

Opinion of the European Data Protection Supervisor

on the Commission Proposal for a Regulation of the European Parliament and of the Council on a European network of Employment Services, workers' access to mobility services and the further integration of labour markets

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,¹

Having regard to 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, and in particular Article 28(2) thereof,²

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Consultation of the EDPS

1. On 17 January 2014, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on a European network of Employment Services, workers' access to mobility services and the further integration of labour markets ('the Proposal').³ On the same day, the Commission sent the Proposal to the EDPS for consultation.
2. We welcome the fact that we were consulted on this Proposal prior to its adoption and that we were given the possibility to provide informal comments to the Commission. The Commission took into account several of these comments. As a result, the data protection safeguards in the proposed Regulation have been strengthened. We also welcome the reference in the preamble to the consultation of the EDPS.

¹ OJ L281, 23.11.1995, p. 31.

² OJ L8, 12.1.2001, p. 1.

³ COM(2014) 6 final.

1.2. Objective and scope of the Proposal

3. The objective of the Proposal is to 'enhance access of workers to intra-EU labour mobility support services, thus supporting fair mobility and increasing access to employment opportunities throughout the Union'.⁴
4. The Proposal aims at providing a revised and updated legal framework for the functioning of the EURES job mobility portal⁵, which has already been in place for some time. The proposed rules will also fundamentally change the way how the portal currently works.
5. As it stands now, the portal offers a tool to help jobseekers find employers and employers find jobseekers across the EU directly through the portal, much like other, privately-operated, job search sites. Jobseekers can register and post their resumes on the portal. Potential employers, in turn, can access, browse and search the site for matching profiles when they are looking to fill vacancies. The EURES job portal is managed by the Commission and hosted on Commission servers.
6. The changes proposed include measures to help increase the number of job vacancies as well as the pool of candidates available in EURES. Further, they also increase the capabilities of the portal to automatically match job vacancies with job applications.
7. To this end the current system of direct registration of CVs and job vacancies will be replaced/complemented by a system where public employment services and other 'authorised' employment services (so-called 'EURES-partners') will make available via EURES a limited and select set of 'matchable' and codified data obtained from the CV and job vacancy databases they hold.
8. To illustrate, these would include data categories such as the occupation or skill concerned, level of academic achievement, language skills, driving license, the number of years of work experience, the nature of the contract (permanent or temporary) and the location of employment. Making these data available to EURES, on the applicant side (data derived from CV data), will be subject to explicit consent of the individuals concerned.
9. The list of organisations systematically feeding data into the system will include not only 'public employment services of the Member States', but also other 'authorised' EURES partners. In other words: participation in the EURES network will be open to all employment services, whether public or private, which fulfil a specified minimum set of criteria (set forth in Annex 1 of the Proposal).
10. Thanks to its matching tool, it is expected that the Regulation will enable the EURES portal to 'carry out a good automated matching between job vacancies and CV's across Member States, translating in all EU languages and understanding skills, competencies, occupations and qualifications acquired at national and sectoral level'.⁶

⁴ Explanatory Memorandum, Section 1.1.

⁵ See <https://ec.europa.eu/eures/home.jsp?lang=en>.

⁶ Explanatory Memorandum, Section 1.4.

11. The process leading to a match can be initiated by any of the EURES partners. If a match is positive, the organisation requesting the match will receive a list of matching applicant profiles.⁷ However, as a rule, the list will not contain the names, the actual CVs or any other personal data of the applicants concerned. These can be obtained, on request, from the EURES partner that made the data available to the EURES portal.⁸

2. ANALYSIS OF THE PROPOSAL

2.1. References to applicable data protection law (Recital 33 and Article 31)

12. We welcome the references to data protection legislation, including Directive 95/46/EC, the national implementing measures thereto and Regulation (EC) No 45/2001. In particular, it is welcome that these references are set forth not only in a recital but also in a substantive article in the main body of the Regulation.

