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## REPORT

on the proposal for a decision of the European Parliament, the Council and the Commission on the regulations and general conditions for the performance of the duties of the European data protection supervisor  
(COM(2001) 411 – C5-0384/2001 – 2001/2150(ACI))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Elena Ornella Paciotti



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## PROCEDURAL PAGE

By letter of 20 July 2001, the Commission forwarded to Parliament the proposal for a decision of the European Parliament, the Council and the Commission on the regulations and general conditions for the performance of the duties of the European data protection supervisor (COM(2001) 411 – 2001/2150(ACI)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal for a decision to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0384/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Elena Ornella Paciotti rapporteur at its meeting of 13 September 2001.

It considered the proposal for a decision and the draft report at its meetings of 9 October 2001, 20 November 2001 and 20 February 2002.

At the last meeting it adopted the motion for a resolution by 35 votes, with 2 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, Lousewies van der Laan and Giacomo Santini, vice-chairmen; Elena Ornella Paciotti, rapporteur; Alima Boumediene-Thiery, Giuseppe Brienza, Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Marie-Françoise Garaud (for Mario Borghesio), Evelyne Gebhardt (for Gerhard Schmid), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Ilka Schröder), Baroness Sarah Ludford, Hartmut Nassauer, Paolo Pastorelli (for Mary Elizabeth Banotti), Hubert Pirker, Martine Roure, Heide Rühle, Ole Sorensen (for Francesco Rutelli), Patsy Sørensen, The Earl of Stockton (for Bernd Posselt), Joke Swiebel, Anna Terrón i Cusí, Astrid Thors (for William Francis Newton Dunn, pursuant to Rule 153(2)), Maurizio Turco and Christian Ulrik von Boetticher.

The opinions of the Committee on Budgets and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 25 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### European Parliament proposal on the proposal for a decision of the European Parliament, the Council and the Commission on the regulations and general conditions for the performance of the duties of the European data protection supervisor (COM(2001) 411 – C5-0384/2001 – 2001/2150(ACI))

This proposal is modified as follows:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
<hr/>	
Amendment 1	
Recital 1	
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,	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, <b><i>with the primary objective of protecting an individual's private and family life.</i></b>
Amendment 2	
Recital 1a (new)	
	<b><i>1a. The data protection rules are concerned with the protection of private and family life, in accordance with the case-law concerning the relationship between Article 8 of the European Convention on Human Rights and the Council of Europe's data protection Convention. It is not the purpose of data protection to restrict the information available to citizens about public activities.</i></b>

#### *Justification*

*To interpret and apply data protection rules correctly, it is necessary to understand their legal basis and that they exist in order to protect private and family life. The preamble to the*

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<sup>1</sup> OJ.C

*Data Protection Convention and Recitals to the Data Protection Directive also make clear that their purpose is to protect the fundamental right of privacy, not to restrict the information available to citizens about public activities.*

Amendment 3  
Recital 3

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.

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. ***The internal rules of procedure of the EUDP supervisor provided for by article 46 letter K of EC regulation n. 45/2001, shall contain in particular procedural provisions governing the manner in which the Data Protection Supervisor shall exercise his powers of investigation.***

*Justification*

*No justification.*

Amendment 4  
Recital 3a (new)

***3a. Whereas the proposal was not foreseen in the financial perspective,***

*Justification*

*The draftsman points out that the current proposal was not foreseen when decisions on the financial perspective were taken. As a result, the budgetary authority should make sure that the amount proposed for the Data Protection Supervisor is compatible with the ceiling under the financial perspective.*

Amendment 5  
Recital 3b (new)

***3b. Whereas the financial envelope of the proposal should be compatible with the current ceiling of heading 5 without restricting other policies.***

*Justification*

*The draftsman points out that the current proposal was not foreseen when decisions on the financial perspective were taken. As a result, the budgetary authority should make sure that the amount proposed for the Data Protection Supervisor is compatible with the ceiling under the financial perspective.*

Amendment 6  
Recital 5

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 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.

5. The European Data Protection Supervisor must have a remuneration on the same level as the European **Ombudsman**, given the need to ensure that the Supervisor a status corresponding to his duties and powers, and the fact that the Regulation largely follows the European **Ombudsman** in defining the institutional profile of the Supervisor. The European **Ombudsman**, in turn, is on the same footing as a judge of the Court of Justice as regards his remuneration, allowances and retirement pension.

