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Dear Madam,

On 21 December 2012, the European Data Protection Supervisor (EDPS) received a notification by the Data Protection Officer (DPO) of the Council of the European Union (Council) concerning the processing of personal data in the framework of the "*Individual Production Monitoring*".

The notification concerns the processing of personal data of translators working in the Directorate in charge of translation and document management (DGA3). Personal data taken from two existing databases (Workflow and PersonaGrata) shall be combined and used to produce individual performance indicators for these translators. On the basis of actual output as compared to the actual working time spent on translation and revision, an objective picture of individual performance shall be established and comparisons between translators made. The purpose of the processing is a fairer assessment of staff (in particular for the individual staff evaluation reporting exercise) but also to improve planning. On the basis of the data gathered monthly, quarterly, half-yearly and yearly, productivity reports are issued. These reports are sent to a dedicated mailbox which is only accessible by the Head of Unit of the translator concerned (individual data of all staff and unit average). A copy of the individual report is sent to the data subject (i.e. the translator) providing his individual data as well as the unit average.

The processing activity was first operated as a pilot project and assessed by the EDPS in 2008. The EDPS issued an Opinion on the Council's "*Pilot project on Individual Productivity Monitoring*" on 1 October 2008 (Case 2008-0436). The Council now considers the pilot project as completed and informs that the Individual Productivity Monitoring shall become permanent. It shall be implemented for all translators in the language units of the Council's Directorate DG3 in the course of 2013. In view of the EDPS Opinion on the pilot project of

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the same processing activity, this current Opinion only covers the factual differences of the new notification of the final processing compared to the past notification of the pilot project. The observations and recommendations of the initial EDPS Opinion concerning the pilot project in case 2008-0436 shall be taken into account also for the final processing.

The processing operation is subject to prior checking on the basis of Article 27(2)(b) and (c) of Regulation 45/2001 (the Regulation).¹ On the basis of the notification of 21 December 2012 and the additional information provided by the Council on 8 February 2013, 20 February 2013 and 21 February 2013, the EDPS would like to give the following recommendations regarding the processing of personal data in the Individual Production Monitoring.

1. Lawfulness of the processing

Pursuant to the notification the processing is based on Article 240 TFEU, Article 23 of the Council's Rules of Procedure and Article 43 of the Staff Regulations and necessary as set out by Article 5(a) of the Regulation.

In his previous Opinion of 1 October 2008 the EDPS recommended that for the fully fledged project after the end of the pilot project a legal decision/instrument providing a specific legal basis for the processing of personal data should be adopted by the Council. This legal decision should notably provide for adequate guarantees for staff members concerned to rectify inaccurate data or to provide justifications for certain figures. The processing with regard to the Individual Production Monitoring as currently planned is not based on such specific legal basis. The EDPS therefore would like to repeat his recommendation to adopt a specific legal basis for the processing before it is actually started.

2. Data quality

The EDPS invites the Council to reconsider if further safeguards could not be established to guarantee the accuracy and completeness of the personal data gathered regarding staff's productivity. Notably, the current productivity indicators might not adequately reflect other aspects such as the difficulty of the document to be translated which could have an impact on number of net pages produced. According to the notification the difficulty of a text is currently only reflected in the statistics by providing the title of the document. However, the automatically generated performance indicator will not reflect such difficulty and only focuses on pages per hours worked. The EDPS takes note of the Council's comment that the Individual Production Monitoring is merely a quantitative indicator and not the only factor taken into account for evaluating a person. Notably the Council also established a system of Individual Quality Monitoring of translators as a qualitative indicator.² Nevertheless, safeguards could be put into place to ensure that the performance indicators are more complete and accurate (i.e. also reflecting the difficulty of a document) and that procedures are in place for data subjects to access and rectify their personal data to ensure accuracy and completeness already prior to their use for annual evaluation.

¹ 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 and on the free movement of such data, OJ L 8, 12.01.2001, p. 1.

² See Case 2009-0295 Individual Quality Monitoring.

3. Rights to rectify and block

The previous notification and the previous Opinion were based on the assumption that data subjects can exercise their rights of access and rectification as afforded in Section 5 of the Council Decision of 13 September 2004 implementing the data protection regulation. In the new notification the Council provides for a specific procedure for rectification or blocking with a very short deadline: a data subject must make a request for rectification or blocking of data within 2 weeks to his/her Head of Unit after receipt of the report. Thereafter the Council shall have a maximum of 15 working days to correct or block the personal data.

In its response to the EDPS's questions, the Council elaborated that these deadlines are based on Council Decision 2004/644/EC. However, this Decision does not contain deadlines for the exercise of their rights by the data subject but these rights can be exercised at any time. It seems that currently the only document defining the procedures for the exercise of these rights is the Draft Information Note. The Council elaborated that short deadlines are necessary as the production of statistics are generated on a monthly basis to avoid their inclusion in subsequent quarterly/half-year/yearly reports.

In this respect the EDPS questions if such short deadline for the exercise of these rights is justified. The right to rectify data is of outmost importance in view of the fact that reports are generated automatically and the data included in the reports may, in some cases, be inaccurate or incomplete.

4. Information given to the data subject - Information Notice

The Information Note provided in the notification covers all the required information pursuant to Article 12 of Regulation 45/2001. However, with regard to the purpose of the processing, it could be clarified that the purpose of the processing is not only for individual evaluation of productivity of staff but also for internal planning (as described in the notification). Furthermore the unit DGA CIS should be mentioned as it is processing personal data on behalf of the controller as recipient and as administrators of the system for technical reasons.

5. Automated individual decisions

In the previous Opinion, the EDPS recommended that -in view of the fact that the productivity reports are produced automatically to provide output information for comparative purposes on the various constituent groups of the language unit submitted to the Heads of Unit notably for evaluation purposes- guarantees should be put into place so as to ensure that the data subject's legitimate interests are taken into account (see Article 19 of the Regulation). Therefore and also in view of data quality discussed above the EDPS invites the Council to introduce procedures to rectify inaccurate data or justify certain figures. Data subjects are offered the general right of rectification as provided for in Section 5 of the Council Decision 2004/644/EC implementing the data protection regulation. However, as indicated in the EDPS' initial Opinion on the pilot project, the EDPS would welcome the possibility of a specific revision procedure by data subjects who wish to contest the accuracy of the reports prior to the evaluation exercise.

6. Conservation of data

The EDPS welcomes the fact that according to the new notification personal data is only stored for a period of one year after the end of the reporting exercise (unless there is an appeal). The previous notification of the pilot project provided for a conservation of 2 years after the completion of the document. The EDPS would also like to repeat the recommendations issued in his previous Opinion and that the controller shall inform the EDPS as to the measures implemented to make the data anonymous at the end of the conservation period.

7. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided the considerations are fully taken into account. In particular,

- the adoption of a legal decision/instrument providing a specific legal basis for the processing of personal data shall be considered;
- the deadlines and procedures for data subjects to exercise their rights to rectify or block shall be reconsidered;
- the Information Note shall be clarified;
- safeguards to ensure the data subject's legitimate interests should be reconsidered in view of the automated issuance of production indicators, in particular specific revision procedures to rectify inaccurate data or justify certain figures prior to the evaluation exercise should be introduced;
- the controller shall inform the EDPS as to the measures used to make the data anonymous at the end of the conservation period.

Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of 3 months.

Yours sincerely,

(signed)

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cc: Ms Carmen LOPEZ RUIZ, Data Protection Officer, Council of the European Union (Consilium)