



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.7.2001
COM(2001) 411 final

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT, OF THE COUNCIL AND OF THE
COMMISSION**

**on the regulations and general conditions for the performance of the duties of the
European Data Protection Supervisor**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Community institutions and bodies commonly deal with personal data in the course of their activities. By way of example, the Commission exchanges data of a personal nature with the Member States as part of the common agricultural policy, to administer the customs procedure, for the management of the structural funds, and in connection with other Community policies such as education, training, culture and research. To ensure the protection of natural persons as regards the processing of these data by the Community institutions and bodies, and to avoid these exchanges being called into question by the Member States on the grounds of data protection, the Treaty signed in Amsterdam introduced, in the Treaty establishing the European Community, a specific provision to that effect. The new Article 286 lays down that, from 1 January 1999, the Community institutions and bodies must apply the Community rules on the protection of personal data, as set out essentially in Directives 95/46/EC and 97/66/EC. It also lays down that the application of those rules must be monitored by an independent supervisory body. Moreover, the same concern was behind the inclusion of the right to the protection of personal data in Article 8 of the Charter of Fundamental Rights of the European Union.

The Community legislator responded to this call in the Treaty by means of 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.

The Regulation lays down a series of principles to which the processing of personal data by the Community institutions and bodies is subject. Alongside these substantive provisions, the Regulation sets up an independent supervisory authority, entitled the *European Data Protection Supervisor*, which is entrusted with ensuring the application of the provisions of the Regulation. It is assisted by an *Assistant Supervisor*.

The Regulation also lays down that the European Parliament, the Council and the Commission shall by common accord determine the regulations and general conditions governing the performance of the European Data Protection Supervisor's duties and, in particular, his or her salary, allowances and any other benefits in lieu of remuneration. In this context, it should be noted that most of the elements to be included in the regulations for the European Supervisor, as well as those for his deputy, were already laid down by the Regulation itself. It lays down specific guarantees for ensuring the independence of the Supervisor, relating in particular to his appointment and resignations, the duration of his term of office, and the prohibition on receiving instructions from anybody. In order to perform the duties attributed by the Regulation, he is granted his own powers.

However, two essential aspects of the regulations and the general conditions governing the performance of the duties of the European Data Protection Supervisor remain to be determined - the remuneration of the Supervisor and the seat of the body.

As regards the Supervisor's remuneration, it is important to ensure regulations for the European Supervisor which correspond to his duties of supervising the Community institutions and bodies, his powers and his independence. In addition, account must be taken of the influence which the figure of the European Mediator has had on the institutional profile of the Supervisor in the Regulation. It is not by chance that many elements of the regulations on the Mediator have been taken over in the Regulation where it refers to the Supervisor, and that his budget is shown in Section VIII of the general budget of the European Union, which currently contains the heading relating to the Mediator. In this way, the Regulation follows

existing practice in some Member States in which the supervisory authority for the protection of personal data is in the form of a one-person and independent body and is even given the title of "ombudsman". It is therefore proposed that the European Data Protection Supervisor receive the same remuneration as the European Mediator who, in turn, is on the same footing as a judge of the Court of Justice of the European Communities as regards his remuneration, allowances and retirement pension.

As regards the remuneration of the Assistant Supervisor, account should be taken of the need to meet a twofold requirement for his regulations. On the one hand, the Assistant Supervisor is appointed according to the same procedure and for the same term of office as the Supervisor, and assists the Supervisor in all the latter's duties and acts as a replacement when the Supervisor is absent or prevented from attending to them. This means that the regulations governing him, and in particular his remuneration, must be close to those for the Supervisor himself. On the other hand, a hierarchy has to be established between the two posts, so as to reflect the difference there must be between the Supervisor and the person assisting and standing in for him. It is therefore proposed that the Assistant Supervisor be put on the same footing as the Registrar of the Court of Justice as regards his remuneration, allowances and retirement pension. The Registrar is subject to the same regulations as the judges of the Court of Justice for the establishment of the emoluments, and in particular their remuneration, allowances and retirement pensions. On the other hand, there is a certain hierarchy between the judges and the Registrar, given that the basic monthly salary of the judges is equal to 112% of the basic salary of an official of the European Communities in the last step of Grade A1, while the basic salary of the Registrar is 101% of the basic salary of such an official¹.

By the very nature of his duties, the European Data Protection Supervisor must be close to the institutions which he has to supervise. Most Commission departments, the Secretariat of the Council of the Union, the Economic and Social Committee and the Committee of the Regions are located in Brussels. These departments are in turn responsible for most of the processing of personal data carried out by the Community institutions and bodies. As regards the other Community institutions and bodies distributed across the various Member States, Brussels is situated at the geographical centre and has reasonably good connections to the outlying areas of the Union. In order to cater for the due performance of his duties, it is proposed that the seat of the European Data Protection Supervisor be established in Brussels.