*Justification*

*The correct term is European Ombudsman.*

Amendment 7  
Recital 7a (new)

***7a. Eventually, the structure and organisation of the European Data Protection Supervisor should be adapted in such a way as to also integrate under the***

***responsibility of a single European authority the data protection supervisory authorities within the European organs created on the basis of Titles V and VI of the EU Treaty.***

*Justification*

*No justification.*

Amendment 8  
Recital 7b (new)

***7b. Taking note that the competent committee of the European Parliament will hold a hearing, open to all Members of Parliament, of the candidates placed on the list drawn up by the Commission in accordance with Article 42(1) of Regulation No 45/2001 following a public call for candidates.***

*Justification*

*Self-explanatory.*



## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a decision of the European Parliament, the Council and the Commission on the regulations and general conditions for the performance of the duties of the European data protection supervisor (COM(2001) 411 – C5-0384/2001 – 2001/2150(ACI))**

*The European Parliament,*

- having regard to the proposal for a decision (COM(2001) 411 – C5-0384/2001<sup>1</sup>),
  - having regard to 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<sup>2</sup> thereof
  - having regard to Rule 54 of its Rules of Procedure
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Legal Affairs and the Internal Market (A5-0054/2001),
1. Approves the proposal for a decision of the European Parliament, the Council and the Commission on the regulations and general conditions for the performance of the duties of the European data protection supervisor, thus amended;
  2. Instructs its President to sign the act, thus amended, together with the President-in-Office of the Council and the President of the Commission;
  3. Instructs its Secretary-General to sign the act, thus amended, inasmuch as it falls within the field of his competences, and to proceed, in agreement with the Secretaries-General of the other institutions, to its publication in the Official Journal;
  4. Instructs its President to forward Parliament's position to the Council and Commission.

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<sup>2</sup>OJ L 8, 12.1.2001, p. 1....

## EXPLANATORY STATEMENT

Article 8 of the Charter of Fundamental Rights of the European Union states:

- '1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.' This article, which encapsulates the EU's model of privacy protection, is the first text explicitly to introduce the right to the protection of personal data as a fundamental right of the European citizen, although this right was earlier the subject of, for instance, Directives 95/46/EC and 97/66/EC.

The Treaty of Amsterdam introduced a new Article into the EC Treaty, intended to guarantee the protection of natural persons in respect of the processing of personal data by the Community institutions and bodies. Article 286 reads:

- '1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.
2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.'

Council Regulation (EC) No 45/2001 was adopted in implementation of this article. This regulation sets out the principles, in line with those laid down by the Community directives for the Member States, for the processing of personal data by the Community institutions and bodies. The areas covered include, for instance, the exchange of personal data with the Member States in the context of the common agricultural policy, the management of the Structural Funds or the customs regime, and such exchange in relation to education, training, culture or research policy.

In addition to transposing the existing rules operating at Member State level to the level of the Community institutions, the regulation also sets up an independent supervisory authority in the shape of the *European Data Protection Supervisor*. The duties of this figure are described in its Article 46:

'The European Data Protection Supervisor shall:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his or her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;

- (c) monitor and ensure the application of the provisions of this Regulation and any other Community act relating to the protection of natural persons with regard to the processing of personal data by a Community institution or body with the exception of the Court of Justice of the European Communities acting in its judicial capacity;
- (d) advise all Community institutions and bodies, either on his or her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before they draw up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data;
- (e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
- (f) (i) cooperate with the national supervisory authorities referred to in Article 28 of Directive 95/46/EC in the countries to which that Directive applies to the extent necessary for the performance of their respective duties, in particular by exchanging all useful information, requesting such authority or body to exercise its powers or responding to a request from such authority or body;
- (ii) also cooperate with the supervisory data protection bodies established under Title VI of the Treaty on European Union particularly with a view to improving consistency in applying the rules and procedures with which they are respectively responsible for ensuring compliance;
- (g) participate in the activities of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 of Directive 95/46/EC;
- (h) determine, give reasons for and make public the exemptions, safeguards, authorisations and conditions mentioned in Article 10(2)(b),(4), (5) and (6), in Article 12(2), in Article 19 and in Article 37(2);
- (i) keep a register of processing operations notified to him or her by virtue of Article 27(2) and registered in accordance with Article 27(5), and provide means of access to the registers kept by the Data Protection Officers under Article 26;
- (j) carry out a prior check of processing notified to him or her;
- (k) establish his or her Rules of Procedure.'

