

Opinion on a notification for prior checking received from the Acting Data Protection Officer of the European Commission on "SYSPER2- e-CV, the Commission's human capital database"

Brussels, 22 June 2006 (Case 2005-406)

1. Proceedings

On 20 December 2005, the European Data Protection Supervisor (EDPS) received a notification from the Acting Data Protection Officer (DPO) of the European Commission for a prior checking relating to the processing operations on personal data concerning "SYSPER2-e-CV, the Commission's human capital database", which was an additional sub-notification of the master- notification SYSPER2.

The dossier on "SYSPER2- e-CV, the Commission's human capital database" consists of:

- 1) the formal notification to the EDPS
- 2) a Draft information note on the "e-CV- the Commission's human capital database"
- 3) an attachment to point 13 on the purpose(s) of processing,
- 4) an attachment to point 17 on access rights to the e-CV, and
- 5) another document "1.1. Basic Principles and Practices".

On 30 January 2006 and on 24 March 2006, the EDPS sent a list of questions requesting supplementary information for the dossier. On 24 April 2006, the EDPS received the responses to both information queries, and some additional documents: a draft of the Specific Privacy Statement for e-CV; and a consolidated version of "Lignes directrices sur la mobilité"(French version)¹. On the same day it was indicated to the EDPS that an update may be expected regarding the information received, which was confirmed on 26 April 2006 in an e-mail received from the Deputy DPO of the Commission. On 5 May 2006, the EDPS made another information request via the DPO of the Commission to which he received the responses on 19 May 2006, including the update mentioned before. To the last information request sent on 22 May 2006, the EDPS received the answer on 23 May, 2006. The EDPS suspended the procedure on 31 May 2006 for a period of ten days in order to allow the DPO to give relevant comments and provide further information if necessary.

On 1 June 2006, a request was made to the EDPS to give his prior approval for launching the test phase of the e-CV for the whole month of June (conditions for the pilot see below). The EDPS gave his prior approval provided that an extensive communication during the pilot phase informs data subjects about their rights under Regulation (EC) No 45/2001 and the controller provides for the mechanism and procedure to exercise those rights.

¹ Le document consolide dans un seul texte la Décision de la Commission du 12 février 2002 arrêtant les lignes directrices sur la mobilité (SEC(2002) 146) et la Décision de la Commission du 31 octobre 2003 autorisant le Directeur général de la DG Personnel et Administration de prolonger le délai de 20 jours dans lequel un fonctionnaire devait être libéré de son ancienne affectation (C/2003/3985).

On 7 June 2006, the EDPS received important updates about the changes introduced in the e-CV system, which new information added to the complexity of the case, thus the deadline to issue the opinion was extended by 10 days.

On 12 June 2006, a "live" demonstration of the e-CV pilot project took place with the participation of staff members of the EDPS and of DG ADMIN.A.2. The meeting was also an opportunity to discuss the updates received about the system.

2. Examination of the matter

2.1. The facts

Objective and general description of the system:

"SYSPER2-e-CV, the Commission's human capital database" (e-CV database) will be one module of SYSPER2 of the new personnel management system of the European Commission. Presently, all information on professional profiles has been stored in paper format in personal files which due to its form (paper copies or scanned images of paper copies) is difficult to exploit in a Commission- sized organisation. The e-CV database will enable staff to create and store their electronic personal CV (professional profile and personal information) by using a specific template. It will enable various services to exploit those data for the defined human resources purposes: elaborate statistics from real data, design of human resources policies, planning and allocation, career guidance and functional needs of specialized services. In addition, the central and local human resources services will be able to use the e-CV in different procedures where staff members willing to participate in a particular procedure need to introduce personal data (for example mobility, and later on, certification and attestation).

- *Statistic*: gathering and processing of non-identifiable data about the different profiles of staff working in the Commission.
- *Human resources policies*: The development of HR policies needs to be based on up-to-date information concerning the staff and its competencies (e. g. planning staff training).
- *Human resource planning and allocation*: The e-CV will help to identify and address the needs of staffing (in connection to the Job Information System (JIS), containing the job description of staff): the comparison of profiles of staff leaving the Commission or a DG with the job descriptions and the existing profiles will help the gap analysis for targeted recruitment; or finding suitable candidates inside the organisation or deciding to launch an external competition.
- *Career management (mobility, redeployment) and career guidance by Service Central d'Orientation Professionnelle (SCOP -Central Career Guidance Service)*: Knowledge of individual profiles is essential when analysing professional experience and competencies and for helping staff to take rational decisions on their career.
- *Mobility issues*: 1) Once a vacancy is published the e-CV will provide information for targeting promising candidates for the post, or may suggest rethinking the vacancy notice if it becomes clear that no candidates match the vacancy notice. The e-CV will not replace the selection process; it will just provide a tool for finding candidates and to bring the vacancy to their attention (in addition to those candidates that will send their CV on the basis of the vacancy notice). 2) The e-CV will also allow staff to prospect on the market. They can compare their profile to vacancy notices. As a recent development the possibility to express wishes for mobility has been linked to some new tasks, the modalities of which are being developed. Several new tasks are foreseen to be assigned to ADMIN.A.2-SCOP later this

year. These tasks deal with career support services (career guidance, headhunting and placement).

