

Opinion on the notification for prior checking received from the Data Protection Officer of the European Commission on "Actions taken in the context of redeployment exercises"

Brussels, 5 September 2007 (Case 2007-278)

1. Proceedings

On 24 March 2007, the Data Protection Officer (DPO) of the European Commission submitted notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 on the need for prior checking, concerning "Actions taken in the context of redeployment exercises". The notification was accompanied by a number of documents, including the prior checking notification form, the Guidelines on redeployment (SEC(2000)2022 revised in 2004 (C(2004) 4274)), two leaflets for staff affected by or managing redeployment exercises, and an explanatory document published by the Central Career Guidance Service (SCOP).

On 30 April 2007 the European Data Protection Supervisor (EDPS) confirmed by email that prior checking was needed, and took the date of 30 April 2007 as the starting point for the prior checking deadline.

On 1 June 2007, the EDPS asked the data controller a number of questions, to which he replied on 12 June 2007. The EDPS's opinion was sent to the data controller for comments on 10 July 2007. The EDPS received those comments on 21 August 2007.

2. Facts

Redeployment exercise objectives and procedure

The Commission regularly adapts its organisational structure and the way it deploys staff in order to meet new challenges and priorities. Every year both vacant and occupied posts are transferred from one Directorate General (the DG of origin) to another (the receiving DG).

Redeployment may be defined as the process for the transfer of vacant posts or the reassignment of individual members of staff within the Commission on the basis of Article 7(1) of the Staff Regulations, when activities are discontinued in their previous DG or service or transferred to another, or when a DG or service ceases to exist.

The main objective of a redeployment exercise is to transfer personnel rapidly and efficiently from one DG or service to another following a change of priorities in the Commission which requires a shift of activities between those entities.

The Commission claims that this objective can be achieved most effectively through cooperation between the DG of origin and the receiving DGs and by empowering individuals

to take ownership of their own redeployment and actively supporting them throughout that process. For this reason a procedure has been established to provide those concerned with a range of professional guidance services, and for those who need a programme adapted to them, with individual support until the end of the redeployment exercise. The redeployment exercise is managed by DG ADMIN on the principles laid down in the Guidelines on redeployment (SEC(2000)2022 revised in 2004 (C(2004) 4274)).

Every year the College of the Commission sets its political priorities in the Strategic Planning and Programming Cycle and allocates its resources accordingly.

If a DG or Service is affected by redeployment, all staff are informed by the Director General. This communication exercise continues throughout the redeployment period.

The persons concerned in a particular unit or area of work included within the redeployment exercise receive a notification from the human resources unit informing them that they are being placed on a redeployment list. This list is verified by DG ADMIN and staff on it are then offered a personal interview with a member of the Central Career Guidance Service (SCOP) who accompanies them until they have found a new post in one of the receiving DGs.

All vacant posts in receiving DGs are published in SYSPER 2, with a statement confirming that priority will be given to candidates involved in the redeployment exercise.

The personal data used by the human resources unit of the DG of origin to identify who is to be redeployed are taken from SYSPER 2 (category/grade/current post/tasks and objectives identified in the job description as being directly linked with the activity).

Persons concerned by a redeployment exercise may contact their local career guidance officer (ReLOP) or a member of SCOP to discuss their situation, and provide all the relevant information about their profile, skills, interests and preferences. This information is transmitted in writing (CV and questionnaires) and at interviews. SCOP will propose one or several possible reassignments. SCOP does not transmit any personal information to the receiving DG. It simply contacts the receiving DGs by phone to check, without mentioning the person's name, that there are vacant posts which might match the person's profile and their wishes in relation to their reassignment. It is then for SCOP's client to decide whether to take up the relevant possibilities identified by SCOP and to send their CV to the corresponding units in the potential receiving DGs.

On the basis of the list provided by the DG of origin, DG ADMIN (SCOP) creates a tool to monitor individual situations (an Excel table) until the officials affected by the redeployment have been definitively reassigned. This file is not sent outside the SCOP.

