



EDPS - European Data Protection Supervisor

CEPD - Contrôleur européen de la protection des données

Opinion on the notification for prior checking received from the Data Protection Officer of the Council of the European Union regarding the Skills Inventory

Brussels, 4 April 2005 (Case 2004-319)

1. Proceedings

1.1. On 9 December 2004 the European Data Protection Supervisor received a notification for prior checking from the Data Protection Officer of the Council of the European Union, concerning a data processing system, the Skills Inventory. It was accompanied by the notification to the Council's Data Protection Officer pursuant to Article 25 of Regulation (EC) No 45/2001 and three annexes (information on data, general description of security measures and access rights).

1.2. The notification followed a series of information notes from the Data Protection Officer, and in particular a note to the officials involved in the pilot project, on the structure of the ARPEGE files, the specification for integration with the Staff Training Department's information systems, including technical information, and a set of operating specifications.

1.3. The European Supervisor requested additional information on the purposes of the ARPEGE system (staff management system) and the Staff Training Department (STD) system. That request put back the deadline by which the Supervisor had to deliver his opinion by 46 days (from 2 January 2005 to 18 February 2005).

1.4. A request for additional information on the data storage period was made on 25 February 2005. A reply was given on 4 March 2005. That request thus put back the deadline by 7 days.

2. Examination of the matter

2.1. Facts

The Skills Inventory is a data file consisting of the CVs of every official or other servant of the General Secretariat of the Council (GSC) in electronic format; data are entered either by the official or by the specialised department. No decisions are taken automatically on the basis of data stored in the system.

The data consist of existing data held in personal files as well as any data that officials may wish to enter on their previous experience. Officials will be informed that any

data they enter on their previous experience may be used in conducting searches.

The aim of the system is to make the current decision-making procedures smoother and to ensure that officials receive fair treatment, with greater recognition being given to their individual skills and abilities.

The system has several objectives, including:

- human resources planning and management;
- filling vacant posts: for example, departments can check whether the skills needed for a post to be filled are available in the GSC and, on the basis of their findings, can decide whether to offer the post outside the institution, for instance, or to organise targeted staff training courses;
- mobility: submission of applications will be easier and more standardised; CVs will be easier to read and the accuracy of the information in them more reliable;
- compilation of statistics in general: for example, do the training courses offered correspond to the GSC's needs?
- better career planning;
- better knowledge of the skills of staff as a whole, by DG, by Directorate and by unit.

Although originally designed to catalogue the skills of officials only, it will be possible to extend the system to other resources (temporary officials, outside staff, etc.).

Type of information

General information on a person includes their personal number, family name, forename, their assignment to a post, a status (temporary, national expert, etc.), or a grade.

That information is supplemented by information on education and training. This may be general information (academic nature, duration, level, title of qualification, year obtained), information on the level (higher education or university), information on the field of training (management, computers, politics, economics, etc.). In the case of in-house or STD training, a description of the training (field or subfield) or the in-house training group is given.

The information also covers language knowledge and level, computer skills and field of skills, and management skills.

Lastly, the information includes current and previous posts and experience. This could be professional experience within the Council, outside the Council, other activities within the Council or outside the Council.

Search engine

A search engine will be created enabling searches to be carried out on the basis of a wide range of criteria:

- criteria relating to personal details;
- criteria relating to language knowledge;

- criteria relating to computer skills;
- criteria relating to management skills;
- criteria relating to experience and activities;
- criteria relating to training courses followed.

The search engine will be available only to the specialised departments (Human Resources Directorate) and other departments with limited access rights.

The system can produce a list of people corresponding to the user's needs specified by means of search criteria.

The system enables the user to save searches, i.e. a set of search criteria entered together with a description.

Every search will be entered in a log giving the name of the person conducting the search, the date and time it was carried out, the criteria specified, the SQL command/s generated and the number of persons that correspond to the search criteria.

Origin of data

The data on careers are taken from the Administration's information system (ARPEGE) and data on training are taken from the Staff Training Department's computer system (Casablanca). As the data in those systems can be relied on only after certain dates, any prior thereto will not be automatically included.

Some of the data will be imported from the ARPEGE system on a daily basis for inclusion in the system. They relate mainly to administrative information such as family name, forename, grade, step, mother tongue, date of birth, etc. No sensitive information (health etc.) will be supplied. Logs are produced for every ARPEGE-Skills Inventory exchange and for every update of the information in the Skills Inventory.

Similarly, Casablanca will be updated to reflect certain personal data found in the Skills Inventory: family name and forename; staff number; category and grade; status; e-mail address; unit and date of assignment; indication whether the person is regarded as active or not in the Skills Inventory. No sensitive information is provided. Data exchange between the two systems uses the staff number as a personal identifier.

Logs are produced for every Casablanca-Skills Inventory exchange and for every update of information in the Skills Inventory.

Access rights

Everybody will have the right to consult their data in the information system, but will not be entitled to consult data on other subjects unless they have the necessary privileges. The specialised departments will also have access depending on right of access to the system.

Varying access rights will be accorded to users, depending on their profile:

- right of identification to the system: allows the user to be connected to the system;
- right to consult and amend one's personal data: possibility of consulting and

printing one's personal data. Possibility of amending data if their status so permits;

- right to consult and amend all personal data: possibility of consulting and printing all data in the computer system regarding a third party. The only thing the user cannot do is conduct searches;
- search rights.

The project controller is to:

- define standard profiles;
- allocate one or more profiles to users;
- allocate to users or withdraw from them one or more specific elementary rights.

The project controller will have to provide the family name or forename of the person or select it from a list of persons in the system.

Erasure and rectification of data

When data entered in the system have been validated by the data subject and the specialised department (Human Resources), any objections or requests for amendment must be sent to that department. Furthermore, data subjects may at any time press the "refuse" button to indicate that they no longer accept the encoded information.

Where a datum is amended or deleted the original is not physically deleted but logically deleted, which means that only its most recent status is visible to a normal user. However, a small number of users will have access to the log file (i.e. all the successive stages in the data field concerned) if they have the right to view the audit trail.

Moreover, the following data are saved in the case of all deletions:

- the user who originally created the line;
- the date of creation (start of visibility);
- the user who deleted the line;
- the date of deletion;
- the date of the end of visibility.

For all updating operations the following data are saved:

- the user of the computer system who carried out the update;
- the date and time of the update.

Any errors reported and any amendments or objections will be indicated under the "validate" tab.

Data storage

Where a person whose data have been processed is no longer considered to be active by the system (for instance, if they have retired or died), the data concerning them will be archived and thus cease to be accessible to users. Information on the person's status (active/non-active) will come from ARPEGE.

All files held on the servers will be backed up in accordance with the common policy

defined by the ITD (Information Technology Division).

Security measures

Security measures will be in place, in particular to prevent data corruption.

2.2. Legal issues

2.2.1. Prior checking

Article 27 of Regulation (EC) No 45/2001 subjects processing operations presenting specific risks to the rights and freedoms of data subjects to prior checking by the European Data Protection Supervisor. Article 27(2) contains a list of processing operations likely to present such risks. As the European Supervisor pointed out in a previous case (Case 2004/013), the list in Article 27(2) is not exhaustive. In other words, although certain processing operations are not included as such in the Article, they may nevertheless present risks.

The European Supervisor considers that he must assess whether this processing operation is covered by the operations listed in Article 27, i.e. whether the operation presents specific risks to the rights and freedoms of data subjects.

Article 27(2)(b) states that the processing operations likely to present such risks include "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

These processing operations are intended to evaluate personal aspects including ability, efficiency and conduct. The aim of the operation is thus to evaluate the data subject. By "processing", the Regulation means "any operation or set of operations which is performed upon personal data ... such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction" (Article 2(b)).

According to the notification received by the Council's Data Protection Officer, the Skills Inventory is a computer tool intended to improve human resources management at the GSC. It facilitates the planning and management of the human resources necessary for, among other things, mobility, filling vacant posts, training and skills development.

According to the definition given in the Regulation, data processing covers operations ranging from collection of data to their use, through combination of data. The Skills Inventory is a data collection tool which will be used, in particular, to determine which people correspond to a given profile. This may be considered to be a form of evaluation of a person's skills.

As such, the Skills Inventory must be understood as falling within the scope of Article 27(2)(b) of Regulation (EC) No 45/2001.

Moreover, as we are dealing with processing operations likely to present specific risks

to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, Article 27(2)(c) provides for prior checking of processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes. This provision is intended above all to avoid data collected for different purposes being linked. The risk of linking data is that quite different information may be deduced by means of the link, or the original purpose be distorted. Linkages not provided for under national or Community legislation thus entail certain risks with regard to data protection where the end purposes differ.

In the present case, there are to be linkages between the Skills Inventory system and the ARPEGE and Staff Training systems: the ARPEGE and Staff Training systems will feed the Skills Inventory system. These linkages are not a priori provided for under national or Community legislation. The question of whether the data are processed for different purposes must be examined.

ARPEGE (Administration des Renseignements sur le Personnel et la Gestion des Emplois) (staff management system) is a data management tool (officials, their families and dependents), for integrated, automatic data management and automatic document generation. It facilitates the management by certain departments of officials' rights and careers. The purpose is not really different: the Skills Inventory is a data management system for, in particular, career-related data.

