



Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on EU CV online

Brussels, on 14 September 2006 (Case 2006-310)

1. Proceedings

On 8 March 2006 the EDPS received a request for consultation under Article 27 (3) of Regulation (EC) No 45/2001 ("the Regulation") from the acting Data Protection Officer (DPO) of the European Commission. The purpose of the consultation was to ask whether a prior check was needed regarding the data processing operations related to the EU CV online system.

After having analyzed the consultation and the facts described therein, the EDPS concluded that the case qualified for a prior check. Therefore, the EDPS requested the DPO of the European Commission to submit a final notification.

On 3 July 2006, the DPO of the European Commission submitted via e-mail a notification on the EU CV online for prior checking under Article 27 (2) of the Regulation.

2. Examination of the matter

2.1. The facts

The EU CV online information system collects and manages professional data from external applicants interested in a job with the European Commission or with another co-operating EU or international organisation. The purpose of data processing in the framework of EU CV online is to collect spontaneous applications, as well as solicited external applications for jobs and calls for interest of the European Commission and other participating institutions in a searchable electronic format. Candidates complete and upload their CVs and applications via the Internet. The system allows candidates to create, modify and delete their electronic CV data, as well as to search for vacant jobs published through EU CV online whose requirements match their personal profile. EU CV online collects vacancy notices from all EU institutions and bodies. EU CV online also collects vacancy notices from other international organisations in Europe including the WTO, OECD and Eurocontrol. The Commission will offer these organisations the option to access candidate profiles subject in each case to the prior consent of the candidates. Discussions are underway in this regard with the Court of Auditors and the Secretariat General of the European Council.

The EU CV online replaces the manual or semi-manual processing of spontaneous applications with a harmonised system. The Commission alone has currently thirty thousand such applications on file. The new database, furthermore, supports the selection and recruitment process leading up to the signature of an employment contract. Finally, the personal identification and CV data of the recruited persons are transferred to the personnel management system of the recruiting institution. An interface with the Commission's system SYSPER2 is foreseen.¹ Until the interface is operational, the data transfer to SYSPER2 is carried out manually and may be limited to the personal identification. Once the interface is operational, the electronic CV data transfer to the SYSPER2 e-CV will be triggered by the data subjects themselves who can import the data from EU CV online instead of reintroducing them.

Data subjects can be a) external candidates including both spontaneous candidates who submit their applications directly via the Internet and candidates on EPSO reserve lists who are invited to complete their CV data to facilitate their job search and recruitment with the participating institutions; b) external applicants to calls for interest, for establishing a specific recruitment reserve, or for a specific job vacancy.

The EU CV online information system collects professional data from external applicants. Each candidate is identified by a username (e-mail address) and a password. Both are encrypted in the database. Candidates enter their data themselves via the Internet in the European Commission's standardized e-CV format. They can also apply online for jobs and calls for interest that are published through EU CV online. Registration of applicant data on EU CV online in the standardized e-CV format facilitates the candidates' search for vacancies that correspond to their CV data, and the search by the recruiting services to identify suitable candidates for open positions.

Candidates introduce their personal identification data (forename, surname, gender, date and place of birth, nationality), address data (address, phone, fax, e-mail), data related to their professional experience (for each entry: start and end date, sector, employer, country, position, domains, organisation size, management experience, main achievements), education (for each diploma: educational level, whether diploma obtained or not, start and end date, diploma name, domain, establishment name, place, country), training (for each training period: year of the training, duration, subject, name of the school, place, country), language skills (for each language: whether mother tongue or not, level of speaking, writing, reading, understanding and translating), other professional and social skills (social, organisational, technical, informatics and other skills and competencies), publications (title, date, editor, URL), and reference persons. Candidates can access their personal data on EU CV online at any time. They can modify or delete data entered in the form. Applicants, however, can only modify their applications until the lapse of the application deadline. Following the deadline, they continue to have access to the application file but can only request factual corrections by e-mail to the EU CV online helpdesk.

A candidate can limit third party access to his/her personal data so that only he himself/she herself could access it, and no one else. In this case, however, only the automatic and anonymous searches are operational on the data. If the candidate applies for a specific vacancy or call for interest, then his/her personal data become accessible to the recipient of this specific application only. At the time of issuing this opinion candidates can make their data accessible only to the European Commission.