- *Functional needs of specialised Central Services:* Some central services are given access, according to their functional needs to the data and the processing tools foreseen for the e-CV.

Data will be gathered on a voluntary basis, except for officials who are willing to participate in certain procedures (mobility, attestation, certification). For them the use of e-CV will be obligatory. Concerning the mobility procedure, the use of e-CV is mandatory based on Section 2.2. (4) of the Guidelines on Mobility² and their implementation (2002).

Data exploitation for the defined purposes will be possible by a search engine and a matching tool.

The *search engine* makes it possible to search for profiles in the e-CV database, based on specified criteria (categories of data, description, key-words, etc). The search engine will allow management to find staff members with specific professional profiles or to draw the attention to the fact that such professional profiles do not exist at the Commission. This information is particularly important for human resource planning, allocation and policy design and when looking for suitable members for a task force. It will also provide statistics for reality based decisions on staff policies.

The *matching tool*, which is still under development at the time of drafting the opinion, enables the comparison of a personal profile with (a set of) requirements in a job description or vacancy notice. It will allow users to find the most appropriate job for a specific person or the best person for a particular job. The matching tool is a help to staff members who want to plan their career on their own or with the assistance of career guidance officers (staff gets more information about their mobility possibilities, career options based on their individual competencies). When looking for a staff with rare skills and competencies, the matching tool helps to identify those persons, who after that may or may not be sent an e-mail by the competent services (*Permanent Rapporteur to the Comité Consultative de Nomination (CCN)*, *Central Career Guidance Service (SCOP)*, or HR units) attracting their attention to the vacancy in question. This process is not considered to be a pre-selection, neither an invitation for applying to a post. The e-CV does not change the existing mobility policy.

The data subjects are:

All members of staff having a direct link of employment with the Commission are data subjects with respect to this module of Sysper2: officials, temporary agents, auxiliary staff, contract agents and seconded national experts.

Data required for the processing operation:

All staff members will have their "My e-CV" module in Sysper2. The module will remain empty until staff fill in their data: education, training, professional experience, knowledge, skills, talents, and language skills.

Only some data will be automatically retrieved from other SYSPER2 modules, such as, name, office, address, e-mail address, nationality, birthday, gender and function group (AST, AD). This data can be seen in the final pdf document or Word document. It always takes the latest

² Guidelines on Mobility. Commission decision (SEC (2002) 146) Point 2.2. (4). Improving the organisational framework for filling vacant posts.

(updated online) data from Sysper2. No direct import is created regarding the "in-house training".

The personal number will also be used in order to identify job holders in a reliable way.

More detail on data collected in the specific template of the e-CV:

- *Experience*: (dates (from - to); domains, environment; number of staff; European institution, services; job title; main activities and responsibilities (space left for description)).
- *Knowledge*: After clicking on a hyperlink such as management, strategic analysis, legislative work, policies, relational functions, etc, the appropriate knowledge in more detail should be chosen from a given list. For each domain, the level of knowledge should be indicated (basic, good, very good, excellent).
- *Languages*: mother tongue, competition language, all other languages. The level of understanding, speaking, reading, and writing should be indicated (the level proposed is based on the Common Framework of Languages).
- *Skills*: communication skills (e.g. ability to understand and be understood, capacity to present issues to an audience, drafting skills, diplomatic skills); delivery of results/ management of work (e.g. planning capacity, capacity to deliver in a structured way), intellectual/ problem solving and judgement skills (e.g. ability to conceptualise problems, identify and implement solutions, capacity to act upon problems); leadership (capacity to mobilise people, entrepreneurship). Skills are selected from a given list, and the level should be indicated as "excellent", "very good", "good" or "basic".
- *Studies*: studies where diploma was obtained at the end of the studies/ when diploma was not obtained. Data collected: level (to be chosen from a pop-up screen), title of diploma/studies, diploma obtained (yes/no) or ongoing studies, dates of studies (from-until), domains (principal subject of studies, which is important because the title of diploma is not the main search criteria in the e-CV presently), name of organisation providing education, location, country.
- *Talents*: 5 principal talents should be selected from a given list, such as: drive for achievements (initiative/self-starter, stress resistance); intellectual capacity (confidentiality, eye for detail/accuracy, creativity, critical analysis, open-mindedness); interpersonal talents (empathy, ability to integrate well in a team).
- *Training*: selection of training from three types: A) Training course from Commission catalogue (name of training, year, duration, domains); B) External training course funded by the Commission (name of training, year, duration, domains, name of organisation providing the training, location and country); C) other training courses.
- *Publications/ Other information*: drafting additional information as a free text.

If something is not listed in the pop-up list it is possible to add a new entry (e.g. knowledge) or to contact SCOP who can add a new domain (e.g. studies) to make the data collected more reliable and accurate.

Unidentified statistical data can be processed and disclosed by DG ADMIN without restrictions.

Information to data subjects:

In the framework of a general communication strategy for the e-CV extensive communication is foreseen with the staff members to inform them in more detail about the purposes of processing. Staff will be invited to enter their data.

