



## **Opinion on the notification for prior checking relating to work rates ("*Rythme de travail*")**

Brussels, 28 January 2005 (Case 2004-96)

### **1. Proceedings**

In a note dated 16 July 2004, Mr KÖNIG – Data Protection Officer of the European Commission – sent the European Data Protection Supervisor a notification for prior checking relating to work rates ("*Rythme de travail*"). The note was received on 22 July 2004. The dossier consists of the formal notification and nine annexes.

On 8 September 2004, the Assistant Supervisor sent an e-mail containing a number of queries about the dossier.

In e-mails dated 10 December 2004 and 6 January 2005, a member of the European Data Protection Supervisor's staff again contacted the Data Protection Officer of the Commission to obtain answers to the questions asked.

In an e-mail dated 17 January 2005, the Data Protection Officer of the European Commission provided the EDPS with answers – received from the controller that same day – to all questions.

### **2. The facts**

As part of its administrative reform, the Commission has developed a new personnel management system, known as SYSPER 2, in order *inter alia* to appraise its staff. SYSPER 2 comprises a set of modules which each deal with precise and specific aspects, including in particular the periodical appraisal and promotion reports. These modules provide for the processing of personal data.

The legal bases for these processing operations are the regulations governing the institution's relations with its staff, including the Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities, the general provisions for giving effect to these regulations, Commission decisions and the internal management rules observed by Commission departments when performing the duties delegated to them by the Commission.

Article 43 of the new Staff Regulations (which entered into force on 1 May 2004) provides that each Commission official shall be the subject of a periodical report. The general implementing provisions to the regulations allow Directors-General to adapt the standard appraisal procedures within their Directorate-General.

Within the framework of the 2003 appraisal exercise carried out in 2004, the Directorate-General for Translation established a system, for the purposes of appraising translators, which provides for the collection, storage and processing of individual productivity indicators for each of the

Directorate-General's translators as part of the CDR (Career Development Review). These productivity indicators are intended to provide an objective basis for appraisal.

That is the processing operation which has been submitted to the European Data Protection Supervisor for prior checking.

As part of the standard appraisal of translators in the Directorate-General for Translation, a system of productivity indicators has been established. It provides Heads of Unit with an overall view of each translator's work and work rate as part of the CDR. Data are extracted from various databases of the Directorate-General for Translation and are aggregated as indicators, in tabular form. The main database, SUIVI, contains data on production and quality control. Each translator has access to SUIVI for the purposes of monitoring his or her own data. The tables are sent to the Head of Unit in PDF format, and are never preserved. The e-mails used to forward the tables are deleted.

The various types of data liable to be involved in appraising the productivity of each translator are as follows:

1. translator's name and forename
2. translator's unit
3. production (in pages)
4. quality control of pages
5. weighted total production (production +  $\frac{1}{4}$  of quality control)
6. working days
7. official days (working days - free time resulting from part-time work)
8. days at work (official days - leave and absences)
9. effective days (days at work - activities entered into the *SIC Temps* information system (training, etc.))
10. % days at work / official days
11. % effective days / official days
12. official rate (weighted production / official days)
13. at-work rate (weighted production / days at work)
14. effective rate (weighted production / effective days)
15. reference of the request
16. document title
17. original language
18. target language
19. date of action

Heads of Unit receive the productivity indicators relating to the translators of their respective units. Translators receive their own productivity indicators from their Head of Unit. The data are not preserved. However, data sources are kept and data can be aggregated again.

All of these productivity indicators enable the Head of Unit responsible for appraising the unit's translators to be consistent in the appraisal by relying on a common and predefined appraisal criterion. All of the translators of the Directorate-General for Translation are thus appraised on the basis of a consistent measurement.

Heads of Unit are requested to delete the tables containing these productivity indicators once the CDR exercise has been completed.

### **3. Legal aspects**

#### **(a) Prior checking**

The notification received on 22 July 2004 relates to processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a)) and therefore falls within the scope of Regulation (EC) No 45/2001.

Under Article 27(2)(b) of Regulation (EC) No 45/2001 of the European Parliament and of the Council, processing operations intended to evaluate personal aspects relating to data subjects, including their ability, efficiency and conduct, shall be subject to prior checking by the European Data Protection Supervisor.

In the case in point, the processing operation is related to an appraisal phase: that of translators. It involves the collection, storage and processing of individual productivity indicators for the purposes of the CDR (Career Development Review).

The formal notification was received on 22 July 2004 through the post. The Assistant Supervisor sent an e-mail on 8 September 2004 containing a number of queries with a view to obtaining clarification on some points of the dossier. Under the terms of Article 27(4)(1), this e-mail suspended the two-month period within which the European Data Protection Supervisor had to issue an opinion. On 8 September, there were 14 days left to issue the opinion.

The Assistant to the Commission's Data Protection Officer provided answers to the queries on 17 January 2005. The 14 days from 17 January led to Monday 31 January 2005.

Within the framework of the formal notification forwarded by the Commission's Data Protection Officer, Annex 1 (Note from the Director-General of the Directorate-General for Personnel and Administration to all Commission Directors-General), which presents the SYSPER 2 system, and Annex 9 (Communication 276/6 of 10 March 2004), and in particular its Annex 2 on the Career Development Review form, which is an integral part of the SYSPER system, are not dealt with in this opinion. The SYSPER 2 system and its annexes will form the subject of a future opinion, provided a formal notification is submitted. This opinion of the European Data Protection Supervisor focuses only on the specific aspects of the system for appraising the translators of the Directorate-General for Translation.

This ancillary appraisal system relates to appraisals for 2003, finalised in 2004. It cannot, therefore, be the subject of conclusions on the part of the European Data Protection Supervisor, even if some reservations can clearly be made. Nonetheless, the European Data Protection Supervisor reserves the right to issue an opinion should any complaints be submitted against the appraisals carried out during the above period.

That being said, the exercise will probably be repeated in following years, even if the data on translator productivity are collected and processed in a different manner. For this reason, this opinion can be regarded as a genuine prior check which shall have to be taken on board in its entirety when establishing appraisal procedures that involve processing data on translator productivity.

#### **(b) Legal basis and lawfulness of the processing operation**

The question of legal basis concerns appraised officials. The legal basis lies in Article 43 of the Staff Regulations of Officials of the European Communities. In accordance with Article 110 of the

Staff Regulations, the institutions adopt the provisions implementing the periodical report to be drawn up every two years on ability, efficiency and conduct in the service. Each Directorate-General is at liberty to adapt the "standard appraisal" procedures. In view of the latitude given institutions in implementing Article 43, the legal basis relating to the appraised official is valid.

The conditions for processing personal data are laid down in Article 5 of Regulation (EC) No 45/2001. The lawfulness of the proposed processing operation derives from an appraisal task set out in the Staff Regulations of Officials and Conditions of Employment of the European Communities. Article 5(a) – "*processing [shall be] necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities ... or in the legitimate exercise of official authority vested in the Community institution ...*" – is therefore complied with.

### **(c) Collection and transfer of data**

The SUIVI database, which is the main source for the tables of productivity indicators used in the appraisal procedure, is devoted to production and quality control. The database is also used for the purposes of appraising translators in the Directorate-General for Translation.

The processing operation being reviewed involves no general change of the specified purpose of SUIVI, nor is it incompatible with that purpose. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 is not applicable to the case in point and Article 4(1)(b) of the Regulation is observed.

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. Processing under Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

The two controllers are in the same Directorate-General but the transfer needs to be organised between departments. The conditions set out in Article 7(1) are fulfilled insofar as 1. each Directorate-General's competence covers the appraisal of its officials and 2. the data are necessary for the performance of the processing operation.

### **(d) Data storage**

The tables showing all productivity indicators are drawn up in PDF format and sent to Heads of Unit by e-mail. Heads of Unit are required to delete the tables on completion of the appraisal procedure.

Translators have the possibility of keeping their own data. Only the source of the data is kept; this is mainly the SUIVI database, which contains data on production and quality control.

Article 4(1)(e) of Regulation (EC) No 45/2001 lays down the principle that data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

Article 4(1)(e) is complied with in this instance.

### **(e) Information for data subjects**

Article 12 of Regulation (EC) No 45/2001 sets out the information to be supplied where the data have not been obtained from the data subject.

In the case in point, data are entered directly into databases whose precise mode of operation is not known to us. The main such database is SUIVI, which contains data on production and quality control. We have no information on who enters these data into SUIVI. It is worth noting, however, that translators have access to the database and can consult all of its data relating to them.

During the appraisal, the Head of Unit shows each of the unit's translators his or her own data. The Head of Unit also explains the purpose of these aggregate data. However, no explicit information is given on the translators' rights.

On the other hand, the translators' elected representatives systematically inform them about their rights and obligations. These representatives take part in designing the appraisal exercise. If a translator considers he or she has been treated unfairly, the Head of Unit can take remedial action, in particular by amending the database itself (amendments are entered by the unit's secretaries).

The "work rate" exercise is managed by a working party. The translators' elected representatives systematically take part in all meetings concerning the preparation of tables per unit.

In short, translators are not informed about their rights with respect to the data being processed, about the identity of the controller or about the existence of a right of access to and a right to rectify data concerning them. The purpose of the process is explained orally by the Head of Unit during the appraisal exercise.

The European Data Protection Supervisor requests this compulsory information to be given to all translators.

#### **(f) Quality of the data**

The data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001).

Given the source of the data and the fact that the data are never kept but are deleted as soon as the translator's appraisal is completed – even though they can be recompiled at any time –, Article 4(1)(c) is complied with.

#### **(g) Security**

With respect to Article 22 of Regulation (EC) No 45/2001 ("Security of processing"), the Commission has not implemented any security measure, either technical or organisational, in relation to the processing operation. Simply, an e-mail is sent to Heads of Unit requiring them to delete aggregate data in the form of tables, originals or copies. Data are not kept, other than temporarily in the e-mail boxes of the Heads of Unit.

This arrangement does not appear to meet security and confidentiality requirements. Accordingly, the European Data Protection Supervisor recommends setting up security measures to ensure firstly that e-mails containing tables of productivity indicators cannot be viewed by any person other than the Head of Unit and secondly that all copies of data per unit are properly deleted.

## Conclusion

The processing operation examined does not appear to be in breach of Regulation (EC) No 45/2001, subject to the observations above. In particular, the Directorate-General for Translation, when carrying out appraisal exercises in future, should:

- provide translators with all compulsory information about their rights relating to their data and processing thereof;
- set up security measures to ensure that e-mails containing tables of productivity indicators cannot be viewed by anyone other than the Head of Unit and that all copies of data per unit are properly deleted.

Done at Brussels, 28 January 2005

*European Data Protection Supervisor*

Peter HUSTINX

Follow-up Note

14 June 2005

All acting measures have been taken on 9 February 2005.

*The European Data Protection Supervisor*