

## **Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Parliament regarding the processing operation "TFlow and PROFIL"**

Brussels, 8 May 2009 (Case 2009-0069)

### **1. Proceedings**

On 26 January 2009, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer of the European Parliament (DPO) a notification for prior checking concerning the processing operation "TFlow and PROFIL".

The Notification was accompanied by several documents:

- the Article 25 notifications to the DPO made on 16 January 2009
- an annex to the notification to the DPO
- copies of the legal basis
- samples of reports produced (active jobs list, weekly attendance list, annual statistical report, work allocation list and work allocation table)

On 4 March 2009 the EDPS requested additional information from the Data Controller. The responses were received on 8 April 2009. On 4 May 2009, the EDPS sent the draft opinion to the DPO for comments, which were received on 7 May 2009.

### **2. The facts**

This notification covers two linked applications (TFlow and PROFIL).

- TFlow is a workload management tool dealing with translation processes. It will provide the translation units with a common tool allowing for easier management of translation processes across all units. This application covers internal workflow in the Translation DG from the reception of a request from Gepro<sup>1</sup> until its final delivery. Today these actions take place via some modules of the Gepro application, accessible by the linguistic units. With the introduction of TFlow and PROFIL, the language units will no longer use Gepro. It means that, according to the data controller, it will no longer contain information about staff in units or the initials of people involved in document processing, as this will become the domain of TFlow and PROFIL.
- PROFIL constitutes a human resources management tool for TFlow, based on available data on profiles and personal agendas of staff members. It works hand-in-hand with the TFlow application.

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<sup>1</sup> Gepro is the central point of management of the translation requests: it is used by the requesters in the different DGs in the Parliament to request a translation of a text. Planning in DGTRAD receives the request via Gepro and forwards it to the linguistic units, which book the job in (=accept) the job and later book it out (=notify the completion).

According to the information provided, based on both TFlow and PROFIL, some statistical data may in the future be collected and presented to persons with defined roles which are allocating work (Heads of Unit, designated persons of the Heads of Unit) to facilitate the allocation of tasks. The data may equally be used by Planning and the DG's office for workload, capacity planning and appraisal purposes. By combining information about jobs processed and the initials of a staff member, it will be possible to assess the productivity in terms of number of pages, number of jobs and number of languages translated/processed from. It is also possible to identify whether deadlines are adhered to. This can be done on a monthly or yearly basis and compared to other translators' productivity. Access to these functions is only available inside a unit for the head of unit and outside of units for specified top management.

The **purpose** of the processing is the management of workload in the translation units of the European Parliament. Moreover, while the primary purpose of the use of the data is for allocation and practical workflow management, including assessing workload and capacity, the notification states that the data may be taken into account for staff assessment and appraisal purposes.

**Legal basis:** according to the notification, the legal basis of the processing is based on Rule 138 of the Rules of procedure of the European Parliament and on Article 10 of the code of conduct on multilingualism. Although Article 10 of the Code of Conduct and Rule 138 of the Rules of procedure only provide the legal basis for the requirement to translate certain texts, the legal bases for the processing of staff data, as part of it, are implicitly derived from the Staff Regulations, in which it is laid down that staff shall be appraised as regards their ability, efficiency and conduct (article 43)<sup>2</sup>.

The **data subjects** concerned are the translators, being officials and other staff (i.e. contractual and temporary staff, in contrast to officials) of DG TRAD. In practice, all the staff in each language unit have to be present in the applications in order to receive work.

The **data processing** is automated wholly or in part and can be described as follows.

The workflow starts with the receipt of a translation request (also called "Feuille de Route") from the application Gepro (soon to be replaced by Gepro+). Part of the workflow management is the task of attributing a text to be translated to a particular translator. This requires the allocator to have access to information about the profile of the translator (most obviously, whether he or she knows the source language) and also information about the availability of the translator. This is not the same as whether the translator is present or absent, as a translator could be recalled from some kinds of absence. For example, a translator on a training course could be recalled to translation work if required. This is not the case for one on sick leave.

Through staff data entered in PROFIL and associated roles for staff, it will be possible for allocators of translation work in TFlow to determine the availability of translation staff and allocate work accordingly. Staff will receive notification of jobs allocated to them and will be able to check in and out the jobs, so that the next chain in the translation workflow can be notified by TFlow and take over.