The importance for the staff of the possibility to promote their own competences has been underlined in several meetings organised to test the communication plan with some target groups. During the communication activities (and in the documents) the Commission speaks at present not about *wishes for mobility* but wishes for actively promote individual careers which does not necessarily mean mobility. Since ADMIN.A.2- SCOP is foreseen to be assigned several new tasks (career guidance, headhunting, placement), once the nature and modalities of those new services have been designed they will be communicated to the data subjects via IntraComm web pages and a special mobility button will be added in the e-CV.

An Administrative notice stating the information in Articles 11 and 12 of the Regulation will be addressed to the staff.

A "Draft information note" on e-CV- the Commission's human capital database submitted to the EDPS contains the general description of the database, the purposes of processing, identifies the controller, the right to have recourse to the EDPS at any time, access rights to the data, information that the database is on a voluntary basis (save the mobility procedure) and implementation of the project. The right to rectification is not mentioned explicitly though it is stated that: "The data will be entered and *maintained* by the jobholders themselves on a voluntary basis..."

The SYSPER2 homepage will contain a specific privacy statement and a link to Regulation No 45/2001. The draft Specific Privacy Statement for e-CV informs data subjects about the purposes of data collection; the categories of data collected (a complete overview of data will be available on SCOP homepage); the technical means used for processing of personal data; access rights to personal data of staff and its disclosure; access rights of data subjects to their own data, verification of its accuracy and correction of personal data; the data storage period; security measures; contact information for queries and complaints, including the right to have recourse at any time to the European Data Protection Supervisor. A comment in the draft states that "since the use of e-CV is not mandatory", it should be mentioned that "data subjects may suppress their e-CV at any time (right to erase data)".

It is mentioned in the draft Privacy Statement for e-CV that in different procedures "*staff members willing to participate a particular procedure need to introduce personal data (for example mobility, certification, attestation)*". The consequences of failure to fill in personal data is mentioned regarding the mobility procedure, where footnote 2 specifically states that: "*In the case of an application to a job vacancy the use of this module to produce an e-CV that will be submitted with the application is mandatory. No application will be accepted otherwise*".

The template of the e-CV provides instructions on how to fill in the e-CV: where the sign [*] is indicated, it is obligatory to fill in the data, or which button to use to add/ delete/correct data. The template provides information about the possible status of data (private or public) and its consequence (See "Scope of access right to data in the system"). This status of data (public/private) can be changed at any moment. The template also informs staff members that they can access their e-CV at any time in order to modify the data and to add new information.

Rectification and erasure of personal data:

When data are introduced by the staff members relating to their curriculum vitae, they are responsible for the quality of the data. They can keep the data up-to date, they can modify or delete them any time.

Data subjects can modify the data to better correspond to their current needs, meaning that they can produce a Word document modifiable for their own purposes. When the Vacancy module takes the CV data from the e-CV that data can be modified only before submitting (signing) it to the vacancy procedure. Data extracted for mobility reasons become non-modifiable once the candidate has approved them and transmitted his/her application for a vacancy.

Data that have been introduced through an e-CV to participate in certain administrative procedures can be erased by the data subjects after their expiration date. For example: staff members have the right to remove their data after a specific mobility procedure is finished.

Administrative data already available in Sysper2 are updated by the competent services of the Commission. If staff members detect mistakes in their administrative data not introduced by themselves, they can inform DG ADMIN following a procedure specified in the e-CV and request that the data be modified or erased. The competent services will investigate into it, would modify, erase or maintain the data accordingly, and will inform the data subject concerned. (The details regarding this procedure in the draft Specific Privacy Statement are to be finalised.)

Access to data in the module:

Access rights are defined on a "need to know" basis, thus a Director General has access to the data in his DG, a Director has access to data of his directorate and a Head of Unit has access to data of his unit. There are specific units or entities which have larger rights due to their mission. The local HR units have access to data of the whole DG.

Scope of access rights to data in the system:

An individual member of staff will have access to every detail of his/her own profile, since he/she need to update and complete the information. He/she will have access to the matching tools to be able to find job descriptions and/or vacancy notices that match his/her e-CV. The individual member of staff will not have access to profiles of colleagues inside or outside of his/her entity, in order to protect privacy. They will therefore not have access to the search engine, either. Data stored in the e-CV is available for individual staff members to create their CV at any time and for any personal need. Members of the staff will also know who has consulted their e-CV and when, because this information will be recorded in an access log-file.

To offer the staff a possibility to promote their competences and skills the e-CV has been provided with two options: "Make private" or "Make public". The first is the default option. It limits access to the e-CV only to the hierarchy of the staff member and to SCOP/CCN. The second option extends the access to the e-CV to all hierarchies in the Commission, which means that the individuals can be contacted if they have the competence searched for. To do that individual staff members need to choose the "Make public" option which is verified via a pop-up message: *Are you sure you want to extend the access to your e-CV?* Staff members

can at any moment limit the access to their data to cover only their hierarchy, SCOP and CCN.