After a meeting with the receiving DG, if the post and profile are suitable, that DG requests the transfer. DG ADMIN has set up a Steering Committee. The Committee is chaired by SCOP'S head of unit and consists of the heads of the human resources units in DGs of origin and receiving DGs, with the local career guidance officers (ReLOPs). Their role is to oversee the proper operation of the redeployment exercise and to ensure that all staff are redeployed to a post which matches their skills and abilities by the end of the exercise. Every case is studied by the Steering Committee which proposes whatever measures it believes might help the person with their professional integration (diagnosis, training, proposing posts etc).

Where an individual has not been able to find a post by the end of the exercise, DG ADMIN, working with the Steering Committee, may have to assign the individual with their post to one

of the receiving DGs. Where an individual considers that the post proposed does not match their personal profile, they may refer their case to the Monitoring Committee.

The Monitoring Committee is composed of an equal number of representatives of the Administration, the DGs concerned and the Staff Committee. The Monitoring Committee has a dual role: firstly, to oversee the implementation of each redeployment exercise from the time those to be redeployed have been identified, until they have been definitively reassigned; secondly, to give an advisory opinion on the cases put forward by individuals concerning the assignment determined by the Appointing Authority. The Committee's essential role is to check - for the small number of individuals who, as a last resort, have to be assigned to a post - that the post matches their profile. If it is evident that the post and profile do not match, the Committee will recommend that a new assignment is found for the person concerned.

At the beginning of the meeting, the secretariat of the Committee (ADMIN A2) provides the members of the Committee with a meeting document presenting the essential data about the persons who are to present their cases: the SYSPER 2 data (name, grade, current post), their wishes for the reassignment and the outcome of the first exploratory approaches by DG ADMIN to potential receiving DGs. This document is taken back at the end of the meeting. A summary of conclusions containing the Committee's recommendations is drawn up by DG ADMIN, acting as the Committee's secretariat.

Once the decision to transfer a person has been taken, the DG or department will take the necessary steps to ensure that the person is properly integrated (office, training, information, etc).

At the end of the redeployment exercise, SCOP draws up a report addressed to the members of the Monitoring Committee. That report contains no personal data. Its aim is merely to indicate the circumstances under which the redeployment exercise took place and to communicate quantitative data in terms of movements: x individuals were reassigned to DG A, x to DG B, x to DG C.

The data is kept until the end of the redeployment exercise, i.e. until all the officials to be redeployed have been effectively reassigned and have taken up their new duties, and throughout the evaluation period for the redeployment exercise (two years). Human resources units provide those officials involved in a redeployment exercise with a copy of a leaflet entitled "You are affected by a redeployment exercise", which tells them what redeployment is, and informs them about the stages of the process, the roles of the various bodies involved, and their rights as regards data protection. The leaflet lists the relevant Intranet sites:

- the redeployment site on IntraComm,
- the training website,
- the Career Navigator,
- the SYSPER 2 Job Information System.

The leaflet states that there is a right to have access to personal data, and to obtain its rectification.

This information is also given on the Mobility/redeployment site on IntraComm.

SCOP tells officials undergoing redeployment how their personal data will be processed, during the interviews they may have on request with a SCOP advisor.

The officials concerned are also informed of their right to have access to their personal data, to check it and correct it, by:

- the human resources units of the DGs of origin, which identify the persons to be redeployed and contact them to help them prepare for their reassignment;
- SCOP, if the persons concerned request an interview;
- the human resources units of the receiving DGs (matching profiles/posts and reassignment proposals);
- the receiving units, when contact is made about a possible reassignment.

Persons wishing to exercise their right of access may address the Head of Unit of ADMIN A2. For data extracted from SYSPER 2, the rights of access and rectification as laid down in SYSPER 2 are applicable. In particular, any member of staff is entitled to read his or her personal details. Those concerned also have a right to rectification, by sending a specific request to a mailbox managed by DG ADMIN.

[...]

