



Opinion on the notification for prior checking received from the Data Protection Officer of the European Parliament regarding the Skills database

Brussels, 13 June 2008 (Case 2008-192)

1. Proceedings

On 27 March 2008, the European Data Protection Supervisor received a notification for prior checking from the Data Protection Officer of the European Parliament, concerning a data processing system, the Skills database.

The EDPS requested additional information on 10 April 2008 and 26 May 2008, and the answers were received on 14 April 2008 and 5 June 2008 respectively. A meeting between EDPS staff and the European Parliament's DPO and controller took place on 11 April 2008, with the result that certain aspects of the processing activity were clarified. On 6 June 2008, the draft Opinion was sent to the controller for comments, and the feedback was received on 12 June 2008.

2. Examination of the matter

2.1. Facts

Purpose of the processing

This data base contains career data on staff covering professional experience in and before joining the EP. The skills database constitutes an electronic processing operation that facilitates Human Resources management in mobility, careers advice, specialised staff search, filling vacant posts and planning competitions.

Categories of data subjects

Officials and temporary agents.

Data categories

The categories of data are the following: Surname, name, staff number; University and Postgraduate education (Field, Subject, Degree or Diploma, University, Official length of study and any comments, Country, Year of Award); Secondary education; Non-university education after secondary school; Professional experience before entering the European institutions; Professional experience in other European

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

Institutions before entering the European Parliament; Publications; Hobbies; Public positions held; Sports; Other:

Some of the information contained in the database is entered by the data subject him or herself, some other elements are derived from other databases maintained by DG Personnel, such as STREAMLINE (Management of the recruitment, career, training, individual entitlements and reimbursement of expenses - e.g. missions - of staff)¹, RAPNOT² (Evaluation), and FORPRO (European Parliament training management, the data extracted from it comprising the list of training courses completed).

Information to be given to data subjects

The Privacy Statement provides information about:

- The identity of the data controller;
- The purposes for which personal data are processed
- Categories of recipients of personal data;
- Whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply;
- The rights of data subjects and how they assert those rights; and
- The right to recourse to the EDPS.

This information is provided on the form to be completed, so before the data subject enters his or her data.

Procedures to grant rights of data subjects

In general, implementing rules relating to Regulation (EC) No 45/2001 contained in the Bureau decision of 22 June 2005 provide for the right of data subjects in Articles 8 - 13. Specifically for this operation, staff has been informed "If you wish to consult this document in order to complete and/or rectify your data, please send your request to the internal e-mail address 05-Skills."

Automated / manual processing operation

Automated and manual processing of a structured set of data accessible according to given criteria.

Storage media of data

¹ ARPEGE was previously used to furnish information, but since the submission of the notification use of ARPEGE for this purpose has been discontinued. ARPEGE and STREAMLINE are effectively the same database in that STREAMLINE is the successor to ARPEGE. The purposes of STREAMLINE are varied (see prior check 2006-495 and the EDPS response of 8 December 2006).

² See prior check Opinion 2004-0206. The reports and promotions procedure meets the obligation to assess the work of every member of staff laid down in Article 43 of the Staff Regulations and Article 15(2) of the Conditions of Employment of Other Servants. A database (RAPNOT) has been added, to computerise part of the procedure for reporting on officials and temporary staff of the European Parliament.

Electronic database

Retention policy

Data are retained until the end of career in the EP, plus 3 months.

Time limits for blocking and erasure of the different categories of data

Article 11 of the implementing rules relating to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Bureau decision of 22 June 2005) foresees the time and procedure for blocking requests.

Security measures

Security measures have been adopted.

2.2. Legal issues

2.2.1. Prior checking

Presence of elements that trigger the application of Regulation (EC) No. 45/2001

The prior checking relates to the processing of personal data by the European Parliament (Articles 2(a) and (b) of Regulation (EC) No. 45/2001 (hereinafter "the Regulation"). The processing activity is carried out by a Community institution, in the framework of Community law (Article 3.1 of the Regulation). The data are processed partly by automatic means (Article 3.2 of the Regulation). As a consequence, the Regulation is applicable.

Assessment of whether the data processing operations fall under Article 27 of the Regulation

Article 27 of Regulation (EC) No 45/2001 subjects processing operations presenting specific risks to the rights and freedoms of data subjects to prior checking by the EDPS. Article 27(2) contains a list of processing operations likely to present such risks.

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

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

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

According to the notification received, the Skills database is a computer tool intended to improve human resources management at the European Parliament. It facilitates the planning and management of the human resources necessary for, among other things, mobility, filling vacant posts, training and skills development.

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

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

Moreover, given the characteristics of the present processing activity Article 27(2)(c) of the Regulation has to be analysed. Indeed, it provides for prior checking of processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes. This provision is intended above all to avoid data collected for different purposes being linked. The risk of linking data is that quite different information may be deduced by means of the link, or the original purpose be distorted. Linkages not provided for under national or Community legislation thus may entail certain risks with regard to data protection where the end purposes differ.

In the present case, there are to be linkages between the Skills database system and the ARPEGE, STREAMLINE, RAPNOT and FORPRO.

