

**Report of the European Data Protection Supervisor on progress achieved
from February to September 2004**

A. Progress achieved

In the Resolution which it adopted on 9 March 2004, the European Parliament (EP) required the Data Protection Supervisor (EDPS) to submit a report to the Budgetary Authority by 30 September 2004 for the first reading of the 2005 budget; in accordance with Article 2 of the Resolution the report states operational needs and records progress in implementing administrative structures and recruitment procedures, the cooperation agreement with the EP and financial and budgetary management.

The EDPS was set up by Regulation (EC) 45/2001; the Supervisor and the Deputy Supervisor were appointed by a EP and Council Decision of 22 December 2003, published in the OJ on 17 January 2004. They took up their duties immediately and began setting up their Secretariat in European Parliament premises on 2 February 2004.

2004 is therefore the year of the Institution's launch, which is in three stages:

I. Stage I: 2 February to 24 June 2004

- Initially, the EDPS received the support of European Parliament departments, thus permitting
 - the EDPS's installation in a European Parliament building with basic equipment;
 - establishment of an amending budget (10/2004) and a budget forecast for 2005;
 - publication of notices of vacant posts as authorised by the establishment plan for the 2004 financial year;
 - preparation and conclusion of the administrative cooperation agreement with EP, Commission and Council departments.
- In addition, a website was created at the address <http://www.edps.eu.int>

II. Stage II: 24 June 2004 to 1 October 2004

- On 24 June, the Secretaries-General of the Commission, the EP and the Council signed an **administrative cooperation agreement** with the EDPS in order to assist the EDPS over a three-year start-up period. This assistance is considered necessary during the first few years for three main reasons:
 - to allow the European Data Supervisor to take advantage of experience gained in the other Institutions in the administrative and financial field by transfer of know-how;
 - to enable it to take its place as an Institution without delay by exercising its functions and prerogatives;
 - to comply with the golden rule of good financial management by introducing economies of scale.

An agreement between departments of the EP/EDPS specifies the arrangements for implementing the inter-institutional agreement; a similar agreement with the Council Secretariat is in preparation; discussions are in progress with the Commission departments on this subject.

On the basis of the inter-institutional agreement

- all the translations required have been carried out by the Council;
- Commission departments have begun recruiting staff; they have dealt with establishment of rights, payment of salaries, reimbursement of sickness costs and payment for missions;
- the Commission departments have also given assistance with accounting and preparation of the budget;
- the Commission internal Accounting Officer and Auditor have been appointed Accountant and Auditor of the EDPS;
- the European Parliament's departments have given their assistance with security matters relating to buildings, mail, information technology, office equipment and supplies.

Although the implementing arrangements have not yet been determined with the Council and the Commission, it should be emphasised that from the outset there has in general been very good cooperation with the departments of the three Institutions; it is however to be regretted that the agreement was not always well publicised among the departments which were supposed to assist the EDPS, and this tended to slow work down in some cases.

- In view of the amount of work to be done in setting up the administration of the new Institution, priority was given to **recruitment**; 13 out of the 15 staff members on the establishment plan have been recruited; six began work on 1 August, while seven others are expected on 1 October 2004. The team should be at full complement by mid-October.

Recruitment was carried out in compliance with the rules applying in the Institutions: giving priority to transfers between Institutions; secondly, making use of EPSO's reserve lists; and thirdly, bringing in outside personnel. Of the 13 staff members so far recruited, two were transferred from other Institutions, four were chosen from reserve lists and seven are on temporary contracts.

The administrative structure provides for:

one unit responsible for administration, staff and budget matters (5 people); one unit responsible for operational tasks (10 people), made up of two sections: one responsible for supervisory matters, the other for general political aspects (mainly legislative and advisory functions) and information. No head of unit has been designated for this unit, partly because members of the Institution actively participate in the processing of files, and partly in a desire to stimulate teamwork, with no hierarchical structure in the office initially.

- **Rules of procedure** are being prepared. With regard to areas in which the Commission assists the EDPS, the general provisions for implementation of the Staff Regulations are the same as those applicable to the Commission.

- Internal **financial and budgetary management** was delegated by the Supervisor to the head of the Administration/Staff/Budget unit acting as authorising officer. An offeror has been appointed.

III. Stage III: 1 October 2004 onwards

- The team will be almost at full complement.
- The Rules of Procedure will be adopted by the end of the year, as will the general framework of procedures and provisions for implementation of the Staff Regulations.
- The provisions for implementing the inter-institutional agreement will have been adopted.
- National experts will be invited to join the EDPS.

B. Statement of operational needs

1. Underestimation of Amending Budget 2/2004

Amending Budget 2 reproduces as it stands the budget drawn up in 2002 for a period of 9 months by the Commission departments; it does not take into account cost-of-living changes or changes in operational needs, either current or for a full year.

2. Reasons for Amending Budget 10/2004

The amounts were determined on the basis of the parameters provided by the European Parliament's and the Commission's departments.

- Expenditure relating to persons working with the Institution:

Members of the Institution: an increase in the appropriations under Chapter B-10 "Members of the Institution" is requested on account of ongoing legal commitments. Pursuant to Decision No 1247/2002/EC of the European Parliament, the Council and the Commission of 1.7.2002, the European Data Protection Supervisor is on a par with a judge of the Court of Justice of the European Communities with regard to the establishment of his salary, allowances and retirement pension, and any other benefits in lieu of remuneration. The Deputy Supervisor is placed on the same footing as the Registrar of the Court of Justice of the European Communities in this regard.