In the present proposal, the Commission calls on Parliament and the Council to adopt the decision enabling the Supervisor to take up his duties, by settling two points which are essential for his statute and are not fixed by the regulation, namely the remuneration to be paid to the Supervisor and the Assistant Supervisor and the seat of his office.

On the matter of remuneration, since the full independence of the Supervisor's office is to be guaranteed in respect of his function of monitoring all the Community institutions and bodies, it appears correct to propose that the Supervisor should receive the same remuneration as a judge at the European Court of Justice. In the case of the Assistant Supervisor, who will be appointed by the same procedure and for the same period as those applying to the Supervisor himself, and will have the additional responsibility of deputising for the Supervisor should the latter be absent or prevented from carrying out his duties, it is proposed that the remuneration payable should be the same as that of the Registrar of the Court of Justice.

As the majority of the personal data processing services of the Community institutions and bodies are located in Brussels, the proposal that the Supervisor's office should also be located there may be endorsed.

In view of the importance of the role to be played by the Supervisor in the system of

protection of the fundamental rights of European citizens under Article 8 of the Charter, it is clear that he should be enabled to take up his duties as rapidly as possible, especially as the time-limit laid down in the Treaty of Amsterdam elapsed some time ago.

10 October 2001

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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  
(COM(2001) 411 – C5-0384/01 – 2001/2050(ACI))

Draftsman: Kathalijne Maria Buitenweg

## **PROCEDURE**

The Committee on Budgets appointed Kathalijne Maria Buitenweg draftsman at its meeting of 13 September 2001.

It considered the draft opinion at its meeting of 10 October 2001.

At this meeting it adopted the following amendments unanimously.

The following were present for the vote: Terence Wynn, chairman; Kathalijne Maria Buitenweg, draftsman; Jean-Louis Bourlanges, Joan Colom i Naval, Carlos Costa Neves, Gianfranco Dell'Alba, James E.M. Elles, Göran Färm, Neena Gill, Catherine Guy-Quint, Jutta D. Haug, Michael John Holmes, Anne Elisabet Jensen, Wilfried Kuckelkorn, Armin Laschet, Juan Andrés Naranjo Escobar, Giovanni Pittella, Bartho Pronk (for Markus Ferber), Giacomo Santini (for Salvador Garriga Polledo), Esko Olavi Seppänen (for Francis Wurtz), Per Stenmarck, Francesco Turchi, Kyösti Tapio Virrankoski, Ralf Walter.

## SHORT JUSTIFICATION

### I. Background

The proposal under consideration takes the form of an interinstitutional agreement and aims at determining two aspects of the regulations and the general conditions governing the performance of the Data Protection Supervisor that were not laid down in Regulation No 45/2001<sup>1</sup>, the remuneration of the Supervisor and the seat of the body.

The Budgets Committee adopted its opinion on the original legal base on 28 March 2000<sup>2</sup> with 4 amendments, of which only one is reflected in the legal base.

Parliament took the view in its first reading resolution<sup>3</sup> for the 2001 budget in October 2000 that the budget for the European Data Protection Supervisor should become Section VIII B of the budget, while the budget of the European Ombudsman would become Section VIII A. This approach was accepted by Council and taken on board in Regulation No 45/2001.

Unfortunately, the Commission has been unable to present the current proposal before the presentation of the PDB 2002. Consequently, no provision was made for the Data Protection Supervisor. Council was in no position either to enter a new section VIII B in its first reading in July. It is now for Parliament to establish an appropriate budget structure in the budgetary procedure. Contrary to Article 3 of the Financial Regulation, the proposal under consideration has no financial statement attached to it, although it has significant budgetary consequences and changes in the number of posts. There was, however, a financial statement attached to the proposal for the original legal base, Regulation No 45/2001, including an establishment plan with 10 posts.