3. Legal aspects

3.1 Prior checking

The notification received by the DPO on 30 April 2006 refers to the processing of personal data ("any information relating to an identified or identifiable natural person" - Article 2(a) of Regulation (EC) No 45/2001): the procedure involves the collection, processing and transmission of data relating to the reassignment of officials affected by redeployment. It involves personal details (name, age, grade) from the personal profile as indicated in the CV which those persons have sent to their human resources unit.

This data processing is carried out by a Community institution in the exercise of activities which fall within the scope of Community law (Article 3(1) of the Regulation).

The files are examined manually, but the data being processed is kept in one or several files. Article 3(2) of the Regulation therefore applies in this case.

This processing therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes 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" subject to prior checking by the EDPS.

Article 27(2)(b) of the Regulation makes "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct" subject to prior checking.

The notification claims that Article 27 does not apply since, although the processing uses the CVs of the data subjects, it does not consist of an evaluation of their competences in the sense of their "ability". It is simply a matter of matching their professional profiles (their know-how, i.e. their "skills" and their experience) with the profiles requested in the receiving DGs, so as to be able to offer them the best possible reassignment depending on their wishes and the needs of the receiving DGs. However, the EDPS believes that competences in the sense of "ability" are not the only personal aspect referred to in Article 27(2)(b). "Skills" are also an integral part of Article 27(2)(b) as one of the personal aspects being evaluated. The procedure

involves the use of the CV of the data subject, an interview with a SCOP advisor, and the possibility of review by the Monitoring Committee. Discussions also take place with the receiving DG. Ability, in whatever sense it is understood, is therefore evaluated and this is thus subject to prior checking by the EDPS.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was set up, the check necessarily has to be performed ex-post. This does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

Notification was received from the Data Protection Officer at the Commission by post on 30 April 2007.

In accordance with Article 27(4) of the Regulation, the European Data Protection Supervisor must deliver his opinion within two months. The case was suspended for 12 days, awaiting additional information. The EDPS's opinion was sent to the data controller for comments on 10 July 2007. The comments were received by the EDPS on 21 August 2007. Since the deadline for delivering an opinion was suspended by the EDPS for the month of August, and since 1 September was a Saturday, the EDPS considers the comments to have been received on 3 September 2007. The opinion must therefore be delivered by 6 September 2007 at the latest.

3.2. Lawfulness of the processing

The lawfulness of the processing operation must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which stipulates that the processing must be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or ... in the legitimate exercise of official authority vested in the Community institution*".

Therefore, the task lies in determining whether the processing operation has been carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments on the one hand, and whether that operation is necessary in order to perform that task on the other. In this regard, recital 27 of the Regulation also 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". All things considered, the pertinent issue is therefore that of determining whether the processing operation is necessary for managing and performing the tasks specified in the Staff Regulations.

Article 7(1) of the Staff Regulations provides that "*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade. An official may apply for a transfer within his institution*". Redeployment exercises relate very precisely to the application of this provision, so are therefore considered as necessary for managing and performing the tasks specified in the Staff Regulations.

The processing operation is therefore considered as lawful.

3.3 Data quality

The 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 Regulation (EC) No 45/2001).

The data processed by DG ADMIN in connection with a redeployment exercise are the name, staff number, grade, professional profile, and wishes for reassignment. SCOP draws up a table showing the name of the SCOP contact person, the dates of interviews with the SCOP advisor, wishes for reassignment and the date of effective reassignment. DG ADMIN also processes the CVs of officials as communicated by the human resources unit of the DG of origin, or which they have themselves forwarded to DG ADMIN. Members of SCOP are also told that the data must not be excessive in relation to its purpose.

Moreover, SCOP's report at the end of the exercise does not contain any personal data.

The EDPS considers that this data respects Article 4(1)(c) of Regulation (EC) No 45/2001.

The data must be *"processed fairly and lawfully"* (Article 4(1)(a) of the Regulation). Its lawfulness is considered above. Fairness relates to the information which must be provided to the data subject (see section 3.10 below).

Article 4(1)(d) of the Regulation states that personal data must be *"accurate and, where necessary, kept up to date"* and that *"every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified"*. The system ensures that the data is accurate and up to date. Moreover, at the beginning of the redeployment exercise, the data subjects are advised to update their CVs. Finally, the data subject's rights of access and rectification (see below) enable individuals to check that their data is correct.