The Staff Training Department's Casablanca application is intended to establish an overall picture of in-house training courses followed by officials and other staff. Some of the data stored in Casablanca are also of use for the Skills Inventory. In order to avoid overlapping of encoding and the inherent risk of error, a link has been established between the two systems. Both systems, Staff Training and the Skills Inventory, converge towards the same purpose, viz. the management of data connected with officials' careers, and thus do not present any specific risks to the rights of data subjects.

Linkages between the Skills Inventory and the Staff Training and ARPEGE systems do not, therefore, appear to present specific risks to data subjects since, on the contrary, the links between the systems are intended to establish greater consistency and accuracy of data.

The link between the Skills Inventory system and the Staff Training system will be accomplished by means of the staff number of the data subject as a personal identifier. Of course, the use of the staff number is first and foremost a means of facilitating the work of the processor: rather than having to introduce a series of data such as family name, forename and date of birth before being able to retrieve the relevant information, only the staff number need be entered. However, such use may have important consequences. The European legislator was moved to lay down rules for the use of personal identifiers in Article 10(6) of the Regulation. The use of a staff number might enable data processed in different contexts to be linked. That is why the European Supervisor intends to give it his attention (see 2.2.5.). Note, however, that this opinion is not intended to establish in a general way conditions in which an identifying number may be processed (as provided for in Article 10(6) of the Regulation), but concerns this particular case specifically.

The notification for prior checking was received by the European Data Protection Supervisor on 9 December 2004. The deadline was extended by 53 days because of requests for additional information, taking the date to 4 April 2005.

2.2.2. Legal basis for and lawfulness of processing

The legal basis for processing is Article 207 of the EC Treaty, under which the Council adopts its own rules of procedure. Article 23 of the Council Decision of 22 March 2004 adopting the Council's Rules of Procedure stipulates that the Council shall decide on the organisation of the General Secretariat.

The analysis of the legal basis is accompanied by an analysis of the lawfulness of processing as defined in Article 5 of Regulation (EC) No 45/2001. Article 5(a) stipulates that personal data may be processed only if the processing is "necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof". The Skills Inventory system falls within the legitimate exercise of official authority vested in the institution, provided that it can reasonably be considered to be necessary and that it makes a useful contribution to the running of the institution. Also, the preamble to the Regulation explicitly states that "processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies" (recital 27).

2.2.3. Data collection and change of purpose

The processing operations analysed do not entail any general change in the intended purpose of the databases relating to staff, nor are they incompatible with that purpose. Skills management within an institution is an activity falling within the general remit of a human resources department. Article 6(1) of Regulation (EC) No 45/2001 is therefore not applicable.

2.2.4. Transfer of data

Processing must also be examined in the light of Article 7 of Regulation (EC) No 45/2001, as the data will be passed to various people within the GSC: officials (or similar staff members), in the case of information regarding themselves; specialised departments, depending on their right of access to the system; hierarchical superiors and officials, depending on their right of access to the system.

Personal data may be transferred *within* or between institutions only "if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient" (Article 7(1)). Under the present project, different access rights may be accorded to different users. It is therefore important that the project controllers define precisely the roles and responsibilities of every user in relation to this criterion of necessity to perform tasks. Users may have access only to data which can be reasonably required to perform their tasks.

Article 7(3) of the Regulation also stipulates that the recipient shall process the personal data only for the purposes for which they were transmitted. Guarantees to

that effect must be provided, with it being explicitly stated that persons accessing data contained in the system may not use them for purposes other than those compatible with the purpose of the Skills Inventory system, viz. the efficient management of human resources within the GSC.

As no data are to be transferred outside the institution, Articles 9 and 10 are not applicable.

2.2.5. Use of the staff number

Article 10(6) of the Regulation states that "the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body".

The Skills Inventory and the Staff Training Department's Casablanca system will be linked by means of the data subject's staff number. Use of the staff number is justified in this case for reasons of practicality. Rather than having to enter a series of data to interconnect the systems, it can be done more readily using the staff number as an identifier. The staff number serves only to link the databases for purposes clearly set out in the project and directed towards a common end, as indicated above. Moreover, security measures and strict access rights preclude the possibility of people being traced through their staff number.

The need to use a single identifier to make connections between files thus appears to be justified and presents no specific risks given the measures to restrict access.

2.2.6. Information to be given to the data subject

Under Articles 11 and 12 of the Regulation, certain information must be provided to the data subject. In the case in question, many data are not obtained directly from the data subject since the system is fed from various sources, including ARPEGE and the Staff Training Department. That said, some data may be provided by the data subject.

A note was circulated to the officials involved in the pilot project on 6 October 2004, informing them of the purposes of the processing operation, the categories of data concerned and the existence of their right to access and if necessary amend the data, and identifying the controllers within the Council.