Letter of amendment 1/2002 has finally provided the budgetary structure for Section VIII B and proposes an establishment plan of 15 posts, whereas the Data Protection Supervisor and his deputy remain "hors cadre". The Commission proposes to enter an amount of EUR 1 526 000 in the 2002 budget for this new section.

In general terms, your rapporteur wishes to underline that it is unfortunate that there is no single data protection instrument for all Community pillars. The European Data Protection Supervisor's scope of responsibility is limited to the first pillar. As to the Schengen Convention, Europol Convention and the Information Technology for Customs Purposes Convention, which also foresee data protection instruments, a joint secretariat inside Council was established with Council Decision of 17 October 2000. The administrative expenditure is charged to Council's section of the budget (Section II).<sup>4</sup> This implies an unnecessary

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<sup>1</sup> 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, OJ L 8 of 12.1.2001, p 1.

<sup>2</sup> For more details see opinion of the Committee on Budgets for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of 28 March 2000 (PE 233.008)

<sup>3</sup> § 45 of the European Parliament resolution on the draft general budget of the European Union for the financial year 2001 (Other Sections). A5-0292/2000 (PE297.081)

<sup>4</sup> Parliament had originally proposed that a separate new section be created for the Joint Supervisory Bodies (Section VIII-C).

duplication of tasks and resources.

## **II. Human and administrative resources**

The Commission's proposal explains that the institutional profile of the Data Protection Supervisor is based on that of the European Ombudsman and on existing supervisory authorities in the Member States.

The Commission proposes that the European Data Protection Supervisor be placed on the same footing as the European Ombudsman, or in other words, as a judge of the Court of Justice. Your rapporteur can agree to this. The Commission also proposes that the Assistant Supervisory, his or her Deputy, be placed on the same footing as the Registrar of the Court of Justice. Your rapporteur considers that this is by no means appropriate. The type of responsibilities, the size of this new body and the expected workload do not lead to the conclusion that an Assistant Supervisor is needed at all. Furthermore, the analogy to the European Ombudsman as underlined by the Commission does not hold, as the Ombudsman has, rightly so, no deputy. Indeed, the Ombudsman's highest-ranking officials are A3. However, regulation 45/2001 stipulates that an Assistant Supervisor be appointed (Article 42). Correspondingly, this post will have to be created. Nevertheless, there is no reason why a second A1 post should be created in this small institution. Your rapporteur suggests that this post be created at A4 level and be included in the establishment plan.

The analogy to supervisory authorities in Member States does not hold either, as these are also called upon to supervise the private sector, whereas the Data Protection Supervisor's scope is limited to data gathered by the European institutions.

The financial statement attached to the Commission proposal for the original legal base, regulation 45/2001, provided an establishment plan that included a total of 10 posts (6A, 2 B and 2 C). The Commission explains that the additional duties assigned to the Data Protection Supervisor in relation to the original Commission's proposal justify the request in the letter of amendment for 5 additional posts. Your rapporteur does not agree with this and considers that the original proposal is more than sufficient for several reasons:

Firstly, it should be noted that each institution is obliged to appoint a Data Protection Officer, who will be responsible for the internal application of the provisions of the Regulation and "assist" the European Data Protection Supervisor with his or her requests. The Commission estimated that around 20 posts would have to be created (or redeployed) for this purpose in all institutions and bodies. Additionally, contracts with external data protection experts are envisaged in all institutions.

Secondly, as Europol and Schengen are excluded from the Data Protection Supervisor's mandate, the amount of sensitive personal data is likely to be reduced considerably.

Thirdly, it is proposed in the letter of amendment that the Data Protection Supervisor's office, following the example of the Ombudsman (at least in this respect), be integrated in Parliament's infrastructure. Your rapporteur agrees with this proposal. As the cooperation agreement between the European Parliament and the Ombudsman foresees, the Data Protection Supervisor could obtain a series of services from the host institution, such as translation, interpretation, administrative functions (administration of missions, professional

training, medical exams, property matters, equipment, office supplies, mail services, usher services) meeting facilities, communications, security, publishing, etc. Consequently, only a minimum amount of administrative posts is required.