¹ See EDPS Opinion of 22 June 2006 on a notification for prior checking on "SYSPER2- e-CV, the Commission's human capital database" (Case 2005-406). Available at: <http://www.edps.europa.eu>.

Data kept in the database can be accessed by the human resources management staff and by managers of the respective institution. Access may be given via a specific delegation to other staff by the above mentioned persons on a strictly "need to know" basis.

For Commission users, it is envisaged that the access will be managed by the SYSPER2 access management rules.² It means that access to EU CV online is based on job descriptions. HR staff and management of other institutions will use a username and password specific to the EU CV online application. The username and the initial password will be created by DG ADMIN A. The password can be changed by the user (same principle as for the candidate's password). Access rights are granted only on formal written request. Justifications are asked and verified by the access right manager (DG ADMIN A, or the delegated access right managers in participating institutions).

Applications for specific vacancies or calls for interest are specifically addressed to the recruiting institution. The persons or categories of persons that have access to the candidates' application data are stated in the vacancy notice. In general, these are the human resources staff of the recruiting institution, the manager(s) of the recruiting entity and the persons they specifically delegate the access for the administration of the selection process. Nobody else is informed about the application, and nobody else has access to the application files.

The personal data entered by applicants on EU CV online remain active for six months. The six month period commences as of the date of the last consultation of his/her file by the data subject. The candidate can delete his/her personal data earlier. Applicants can re-activate the data if they wish their profile to stay in the database. After 12 months of inactivity, however, the data will be completely removed from the database. While a profile is inactive, the personal information on it will not be searchable. The data cannot even be exploited in anonymous searches, and are only accessible for purposes of reactivation by the candidates themselves. Data related to specific applications are kept on file for 12 months after the appointment of the selected recruit, for consultation and revision purposes. Following this period the data are deleted from the database, which only keeps a summary of the applications on anonymous basis for statistical purposes. It means that no copies of individual applications are kept.

Recruiting services can carry out searches based on the professional specifications of a job, receive a statistical analysis on the professional profiles found, and can send messages to all persons that correspond to the anonymous search criteria. Users from recruiting services and human resources departments can browse and search the electronic profiles of the applicants. The search facilities for recruiting services, however, are limited to professional information that does not directly identify the applicant. Each search request as well as each consultation of the data of a candidate is logged in the system. Furthermore, each record contains a creation date and a last modification date. The modification of the candidate's status is also logged in the system.

The controller with general responsibility for EU CV online is the Director Personnel and Careers in the Personnel and Administration Directorate General of the European Commission. The controllers responsible for the data introduced in specific selection processes are the persons indicated in the notice publishing the specific selection procedure. Data subjects are informed via the 'Specific privacy statement for EU CV online' about the circumstances of the data processing and the persons to be contacted if any data protection issue arises.

² See EDPS Opinion on SYSPER2- e-CV referred to in footnote 1 above.

Data are stored on the servers of the Commission Data Centre. The controller has set up measures to guarantee the security of data processed. These measures correspond to the ones applied to the standard IT infrastructure of the European Commission. Each access, creation, consultation or updating of data are achieved using a secure Internet protocol (SSL/https).

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 the Regulation.

The processing operation by the European Commission is carried out (a) by a Community institution and (b) in the exercise of activities falling within the scope of Community law (Article 3 (1) of the Regulation).

The EU CV online concerns automatic processing, and the content is intended to form part of a filing system. Therefore, Article 3 (2) of the Regulation applies.

Article 27 (1) of the Regulation 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*".

The notified processing operations are intended to evaluate personal aspects of the data subject including ability, efficiency and conduct. According to the definition given in the Regulation, data processing covers a variety of operations ranging from collection of data to their use, disclosure and combination.³ The EU CV online is a data collection tool which can be used to assess which people correspond to a given profile. This constitutes a form of evaluation of a person's skills.⁴ For example, when looking for applicants with rare skills and competencies, the matching tool may help find these persons. The competent services may then email to this "pre-selected" group only, thereby attracting their attention to the vacancy in question. Although this search is not considered to be a true pre-selection of candidates for a post, it is nevertheless a preliminary evaluation with the purpose of finding individuals in whose application the respective organisation might be interested. Because of this aspect of the system, the EU CV online is subject to prior checking under Article 27 (2) (b) of the Regulation.