This increase is virtually covered by using the appropriations entered in the reserve – Chapter 100 provisional appropriations.

Staff in active employment: The adjustment of the appropriations under Chapter B-11 "Staff in active employment" is based on a forecast of the posts which will be filled in 2004; the calculation assumes a progressive growth of the Institution. To date, six staff members have taken up their duties and the other nine will join the EDPS in October. The notices of vacancies for these posts were published on 8 March and on 3 and 10 May 2004. The conversion of three permanent posts

into temporary posts is no longer required; in view of the need to recruit staff rapidly, the EDPS has recruited to permanent posts.

Graduate traineeships and exchanges of officials: the creation of a new chapter B-15 "Graduate traineeships and exchanges of officials" is requested and an article B-150 "Cost of organising graduate traineeships within the institution and staff exchanges between the institution and the public sector in the Member States" with a budget of EUR 60 624. This amount meets the need to recruit national experts in the last quarter of 2004.

- Buildings, equipment and miscellaneous operating expenditure

On the basis of the administrative cooperation agreement, the EP assists the EDPS in this area; estimates are based on the parameters provided by the EP, and on the standards in force there.

Building and associated costs: the European Data Protection Supervisor's office has been installed and furnished in a European Parliament building – Montoyer 63.

The installation, and the necessary furnishings, involve an overall cost estimated at EUR 199 125 for the financial year 2004.

In view of the appropriations already authorised under Amending Budget 2/2004, an increase of EUR 141 125 is therefore requested.

Data processing and telecommunications: Amending Budget 2/2004 authorised appropriations of EUR 56 000 in total.

The European Data Protection Supervisor has assessed his needs regarding this type of infrastructure, which is indispensable for his work as from this year.

He therefore asks that chapter 21 "Data processing and telecommunications" be increased by an amount of EUR 120 000.

- ***Reallocation of the appropriations authorised under Amending Budget 2/2004***

The European Data Protection Supervisor considers that the principle of sound financial management applies as from the financial year 2004.

He therefore considers that progress with establishing his institution requires the appropriations for certain budget headings to be adjusted, but that these reductions should not prejudice his requests for the financial year 2005.

He therefore proposes:

- entering under budget headings the appropriations in the reserve, namely an amount of EUR 200 000;
- partial reductions in appropriations concerning:
 - mission expenses (article B-130),
 - secretarial allowances (item B-1103), which has ceased to be relevant following the entry into force of the new Staff Regulations;

- translation and interpretation costs (B-1175); expenditure on publishing and information (B-270).

The overall net amount of these reductions is EUR 41 050.

3. PDB 2005

The estimate for 2005 sets expenditure at EUR 2 889 142. It has thus increased by 127,13% in relation to Amending Budget 2/2004 and by 48,8% in relation to Amending Budget 10/2004 (which was calculated on the basis of 11 months).

In this regard, it should be noted that at present the appropriations authorised in 2004 are not sufficient to cover legal commitments, or to ensure the proper launching of the institution this year.

Budget year 2005 offers the European Data Protection Supervisor the opportunity of submitting his estimate for a complete year and enables him to preserve his share under Heading 5 "Administrative Expenditure" in relation to his specific, measurable and achievable objectives in accordance with the financial provisions in force.

General framework:

The requests submitted for budget year 2005 are framed by:

- the macroeconomic parameters supplied by the Commission and the budget authority's political guidelines;
- the dynamic developed since the launching of this new institution throughout the current year;
- the desire to make the institutional presence of the European Data Protection Supervisor felt in the Community arena as an operational partner.

Measures concerning the establishment plan and requests for appropriations:

General comment

The Commission's macroeconomic parameters and the budget authority's political guidelines regulate the movement in appropriations for all the institutions for the financial year 2005.

It is nevertheless necessary to grant them a certain degree of tolerance where they are applied in the framework of a new institution.

The European Parliament summed up this situation at the time of adoption of the guidelines for 2005, when it said that it *"expects that the appropriations for the EDPS will be included in the PDB for 2005"*².

² See Parliament/Texts Adopted/P5_TA-PROV(2004)0118/Rapport A5-0062/2004/PE 342.396.

The dynamic developed since the launch of this new institution relied in 2004 on the approaches outlined earlier in the text.

Measures concerning the establishment plan:

The European Data Protection Supervisor plans the creation of four permanent posts in the establishment plan of his institution: two A*, one B* and one C*. There is no longer a request for six permanent posts in categories A* and B* to be converted into temporary posts.

Requests for appropriations

The appropriations requested by the European Data Protection Supervisor, apart from those linked to the two members of the institution and its establishment plan, concern the following measurable activities:

- a mission plan which should serve to support the European Data Protection Supervisor's annual activity programme. This mission plan also includes a provision for the administrative tasks of his secretariat;
- the possibility of calling upon national experts, for a limited period;
- necessary provision for payment of services connected with his physical installation, computer equipment and any other expenditure linked to the day-to-day administrative functioning of his institution.

The European Data Protection Supervisor would also like to point out that the amount intended to pay for day-to-day administrative functioning takes account of the positive effects of interinstitutional cooperation, opportunities for greater computerisation of his secretariat and consequently for substitution of a certain number of paper publications by systematic use of the website.

For all these reasons, the budgetary amendments proposed by the Council would have the effect of impeding the proper start-up of the institution.

4. *A summary of estimates* is set out below.