Furthermore, your rapporteur considers that the responsibilities of the Data Protection Supervisor have not been determined with the necessary precision in regulation 45/2001. Indeed, the risk of duplication of some tasks between the Ombudsman and the Data Protection Supervisor cannot be excluded. Your rapporteur cannot avoid questioning the usefulness of creating an entirely new and separate institution for this purpose at the expense of taxpayers' money. However, as the legal base stipulates this there is no alternative. In this context, it is proposed to avoid all possible duplication to optimise the use of resources. Therefore, the rapporteur invites the European Ombudsman and the Data Protection Supervisor to examine all possible synergies.

### **III. Budgetary aspects**

The creation of this body was not foreseen in the financial perspectives. Given the difficult situation in Heading 5 ("Administrative expenditure") in 2002 and the even tighter situation to be expected from 2003 onwards, your rapporteur considers that this provides an additional element for Parliament's request for an adjustment of the ceiling to cater for additional needs in the institutions and for enlargement.

As agreed, a new Section VIII B will be established by Parliament. It will be to the budgetary authority to determine the necessary amount of resources to be allocated to this new section. Your rapporteur considers in light of the current state of affairs that an envelope of € 1.2 m would seem appropriate to cover the needs of this new body, including a maximum of 10 posts.

### **IV. Conclusions**

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, to incorporate the following amendments in its report:



## AMENDMENTS

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 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.

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 to be laid down.

#### *Justification*

*There is no need to determine the regulations and general conditions for the performance of the Assistant Supervisor in an Interinstitutional Agreement. It is to the budgetary authority to take decisions on establishment plan measures.*

### Amendment 2 Recital 3bis (new)

***Whereas the proposal was not foreseen in the financial perspective***

#### *Justification*

*The rapporteur points out that the current proposal was not foreseen when decisions on the financial perspective were taken. As a result, the budgetary authority should make sure that the amount proposed for the Data Protection Supervisor is compatible with the ceiling under the financial perspective.*

### Amendment 3 Recital 3ter (new)

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<sup>1</sup> Not yet published in OJ.

***Whereas the financial envelope of the proposal should be compatible with the current ceiling of heading 5 without restricting other policies.***

*Justification*

*The rapporteur points out that the current proposal was not foreseen when decisions on the financial perspective were taken. As a result, the budgetary authority should make sure that the amount proposed for the Data Protection Supervisor is compatible with the ceiling under the financial perspective.*

Amendment 4

Recital 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.

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, his allowances and any other benefits in lieu of remuneration, and the seat of the Supervisor.

*Justification*

*There is no need to determine the regulations and general conditions for the performance of the Assistant Supervisor in an Interinstitutional Agreement. It is to the budgetary authority to take decisions on establishment plan measures.*

Amendment 5

Recital 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 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.

The European Data Protection Supervisor must have a remuneration on the same level as the European ***Ombudsman***, given the need to ensure that the Supervisor a status corresponding to his duties and powers, and the fact that the Regulation largely follows the European ***Ombudsman*** in defining the institutional profile of the Supervisor. The European ***Ombudsman***, in turn, is on the same footing as a judge of the Court of Justice as regards his remuneration, allowances and retirement pension.

*Justification*

*The correct term is European Ombudsman.*

Amendment 6

Recital 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.***

***Deleted***

*Justification*

*There is no need to determine the regulations and general conditions for the performance of the Assistant Supervisor in an Interinstitutional Agreement. It is to the budgetary authority to take decisions on establishment plan measures.*

Amendment 7

Article 2

***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.***

***The grade, remuneration, allowances, retirement pension and any other benefit in lieu of remuneration will be determined by the budgetary authority in the establishment plan and in the annual budgetary procedure, in accordance with Article 43 of Regulation 45/2001.***

*Justification*

*There is no need to determine the regulations and general conditions for the performance of the Assistant Supervisor in an Interinstitutional Agreement. It is to the budgetary authority to take decisions on establishment plan measures.*

24 January 2002

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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  
(COM(2001) 411 – C5-0384/2001 – 2001/2150(ACI))

Draftsman: Malcolm Harbour

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Malcolm Harbour draftsman at its meeting of 11 September 2001.

It considered the draft opinion at its meetings of 18 December 2001 and 24 January 2002.