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<sup>2</sup> Although separate from the operation RAPNOT (NOT/40 of 4 August 2004), the DPO underlines that this processing can be considered an associated operation, in that data about the volume of work performed by an individual translator may influence the annual evaluation. A check of RAPNOT has already been carried out (cf. EDPS opinion 2004-206 of 3 March 2005)."

**The categories of data** processed are meant to evaluate personal aspects of data subject (ability, efficiency, reliability or conduct). The data held on individual translators include information about linguistic skills and linguistic courses followed, number of pages translated and the Feuille de Route numbers, as well as information about missions and absences. Translators are identified by initials. PROFIL managers (profile and calendar managers) add data for the translators in PROFIL. Data subjects add data by accepting/not accepting the jobs sent by Tflow.

The names of staff are imported to PROFIL from CODICT. In PROFIL an association is then made between the name and the initials. The initials are used in TFlow, but not the names of the staff, so the data imported from CODICT are not used in TFlow.

Furthermore, data subjects do not edit their profiles themselves. It's only profile managers that do it and they are designated and authorised by the Heads of Unit - on average 2 persons per unit. Data are not disclosed to other users in the DG. They are visible only to profile and calendar managers (and the heads of unit) within their unit only. So, the profile or calendar managers or allocators in unit X cannot see data in unit Y.

Concerning the **recipients**, data are disclosed to users in Directorate General based on specifically defined roles giving them precise access rights (i.e. ALO (allocation) role) which are assigned to staff members designated by Heads of Unit. Heads of units decide to whom they wish to give the right of ALO (based on qualifications and skills). This is not part of any specific list but gets established by the Heads of Unit, based on internal organisation of the units and then the corresponding roles are defined directly in PROFIL.

According to further information received from the Data Controller, all reports concerning the situation in a unit will be available to the Head of Unit of that unit only. Reports concerning the situation in other units will not be visible. Specified top management in central DG TRAD services may, for capacity and staff planning reasons, have access to reports showing the situation in all units.

Regarding the **conservation period**, data will be accessible for a limited period of 5 years, after which it will be systematically deleted. It is explained that the data need to be stored for 5 years for functional reasons. This is mainly to facilitate searching for earlier translation demands in order to allocate in the most efficient way and to ensure that work done by encoding data will not need to be redone when staff is reintegrated into DG TRAD after leaves. After this period of 5 years, it will be systematically destructed<sup>3</sup>. Moreover, storage for historical, statistical or scientific purposes is envisaged but not implemented at this stage. It is foreseen in the provided documentation that searches on historical data are not associated with personal data information, unless necessary for the allocation role.

Regarding the **rights of the 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, each system user will have access to his/her own profile. The data processed are partly introduced by data subjects (in accepting or not the jobs allocated).

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<sup>3</sup> The data relate to the family name, surname, personal number and linguistic combination of the data subject who can be either detached, on familial or parental leave, following a training, exchange programme and therefore absent from the service for a while.

The **information** which is given to the data subjects consists of a presentation of the system to data subjects and a communication via Intranet.

Regarding **security** aspects, the data are processed and stored on JBoss/Oracle servers subject to DG ITEC security policies. For users, access management is based on CODICT database, so users' security is subjugated to CODICT database and access protocol security.

It is also underlined that all data entered in these applications will be used only inside DG TRAD. There is no access to the data from outside DG TRAD. DG TRAD users only have access to their own data (as regards PROFIL) and to the data about their unit (as regards TFlow). Inside TFlow only users with specific privileges (roles) have access to other data than the data they are currently working on.

### 3. Legal analysis

#### 3.1. Prior checking

**Applicability of Regulation (EC) 45/2001:** The allocation and practical workflow management, including assessing the workload and capacity, also to be used in appraisal constitutes processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation). The data processing is performed by a Community body, in this case, by the EP, in the exercise of activities which fall within the scope of Community law (Article 3 (1) of the Regulation). The processing of the data is made partly by automated means (Article 3 (2) of the Regulation). Therefore, Regulation (EC) 45/2001 is applicable.

