

## I

*(Resolutions, recommendations, guidelines and opinions)*

## OPINIONS

## EUROPEAN DATA PROTECTION SUPERVISOR

**Opinion of the European Data Protection Supervisor on the proposal for a Council Regulation amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy — COM(2007) 122 final**

(2007/C 134/01)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty establishing the European Community, and in particular its Article 286,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular its Article 8,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <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 <sup>(2)</sup>, and in particular its Article 41,

Having regard to the request for an opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001 received on 20 March 2007 from the Commission;

HAS ADOPTED THE FOLLOWING OPINION

## INTRODUCTION

**Consultation of the EDPS**

1. The proposal for a Council Regulation amending Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(3)</sup> was sent by the Commission to the EDPS for consultation, in accordance with Article 28(2) of Regulation 45/2001/EC (hereinafter 'the Proposal'). The EDPS welcomes the mention of the present opinion in the preamble of the Regulation, as proposed by the Commission.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

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

<sup>(3)</sup> OJ L 209, 11.8.2005, p. 1.

### The importance of the proposal

2. The aim of the proposal is to fulfil the requirement on the publication of information on beneficiaries of Community funds, as inserted into the Financial Regulation by Council Regulation (EC, Euratom) No 1995/2006 <sup>(1)</sup>. Indeed, in order to implement the European Transparency Initiative, this Regulation inserted Articles 30(3) and 53b(2)(d) on the annual *ex-post* publication of beneficiaries of funds deriving from the budget.
3. The Regulation also provides that the necessary details shall be laid down in the relevant sector-specific rules (i.e. sector-specific Regulations). Therefore, in view of implementing this obligation, the Council deems it necessary to modify Regulation (EC) No 1290/2005 on the financing of the common agricultural policy, as both the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) form part of the budget of the European Communities and finance expenditure in a context of shared management between the Member States and the Community. To that end, Member States should ensure annual *ex-post* publication of the beneficiaries and the amount received per beneficiary under each of these funds.

### THE ANALYSIS OF THE PROPOSAL

4. As a matter of fact, the EDPS has followed the developments leading to the adoption of the amendments of the Financial Regulation and, in this context, has issued an Opinion of 12 December 2006 on proposals for amending the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules <sup>(2)</sup>.
5. In this opinion, the EDPS supported the inclusion of the transparency principle in the legislation, with due respect to Directive 95/46/EC and Regulation (EC) 45/2001, but advised that a proactive approach to the rights of the data subjects <sup>(3)</sup> should be respected, as personal data will be disclosed. The EDPS underlined that a proactive approach could consist of informing the data subjects beforehand, at the time the personal data are collected, that these data will be made public, and of ensuring that the data subject's right of access and right to object are respected.
6. In the view of the EDPS, this principle also applies to the *ex-post* publication of beneficiaries (see Article 169(2) of the Implementing Rules). Therefore, the EDPS welcomes the final part of the proposed Article 42(8)(b) which states that the Commission shall adopt: '[T]he detailed rules as to the obligation of the Member States to publish information on beneficiaries laid down in Article 44a, *including aspects related to the protection of individuals with regard to the processing of their personal data*'.
7. Moreover, it goes without saying that according to Article 28(2) of the Regulation (EC) No 45/2001, the Commission shall consult the EDPS before these detailed rules are adopted.
8. Furthermore, in the more general context of developing a proactive approach on transparency and the provisions of the Financial Regulation and its Implementing Rules, the EDPS wants to draw the attention of the Council to the following aspect: in the framework of the amendment of the Implementing Rules <sup>(4)</sup> of the Financial Regulation, the EDPS has suggested introducing a specific provision, which would help to comply with Article 12 of Regulation (EC) No 45/2001, as regards the need to inform data subjects about the processing of their personal data by auditing and investigating institutions and bodies. The EDPS suggested <sup>(5)</sup> a change which would comply with the need to inform data subjects about the processing of their personal data. Given the enormous number of possible data subjects, some institutions and bodies involved find it impossible to fulfil this obligation. A proactive approach would also be extremely helpful in this context. In this case, auditing institutions and bodies would be exempted from informing where the data subject already has the information (last indent of the first paragraph of Article 12(1)).

<sup>(1)</sup> OJL 390, 30.12.2006, p. 1.

<sup>(2)</sup> Available at:  
<http://www.edps.europa.eu/EDPSWEB/edps/lang/en/pid/45#2006>

<sup>(3)</sup> See Articles 11-13 and 18 of Regulation (EC) No 45/2001. On the notion of a proactive approach, see: *EDPS Background paper: public access to documents and data protection*, 12 July 2005 available at:  
<http://www.edps.europa.eu/EDPSWEB/edps/lang/en/pid/21#BackgroundP>

<sup>(4)</sup> Council Regulation (EC, Euratom) modifying Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (SEC(2006)0866).

<sup>(5)</sup> In a letter sent to the MEP acting as rapporteur of the text.

9. The European Parliament has taken this suggestion into account by introducing an Article 43a in its legislative resolution adopted on 13 February 2007 <sup>(1)</sup> on the rules for the implementation of the Financial Regulation, which reads as follows: *'In any call made in the context of procurements, grants or structural funds, potential beneficiaries, candidates and tenderers shall be informed that, for the purpose of safeguarding the financial interests of the Communities, their personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF), or to any other institution or body competent in the fields of auditing or investigation'*. The EDPS is following the outcome of the procedures as to this article and would welcome an endorsement of his position by the Commission.
10. In the context of the present amendment and aside from the general provision of the Implementing Rules, the EDPS would find it most appropriate to include an equivalent provision relating to the beneficiaries in the current proposal.

Done at Brussels, 10 April 2007.

Peter HUSTINX  
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<sup>(1)</sup> Available at:  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0027+0+DOC+XML+V0//EN&language=EN>