



Opinion on the notification for prior checking received from the Data Protection Officer of the Translation Centre concerning certification

Brussels, 11 June 2012 (Case 2011-1156)

1. Procedure

On 14 December 2011 the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Translation Centre for the Bodies of the European Union (CdT) a notification for prior checking concerning the certification procedure, together with the following documents:

- draft decision by the CdT laying down implementing rules for the certification procedure;
- application form for the certification procedure;
- statement entitled 'Intranet information publicity'.

The procedure was suspended between 20 December 2011 and 15 February 2012 for a request for additional information, and between 23 March 2012 and 23 May 2012 to allow the DPO to make comments on the draft of this Opinion. He informed the EDPS that he had no comment on the subject.

2. Legal aspects

The present Opinion relates to the new certification procedure within the CdT and is based on the Guidelines in the area of staff evaluation¹ enabling the EDPS to focus on those practices which do not appear to comply with Regulation (EC) No 45/2001 on data protection².

2.1 Data retention. Application files will be retained for a period of three years from the date of the application, or, where relevant, until all remedies have been exhausted in the event of appeal to the Court of Justice. The time-limit for retention of decisions on certification in the personnel file is set at 10 years from the date of departure of the official or of the last payment of the pension. The 'data remaining' will be retained for seven years after the procedure has been closed.

¹ Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data.

Article 4(1)(e) of Regulation No 45/2001 requires personal data to be stored in a form which permits identification of the 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 EDPS notes that no precise time-limit for the storage of the files of unsuccessful applicants had been established and therefore recommends that a time-limit be established for the purposes of any possible future litigation.

Moreover, the EDPS questions the need for the retention period for the ‘data remaining’, in particular the supporting documents attached to the applications. The EDPS calls on the CdT to set a shorter retention period appropriate to the actual purposes of the processing operation. In similar cases, it considered that the retention of the supporting documents for one month after publication of the list of successful candidates complied with Regulation No 45/2001³.

2.2. Transfer of data. The EDPS notes that transfers of data within the Centre, and to other institutions of the European Union comply with Article 7(1) of Regulation 45 No/2001. Nonetheless, it recommends a reminder in accordance with Article 7(3) that each of the recipients may process the data received only for the purpose for which they were transmitted.

2.3. Information to be given to the data subject. The EDPS emphasises that there must be a specific point in the application form stating the identity of the controller, the purposes of the processing operation, the recipients of the data, the legal basis of the processing operation, the period of storage of the data, the origin of the data, and the right to have recourse to the EDPS.

In accordance with Articles 11(1)(e) and 12(1)(c) and (e) of Regulation No 45/2001, at the time their personal data is recorded, the data subjects must obtain information on the categories of data processed and the existence of the rights to access and to rectify the data.

As a result, the EDPS calls on the Centre to put in place this specific point in relation to the protection of the data concerning all the information listed in Articles 11 and 12 of Regulation No 45/2001.

3. Conclusion

The proposed processing operation does not appear to involve any breach of the provisions of Regulation No 45/2001, provided that the observations made above are taken into account. This means, in particular, that:

- a precise time-limit should be established for the retention of the files of unsuccessful candidates;
- the retention period for ‘data remaining’ should be revised as appropriate to the purposes of the processing operation;
- the recipients of the data should be reminded to process the data only for the purpose for which they were transmitted;
- arrangements to provide full information to data subjects as provided for in paragraph 2.3 should be put in place.

The EDPS calls on the Translation Centre to inform it that the present recommendations have been implemented within a period of three months from the date of receipt of this Opinion.

Done at Brussels, 11 June 2012

(signed)

Giovanni Buttarelli
Assistant European Data Protection Supervisor

³ See Opinion of 26 November 2008 on the certification procedure at the European Economic and Social Committee (Case EDPS 2008-475) or Opinion of 29 November 2007 on the certification procedure of the Committee of the Regions (Case EDPS 2007-375).