In this case, Article 4(1)(d) of the Regulation is complied with.

3.4 Data storage

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

As mentioned above, in this case the data are kept until the end of the redeployment exercise, i.e. when all the officials who are to be redeployed have been effectively reassigned and have taken up their new duties, and throughout the evaluation period for the redeployment exercise (end of the exercise + two years). The EDPS believes that this storage period is justified on the basis of Article 4(1)(e).

3.5 Transfer of data

Redeployment exercises involve the transfer of data between various Commission DGs (DG ADMIN, the receiving DG and the DG of origin). Those transfers must be examined in the light of Article 7(1) of Regulation (EC) No 45/2001. That article states 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"*. This point is fully complied with here.

Article 7(3) of Regulation (EC) No 45/2001 states that *"the recipient shall process the personal data only for the purposes for which they were transmitted"*. The DG ADMIN A2 unit gives precise instructions to this effect to anyone called on to manage the redeployment exercise; those instructions limit transmission to those who are authorised to handle redeployment in the human resources units of the DGs of origin and the receiving DGs, and in DG ADMIN.

3.8 Processing including the personnel or identifying number

The Commission uses the personnel number for processing operations subject to prior checking. While the use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the task of the personal data controller, its effects may nevertheless be significant. This is why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the European Data Protection Supervisor.

In the case in point, use of the personnel number may allow the linkage of data processed in different contexts. Here, it is not a case of establishing the conditions under which the Commission may process the personnel number, but rather of drawing attention to this point in the Regulation. In this instance, the Commission's use of the personnel number is reasonable because it is a means of facilitating the processing task.

3.9. Right of access and rectification

Article 13 of Regulation (EC) No 45/2001 makes provision, and sets out the rules, for right of access at the request of the data subject. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source.

According to the information received, any data subject may exercise the right of access to their data by contacting the data controller, namely the Head of Unit of ADMIN A2. The EDPS is accordingly satisfied that this right of access exists. Nonetheless, he would like this right also to cover data processed by the Monitoring Committee involved in the redeployment exercise, and particularly the Committee's recommendations.

Article 14 of Regulation (EC) No 45/2001 allows the data subject the right of rectification. Data subjects may exercise this right also by contacting the Head of Unit of ADMIN A2. The EDPS would here like to stress that the right of rectification essentially covers objective data such as administrative data, and not data which results from a subjective evaluation by SCOP or the Monitoring Committee. By their nature such data are subjective and it is difficult to assess their accuracy.

3.10. Information for data subjects

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and others from other persons.

The provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject apply in this case insofar as officials themselves provide some information concerning their situation and profile to SCOP.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also apply in this case, since this information is extracted from SYSPER 2.

Articles 11 and 12 of the Regulation provide a detailed list of information that needs to be provided to data subjects. In basic terms, the controller must state the identity of the controller, the purposes of the processing operation, the recipients of the data, whether replies are obligatory or voluntary, and the possible consequences of failure to reply. The information must also cover the right of access and rectification. Further information, including the legal basis of processing, the time limits for storing the data, and the right of recourse to the EDPS at any time must also be provided insofar as the specific circumstances in which the data are collected make it necessary to do so in order to guarantee fair processing.

The EDPS is pleased to see that this information is provided to the data subject at different stages of the procedure, and that it is also available in the various leaflets and on the relevant Intranet sites.

3.1.2 Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on security of processing, "*the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected*".

The EDPS is satisfied that adequate security measures have been adopted as regards the risks represented by the processing and the nature of the personal data to be protected.

Conclusion

The proposed processing does not appear to infringe the provisions of Regulation (EC) No 45/2001, so long as the comments made above are taken into account. This means in particular that it must be specified that the right of access and the right to rectification can also cover the data processed by the Monitoring Committee involved in the redeployment exercise.

Done at Brussels, 5 September 2007

(signed)

Peter HUSTINX