**Grounds for prior checking:** According to Article 27 (1) of Regulation (EC) 45/2001 "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27 (2) (b) "*processing operations intended to evaluate personal aspects relating to the data subject, including his ability, efficiency and conduct*". The evaluation of translators is not presented by the Data Controller as the primary purpose of the processing operation. However, the appraisal for the purpose of assessing the performance of the translators clearly represents one of the purposes of the processing operation and therefore subjects it to prior checking by the EDPS.

**True prior-checking:** Since prior checking aims at addressing situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. The current opinion constitutes a **true prior check**. Therefore, such processing should not be implemented until the recommendations of this opinion are taken into account and the EDPS is informed of the measures of implementation.

**Deadlines:** The notification of the DPO was received on 26 January 2009. According to Article 27 (4) of Regulation (EC) 45/2001, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 34 days to require additional information and 4 days to allow for comments from the data controller. Consequently, the present opinion must be delivered no later than 8 May 2009.

### **3.2. Lawfulness of the processing**

Personal data may only be processed if grounds can be found in Article 5 of Regulation (EC) No 45/2001.

Of the various grounds listed under Article 5 of Regulation (EC) No 45/2001, the processing operation notified for prior checking falls under Article 5 (a), pursuant to which data may be processed if the processing is "*necessary for 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 or in a third party to whom the data are disclosed*"

In order to determine whether the processing operations comply with Article 5 (a) of Regulation (EC) No 45/2001, the first issue under Article 5 (a) is to determine whether there is a specific legal basis for the processing: a Treaty provision or another legal instrument adopted on the basis of the Treaties. The second issue is to determine whether the processing operation is necessary for the performance of a task carried out in the public interest. To address this second issue in the present case, recital 27 of the Regulation needs to be taken into account, which specifies that "*processing of personal data for performance of tasks carried out in the public interest includes the processing necessary for the management and functioning of those institutions and bodies*". Thus, the second issue in the present case is whether the processing is necessary and proportionate for the management and functioning of the European Parliament.

First, Rule 138 of the Rules of Procedure and Article 10 of the Code of Conduct on Multilingualism, adopted by the Bureau of the European Parliament on 17 November 2008 only provide the legal basis for the requirement to translate certain texts. The legal basis for the processing of staff data, as part of it, is implicitly derived from the Staff Regulations, in which it is laid down that staff shall be appraised as regards their ability, efficiency and conduct (Article 43). In this case, it relates specifically to the efficiency. As pointed out by the DPO, staff evaluation was an associated operation which had already been checked<sup>4</sup>.

Secondly, the evaluation of the performance of the translators is part of the legitimate exercise of official authority vested in the European Parliament *ex* Article 5 (a) Regulation 45/2001. In particular, in this case, the appraisal of translators entails a processing of personal data which is necessary for the DG TRAD to manage the personnel of their respective Units and to ensure their proper functioning. Indeed, these applications are considered as very important management tools, whose launch will increase the possibility to identify, understand and solve bottlenecks and productivity hiccups which are not visible in the current systems, and thus contribute to increased productivity and better use of the existing resources.

### **3.3. Data Quality**

***Adequacy, relevance and proportionality:*** According to Article 4 (1) (c) of Regulation (EC) 45/2001, personal data must be "*adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed*".

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<sup>4</sup> Although separate from the operation RAPNOT (NOT/40 of 4 August 2004) this processing can be considered an associated operation, in that data about the volume of work performed by an individual translator may influence the annual evaluation. A check of RAPNOT has already been carried out (cf. your opinion 2004-206 of 3 March 2005).

The type of information processed from individuals concerned includes mainly identification information, status, function, expertise, information about linguistic skills and courses followed, number of pages translated and the FdR numbers, as well as information about missions and absences. The information presented to the EDPS on the categories of data processed during the processing operation appears to meet those requirements. The EDPS considers that the information collected and further processed complies with Article 4(1)(c) of the Regulation.

**Accuracy:** Article 4 (1) (d) of Regulation (EC) 45/2001 provides 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 are erased or rectified"*. In this case, part of the data has been provided by the data subject himself/herself. This procedure itself helps to guarantee the accuracy of the personal data. However, other information is not provided directly by the individual but generated by the European Parliament (introduced from other sources: CODICT, etc). In this regard, as further developed below, it is important for the concerned staff to be able to exercise the right of access and rectification insofar as it enables individuals to control whether the data held about them are accurate and the same is true for the data relating to their jobs. In this respect, see also section 3.6.