The notification of the DPO was received on 3 July 2006. According to Article 27 (4) of the Regulation, opinions must be delivered within a period of two months. However, on 4

³ The Regulation defines "processing" as "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)).

⁴ Note that the EDPS previously issued his opinion on a similar case regarding the Skills Inventory at the Council.. See 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>.

September 2006, the deadline to issue the opinion was suspended by 10 days. Therefore, the final EDPS opinion must be rendered no later than 15 September 2006.

2.2.2. Lawfulness of the processing

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 EU CV online system falls within the legitimate exercise of official authority vested in the Commission, as it can reasonably be considered necessary and it makes a useful contribution to the day-to-day management of the institution. In fact, 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. The Commission is leading the way to other European institutions (and potentially, to other participating international organizations) in handling spontaneous applications in an efficient manner using a uniform electronic database.

In addition, since the provision of the data introduced in the EU CV online is not mandatory, the processing is lawful under Article 5 (d) of the Regulation because "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. In this regard special attention has to be paid to the information given to data subjects. Data subjects' consent has to be interpreted in the light of the information they receive about the data processing. Data subjects' consent has to be "informed", as provided in Article 2 (h) of the Regulation. In addition, the consent, which is the main legal basis of the processing, cannot exceed the information given to data subjects: No operation performed upon personal data is lawful if no or insufficient information is provided about that particular operation.

2.2.3. Processing of special categories of data

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health or sex life is prohibited unless specifically exempted from the prohibition under Article 10 of the Regulation.

Although in principle the EU CV online collects and processes only professional data, it cannot be excluded that the data that applicants upload on EU CV online will also include special categories of data. For example, an applicant might volunteer information or (by reference to his/her studies, professional experience and achievements) might implicitly disclose information on his/her political opinions or philosophical beliefs, without being required to do so. In the case of voluntarily submitting sensitive information 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 the Regulation.

In addition, the form available on EU CV online specifically includes the question "Do you suffer from a disability requiring individual measures to be taken to enable you to take part in the selection interview?" as "additional information". This question is answered optionally, and it is obvious that by answering this question the data subjects provide special categories

of data. Thus, as noted above, it can be considered that the data subject has given his/her express consent to the collecting and processing of those data, and therefore, the requirement of Article 10 (2) (a) of the Regulation is fulfilled. In addition, processing of sensitive information in this case is also permissible under Article 10 (2) (b) because the purpose of the processing is to ensure accommodation for disabilities during the interview process, and thus, the processing is "necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law".

2.2.4. Data Quality

Data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*" (Article 4 (1) (c) of the Regulation). The information presented to the EDPS on the professional data processed by the system appears 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.

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 themselves can access and rectify their data, so their data introduced can be as accurate and up-to-date as possible. This makes it possible to ensure data quality.

2.2.5. Conservation of data

Article 4 (1) (e) of the Regulation sets forth the principle that "*personal 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 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 subjects encrypted.*"

Data introduced into EU CV online are kept for a period determined by the data subject (he/she can delete it at any time), or for 18 months (6 months active, 12 months inactive, if the data subject does not delete the data earlier). Data related to specific applications are stored for 12 months following the appointment of the selected recruit.

The EDPS highlights that if print-outs can be produced from the application data, a storage period should be provided for those documents as well in light of Article 4 (1) (e): data in those documents should be kept in a form permitting 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.

According to the notification no time limit has been set for storage of log files. The EDPS suggests saving log files only for as long as the profiles themselves exist. The EDPS would also like to see measures put in place to ensure that any result of a search in the database is not kept beyond the requisite period for the purpose for which the search was carried out.

2.2.6. Compatible use

Personal data should not be further processed in a way incompatible with the initial purposes (Article 4 (1) (b) of the Regulation). EDPS considers that the future use of the data in the e-CVs that form part of SYSPER2 is compatible with these initial purposes.