The Commission would also stress the importance of the role the Supervisor will be called upon to play in the system of protection for personal data laid down by the Regulation. On the one hand, the Supervisor is the guarantor, for the persons concerned, that their data will be processed in absolute compliance with the principles of the Regulation, in particular through the enquiries which he can make, either at his own initiative or on the basis of a complaint, and through prior checks on certain processing. On the other hand, his intervention gives the general data protection system established by the Regulation the flexibility needed to adapt to circumstances which the Regulation itself could hardly foresee, while ensuring the appropriate guarantees. The Supervisor can, for instance, authorise transfers of personal data to a third country or an international organisation which does not ensure an adequate level of protection; he may derogate from the principle of the prohibition of processing of sensitive data and computerised decisions affecting individuals; and he can authorise the processing of certain data on traffic and invoicing in telecommunications networks over and above what the Regulation permits in general.

¹ Regulation (ECSC, EEC, EURATOM) No 1546/73 of the Council du 4 June 1973, OJ L 155 of 11.6.1973, p. 8.

In view of the above, the Commission considers that it must take the steps needed on its part to enable the European Data Protection Supervisor to be established and become operational as soon as possible. In particular, it will take action in the budget procedure to ensure that the Supervisor appointed has the necessary human and financial resources needed for the performance of his tasks as soon as possible, while of course respecting the role attributed to him by the Treaty in budgetary matters. The Commission will therefore submit to the budgetary authority as soon as possible a letter of amendment to the PDB for 2002 containing a forecast of the resources needed by the Supervisor and established on the basis of this proposal. Subsequently, the Commission would like to be in a position to launch a call for candidates for the post of Supervisor and of Assistant Supervisor, as provided for in Article 42 of the Regulation, by 1 November 2001 at the latest.

The Commission invites the European Parliament and the Council to join with the Commission in a joint effort, so that citizens can count rapidly on the European Data Protection Supervisor to ensure their fundamental right to the protection of their personal data when these are processed by the Community institutions and bodies.

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THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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, and in particular Article 43 thereof¹,

Having regard to the proposal from the Commission²,

Whereas:

- (1) The European Data Protection Supervisor is the independent supervisory body entrusted with monitoring the application to the Community institutions and bodies of the Community instruments relating to the protection of natural persons as regards the processing of personal data and the free movement of such data.
- (2) The effective establishment of this independent supervisory body calls for the regulations and general conditions for the performance of the duties of the European Data Protection Supervisor and of the Assistant Supervisor to be laid down.
- (3) Most of the elements to be included in the regulations for the European Data Protection Supervisor are already contained in the Regulation. It contains the necessary provisions for the appointment of the European Data Protection Supervisor and that of the Assistant Supervisor; his human and financial resources, his independence, his obligation of professional secrecy, his duties and his powers.
- (4) Only two major aspects of the regulations are not contained in the Regulation and thus remain to be clarified. This concerns the remuneration of the Supervisor and the Assistant Supervisor, his allowances and any other benefits in lieu of remuneration, and the seat of the Supervisor.
- (5) The European Data Protection Supervisor must have a remuneration on the same level as the European Mediator, given the need to ensure that the Supervisor a status

¹ OJ L 8 of 12.1.2001, p. 1.

² OJ C of , p. .

corresponding to his duties and powers, and the fact that the Regulation largely follows the European Mediator in defining the institutional profile of the Supervisor. The European Mediator, in turn, is on the same footing as a judge of the Court of Justice as regards his remuneration, allowances and retirement pension.

- (6) The Assistant Supervisor must be placed on the same footing as the Registrar of the Court of Justice of the European Communities as regards his remuneration, allowances and retirement pension, so as to establish a hierarchy between him and the European Supervisor, while submitting both to the same type of emoluments, in line with their appointment procedure, term of office and duties.
- (7) The seat of the European Data Protection Supervisor must be established in Brussels, so as to ensure the proximity which, by the nature of his tasks, must exist between the European Supervisor and the Community institutions and bodies subject to his supervision, and in order to facilitate the smooth performance of his duties,

HAVE ADOPTED THIS DECISION:

Article 1
Remuneration of the European Data Protection Supervisor

The European Data Protection Supervisor is placed on the same footing as a judge of the Court of Justice of the European Communities as regards the determination of his remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.

Article 2
Remuneration of the Assistant Supervisor

The Assistant Supervisor is placed on the same footing as the Registrar of the Court of Justice as regards the determination of his remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.

Article 3
Seat

The European Data Protection Supervisor and the Assistant Supervisor shall have their seat in Brussels.

Article 4

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Done at Brussels,

For the
European Parliament
The President

For the Council of
the European Union
The President

For the Commission of the
European Communities
The President