13. We also welcome the fact that the Annex to the Regulation, which sets forth the 'Common criteria for the authorisation of organisations to act as EURES Partners', under its first point, also specifically refers to data protection law. This provision requires the 'existence of adequate mechanisms and procedures to verify and ensure full respect for applicable labour standards and legal requirements, *including applicable data protection law and requirements and standards on quality of job vacancy data*'.

2.2. Articles 14(b) and 17: explicit consent of the workers, information provided to them, and their access to their own data

14. Article 14(1)(b) provides that '*each Member State shall make available to the EURES portal all job applications and CV's available with its public employment services as well as those provided by its EURES partners, provided that the workers concerned have consented to making the information also available to the EURES portal under the terms defined in paragraph 3*'.

15. Article 14(3) specifies that '*the consent of workers ... shall be explicit, unambiguous, freely given, specific and informed. Workers shall be able to withdraw at any time their consent and require the deletion or modification of any or all of the data made available. Workers shall be able to choose from a number of options to restrict access to their data or to certain attributes*⁹'.

16. Article 17(1) in turn provides that '*the public employment services shall ensure that workers using their services, by making available job applications and/or CV's with them, can choose to have those employment services assist those workers with their registration on the EURES portal...*'.

⁷ As noted in para 8, profiles will include data categories such as the occupation or skill concerned, level of academic achievement, language skills, driving license, the number of years of work experience, the nature of the contract (permanent or temporary) and the location of employment will be accessible in EURES.

⁸ With that said, it appears that applicants can also decide to make available their entire CVs to the portal. Further, they can also add information in a free-text field to accompany the codified standard information that will appear in the results when the matching tool is used.

⁹ Paragraphs (4) to (7) of the same Article 14 contain additional provisions related to the protection of personal data.

17. Further, Article 17(4) provides that '*workers and employers shall have access to general information on how, when and where they can update, revise and withdraw the data concerned*'.

18. The EDPS welcomes:

- that making available CVs and job applications is subject to 'explicit, unambiguous, freely given, specific and informed consent', and that consent should be sufficiently granular;
- the requirement to provide information to the workers, including information on how to update or delete their data (we note here that provision of information is also a prerequisite for the individuals to consent in the first place; if CV and contact information of the workers will be made publicly available via the EURES portal, it is essential that the individuals have sufficient information in this regard)¹⁰;
- that workers may at any time withdraw their consent and also require the deletion or modification of any or all of their data from EURES.

19. To further improve these provisions, and in particular, to help ensure both the accuracy of the database and the respect of the autonomy and self-determination of the data subjects, we would recommend the following:

- We take note that the last sentence of Article 14(3) provides that 'workers shall be able to choose from a number of options to restrict access to their data or to certain attributes'. We welcome the fact that the workers may decide among some options, and we also acknowledge the need to keep this provision sufficiently flexible to cater for the different needs that may arise during the implementation of the EURES portal. At the same time, it could be helpful to add a recital providing some non-exhaustive examples of the types of choices that workers may be provided with. For example a recital could explain that workers may be able to designate in which Member States they wish to work and will therefore be matched for job vacancies;
- Article 17(4) should refer to 'access to information' rather than 'access to *general* information';
- in Article 15(3) after the words 'job applications, and CV's made available on the EURES portal' the words 'in accordance with Article 14' could be added.

2.3. Article 14(4) to (8): Data quality, data security and privacy by design

20. We welcome the fact that additional provisions are included on various aspects of data protection in Article 14 (4) to (8), in particular, that there are references to the quality of data and to data security. To complete, we recommend adding a substantive provision or a recital to require that the principle of data protection by design be applied for the development of the EURES portal. This requirement could also be specified with a number of obligations, either in a substantive provision or in recitals such as:

- the central and national systems should apply appropriate security measures and standards for security measures might be the subject of implementing measures;
- measures to contribute to the quality of personal data in EURES and that

¹⁰ See also related recommendations in Section 2.6, para 34 below.