At this meeting it adopted the following amendments by 21 votes to 7.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadis, vice-chairman; Bill Miller, vice-chairman; Malcolm Harbour draftsman; Paolo Bartolozzi, Ward Beysen, Brian Crowley, Willy C.E.H. De Clercq, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Fiorella Ghilardotti, Heidi Anneli Hautala, The Lord Inglewood, Klaus-Heiner Lehne, Neil McCormick, Manuel Medina Ortega, Elena Ornella Paciotti, Astrid Thors, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Alexandre Varaut, Diana Wallis, Joachim Wuermeling and Stefano Zappalà, Bruno Gollnisch (for Gerhard Hager) and Michel J.M. Dary (for François Zimeray) pursuant to Rule 153(2)).

## SHORT JUSTIFICATION

### Background

The European Data Protection Supervisor stems from Article 286 EC<sup>1</sup> and from Articles 41-48 of Regulation No 45/2001<sup>2</sup>, adopted pursuant to thereto.

Regulation No 45/2001 sets out the principles for personal-data processing by Community institutions/bodies. The areas covered include exchange of such data in the context of the CAP, management of the structural funds and the customs rules and in relation to education, training and culture and research policy.

Under Article 41, the Supervisor is responsible for ensuring that the fundamental rights and freedoms of natural persons, in particular, their right to privacy<sup>3</sup>, are respected by Community institutions/bodies. He is also responsible for monitoring and ensuring the application of Regulation No 45/2001 and other Community acts relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Community institution/body and for advising Community institutions/bodies and data subjects on all matters concerning the processing of such data.

Under Article 46, his duties are to:

- hear and investigate complaints;
- conduct inquiries on his own initiative or on the basis of complaints;
- monitor and ensure the application of the Regulation and other Community acts relating to the protection of natural persons with regard to the processing of personal data by a Community institution/body with the exception of the ECJ acting in its judicial capacity;
- advise Community institutions/bodies, either on his own initiative or after consultation, on all matters concerning the processing of personal data;
- monitor relevant developments;
- cooperate with national supervisory authorities and with the supervisory data protection bodies established under Title VI of the EU Treaty;
- participate in the activities of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data;
- determine, give reasons for and make public certain exemptions, safeguards, authorisations and conditions provided for in the Regulation;
- keep a register of processing operations and provide means of access to the registers kept by the Data Protection Officers under the Regulation;

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<sup>1</sup> "1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.

2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate."

<sup>2</sup> 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, OJ L 8, 12.1.2001, p. 1. See also the Charter of Fundamental Rights of the European Union, Article 8.

<sup>3</sup> See, in particular, Article 8 of the ECHR and Article 6 EU.

- carry out a prior check of processing notified to him;
- establish his Rules of Procedure.

Under Article 47, the Supervisor is empowered to:

- give advice to data subjects;
- refer the matter to the controller in the event of an alleged breach of the provisions governing the processing of personal data, and make proposals for remedying that breach and for improving the protection of data subjects;
- order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of the Regulation;
- warn or admonish the controller;
- order the rectification, blocking, erasure or destruction of data processed in breach of the provisions governing the processing of personal data and the notification of such actions to third parties to whom the data have been disclosed;
- impose a temporary or definitive ban on processing;
- refer the matter to the Community institution/body concerned and, if necessary, to Parliament, the Council and the Commission;
- refer the matter to the ECJ;
- intervene before the ECJ.

In addition, the Supervisor has the power:

- to obtain from a controller or Community institution/body access to all personal data and to all information necessary for his inquiries;
- to obtain access to any premises in which a controller or Community institution/body carries on its activities when there are reasonable grounds for presuming that an activity covered by the Regulation is carried out there.

### **The proposed decision**

The Supervisor is to have remuneration on the same level as the Ombudsman (wrongly rendered as "Mediator" throughout), namely that of a judge of the ECJ, and the Assistant Supervisor is to be placed on the same footing as the Registrar of the ECJ. The Supervisor is to be based in Brussels.

