA staff; this resulted in the DPO lodging several complaints with the EDPS, as the DPO considered that the rights of informants/whistle-blowers and persons under investigation were not respected.

Collaboration between the DPOs and the EDPS

The DPOs of the EU institutions/bodies met twice during 2011 and twice in 2012 to exchange experiences and best practices and discuss data protection issues of mutual concern.

A proposal to set up an IT training course for DPOs was made in conjunction with three other DPOs and a survey was sent to all DPOs to ascertain their needs.

Prior checking

Article 27 of Regulation No 45/2001 requires that processing operations concerning personal data likely to present specific risks to the rights and freedoms of data subjects shall be subject to prior checking by the EDPS.

In 2011 four notifications and in 2012 one new notification for prior checking were submitted to the EDPS. In 2012 another prior checking notification was prepared but could not be finalised owing to a lack of collaboration on the part of the data controller.

Opinions, comments

In 2011, the number of opinions and comments delivered on data protection issues in response to requests coming from different sources remained about the same as in previous years, but tripled to 35 in 2012.

Opinions were delivered on, amongst other things:

Access to documents;

Telephone lists;

Transfer of data to embassies;

Audit surveys; staff surveys;

Training of staff and other people;

Time management;

Medical data;

Human resources treatment, including personal files;

Retention periods.

Complaints

After having witnessed in 2010 how personal data were collected and processed by OLAF staff during an on-the-spot investigation on the premises of the ECA and having tried in vain to prohibit the collection of some personal data, the DPO lodged several complaints with the EDPS in 2011 and 2012. The complaints concerned the collection and processing of personal data stored on private drives, in e-mail accounts, on mobile telephones, but also in documents located at desks and which were not related to the case being investigated. The data that were collected and processed included medical data and private communications. Some of the data collected were transported in an insecure way and/or were disproportionate, irrelevant and excessive in relation to the investigated facts and thus non-compliant with several of the principles specified in Data Protection Regulation No 45/2001. In addition, the investigation did not respect some principles of the Charter of Fundamental Rights of the European Union and the Convention of Human Rights, especially the right to privacy and the secrecy of correspondence. As mentioned in its 2012 Annual Report, OLAF's Supervisory Committee shares the DPO's opinion concerning non-compliance with human rights and data protection principles in the case of this investigation but the EDPS rejected it. The President of the ECA was also informed by the DPO that OLAF performed an on-the-spot investigation in respect of two persons who were not covered by an investigation mandate.

Training

Key Performance Indicator 4: At least five DPO training days, equivalent to 40 Continuing Professional Education (CPE) hours, about data protection and information security. Forty-three CPE training hours were achieved in 2011 and 64 in 2012, which fully meets the set objective.

DPO resources

The ECA dedicated a half-time administrator to the DPO function in 2011 and 2012. In 2012 its resources were supplemented for a period of four months by a trainee to enhance its legal expertise. As the number of personal data processing operations is increasing by around 15 % on average every year and the volume of requests received and advice given by 200 %, and since the EDPS issues at least two new guidelines per year and the new data protection legislation under preparation will impose more duties on the DPO, the ECA should plan to dedicate more resources to comply with the obligation in Regulation No 45/2001 to "provide him or her with the staff and resources to carry out his or her duties".

Conclusions

2011 and 2012 have been very challenging years for the DPO owing to the fact that some staff considered that their personal data were processed in breach of the Data Protection Regulation, there was a considerable increase in the number of personal data processing operations and a proliferation of requests to and advice given by the data controllers and data processors.

This would seem to have arisen as a result of the increased awareness of data protection brought about not only by the DPO but also by the EDPS and the national data protection authorities over the last few years.

Data Protection has become more visible and more important owing to the priorities set by the Commission and two of its Commissioners and will in future require more resources to be able to comply with the obligations imposed.

(s) Johan Van Damme



Luxembourg, 08.07.2013
CPR005494EN01-13PP-OR.DOC

Vitor Caldeira

PRESIDENT
EUROPEAN COURT OF AUDITORS

Mrs Viviane Reding
Vice President of the European
Commission
Rue de la Loi, 200
B – 1049 Brussels

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Vice President,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

It is in this context that I would like to draw your attention once more for this element of utmost importance in the light of the evidence provided by the Court's Data Protection Officer in his Annual Report 2012. He considers that general principles such as the protection of the private life and communications, and the respect of the national legislation when and how personal data and communications are collected are not being taking into account by OLAF in an appropriate manner.

Therefore, and bearing in mind the administrative nature of OLAF inquiries, allow me to reaffirm the Court's position on this particular aspect, and reiterate the need for OLAF investigators to have a concrete mandate with a clear legal basis for every person to be investigated, safeguarding appropriate guarantees of an independent supervision by a third person. Moreover, the Office investigators should have the right of access only to information in relation with the investigated facts.

I trust these concerns will be appropriately addressed in the context of the reform of the Regulation No 1073/1999 and in establishing its implementing measures.

Yours sincerely,

Vitor Caldeira



Luxembourg, 08.07.2013
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Vítor Caldeira

PRESIDENT
EUROPEAN COURT OF AUDITORS

Mr. Linas Linkevičius
President du Conseil « Affaires générales »
175, rue de la Loi
B- 1048 Bruxelles

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Mr. Linkevičius,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

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Yours sincerely,

Vítor Caldeira



Luxembourg, 08.07.2013
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Vitor Caldeira

PRESIDENT
EUROPEAN COURT OF AUDITORS

**Mr Michael Theurer
Chairman of the
Committee on Budgetary Control
European Parliament
60, rue Wiertz,
B – 1047 Brussels**

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Mr. Theurer,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

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Yours sincerely,

Vitor Caldeira



Luxembourg, 08.07.2013
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Vitor Caldeira

PRESIDENT
EUROPEAN COURT OF AUDITORS

Mr Algirdas Šemeta
Member of the European
Commission
Rue de la Loi, 200
B – 1049 Brussels

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Commissioner,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

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Vitor Caldeira



Luxembourg, 08.07.2013
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Vítor Caldeira
PRESIDENT
EUROPEAN COURT OF AUDITORS

Mr Giovanni KESSLER
Director-General of the
European Anti-Fraud Office
Rue Joseph II, 30
B-1049 Brussels
Belgium

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Mr. Kessler,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

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Vítor Caldeira



Luxembourg, 08.07.2013
CPR005492EN01-13PP-OR.DOC

Vitor Caldeira

PRESIDENT
EUROPEAN COURT OF AUDITORS

Mr Johan DENOLF
Chairman of the OLAF
Supervisory Committee
Bât. J30 13/62 – Rue Joseph II, 30
B – 1049 Brussels

Subject: Reform of the Regulation No 1073/1999 (Investigations OLAF)

Dear Mr. Denolf,

As you may recall, the European Court of Auditors presented its observations on the reform of the Regulation No 1073/1999 concerning investigations conducted by the OLAF on its Opinion No 6/2011. One of the Court's observations deals with the need to respect the individual rights and procedural guarantees of investigated persons as established by the Charter of Fundamental Rights of the Union and the Treaty.

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Vitor Caldeira