- jobseeker (CV etc) and vacancy data are automatically deleted from the system once no longer required for the purposes of job matching (on other aspects of purpose limitation, please see Sections 2.7 and 2.8 below).

2.4. Article 14(1)(a): Concerns regarding 'job vacancies in the public domain' and 'web-crawling'¹¹

21. Article 14 (1) (a) provides that *'each Member State makes available to the EURES portal ... all job vacancies available with its public employment services, as well as those provided by its EURES partners'*.
22. In this respect we would emphasise that data sharing remains subject to applicable provisions of data protection law. For example, it must be ensured that personal data that may be found in the job vacancies are obtained by lawful means by the organisation that provided the data to the EURES portal, on an appropriate legal ground (such as consent, legal obligation, or public task of the controller) and that the data shared via the EURES portal are proportionate. A correct interpretation, case by case, of Article 14(a), read in light of Article 31 referring to applicable data protection law, should ensure that this will be the case.
23. Such a case by case analysis of what data to share via EURES is particularly important regarding web-crawling for data 'available in the public domain'. Indeed, the Commission itself, on page 10, Section 5.3 of the Explanatory Memorandum reflects on these concerns. It provides in particular that *'taking into account the relatively recent technological developments on web crawling, the limited number of Member States which make use of such tools and possible data protection concerns, at this stage it is not proposed to require Member States to make available to the EURES portal any data harvested with web crawlers in accordance with national law'*.
24. This consultation procedure does not assess the compliance of any national 'web-crawling' practices with EU and national data protection law. However, as a general observation, we point out that practices such as web-crawling, in principle, may only be regarded acceptable as methods to populate the EURES database subject to appropriate safeguards .
25. Indeed, harvesting data via web-crawlers raises very significant data protection concerns, including questions of purpose limitation as well as accuracy of the database so populated.
26. Further, unless the employers are subsequently contacted to confirm and update their data, the accuracy of the data is not guaranteed. An employer may have posted an announcement on the web and may have simply failed to remove it when the vacancy has been filled.
27. On these grounds, we welcome the fact that the Proposal does not specifically require or encourage web-crawling and indeed raises relevant data protection concerns about this in the Explanatory Memorandum.

¹¹ In the context of the present opinion, the term 'web-crawling' refers to practices whereby an employment service uses an automated script or program that systematically browses the World Wide Web and analyses web pages for the purpose of retrieving and continuously updating any publicly available job postings.

2.5. Article 15: Access at national level to the common platform

28. Article 15(1) provides that *'the public employment services shall ensure that the EURES portal is linked to, clearly visible and intuitively searchable through all the job search portals they manage, be them at central, regional or local level'*.
29. This language suggests that not only public employment services, or other authorised employment services ('EURES partners') may have access to EURES, but also any potential employer, and that this access may be given via a variety of different job search portals in the different Member States.
30. The EDPS recommends that the Regulation clearly specifies who can have access to the database and subject to what safeguards: e.g. if access is given broadly to any employment services in Member States and any potential employers in Member States via a variety of portals, it may be provided that access is subject to registration and acceptance of terms and conditions.
31. Technical and organisational measures must also be in place to ensure that the contents of the entire database or large parts of it cannot be massively 'harvested' by automated means for further (possibly incompatible) use.¹²

2.6. Article 16: Automated matching through the common platform

32. Article 16(1) provides that 'the Commission shall develop a European classification of skills, competences, qualifications and occupations' and that this classification will facilitate, among others, job-matching. Article 16(5) calls for the 'adoption, by means of implementing acts, the technical standards and formats necessary for the operation of the classification'.
33. As this potentially involves processing large amounts of data and the fact whether a worker will or will not be automatically matched will have significant consequences for him/her, the EDPS would welcome further clarification in the text of the Regulation on how the automated matching works. Clarification in the Proposal itself of what the automated matching is would be all the more useful also in light of Article 12(a) of Directive 95/46/EC, which gives data subjects the right to obtain from the controller 'the knowledge of the logic involved in any automated processing of data concerning him'.
34. In any event, the Regulation should specify that -unless a worker made an informed choice to make his/her entire CV available on EURES- those searching the EURES portal will not have direct access to the names, CVs or any other directly identifiable personal data of the applicants, only to the list of a limited and select set of 'matchable' and codified data obtained from the CV databases they hold. These would include data categories such as the occupation or skill, educational background, language skill, driving license, years of work experience, as well as the nature of the contract (permanent or temporary) and the location of employment that applicants are interested

¹² While web-crawling used for populating job databases, as mentioned above in Section 2.4, could compromise the quality of data available accessible via the portal, web crawling on the portal could undermine any purpose limitation on the data accessed.

in. In other words, workers should be able to make an informed decision on whether they wish their CV data be made available via EURES to everyone who registers as a potential employer on the site or whether they prefer that their data are searchable only via general data categories (e.g. an individual may be an English-speaking qualified doctor in Poland looking for employment in the UK) while keeping their detailed CV as well as their name and contact information confidential and with the employment agency they are working with.

2.7. Article 29: Data Collection and indicators

35. Article 29 calls for collection of data including, among others, on placement and recruitment resulting from EURES activity.
36. We recommend that a substantive provision in the Proposal specify that these activities should not result in storage of personal data for periods longer than necessary for the initial purposes of the data processing, and that instead aggregated statistical data that contains no personal data may be stored for these purposes. It should remain clear that Article 29 does not create a legal base for retaining personal data for longer than would be legal under the other provisions of the Proposal.

2.8. Additional comments: purpose of processing and restrictions on unsolicited marketing

37. As with any large-scale databases, portals, or other IT tools operated by the Commission, we recommend that the purpose of the processing and the acceptable range of further use of the data be clearly specified in the proposed Regulation. Preferably, such a provision should be set forth in a substantive article. For example, a substantive article may provide that the data obtained via EURES will only be used for the purposes of filling in existing job vacancies, or for other purposes that are compatible with this purpose, subject to appropriate safeguards. An additional provision, in turn, may specifically exclude that any data (including CV data specifically agreed by the applicants to be also made available via EURES) be used for purposes of unsolicited marketing.¹³

3. CONCLUSIONS

38. We welcome the careful consideration by the Commission of the right to the protection of personal data when drafting the Proposal. In particular, the Proposal requires explicit consent from the workers concerned and takes due account of the rights of data subjects, including their right to access and correct their data. In addition, the Proposal does not specifically require or encourage web-crawling and indeed raises relevant data protection concerns in this regard in the Explanatory Memorandum.
39. In the present Opinion we recommend certain further improvements:
- a recital could be added to explain what is meant by the granularity of consent under Article 14(3);

¹³ The issue of unsolicited marketing may be relevant in cases where the workers choose to post their CV information and contact information for everyone to see via the EURES portal.

- in Article 15(3) after the words 'job applications, and CV's made available on the EURES portal' the words 'in accordance with Article 14' could be added;
- Article 17(4) should refer to 'access to information' rather than 'access to *general* information';
- a specific substantive provision or a recital could be added to the draft Regulation, requiring that the principle of data protection by design be applied for the development of the EURES portal. In addition, it could also be helpful to provide some further guidance in substantive provisions or at least in recitals, as outlined in this Opinion;
- the Regulation should more clearly specify who can have access to the database and subject to what safeguards;
- There should also be further clarification in the text of the Regulation on how the automated matching works. In any event, the Regulation should specify that - unless a worker chooses to make his/her entire CV available on EURES - those searching the EURES portal will not have direct access to the names, CVs or any other directly identifiable personal data of the applicants, only to the list of a limited and select set of 'matchable' and codified data obtained from the CV databases they hold;
- Finally, the purpose of the processing and the acceptable range of further use of the data should be clearly specified in the proposed Regulation.

Done in Brussels, 3 April 2014

(signed)

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