Whereas your draftsman finds it eminently sensible that the Supervisor should be based in Brussels, he disagrees with the proposed level of remuneration. The Supervisor's powers, duties, responsibilities and status are certainly not on a par with those of a judge of the ECJ and to compare the responsibilities of the Assistant Supervisor (assisting the Supervisor in his duties and replacing him when the latter is absent or prevented from attending to his or her duties - Article 42(1)) with those of the Registrar of the Court, a large institution employing over 1000 staff, is entirely inappropriate. Your draftsman therefore proposes amending the decision to provide for a proper evaluation of the respective responsibilities of the Supervisor and his assistant, which should lead to a determination of the appropriate level of their remuneration package, following which they can be allocated an appropriate grade under the Staff Regulations. He also advocates a form of hearing of candidates by Parliament in line with the hearings held in connection with the appointment of the Ombudsman. Lastly, your draftsman considers that, in order to ensure that the Supervisor's Rules of Procedure are appropriately drafted, they should be submitted to Parliament and the Council for approval

and the Ombudsman's opinion should be obtained on them.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 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,

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, ***with the primary objective of protecting an individual's private and family life.***

### Amendment 2 Recital 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 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 European Data Protection Supervisor must have a remuneration ***commensurate with his duties, responsibilities and status. To this end, his remuneration, and the corresponding grade and step in the scale set out in the Staff Regulations of officials of the European Communities, should be determined by making an evaluation of his responsibilities having regard to the remuneration package of officials***

<sup>1</sup> OJ C 304 E, 30.10.2001, p. 178.

*the Court of Justice as regards his remuneration, allowances and retirement pension.*

*performing equivalent functions and bearing equivalent responsibilities in the Member States. As regards his allowances, retirement pension, taxation and sickness, accident and invalidity cover, the Staff Regulations of Officials of the European Communities should apply mutatis mutandis.*

#### *Justification*

*Self-explanatory.*

#### *Amendment 3 Recital 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.*

*The remuneration of the Assistant Supervisor must stand in an appropriate relationship to that of the European Data Protection Supervisor and must be commensurate with his duties, responsibilities and status. To this end, his remuneration, and the corresponding grade and step in the scale set out in the Staff Regulations of officials of the European Communities, should be determined by making an evaluation of his responsibilities having regard to the remuneration package of officials performing equivalent functions and bearing equivalent responsibilities in the Member States. As regards his allowances, retirement pension, taxation and sickness, accident and invalidity cover, the Staff Regulations of Officials of the European Communities should apply mutatis mutandis.*



*Justification*

*Self-explanatory.*

Amendment 4  
Article 1

***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.***

***The remuneration of the European Data Protection Supervisor, and his corresponding grade and step in the scale set out in the Staff Regulations of officials of the European Communities, shall be determined by making an evaluation of his responsibilities having regard to the remuneration package of officials performing equivalent functions and bearing equivalent responsibilities in the Member States. As regards his allowances, retirement pension, taxation and sickness, accident and invalidity cover, the Staff Regulations of Officials of the European Communities shall apply mutatis mutandis.***

*Justification*

*Self-explanatory.*

Amendment 5  
Article 2

***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.***

***The remuneration of the Assistant Supervisor, and his corresponding grade and step in the scale set out in the Staff Regulations of officials of the European Communities, shall stand in an appropriate relationship to that of the***

***European Data Protection Supervisor and shall be determined by making an evaluation of his responsibilities having regard to the remuneration package of officials performing equivalent functions and bearing equivalent responsibilities in the Member States. As regards his allowances, retirement pension, taxation and sickness, accident and invalidity cover, the Staff Regulations of Officials of the European Communities shall apply mutatis mutandis.***

*Justification*

*Self-explanatory.*

Amendment 6  
Article 2a (new)

***The competent committee of the European Parliament shall hold a hearing, open to all Members of Parliament, of the candidates placed on the list drawn up by the Commission in accordance with Article 42(1) of Regulation No 45/2001 following a public call for candidates.***

*Justification*

*Self-explanatory.*

Amendment 7  
Article 2b (new)

***Within one month of his appointment, the European Data Supervisor shall submit his Rules of Procedure established in***

*accordance with Article 46(k) of Regulation No 45/2001 to the European Parliament, the Council and the Commission for their approval. The European Ombudsman shall be invited to give his opinion on those rules.*

*Justification*

*Self-explanatory.*