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(Acts whose publication is obligatory)

DECISION No 1247/2002/EC OF THE EUROPEAN PARLIAMENT, OF THE COUNCIL AND OF THE COMMISSION
of 1 July 2002
on the regulations and general conditions governing the performance of the European Data-protection Supervisor's duties

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

Data-protection Supervisor and of the Assistant Supervisor to be laid down.

Having regard to the Treaty establishing the European Community,

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 ⁽¹⁾, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽²⁾,

Whereas:

- (1) The European Data-protection Supervisor is the independent supervisory body entrusted with monitoring the application to Community institutions and bodies of 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 data protection rules are designed to protect the fundamental rights and freedoms of individuals, in particular their private and family life, with regard to processing of personal data, in particular in accordance with Article 6 of the Treaty on European Union and with due regard to Articles 7 and 8 of the European Union Charter of Fundamental Rights. Those fundamental rights are to be interpreted, under the case law of the Court of Justice of the European Communities, in the light of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States. The objective of data protection must be met while taking into account the objective of not restricting the information available to citizens about public activities.
- (3) The effective establishment of this independent supervisory body calls for the regulations and general conditions governing the performance of the duties of the European

- (4) Most of the elements to be included in the regulations and general conditions governing the performance of the duties of the European Data-protection Supervisor are already contained in Regulation (EC) No 45/2001. It contains the necessary provisions for the appointment of the European Data-protection Supervisor and of the Assistant Supervisor, for their human and financial resources, their independence, their obligation of professional secrecy, their duties and their powers. The Rules of Procedure of the European Data-protection Supervisor, required by Article 46(k) of Regulation (EC) No 45/2001, should contain, in particular, procedural provisions governing the manner in which he is to exercise his powers.
- (5) The European Data-protection Supervisor is bound by Community law and should comply with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽³⁾. He should thus be bound by the provisions of the Treaty concerning the protection of fundamental rights and freedoms, establishing that decision-making in the Union is to be as open as possible and providing for protection of personal data, in particular the right to privacy.
- (6) The financial framework of this Decision should be compatible with the current ceiling of heading 5.
- (7) Only two major aspects of the regulations are not contained in Regulation (EC) No 45/2001 and thus remain to be clarified. They concern the fixing of the salary of the Supervisor and the Assistant Supervisor, their allowances and any benefits in lieu of remuneration, and the seat of the Supervisor. The provisions of Regulation (EC) No 45/2001 on the procedure for appointing the European Data-protection Supervisor and the Assistant Supervisor should also be clarified.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ C 304 E, 30.10.2001, p. 178.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

- (8) The European Data-protection Supervisor should have remuneration on the same level as the European Ombudsman, given the need to ensure that the Supervisor has a status commensurate with his duties and powers, and the fact that Regulation (EC) No 45/2001 largely follows the example of the European Ombudsman in defining the institutional profile of the Supervisor. The European Ombudsman is on a par with a judge of the Court of Justice as regards remuneration, allowances and retirement pension.
- (9) The Assistant Supervisor should be placed on the same footing as the Registrar of the Court of Justice as regards remuneration, allowances and retirement pension, so as to establish a hierarchy between him/her and the European Supervisor, while making them both subject to the same type of emoluments, in keeping with their appointment procedure, their term of office and their duties.
- (10) The seat of the European Data-protection Supervisor should be established in Brussels, so as to ensure the proximity which, by the nature of his/her tasks, must exist between the European Supervisor and the Community institutions and bodies subject to his/her supervision, and in order to facilitate the smooth performance of his/her duties.
- (11) Consideration will need to be given to the extent to which cooperation with supervisory data-protection bodies established pursuant to Title VI of the Treaty on European Union, as provided for in Article 46(f) of Regulation (EC) No 45/2001, will serve to attain the aim of ensuring consistency in the application of data protection supervisory rules and procedures.
- (12) The competent committee of the European Parliament may decide to 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 (EC) No 45/2001 following a public call for candidates,

HAVE DECIDED AS FOLLOWS:

Article 1

Remuneration of the European Data-protection Supervisor

The European Data-protection Supervisor shall be on a par with a judge of the Court of Justice of the European Communities as

regards the determination of remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.

Article 2

Remuneration of the Assistant Supervisor

The Assistant Supervisor shall be on a par with the Registrar of the Court of Justice of the European Communities as regards the determination of remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.

Article 3

Appointment procedure

The European Data-protection Supervisor and the Assistant Supervisor shall be appointed following a public call for candidates. The call for candidates shall enable all interested parties throughout the Community to submit their applications. The list of candidates shall be public. On the basis of the list drawn up by the Commission in accordance with Article 42(1) of Regulation (EC) No 45/2001, the competent committee of the European Parliament may decide to arrange a hearing in order to enable it to express a preference.

Article 4

Seat

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

Article 5

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

Done at Brussels, 1 July 2002.

*For the European
Parliament*

The President

P. COX

For the Council

The President

M. ARIAS CAÑETE

For the Commission

The President

R. PRODI