When participating in the mobility procedure, data concerning mobility will not be accessible for the hierarchy but only to the central services, SCOP and CCN. Thus, conditions for staff concerning mobility will be identical throughout the Commission, including the staff working in the HR units.³

The *Director General of DG ADMIN* and the *Director of DG ADMIN.A* (Directorate "Staff and Careers") will have access to all elements of all profiles of all members of the staff at the Commission, and also to the search engine and the matching tool. Full access rights are granted with the justification that *Director General of DG ADMIN* needs more information to make strategic decisions on personnel policy and strategy and on the optimal use and deployment of human resources in the Commission; and that the *Director of DG ADMIN.A* is responsible for the same matters.

The *Permanent Rapporteur to the Comité Consultative de Nomination* (CCN), due to CCN's role giving advice on nomination of senior managers, will have access to all elements of all profiles of management at the Commission, to the search engine and the matching tool. CCN does not have access to data concerning personnel who are not eligible for a senior management position.

The *Central Career Guidance Service* (SCOP/ ADMIN.A.2) will have access to all information of profiles in the Commission with the exception of senior management. It will have access to the search engine and the matching tool. This service has set up the e-CV module of Sysper2, and it is responsible for the management of this application. This service also provides services in career guidance, mobility and redeployment exercises. SCOP acts as a central "headhunting" unit for all staff, except for senior management, which is covered by the Permanent Rapporteur to the Consultative Committee on Appointments (CCN). Local senior and middle management will not have access to data Commission-wide, and queries need to be made through SCOP. The role of SCOP is a necessary step to guarantee that access rights are given strictly according to functional needs, and to maximise the trust of staff in the tool in order to encourage them to complete their profile (and not to provide partial or incorrect information (low quality data) or no information at all). The procedure is planned as follows: If a DG is looking for a special profile and has justified their request to SCOP, SCOP can draw the attention of staff members with the required profile via an e-mail to the vacancy notice. It is not foreseen that SCOP provides individual data/profiles directly to DGs.

The *Local Resources Directors, Heads of Resources and staff in HR units* will have access to all profiles of members of staff of their DG, to the search engine and the matching tool. They manage the human capital within the DG, and they should be enabled to deploy resources according to the wishes of staff and the needs of the DG. They will not have access to profiles of staff in other DG's in order to avoid uncontrolled headhunting of staff of one DG by another one. If they have a query regarding staff of other DG's they can turn to SCOP or the Permanent Rapporteur for assistance.

The *Local Director-Generals, Directors and Heads of unit* will have access to all profiles of all members of staff of their entity (i.e. a Head of unit to the staff's profile in his/her unit, a

³ As opposed to the initial project, where the hierarchy of members of staff in local human resources could have seen the wishes for mobility of their staff, since the mobility procedure was to be run by the human resources units. It was planned to inform local HR staff of that fact.

Director and the Director -General in the DG), and to the search engine and the matching tool. They manage the human capital in their entity, and they should be able to deploy staff according to the wishes of the staff and the needs of the DG. If they have a query regarding staff of other DG's they can turn to SCOP or to the Permanent Rapporteur for assistance, to avoid uncontrolled headhunting.

Specialised services (e.g. the Central Training Unit) will be granted access to all data or specific parts of the profiles of members of staff with the exception of senior management. This access might be on an anonymous basis or not. They will have access to the search engine and the matching tool, but only for those parts that concern them. Access rights to special centralised services in DG ADMIN are based on a "need to know" principle. Each request made by such a service must be studied individually taking into consideration the administrative and functional need for specific information in the e-CV. A Head of unit of a specialised service can delegate access rights according to the services' needs, under the Sysper2 general rules on access rights. SCOP will verify granted access rights at least once a year and update a list of specialised services which will be available to staff via Sysper2.

Data storage:

Unless the staff member deletes the data introduced voluntarily, it will be available in the e-CV database as long as the member of staff is in active service with the Commission. DG ADMIN defines the active status and the data will no longer be available once an active status is removed according to existing rules applicable to Sysper2. This means that data will no longer be accessible neither for the jobholder nor for the hierarchy having access rights to the e-CV. All data will be made anonymous and accessible only for statistical purposes. Statistical, non-identifiable data will be available for HR units in DGs and DG ADMIN.A.2.SCOP.

Printed versions produced from the e-CVs for selection purposes in the Vacancy module can be stored in the file of the procedure with a HR unit or DG ADMIN for 10 years in cases of decisions related to senior and middle management posts, or until the end of the mobility procedure and an appeal period in the case of other posts. The files will be destroyed after this period. The procedure files are kept to ensure that the Commission keeps all necessary information to justify specific decisions on nominations, since staff members can remove their data from the e-CV at any moment after they have applied for a post and relevant data upon which decisions were made will no longer be available. This storage will allow proper handling of potential complaints or appeals regarding the selection process which sometimes takes years to be dealt with by the Court.

The "Access history" will register the date, personal id, name and access type. The Access history includes all personal "read" accesses and "modification" accesses. Each time an individual e-CV is consulted by anyone having the applicable access right, this consultation is registered in an access log-file. Only the latest data will be stored in the e-CV. Every time a modification is made in the e-CV database a trace is kept in the access history. All individual Access histories are saved for as long as the profile exists. (Some details may become non-visible as the list kept gets longer, however the Access histories are saved in another database.)