Following the foreseen retention period (12 months), a summary of the applications on anonymous basis is kept for statistical purposes. Since these data are no longer considered as personal data, Article 4 (1) (d) and (e) are complied with.

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 backup uses them solely for that purpose.

2.2.7. Transfer of data

The processing must be examined in the light of Article 7 (1) of the Regulation, 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 and outside the Commission depending on their right of access to the system. Based on the available information, it can be concluded that the controller precisely defined the roles and responsibilities of the users in relation to the criterion of necessity to perform tasks. In that respect Article 7 (1) of the Regulation is complied with.

Data will also be accessible to various Community and international institutions in the future. Article 7 (3) of the Regulation stipulates that the recipients shall process the personal data only for the purposes for which they were transmitted. Therefore, 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 (Article 4 (1) (b) of the Regulation).

As to the foreseen future transmission to international organisations that are not Community institutions or bodies, Articles 8 and 9 apply. The EDPS draws the controller's attention especially to Article 9. According to this article, and considering also that the transfer is structural, an adequate level has to be ensured in the country of the recipient (or within the recipient international organisation) if any transfer of personal data is to take place. Access can be given to organisations falling under the scope of Article 9 only if adequate protection is guaranteed.

2.2.8. Right of access and rectification

Article 13 of the Regulation 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 data introduced into the EU CV online system. They can update, correct or modify their own data at any time. The right to erase data is inherent in the database, since entering or deleting data in the system is voluntary, the data subject is the "master" of his/her own data, and he/she can delete his/her own data any time.

Right of access and rectification is also ensured regarding data related to specific applications. However, following the lapse of the application deadline these rights can be exercised only via the EU CV online helpdesk. EDPS recognizes that this restriction on the right to rectify and erase data may be necessary to protect the rights and freedoms of others, as provided in Article 20 (1)(c) of the Regulation, but emphasizes that the sole purpose of this limitation must be to ensure a fair procedure and objective conditions for all candidates.

Articles 13 and 14 are therefore complied with.

2.2.9. Information to the data subject

Articles 11 and 12 of the Regulation list several items 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.

As already mentioned in point 2.2.2., since the main legal basis of processing is the consent of data subjects, due attention has to be paid to information given to data subject. Data subjects are informed via the "Specific privacy statement for EU CV online", which is available on the EU CV online homepage. Data subjects are provided with necessary information on the processing, concerning the data collected, technical means applied, right of access, data retention periods, security measures and persons who can be contacted on data protection issues. The EDPS considers information available in the "Specific privacy statement for EU CV online" as sufficient in the light of Article 11 of the Regulation. In addition, in EDPS' view data subjects are able to give their "informed" wish to the processing. Nevertheless, the EDPS requests the controller to update the privacy statement, since the e-mail contact information of the EDPS has recently changed: edps@edps.europa.eu.

Referees should be informed before their data are introduced into EU CV online. The system should draw applicants' attention to this requirement. The EDPS suggests completing the current EU CV online form with a question "Have you informed the persons listed as your referees that their names and contact information will be introduced into EU CV online?", or providing a similar mechanism to ensure the notification of the data subjects (reference persons). This question could be answered, for example, by ticking off a checkbox. (Please note that if this method is used for compliance, the checkbox should not be ticked off in advance.)

2.2.10. Security measures

Based upon the available information, the EDPS considers that the security measures are adequate in the light of Article 22 of the Regulation.

Conclusion:

The proposed processing operation does not seem to involve any breach of the provisions of the Regulation provided that account is taken of the observations made above. This means in particular that the European Commission should:

- If print-outs can be produced from application data, a storage period should be provided for those documents as well in light of Article 4 (1) (e);
- Save log files only for as long as the profiles themselves exist;

- Put in place measures to ensure that any result from a search in the database is not kept beyond the requisite period for the purpose for which the search was carried out;
- Provide guarantees that anyone with access to data which are stored for the purpose of backup restores them solely for that purpose;
- 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;
- Update the email contact information on the EDPS;
- Ensure that the consent of the reference persons is obtained to include their names and contact information in EU CV online.

Done at Brussels, 14 September 2006

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