Further information will have to be provided on the persons with access to the data (recipients) and the time-limits for storing the data. In the case of data obtained directly from the data subject, it is also recommended that the data subject be told whether replies to the questions are obligatory and informed of the possible consequences of failure to reply.

The Supervisor would also like the Council to indicate how it envisages informing all data subjects when the system is introduced throughout the Council. Furthermore, if the project is to be extended to persons other than officials and staff of the GSC, provision must be made for those persons also to be properly informed.

2.2.7. Right of access and rectification

Articles 13 and 14 of Regulation (EC) No 45/2001 state that data subjects have the right to request that their data be sent to them and the right to rectify them if necessary.

As stated above, all data subjects will have the right to consult their data in the information system. They may lodge an objection or request amendment by the specialised department (Human Resources). Furthermore, data subjects may at any time press the "refuse" button to indicate that they do not accept the data encoded.

The European Supervisor therefore considers that the rights of access and rectification have been respected.

2.2.8. Storage of data

Pursuant to Article 4(1)(e) of the Regulation, data may not be kept in a form which permits identification of data subjects for any longer than is necessary for the purposes for which the data were collected or further processed. This Article lays down that if personal data are stored for a period longer than is necessary for statistical purposes, data should be kept either in anonymous form or, if that is not possible, only with the identity of the data subjects encrypted.

Where a person whose data have been processed is no longer considered to be active by the system (for instance, if they have retired or died), the data concerning him/her will be archived and thus cease to be accessible to users. However, it is technically possible for a computer specialist to re-access this information using a manual procedure.

All files held on the servers will be backed up in accordance with the common policy defined by the ITD (Information Technology Division). Once again, by performing certain operations, a computer specialist could restore and then re-access all this information.

Guarantees must be provided that anyone with access to data which are stored for the purpose of archiving or back-up restores them solely for those purposes.

The procedure for data storage for the duration of service of the data subjects seems adequate with regard to data protection rules. Moreover, data storage for archiving or back-up purposes is justified, and measures have been taken to ensure that the data will be used solely for those specific purposes.

The European Data Protection Supervisor would like measures to be taken to ensure that any result from a search in the Skills Inventory is not kept beyond the requisite period for the purpose for which the search was carried out.

Steps should also be taken to ensure that only anonymous data are used when compiling statistics.

2.2.9. Automated individual decisions

Article 19 of the Regulation lays down that data subjects have the right not to be subject to an individual decision which produces legal effects concerning them or significantly affects them and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to them, such as their performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or, if necessary, by the European Data Protection Supervisor. In either case, measures to safeguard data subjects' legitimate interests, such as arrangements allowing them to put their point of view, must be taken.

The project in its current state clearly indicates that no decision is taken automatically on the basis of data recorded in the system. The system does not modify the principles applicable to mobility, training or career. Processing is therefore not covered by this provision. Any use of data for the purposes of automated decision-making will require the controller, in compliance with Article 19, to ensure that the data subject's legitimate interests are safeguarded.

2.2.10. Data quality

Pursuant to Article 4(1)(c) data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed".

In relation to the information received on data stored currently in the system, only data relevant to the purpose are collected and processed.

2.2.11. Security measures

Strict security measures have been put in place to counter any data alteration or destruction and any non-authorised access to data.

In this connection, the European Data Protection Supervisor has received information allowing him to state that the security measures seem satisfactory in this case.

Conclusions

The proposed processing does not appear to infringe Regulation (EC) No 45/2001 provided that the following recommendations are taken into account:

- guarantees must be provided that persons accessing data contained in the system may not use them for purposes other than those compatible with the purpose of the Skills Inventory system, viz. the efficient management of human resources within the GSC.
- the project controllers must define precisely the roles and responsibilities of every user in relation to this criterion of necessity to perform tasks.
- further information will have to be provided on the persons with access to the

data (recipients) and the time-limits for storing data. In the case of data obtained directly from the data subject, it is also recommended that the data subject be told whether replies to the questions are obligatory and informed of the possible consequences of failure to reply.

- the Council must indicate how it envisages informing all data subjects when the system is introduced throughout the Council. Furthermore, if the project is to be extended to persons other than officials and staff of the GSC, provision must be made for those persons also to be properly informed.
- guarantees must be given that anyone with access to data which are stored for the purpose of archiving or back-up restores them solely for those purposes.
- measures must be taken to ensure that any result from a search in the Skills Inventory is not kept beyond the requisite period for the purpose for which the search was carried out.
- only anonymous data are used when compiling statistics.

Done at Brussels, 4 April 2005

Peter HUSTINX
European Data Protection Supervisor

Follow-up Note

8 November 2005

All acting measures have been taken on 7 November 2005.

The European Data Protection Supervisor