Data that has been automatically introduced in the e-CV through other administration IT systems, will be maintained according to existing rules applicable to Sysper2.

Linkages with other Sysper2 modules:

The e-CV is linked to other modules of Sysper2. The *Personal data* module provides identification data to the e-CV once a pdf or a word format CV is generated. The e-CV will provide CV data (experience, training, knowledge, skills, talents, languages skills and other information as free text) for the purpose of mobility to be used in the *Job Vacancy* module. The Matching Tool links the e-CV and the *Job Information System* (JIS, containing all the job description at the Commission) together, and makes it possible to compare one's personal profile with a job description, and helps the management to find the right person to a specific job.

For the time being, the e-CV and the *Attestation* and *Certification* modules are not linked. In principle, they contain the same data on career, education and training. At a later stage to avoid duplication and multiple data input a link will be created to allow staff members to re-use their e-CV data to apply for these procedures.

All career history is stored in the module *Career history* and for the time being no direct link has been installed. Thus, staff members need to fill in those data themselves.

The e-CV is not connected to the evaluation system of Sysper2 ("*Évaluation professionnelle REC*").

Security measures:

Security measures have been adopted.

[...]

Pilot project:

For the month of June 2006, a pilot project was scheduled involving the staff members of two DGs (Employment and ADMIN) and the human resource units. The participation is on a voluntary basis in the test phase, and it concerns entering "professional" data (experience, studies, knowledge, skills, etc) but not testing the other tools (matching tool, search engine). The privacy statement is made available on-line for the data subjects. Extensive communication takes place informing data subjects about their rights under Regulation (EC) No 45/2001, and staff members can delete their data after the pilot if they decide to do so.

2.2. Legal aspects

2.2.1. Prior checking

The notification for prior checking concerns the processing of personal data ("any information relating to an identified or identifiable natural person") and therefore falls within the scope of Article 2(a) of Regulation (EC) No 45/2001.

The processing operation by the Commission is carried out in the exercise of activities falling within the scope of Community law (Article 3(1) of Regulation (EC) No 45/2001).

The "SYSPER2-e-CV human capital database" of the Commission concerns automatic processing, and hardcopy versions printed from the database can be subjected to manual

processing but the content is intended to form part of a filing system. Therefore Article 3(2) of the Regulation applies.

Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all *"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) of the Regulation contains a list of processing operations that are likely to present such risks, including in Article 27(2)(b) *"processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct"*; and Article 27 (2)(d) *"processing operations for the purposes of excluding individuals from a right, benefit or contract"*.

These processing operations are intended to evaluate personal aspects including ability, efficiency and conduct of the data subject. According to the definition given in the Regulation, data processing covers operations ranging from collection of data to their use, through combination of data.⁴ The e-CV 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 (The EDPS has already issued his opinion on a similar case regarding the Skills Inventory at the Council)⁵. For example, when looking for a member of staff with rare skills and competencies, the matching tool helps to identify those persons, who thereafter may or may not be sent an e-mail by the competent services attracting their attention to the vacancy in question. Although this "headhunting" is not considered to be a pre-selection of candidates for a post, it is a kind of preliminary evaluation exercise to find individuals in whose application the respective services might be interested. Because of this aspect of the system, the e-CV falls under the prior checking scope of Article 27 (2)(b) of the Regulation.

The notification form mentions Article 27 (2)(d) of the Regulation as ground for prior checking. That article applies where the system is designed for excluding individuals from a right, benefit or contract, such as debarment. This is not the case here.

Under Article 28.1 of the Regulation, together with the prior checking notification an attachment was submitted regarding the new administrative measures applicable for the processing operations on personal data relating to "SYSPER"- e-CV, the Commission's human capital database". For practical reasons this opinion addresses where necessary and relevant some of the aspects of that document.

Although the e-CV provides personal data on experience, training, knowledge, skills, talents, etc for the Job vacancy (Staff mobility) module of Sysper2, that module will be prior checked separately. A consultation has already taken place and the EDPS is expecting the prior checking notification for the Job Vacancy module (Case 2006-0020). However due to the close link between the two modules, the limitation on the right to rectify and erase data⁶ will be considered in the present opinion.

⁴ By "processing", the Regulation means "any operation or set of operations which is performed upon personal data, whether or not by automatic means, 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)).

⁵ Opinion of 4 April 2005 on the notification for prior checking received from the Data Protection Officer of the Council of the European Union regarding the Skills Inventory (Case 2004-319). Available at: <http://www.edps.europa.eu>.

⁶ As proposed by the controller, the issue of storage period of printed e-CVs linked to applications for mobility will be dealt in the prior checking opinion of that procedure, as the purpose of such processing have to be taken into account.

The EDPS hereby draws the attention of the controller to the fact that the attestation and certification procedures in their entirety also fall under the scope of prior checking.⁷

The e-CV is an ongoing project, and various changes seem to be expected in the system: extending the tasks of SCOP, defining the rules of procedures in which the staff can promote their own competences, linking the e-CV with other databases, etc. Therefore, the EDPS requests the submission for prior checking of those processing operations within the Commission, which fall under Article 27 of Regulation (EC) No 45/2001 in this context.

The notification of the DPO was received on 20 December 2005. According to Article 27(4) the present opinion must be delivered within a period of two months that is no later than the 21 February 2006. The information requests suspended the prior checking procedure for 84 + 14 + 1+10 days, which delays the deadline by 12 June 2006. The period to issue the opinion was extended by 10 days, thus the opinion should be rendered no later than 22 June 2006.

2.2.2. Legal basis for and lawfulness of the processing

The legal basis for the processing is Article 218 (2) of the EC Treaty, which specifies that: "*The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these Rules are published.*"

Article 25 of the Rules of Procedure of the Commission (C(2000) 3614) specifies further that: "*The Commission shall, as necessary, lay down rules to give effect to the Rules of Procedure*", and that the "*Commission may adopt supplementary measures relating to the functioning of the Commission and its departments, which are annexed to the Rules of Procedure*". The Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public is annexed to the Rules of Procedure, which demand a quality service: "*The Commission and its staff have a duty to serve the Community interest, and in so doing, the public interest. The public legitimately expects quality service and an administration that is open, accessible and properly run.*"

The White Paper on Reforming the Commission lays down that "*A personnel database to replace the current SYSPER will be developed to include information profiles, job descriptions and skills of individuals. This database will be a useful tool for better career guidance and development. In developing the new database, specific attention will be paid to security aspects, and to the protection of confidential and of personal data in accordance with Community law*".⁸

The Guidelines on Mobility⁹ require that when an official applies for a post, he/she must fill in a standard application form, provide a curriculum vitae following the format recommended by the Commission recommendation for a standard format for curriculum vitae (CV) and attach a motivation letter.

⁷ Although some aspects of those procedures were mentioned in the prior checking of "SYSPER2: staff appraisal-CDR" system, the entire procedures were not scrutinised in the framework of a prior checking procedure. See, Opinion of 15 December 2005 on the notification for prior checking received from the Data Protection Officer of the European Commission on the "SYSPER2: staff appraisal-CDR" system (2005-218). Available at: <http://www.edps.europa.eu>.

⁸ See Action 35. Provide access to career guidance. In: Reforming the Commission. A White Paper-Part II. Action Plan. (COM (2000) 200 final, 1.3.2000)

⁹ Commission decision (SEC (2002) 146) Point 2.2 (4) Improving the organisational framework for filling vacant posts.

The analysis of the legal basis goes together with 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 or in the legitimate exercise of official authority vested in the Community institution or body.*" The creation of "SYSPER2-e-CV, the Commission's human capital database" falls within the legitimate exercise of official authority vested in the Commission, as it can reasonably be considered to be necessary and that it makes a useful contribution to the running of the institution. Also, the preamble of the Regulation in recital 27 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*". This is the case here.

In cases where the use of e-CV is not mandatory Article 5(d) makes the processing lawful if "the data subject has unambiguously given his or her consent". The consent is withdrawn when data subjects remove (delete) their personal data from the database.

2.2.3 Data Quality

Data must be "*adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed*" (Article 4(1)(c) of Regulation (EC) No 45/2001). The information presented to the EDPS on the professional data processed by the system and on the administrative data imported from Sysper 2 seems to meet those requirements.

The data must be processed "*fairly and lawfully*" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (See 2.2.2 above). As regards fairness, this relates to the information given to the persons concerned (See 2.2.10 below).

Data must be accurate, and where necessary, kept up to date" (Article 4 (1)(d). The system in general ensures data accuracy and the updating of the data. Data subjects have the right of access and rectification of data, so their e-CV can be as comprehensible as possible. This makes it possible to ensure data quality (For further comments, see Part 2.2.9).

2.2.4. Processing of special categories of data

Although in principle the e-CV collects and processes only professional data (and administrative data), it can not be excluded that for example in the "free text" of the "Publications/ Other information" section of the e-CV special categories of data occur. For example if a staff member submits information on his/her disability, without being required to do so. In the case of voluntarily submitting sensitive information (e.g. disability) it can be considered that the data subject has given his/her express consent to the collecting and processing of those data. Thus it fulfils the requirement of Article 10 (2)(a) of Regulation (EC) No 45/2001.

2.2.5. Conservation of data

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

to be stored for longer periods for ... statistical use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subject encrypted."

If data subjects do not remove their data, the data entered are kept in an identifiable form as long as the staff member is in active service with the European Commission. This period seems adequate with regard to data protection rules. Once data subjects are not in active service any more, data will automatically be made unidentifiable and can be used only for statistical purposes. Thus, the requirements of Article 4(1)(e) of the Regulation are met.

The storage period for the printed CVs imported from the e-CV for the various procedures (mobility, attestation, certification) will be scrutinised while prior checking those procedures.

However, the EDPS hereby stresses that if print-outs can be produced from the e-CV, a storage period should be provided for those documents in light of Article 4 (1)(e): data in those documents should be kept in a form permitting identification of data subject for no longer than is necessary for the purposes data was collected and further processed.

The EDPS is satisfied that individual "access histories" (access log) are saved only for as long as the profiles exist.

The EDPS would like to see measures put in place to ensure that any result from a search in the e-CV database is not kept beyond the requisite period for the purpose for which the search was carried out.

2.2.6. Collection of data and compatible use

Personal data should not be further processed in a way incompatible for the initial purposes (Article 4(1)(b) of the Regulation). The e-CV database is established for various human resources purposes: elaborating statistics from real data, designing human resources policies, human resources planning and allocation, mobility management, career guidance and functional needs of specialised services fall within the general remit of human resources management.

In the future, as planned, personal data filled in the e-CV database can be further processed in the framework of different procedures (like mobility, attestation and certification procedure). Since these procedures are also within the remit of human resources management, there seem to be no change in purpose, and the use of e-CV data is compatible.

As to the further processing of personal data for statistical purposes the EDPS draws the attention of the controller to Article 4(1)(b) and Article 4(1)(e) of the Regulation. Elaborating statistics from real data is not incompatible "*provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual*" (Article 4(1)(b) of the Regulation). In the case of storage of data for longer periods than defined in the first part of Article 4(1)(e) for statistical purposes data should be kept in an anonymous form or with the identity of the data subject encrypted. Also, measures should be put in place to safeguard that *the data shall not be used for any purpose other than for statistical purpose.* (Article 4 (1)(e) of the Regulation).

It is technically possible for a computer specialist to restore and re-access backed up information. Thus, guarantees must be provided that anyone with access to data which are stored for the purpose of back-up restores them solely for that purpose.

2.2.7 Transfer of data

The processing must be examined in the light of Article 7(1) of Regulation (EC) No 45/2001, which requires that *"personal data shall only be transferred 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"*.

Data will be accessible to various units/services within the Commission depending on their right of access to the system: Director-General of DG ADMIN and Director of DG ADMIN.A (Directorate "Staff and Careers"); the Permanent Rapporteur to the CCN; the Central Career Guidance Service (SCOP/ADMIN.A.2); Local Resources Directors, Heads of Resources, staff in HR units; Local Directors-General, Directors, Heads of unit; and specialized services. It seems that there will be no data transfer outside of the Commission.

Based upon the available information, it can be concluded that, save the printing rights from the system, the controller precisely defined the roles and responsibilities of every user in relation to the criterion of necessity to perform tasks. In that respect Article 7 (1) of the Regulation is complied with.

There is no mention of printing rights from the e-CV database. It should be clearly defined as to who can produce printed versions from the database, and it should be mentioned explicitly that printed information from the e-CV is to be used solely for the defined human resource purposes.

In the ongoing e-CV project various changes can be expected to be put in place (see above 2.2.1). Therefore, the EDPS finds it essential that since different access rights may be accorded to different users, the project controller defines precisely the roles and responsibilities of every user in relation to the criterion of necessity to perform tasks. Users may have access only to that e-CV data which can be reasonably required to perform their tasks.

Article 7 (3) of Regulation (EC) 45/2001 also stipulates that the recipients shall process the personal data only for the purposes for which they were transmitted. It should be explicitly stated that persons accessing data contained in the system may not use them for purposes other than those compatible with the purposes of the database, the defined various aspects of human resource management. This is even more true to the use and processing of personal data by the specialised services when they are granted access rights, including non-anonymous data (Article 4(1)(b) of the Regulation).

2.2.8 Processing of personal number or unique identifier

Article 10(6) of the Regulation provides 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 the Community institution or body"*.

Here, it is not the case to establish the conditions under which the Commission may process the personal number, but rather of drawing the attention to this point in the Regulation. In this case, the use of the personal number by the Commission in order to identify job holders in a reliable way is reasonable.

2.2.9 Right of access, rectification and erasure of data

Article 13 of Regulation (EC) No 45/2001 establishes a right of access- and the arrangements for exercising it- upon request by the data subjects. Article 14 provides for a right of rectification of inaccurate or incomplete personal data.

Data subjects have direct access to their e-CV online any time, they can update, correct or modify their own data. The Specific Privacy Statement presently in draft stage will provide for a procedure of rectifying incorrect or inaccurate administrative data in the system. In this respect Article 13 and 14 are complied with.

The right to erase data is embodied in the main principle of the database, since entering data in the e-CV is voluntary (save the case when data subjects decide to participate in certain procedures, and when entering data is obligatory), thus the data subject is the "master" of his/her own data, he/she can delete his/her own data any time.

The system will provide for restrictions on the right to rectify and erase data. Deleting information which was introduced by the data subjects through e-CV to participate in certain administrative procedures will be restricted until the end of those procedures (mobility, attestation, certification). Also, when the Vacancy module takes the CV data from the e-CV that data can be modified only before submitting (signing) it to the vacancy procedure. Data becomes non-modifiable once the candidate have approved them and transmitted his/her application for vacancy.

The restriction on the right to rectify and erase data can be covered by Article 20 (1)(c) of Regulation (EC) No 45/2001, provided that it serves the need to ensure objective, secure and stable conditions for all candidates as a condition of fairness of the administrative procedures concerned.

2.2.10 Information to the data subject

Articles 11 and 12 of Regulation (EC) 45/2001 list a series of information that must be provided to the data subjects.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) should be observed in the present case. Staff members personally fill in the data required in the template, thus data subjects provide the data themselves.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) should also be observed regarding the identification and administrative data coming from Sysper2.

Data subjects are informed by the following instruments:

- Extensive communication informing data subjects about the purposes of the processing,
- "Administrative notice" addressed to the staff,
- "Information note",
- Specific Privacy Statement on Sysper2 homepage,
- Specific template.

The EDPS would like the right to rectification and erasing data to be specifically mentioned in the Draft Information Note beside using the term "maintaining" data.

In all means of communication to staff, it should be mentioned which procedures will involve the mandatory use of e-CV.

The EDPS agrees with the comment in the draft Specific Privacy Statement that "since the use of e-CV is not mandatory", it should be mentioned that "data subjects may suppress their e-CV at any time (right to erase data)" in order to guarantee fairness for the data subjects due to the specific circumstances of collecting data. Procedures whereby the deletion of personal data can only take place when the procedures has been completed should be clearly identified to the data subjects

The draft Specific Privacy Statement should finalise the description of procedure to rectify administrative data.

At a later stage, when it will be possible to use the e-CV for the attestation and certification procedure, for reasons of fairness, the information on the possible consequences of failure to fill in the e-CV when personal data are needed for the certification and attestation procedure should be provided (Article 11 (1)(d)).

Data subjects should be clearly informed as to which procedures involve a temporary restriction to the right to rectify data until they participate in those procedures (e.g. mobility).

More detailed rules should inform data subjects about the "headhunting" exercise within the Commission, as a guarantee of fair processing in respect of the data subjects.

The EDPS endorses the practice that data subject can at any time check the "Access history", thus they can learn who, when and under what access type have accessed their information. It is especially important when access rights can be delegated in the system. This information enables data subjects to take any further measures, if necessary.

The EDPS would like to ask the controller to update the Privacy Statement, since recently the e-mail contact information of the EDPS has changed: edps@edps.europa.eu.

2.2.11 Automated individual decisions

Article 19 of the Regulation (EC) 45/2001 lays down the criteria for automated individual decisions.

Although the notification states that "the e-CV and the data processing do not include any automated decision making", the EDPS would like to draw the controller's attention to this point of the Regulation, because some aspect of the system is close to it. For example, when looking for a member of staff with rare skills and competencies, the matching tool helps to identify those persons, who thereafter may or may not be sent an e-mail by the competent services (CCN, SCOP or HR units) attracting their attention to the vacancy in question. Although that decision is not based solely on automated processing, because there is a human element to determine whether to send the e-mail or not, this procedure can mean practical exclusion of individuals through an automated pre-evaluation by the use of the system, and may have significant impact on those people who will not receive an e-mail drawing their attention to the vacancy. For this reason, the information for data subjects on the rules of "headhunting" within the Commission becomes even more crucial (See 2.2.10).

If the definition of the rules result in a system where proposing an individual a job interview would depend exclusively on an automatic scanning of the e-CVs, the controller should

comply with the requirements of Article 19 of the Regulation: authorisation by law or by the EDPS and measures to safeguard the data subject's legitimate interests.

2.2.12 Security measures

Based upon the available information, the EDPS considers that the security measures are adequate in the light of Articles 22 and 35 of Regulation (EC) 45/2001, save one aspect [...].

Conclusion:

The proposed processing operation does not seem to involve any breach of the provisions of Regulation (EC) No 45/2001 provided that account is taken of the observations made above. This means in particular that the European Commission should:

- Provide for a storage period of print-outs from the e-CV for no longer than is necessary for the purposes data were collected and further processed.
- Put measures in place to ensure that any result from a search in the e-CV database is not kept beyond the requisite period for the purpose for which the search was carried out.
- Comply with Article 4(1)(b) and Article 4(1)(e) of the Regulation in case of processing personal data for statistical purposes.
- Provide guarantees that anyone with access to data which are stored for the purpose of back - up restores them solely for that purpose.
- Define clearly printing rights from the database, and it is explicitly mentioned that printed information from the e-CV is to be used solely for the human resource purposes mentioned.
- Define precisely the roles and responsibilities of every user in relation to the criterion of necessity to perform tasks, for any changes in the e-CV project. Users may have access only to that e-CV data which can be reasonably required to perform their tasks.
- State explicitly that persons accessing data contained in the system may not use them for purposes other than those compatible with the purposes of the database, the defined human resource management purposes. The same applies to specialised services when they are granted access right to exploit data for a specific purpose.
- Mention in the "Information note" specifically the right to rectification and erasure of data.
- Mention in all communication to staff the procedures where the use of e-CV will be mandatory.
- Mention in the Specific Privacy Statement for the e-CV: the right of data subjects at any time to delete their data, and mention specifically the restrictions when deleting and rectifying data will be possible only after a specific procedure has finished; also mention all details regarding the procedure to rectify administrative data.
- When the use of e-CV will be introduced in the administrative procedures, the information on the possible consequences of failure to fill in the e-CV for those procedures (e.g. certification and attestation) should be mentioned.

- Put in place more detailed rules and inform data subjects about the "headhunting" exercise and, where applicable, comply with Article 19 of the Regulation.
- Update the e-mail address of EDPS in the Privacy Statement.
- [...]

Done at Brussels, 22 June 2006

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