The purpose of ARPEGE and STREAMLINE is mainly the management of the recruitment, career, training, individual entitlements and reimbursement of expenses - e.g. mission- of staff. The purpose of Skills Database is more restricted in certain aspects. However, linkages between these systems do not appear to present specific risks to data subjects since only data which are necessary for the purpose of Skills is processed.

The link between Skills database and RAPNOT is restricted to a certain number of information: the name and family of the current job (e.g. job: "Administrator for a parliamentary body", family: "Parliamentary Assistance") and the description of the current functions/ tasks. Therefore, this linkage does not present specific risks.

Furthermore, linkages between the Skills database and FORPRO will also take place. The purpose of FORPRO is training Management and the data extracted from it comprise the list of training courses completed. This processing activity does not

imply specific risks to data subjects either.

The notification for prior checking was received by the EDPS on 27 March 2008. According to Article 27.4, the present Opinion must be delivered within a period of two months. The Opinion should therefore be issued not later than on 13 June 2008 (including 20 days of suspension).

2.2.2. Lawfulness of the processing and legal basis

Regulation (EC) 45/2001 provides that processing of personal data must find grounds in Article 5 in order to be considered as lawful.

Article 5(a) of the Regulation provides that personal data may be processed if "processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties [...] or other legal instrument adopted on the basis thereof".

The first issue under Article 5(a) is to determine whether the processing is instituted to serve a specific task provided for in a Treaty provision or another legal instrument adopted on the basis of the Treaties. The second issue is whether the activity at stake is carried out in the public interest. The third issue is to determine whether the processing operation is indeed necessary for the performance of such a task.

There is a general power of organisation of the services of the institution. The legal basis for this general power is Rule 197(2) of the Parliament's Rules of Procedure: "The Secretary-General shall head a Secretariat the composition and organisation of which shall be determined by the Bureau."

Given the general character of this legal basis, the EDPS recommends the adoption by the appropriate authority in the European Parliament of a Decision stipulating the characteristics, definition and guarantees of the Skills database, in order to ensure transparency and legal certainty.

The Skills database falls within the legitimate exercise of official authority vested in the institution, provided that it can reasonably be considered to be necessary and that it makes a useful contribution to the running of the institution. Also, the preamble to the Regulation explicitly states that "processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies" (recital 27).

Then, the processing of personal data in the present context can be considered as an activity conducted in the public interest.

Furthermore, the necessity of the processing has to be evaluated in the light of the purpose. In the present case, the processing is, in principle, necessary for the purposes described.

2.2.3. Data Quality

According to Article 4(1)(d) personal data must be *"adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed"*.

This rule is respected in the present case.

According to Article 4(1)(d) of the Regulation, personal data must be *"accurate and where necessary kept up to date"*, and *"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."*

This principle is very much connected to the exercise of the right of access, rectification, blocking and erasure (see point.2.2.8. below).

Lastly, data must also be *"processed fairly and lawfully"* (Article 4(1)(a) of the Regulation). The question of lawfulness has already been considered. As for fairness, it is related to the information to be given to the data subject (see below point 2.2.9.).

2.2.4. Conservation of data

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 are further processed. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes"* (Article 4(1)(e) of the Regulation).

As indicated above, data are retained until the end of career in the EP, plus 3 month. Taking into account the purpose of processing, this conservation period is reasonable.

2.2.5. Data collection and change of purpose / Compatible use

Article 4(1) (b) of Regulation 45/2001 provides that personal data must be *"collected for specified, explicit and lawful purposes and not further processed in a way incompatible with those purposes"*.

The processing operations analysed do not entail any general change in the intended purpose of the databases from where some data are collected, nor are they incompatible with that purpose. Skills management within an institution is an activity falling within the general remit of a human resources department.

2.2.6. Transfer of data

In the present case, the controller does not transfer data outside of its Unit.

2.2.7. Use of the staff number

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

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

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

2.2.8. Right of access and rectification

According to Article 13 of the Regulation, the data subject shall have the right to obtain without constraint from the controller, communication in an intelligible form of the data undergoing the processing and any available information as to their source.

As described in point 2.1 of the present Opinion, Article 13 of the Regulation is respected since the right of access is guaranteed.

Article 14 of the Regulation provides the data subject with a right to rectify inaccurate or incomplete data. This right is also respected in the present case.

2.2.9. Information to be given to the data subject

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

As already mentioned, the privacy statement provides information about: (a) the identity of the data controller; (b) the purposes for which personal data are processed; (c) categories of recipients of personal data; (d) whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply; (e) the rights of data subjects and how they assert those rights; and (f) the right to recourse to the EDPS.

The EDPS advises including in the privacy statement a reference to the legal basis and the time limits.

2.2.10. Security measures

Strict security measures have been put in place to counter any data alteration or destruction and any non-authorized access to data. In this connection, the EDPS has received information allowing him to state that the security measures appear to be satisfactory in this case.

Conclusions

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

- the appropriate authority in the European Parliament should adopt a Decision stipulating the characteristics, definition and guarantees of the Skills database, in order to ensure transparency and legal certainty.
- the Privacy Statement should include a reference to the legal basis and the time limits.

Done at Brussels, 13 June 2008

(signed)

Peter HUSTINX
European Data Protection Supervisor