**Fairness and lawfulness:** Article 4 (1) (a) of Regulation (EC) 45/2001 also provides that personal data must be *"processed fairly and lawfully"*. Lawfulness has already been discussed (section 3.2) and fairness will be dealt with in relation to information provided to data subjects (section 3.7).

### **3.4. Conservation of data/ Data retention**

Article 4 (1)(e) of Regulation (EC) 45/2001 states 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 are further processed"*.

Regarding the **conservation period**, data will be accessible for a limited period of 5 years, after which they will be systematically deleted. It is explained that the data need to be stored for 5 years for functional reasons. This is mainly to facilitate searching for earlier translation demands in order to allocate work in the most efficient way and to ensure that work done by encoding data will not need to be redone when staff is reintegrated into DG TRAD after leaves. After this period of 5 years, they will be systematically destroyed. The EDPS does not find sufficient the argument that data should be kept for 5 years in order to allow searching for earlier translation and facilitating the use of data when staff is reintegrated into DG TRAD after leaves. The EDPS considers that data coming from the reports which are produced as part of the evaluation of staff should not be kept longer than what is necessary for the purpose of the evaluation. By consequence, they should be deleted as soon as the period for appeal to the evaluation concerned by the reports has elapsed.

Moreover, storage for historical, statistical or scientific purposes is envisaged. It is foreseen in the provided documentation that searches on historical data are not associated with personal data information, unless necessary for the allocation role. The EDPS stresses that if such processing is envisaged, it is only possible in full respect with Article 4(1)(e), which states that *"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"*.

### **3.5. Transfer of data**

In line with Article 7 of Regulation (EC) No 45/2001, personal data can be transferred within or to other Community institutions or bodies *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient can process the data *"only for the purposes for which they were transmitted"* (paragraph 3). As mentioned above, the data are limited to the internal organization of the DG TRAD (Heads of Unit and top management in central DG TRAD services).

The EDPS considers that these transfers are necessary for the legitimate performance of the tasks covered by the given recipient. In fact, the data transmitted to the Heads of Unit are necessary for them to carry out their tasks which include the correct management of their staff. Therefore, Article 7 (1) of the Regulation is being complied with.

No further transfers under Article 8 or 9 of Regulation (EC) No 45/2001 are foreseen.

### **3.6. Right of access and rectification**

According to Article 13 of Regulation (EC) No 45/2001, 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. Article 14 of the Regulation provides the data subject with the right to rectify inaccurate or incomplete data.

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, each system user will have access to his/her own profile. The data processed is partly introduced by data subjects (in accepting or not the jobs allocated). This recommendation should be part of the privacy statement of the system (see point 3.7.).

### **3.7. Information to the data subject**

Pursuant to Articles 11 and 12 of the Regulation, those who collect personal data are required to inform individuals that their data are being collected and processed. Individuals are further entitled to be informed of, *inter alia*, the purposes of the processing, the recipients of the data and the specific rights that individuals, as data subjects, are entitled to.

According to the Notification, there is a presentation of the system to data subjects as well as communication via Intranet. The EDPS recommends that a privacy statement be adopted by the European Parliament and provided to the individuals concerned in connection with the information required under Articles 11 and 12 of the Regulation, as well as the information concerning the exercise of the rights of access and rectification outlined in Section 3.6 above. Such privacy statement should be made readily available to the concerned staff, as part of the procedures of TFlow and PROFIL, as well as posted on the Intranet of the European Parliament.

### **3.8. Security measures**

According to Article 22 of the Regulation, the data controller must implement the 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. According to the notification, several security measures are implemented by the data controller to protect the files in accordance with Article 22.

The EDPS agrees with the security measures implemented

#### **Conclusion:**

There is no reason to believe that there is a breach of the provisions of Regulation (EC) No 45/2001 provided the above considerations are fully taken into account. In particular, the EP should:

- Process the data which are kept for statistical, historical or scientific purposes in the respect of Article 4(1)(e).
- Delete the data relating to the reports issued as soon as they are not necessary in the context of the evaluation they refer to;
- Adopt a specific privacy statement including the information referred to in Article 11 and 12 of Regulation (EC) No 45/2001 as well as relating to the right of access.

Done at Brussels, 8 May 2009

(Signed)

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor