

Opinion on the notification for prior checking received from the Data Protection Officer ("DPO") of the European Training Foundation ("ETF") regarding ETF's Competence Inventory

Brussels, 13 June 2007 (Case 2006-437)

1. Proceedings

On 14 September 2006, ETF's DPO informed the European Data Protection Supervisor ("EDPS") via e-mail about ETF's data processing operations related to its competence inventory ("**Competence Inventory**"). On 29 September 2006, the EDPS received the formal prior checking notification ("**Notification**") by regular mail.

On 23 October 2006 the EDPS requested further information from ETF. ETF's DPO replied on 13 February 2007. On 13 March 2007 the EDPS requested additional information. On 19 March, the EDPS met ETF's Director, at her request, to discuss the procedure and the information requested by the EDPS. Subsequently, ETF responded to the EDPS information request on 18 April 2007. The EDPS requested additional information on the same day. ETF provided the requested information the following day, on 19 April 2007.

The information provided by ETF on 18 and 19 April 2007 raised additional issues. Due to the complexity of the case, and in accordance with Article 27(4) of Regulation (EC) 45/2001 ("**Regulation**"), the EDPS extended the deadline by one month.

Finally, the procedure was further suspended for 7 days between 23 May and 30 May 2007 during which ETF was offered the possibility to comment on the draft EDPS Opinion. ETF requested an extension of the 7 day period by an additional 9 days until 8 June 2007, and provided its comments on that day.

2. Examination of the matter

2.1. The facts

2.1.1. The European Training Foundation. The ETF is an agency of the European Union located in Turin, Italy. The ETF mission is to assist partner countries mostly in neighbouring regions such as North Africa, the Middle East, the Balkans and the former Soviet Union in developing quality education and training systems and in putting them into practice. Working on behalf of the EU, the ETF helps these countries to develop people's skills and knowledge to promote better living conditions, active citizenship and democratic societies that respect human rights and cultural diversity. ETF works in close cooperation with partner organisations to promote knowledge sharing and expertise development.

2.1.2. Overview of the Competence Inventory. The Notification concerns ETF's Competence Inventory. The Competence Inventory exercise, or “competence mapping”, is a complex exercise carried out in the framework of ETF’s human resources management strategy. The mapping exercise leads to the establishment of a computer database containing extensive, searchable data about the professional competences of all ETF staff (including temporary, contractual, and local agents) and detached national experts (engaged for a year or longer at ETF).

Under the competence profiling exercise, which is carried out every two years, each person's professional competences are assessed and rated based on written evidences provided by the employee. The competence profiling exercise is carried out in several steps, as described below in more detail in Section 2.1.5.

First, the self-assessor must grade his or her own competences on a scale of 1 to 4 with respect to each pre-defined competence or sub-competence. The self-assessment is based on an extensive set of pre-defined categories of core competences and technical competences, as described in detail in Section 2.1.4 below. Core competences include "universal" competences valuable across the entire organization, such as "effective communication" or "analysis, synthesis and problem solving". Technical competences are more specialized and include categories such as "corporate administration skills" or "project and process management skills". Most technical competences are subdivided into further subcategories.

Second, a so-called "sparring partner" critically evaluates the self-assessment of the employee. Third, the self-assessed and critically reviewed competence levels are moderated, to help ensure consistency throughout the organization. Moderation means that the self-assessment (both self-declared evidences and levels) and the comments and opinion of the sparring partner are reviewed by a moderation panel, which establishes the final grade for each self-assessed competence.

The employees' technical expertise and language skills are also recorded in the database. These are, however, neither moderated, nor reviewed by a sparring partner.

Participation in the exercise is mandatory. The computer database is a self-standing database not linked to any other external database. Within the database each individual is identified by name and surname rather than by any personal identification number.

2.1.3. The purpose of the Competence Inventory and contemplated uses

Overview. The purpose of the Competence Inventory exercise, as explained by ETF in its Notification, is to "obtain a complete map of professional competences available at the ETF". The Competence Inventory is designed to ensure that human resources at ETF are deployed so that the ETF gets the best return from its staff. It should also highlight where there is a shortage of competence so that gaps can be filled through training or recruitment. From the staff members' perspective, it should ensure that they are given work for which they have the capacity and expertise. It will form the basis of staff members' career plans and will also help identify their training needs.

ETF emphasized that the Competence Inventory will not be used to determine staff members' salary or grade. ETF further explained that the set of evidences in support of the competence levels claimed (see Section 2.1.4) are not used beyond the stage of moderation.

Justification for necessity of the database. To justify the necessity for a comprehensive competence-database, ETF added that ETF is going through a period of change as its Council Regulation is being revised. The revision includes a considerable broadening of ETF's mandate, and therefore, the agency will need to change its current institutional skills profile. Further, ETF explained that it will also need to continuously keep adapting its competence profile in the future as the priorities of the General Directorates to whom ETF provides its services will keep changing. The competence profiling system will provide ETF with the means to constantly re-identify its skills needs and adjust its staffing profile to match those skills through staff development activities or recruitment.

Contemplated uses. ETF explained that the database is used to inform and achieve better choices in the human resources management of the organisation. It is used as one input among others for all processes that require that specific competence levels are guaranteed to successfully achieve objectives. This covers allocation of tasks to individuals and teams, internal mobility, career planning, training (internal and external) and statistical analysis of the agency's pool of expertise to contribute to the adoption of institutional strategies and policies.

From the information provided by ETF, it appears to the EDPS that ETF's use of the database can be broken down to two main categories:

A. Strategic management purposes. First, the Competence Inventory database may serve strategic management purposes in that it gives management an overview of staff competences. On a practical level this means, for example, that ETF management may decide to recruit more people with certain specific competences, or organize targeted staff training where the database shows that certain competences are lacking within ETF. For these purposes predominantly aggregate (rather than individual) data are used.

B. Decision-making with direct effect on individuals. Second, the database may also be used for purposes that affect staff members individually. As a practical example, ETF mentioned that it operates an internal mobility scheme to enable internal mobility without changing grades. When the internal mobility panel decides about the adequacy of the applicants for the job, it will, among others, compare the competences of the staff member noted in the database with the target levels of the post. For these purposes predominantly individual (rather than aggregate) data are used.

Examples of the uses of the database. When requested to provide additional practical examples of the use of the database, ETF explained that the use of the database has so far been limited, pending prior checking by the EDPS. ETF further noted that it is anticipated that once the EDPS Opinion is received and any necessary adjustments have been made to the procedures the moderated competence levels will be used for the following purposes:

- identify skill shortages in ETF for the immediate and medium-term and recruit for these when vacant posts become available;
- identify corporate training needs and build these into the annual training plan;
- encourage dialogue between individuals and their line managers on competences required for their current posts and for posts to which they aspire, and develop action plans to develop such competences;
- enable candidates for internal mobility support their applications.

No automatic decision-making or pre-selection. ETF did not specify any further planned uses of the database, but noted that the list that it provided to the EDPS is not exhaustive. In

any event, ETF confirmed that there will be no decisions taken automatically, without human intervention, using the data stored in the database. For example, when the database is used to assist in filling internal vacancies via ETF's internal mobility scheme, the database will not be used to automatically pre-select candidates from the database based on their particular competences. Instead, data will be used as only one of the several inputs taken into account in the decision-making.

Possibilities to search in the database. Finally, as a technical matter, ETF explained that "queries" are possible in the database by competences, linguistic and expertise fields, and return the list of staff matching the set criteria. The competence profiles can also be browsed individually. The results of the queries can be printed out in form of "printed indexes". The printed indexes can be grouped by departments and units, but they can also be broken down to the level of individuals, if such detail is needed.

2.1.4. Categories of data recorded in the database. The database records information related to so-called core competences and technical competences, as well as the staff members' expertise and language skills, as described in more detail below.

Four core competences. For purposes of the Competence Inventory, ETF initially designated four core competences in its Notification:

- teamwork and coaching
- effective communication
- analysis, synthesis and problem solving
- service orientation

During the prior checking procedure, ETF explained that the number of core competences will be increased to five, since "teamwork and coaching" will be split into two separate and distinct competences following suggestions by staff. ETF also noted that the list of competences in the Competence Inventory may be modified over time, to match the evolution of ETF's mandate.

Each core competence has four proficiency levels and two dimensions: creativity and complexity. Creativity measures to what extent staff members can contribute to new ideas. Complexity refers to the size, scope, and level of difficulty. Staff members must be able to demonstrate experience in both dimensions in order to qualify for a particular proficiency level.

When completing their profile in the Competence Inventory database, staff members are required to select their level of proficiency with respect to each core competence. In addition, they are also required to provide so-called "**evidences**" demonstrating the designated level of proficiency.¹ Each staff member, however, can decide not to claim any proficiency level in one or more of the core competences.

¹ The "Competence Inventory Introductory Handbook", which describes the processing operation, provides the following illustrative sample evidence for effective communication skills at level 2: "Creativity: When the new competence model has been implemented I supported actively its introduction by: submitting twice argued proposals for adaptations to competences definitions, in writing to the project leader; completing in details the feedback questionnaire with suggestions for improvement; giving verbal feedback on how to improve the communication to Roberto. Complexity: At the occasion of the introduction of the revised Staff Regulations I have drawn on my knowledge of these regulations to create written presentation material and deliver 3 specific information sessions on performance and promotion in the new context. This was done against a background of insecurity created by the ambiguities contained in the regulatory text."

Five technical competences. The database contains five technical competences:

- Skills in policy advice and analysis of human resource development issues
- Skills in policy advice and analysis on EU policies, EU instruments, and EC tools
- Relationship management skills
- Project and process management skills
- Corporate administration skills

Each technical competence is further subdivided into **sub-competences**.² Each technical competence has four proficiency levels and three dimensions: autonomy, complexity, and recognition. Autonomy refers to the extent to which staff members can ensure successful and timely completion of a task in an autonomous way. Complexity is defined the same way as with respect to core competences. Knowledge recognition refers to recognition as having a high degree of skill or knowledge of a certain subject as a result of experience or training: making the best use of that knowledge, including sharing it with others. As with the core competences, staff members must be able to demonstrate experience in all three dimensions in order to qualify for a particular proficiency level.

As with core competences, when completing their profile in the Competence Inventory database, staff members are required to select their level of proficiency with respect to each technical competence. In addition, they are also required to provide so-called "evidences" demonstrating the designated level of proficiency. Each staff member, however, decides for himself/herself which technical competences are relevant to him/her and provides evidence(s) accordingly in order to claim a proficiency level.

Expertise fields. For some but not all technical competences (or technical sub-competences), staff members are also required to register the expertise fields in which they are knowledgeable and rank their knowledge according to three categories: basic, intermediate and advanced.³

There is no need to provide any specific "evidence" or other comments to the expertise fields. It is sufficient if staff members rank their knowledge as basic, intermediate or advanced, as noted above.

Language skills. According to ETF's initial Notification, staff members are required to rank their language skills, with respect to each language, according to four proficiency levels, with the following breakdown: listening, reading, speaking, and writing skills. Again, there is no need to provide any specific "evidence" or other comments to the expertise fields. It is sufficient if staff members rank their knowledge according to the four proficiency levels noted above.

ETF noted when commenting on the draft EDPS Opinion that the ranking and categorization of language skills will be changed. In particular, language skills will be indicated according to

² The first technical competence, "Skills in policy advice and analysis of human resource development issues", for example, is subdivided into nine different sub-competences, including entries such as "labour market and employment", "governance of education", or "vocational education supported by ICT".

³ As an illustration, the "labour market and employment" sub-competence offers six different self-declared expertise fields, including entries such as "analysis of labour markets" "labour markets in transition", and "employment policy".

the Council of Europe's reference document for the European Language Portfolio known as "Common European Framework of Reference – CEFR".⁴

2.1.5. Procedure for recording data in the database. The database is updated regularly, every two years, following a three-step procedure. Staff members are first required to carry out a self-assessment. This is followed by a review by a so-called "**sparring partner**", and subsequently, the final profile is adopted by the moderation panel. The name of the sparring partner is also recorded in the database. The procedure, in more detail, is as follows:

Self-assessment. Staff members are first required to carry out a self-assessment. During this phase of the procedure they individually assess their competences and input their data themselves directly into the computer database. Staff members must fill in the parts relating to those competences where they have a level of proficiency reaching at least level 1.

The "sparring partner". As a next step, the so-called "sparring partner" critically reviews, and, if justified, challenges, the quality of the staff member's self-assessment. The role of the sparring partner is to act as a source of advice and support during the process, to check accuracy and level of detail, and to challenge, if justified, the selected competences, levels, or evidence given. His or her comments are also included in the database.

All modifications that the sparring partner makes in the textual part of the evidence are logged into the system. The system, however, can also display only the final, clean version of the evidence, without showing the corrections. It is up to the self-assessor to decide which form will be sent to the moderation panel. In case of disagreement on the level of a given competence, both the self-assessor's and sparring partner's levels are displayed, for the benefit of the moderation panel.

During the 2006 application, the sparring partners were chosen by the HR Unit. Sparring partners had no direct hierarchical link with the self-assessor. Further "peer review" was allowed upon wish, initiative and management of the self-assessor. The question of who should act as sparring partner in the future is currently under review.

The moderation panel. As the third step, the staff member's self-assessment and the comments of the sparring partner are reviewed by the moderation panel, to ensure consistency across the organization, and "to guarantee transparency and objectivity".

According to the initial Notification made by ETF, the moderation panel was made up of two members of the Senior Management Team, two sparring partners and a staff representative as an observer. The Senior Management Team, in turn, was composed of five members, and included the Director and each of ETF's four heads of units/departments. It is the moderation panel that takes the final decision on competence levels.

When commenting on the draft EDPS Opinion, ETF noted that the composition of the moderation panel had been reviewed, in light of the comments of the ETF Staff Committee and the EDPS, and will now include the following persons: one chairperson (acting also as a facilitator), four sparring partners, one observer nominated by the ETF Staff Committee, and two members of the HR Unit acting as secretaries. The moderation panel reviews the self-assessed proficiency levels, as well as the comments and opinion of the sparring partner, of every individual self-assessor, on every competence. The chairperson and the four sparring

⁴ Source: <http://www.coe.int/T/DG4/Portfolio>

partners seek consensus across the panel during the moderation exercise; in case of disagreement, only these five members vote on the final competence level.

Neither the staff members evaluated, nor their line managers are heard or interviewed by the moderation panel. With regard to the lack of involvement of line managers, ETF noted in its comments on the draft EDPS Opinion that it is an agency composed of temporary staff, and values competences brought by everybody beyond the ones they have been given the opportunity to demonstrate during their sometimes limited employment period in ETF.

The database includes three versions of each grade: the grade indicated by the self-assessor, the grade suggested by the sparring partner, and the grade determined by the moderation panel. The panel's comments are also recorded in the database under the heading "comments of the moderation panel".⁵

Following the moderation phase, feedback is given to self-assessors directly via the computer database, that is, each staff member has read-only access to his/her revised grades and the "comments" of the moderation panel. This feedback is also communicated to each staff member in writing. Upon specific request, each staff member also has the possibility to meet the Director who will then provide justification for any changes made by the moderation panel.

The textual part of the self-assessment (evidence) and the comments of the sparring partner and the moderation panel remain visible in the database even after the moderation phase. In this respect, when commenting on the draft EDPS Opinion, ETF explained that following the recommendations of EDPS, the self-assessor's evidence in support of the proficiency levels claimed for each selected competence will be available in the database for the next review exercise and to the self-assessor only. Every two years each self-assessor will be asked to either confirm or update the previously recorded set of evidences, in order to confirm the proficiency levels, or claim different ones. Only the latest version of the evidences and proficiency levels will be kept in the Competence Inventory database, and the previous set of evidences and levels will be deleted.

2.1.6. Recipients of the data. ETF explained to the EDPS that access to individual profiles and aggregate information is determined by the Head of Administration and Central Services, to whom the Director of ETF has delegated her tasks as a data controller. Access levels are defined by functional needs, and implemented in the database software by a technician within the Computer Unit. Access by such authorized personnel is via username and password.

The Head of Personnel Unit and the Head of Administration and Central Services each has full access to both aggregate and individual data relating to any and all staff members. The Head of Personnel Unit delegates the (logistical) management of the database to one member of the Personnel Unit. Each head of unit and each head of department also has access to the data of staff under their respective supervision.

In addition, the members of the Senior Management Team when acting together are also given access to both aggregate and individual data relating to any and all staff members. However, this access is given indirectly, via the provision of printed indexes containing the

⁵ According to the Handbook, a comment relating to teamwork and coaching skills, for example, could include the following: "The Creativity dimension should include more innovative elements to comply with Level 3. The Complexity dimension could focus more on the team leading element." Another sample comment offered by the Handbook, this time relating to service orientation skills is the following: "The evidence of the Creativity dimension should be developed to better match Level 2."

necessary, mostly aggregate, data. In other words, the password of a head of unit, even when he/she is acting as a member of the Senior Management Team, will give him/her access only to the data of his/her own staff, and not to staff members under the supervision of other members of the Management Team.

Further, each staff member has access to his/her own profile in the database. Sparring partners and members of the moderation panel have also access to the profiles of the staff members whose competences they are evaluating.

ETF emphasized that all data included in the database are treated in accordance with the required confidentiality. It also noted that no transfer of data is foreseen to third parties. The content of the Competence Inventory is for internal use only.

This information was inconsistent with the frequently asked questions provided to staff members, which suggested that certain parts of the competence profiles will be published on the intranet and made available to everyone within ETF.⁶ When responding to the request of the EDPS for clarifications in this respect, ETF explained that "differentiation on confidentiality will be introduced (for instance, language could be made public)." When commenting on the draft EDPS Opinion, ETF clarified and confirmed that no part of the Competence Inventory database will be made public to third parties, neither externally nor internally. The data will be exclusively used for the purposes described in Section 2.1.3. Nevertheless, any individual staff member might decide to make public his/her own competence profile, upon individual initiative.

When commenting on the draft EDPS Opinion, ETF also emphasized that the entire data access policy in the framework of the ETF Competence Inventory will be revised and strengthened. All actors involved at sparring partner and moderation phase will sign a declaration of confidentiality. As it is becoming regular practice at the ETF, all processors of personal data are asked, in this context, to (i) use the data for the sole legitimate purpose of the work required by the Competence Inventory exercise, (ii) guarantee at all times confidentiality of the information processed and managed, (iii) take all possible steps to prevent access by any illegitimate party to the set of information they are entrusted with, and (iv) asked to ensure the destruction of this information as soon as no longer needed for the reasons it is in their possession.

2.1.7. Information provided to data subjects. As noted earlier, ETF prepared a "Competence Inventory Introductory Handbook", which explains the Competence Inventory exercise. The Handbook describes in detail the type of data collected in the database (see Section 2.1.4 above) and the procedure for recording data in the database (see Section 2.1.5). It also describes, in general terms, the purposes of the processing (see Section 2.1.3), and reassures data subjects that the data contained in the database will not be used to establish their grade or salary. The Handbook is posted on the ETF intranet. A hard-copy of the Handbook was provided to each staff member prior to the beginning of the first Competence Inventory exercise in 2005 (the Handbook has since been revised in 2006).

⁶ See Frequently Asked Questions, Question nr. 16: "Are the competence profiles going to be in the public domain? Answer nr. 16: The catalogue of self-declared expertise fields will be public internally. For the individual competence profile, considering we are in an introductory phase, ETF colleagues will be given the individual choice to make it available to all colleagues or only to management"

Staff members also participated in a series of workshops where they were offered the opportunity to ask questions about the process. This interaction led to the compilation of a set of frequently asked questions, which was compiled and made available to staff members.

The Handbook and the frequently asked questions provide only limited information on data protection. In particular, apart from information on the categories of data collected, and the purpose of the processing, no other items required under Articles 11 or 12 of the Regulation are mentioned. In addition, whereas the categories of data were described in detail, the purpose of the Competence Inventory exercise was only discussed in a summary form. In response to an EDPS information request, ETF noted that information with respect to these missing elements will be set forth explicitly in the next issue of the Handbook.

2.1.8. Access rights. ETF staff members have read-only access to their own profiles in the Competence Inventory including their own input as well as all information provided by the sparring partners and the moderation panel.

ETF explained that the competence mapping is a process planned to be run with regularity. Updating data is performed every two years and that once the data are recorded and stored, they cannot be further modified (until the next update). *Ad hoc* updates and corrections are, therefore, not foreseen.

In case of clerical or software errors, however, ETF confirmed that the necessary corrections would be made as soon as pointed out. ETF also confirmed that it would apply Article 90 of the Staff Regulations in this case, which would allow staff members to "submit to the appointing authority a request that it take a decision relating to him".

2.1.9. Conservation period. ETF noted in its Notification that data are kept for the same period as information held in the personal file. In response to request for further information, ETF explained that administrative information (e.g. information on pension rights, allowances) is kept indefinitely in the personal file. At the same time, ETF requested the EDPS to advise whether the data in the Competence Inventory should follow this approach or should be deleted upon departure of the staff member.

2.1.10. Information security. All data are stored in a protected area of the ETF servers. The database is built with the Lotus Notes software. As described in Section 2.1.6, access levels are defined by functional needs, and implemented in the database software by a technician within the Computer Unit. In addition, one staff member (a technician within the Computer Unit) has access to the database for technical purposes (IT issues only). This staff member will also sign a declaration of confidentiality, as noted in Section 2.1.6 above. Data are encrypted and not accessible without a password. Staff working with the data are statutory staff subject to confidentiality obligations as described in the Staff Regulations. Any service provider called to intervene in support of the process is bound by explicit contractual declarations of confidentiality. All summary documents produced for management are marked as confidential.

2.1.11. Background and development of ETF's policy regarding the Competence Inventory exercise, expected changes

Internal Control Standard nr 3 and IAS recommendations. When discussing the legal basis of the processing, ETF explained to the EDPS that the ETF Governing Board adopted a set of 25 Internal Control Standards ("ICS") on 29 June 2004 to implement the standards adopted by the European Commission in 2003. Of these standards, ETF called the attention

of the EDPS to ICS nr 3, which included, among others, the requirement that "ETF shall ensure on a permanent basis the adequacy between staff competence and their tasks" and "defin[e] the knowledge and skills required by each job and carry [out] an individual assessment of competence as part of the annual objective setting and PAS [performance assessment system] review."

ETF further explained that in May 2005 the Commission's Internal Audit Service ("IAS") reported on ETF's compliance with the 24 ICS. The report pointed out as an "important recommendation" that ETF must "ensure that the personnel's expertise and skills are developed and maintained in accordance with the current and future business operational requirements".

CBHRM Strategy and the Competence Inventory. In response to the IAS recommendation, ETF management decided to adopt a Competence Based HR Management strategy ("**CBHRM Strategy**"). When requested to provide further information about this strategy, ETF explained the relevance and importance of using the CBHRM Strategy by stating that "traditional tests such as academic aptitude and knowledge tests, [do] not predict success in the job" and "research reinforced and emphasised the importance of competencies as essential predictors of outstanding performance". ETF further explained that the identification of the most relevant ETF-specific core and technical competences was the first step in the process of implementing the strategy. ETF, since the adoption of the CBHRM Strategy, has been working to introduce and incorporate these competences into all aspects of human resources management, including recruitment, integration of new staff, description of job categories and functions, objective setting and the performance evaluation process. The Competence Inventory, as a tool to record the self-declared and moderated competences of ETF staff, is intended to support the integrated CBHRM Strategy.

When commenting on the draft EDPS Opinion, ETF noted that the document is now referred to simply as "HR Management strategy" and is currently under revision by a working group composed by two Staff Committee members, one HR Unit member and the Director.

Models for the Competence Inventory database. The concept of the Competence Inventory database was proposed by a leading consultancy company on HR issues, which assisted ETF management during the review of its HR processes in 2005. ETF noted that in addition to private organizations, certain public service institutions, including the Council of Europe and CEDEFOP also underwent a similar self-assessment process requiring the establishment of a large-scale Competence Inventory database.

Deployment of the Competence Inventory, pilot phase. The Competence Inventory exercise is an institutional policy established following regular ETF practices for the elaboration of internal policies. The decision regarding its establishment was formally communicated to all ETF staff on 15 September 2005 after consultation with the ETF Staff Committee.

Full deployment was preceded by a pilot project in 2005 during which 27 staff members were involved. The rest of the staff completed the exercise between the end of 2005 and the first half of 2006. Initially, during the pilot exercise, the list of competences counted a larger number of skills to be mapped. The consultation process and the practical experience with the pilot project eventually led to a "lighter" deployment of the system.

Expected changes before the 2007 roll-out of the Competence Inventory exercise. In response to request for addition information, ETF explained that following discussions

between the Staff Committee and the management, certain changes will be implemented before the 2007 roll-out of the Competence Inventory exercise. ETF listed the following agreed changes:

- The overall purposes of competence profiling will be re-stated and the distinction between competence and performance will be further clarified.
- Through a revised version of the Handbook and updated training modules, more detailed explanation of different forms of evidence being acceptable will be provided to self-assessors.
- The idea of using line managers as a form of verifier instead of the sparring partners will be investigated further.
- Training activities for sparring partners will be reinforced.
- Some combined competences (such as Core Competence 1: Teamwork and Coaching skills) shall be separated. The whole set of competence definitions will be reviewed and updated before the deployment of the exercise; in doing so, consistency must be ensured.
- The set of job descriptions which will be available and made public after June 2007 will be used as a basis for the update mentioned in the point above.
- Selected examples of good evidence will be provided to self-assessors, prior to the deployment of the review exercise of the competence map.
- In order to ensure adequate representation of staff levels and departments and in order to avoid the risks of a conflict of interest of the appointing authority in decision making, the composition of the moderation panel will be revised (the Director will not be member any longer).
- A system to deal with either new staff joining the agency or with requests for occasional update will be introduced. The issue of appeals will be dealt within the same context.
- With the aim of introducing reasonable timeframe for development in case desirable competence levels are not met, the competence map exercise will make explicit reference to staff development activities.
- Further reference to confidentiality issues will be introduced and enforced in accordance with the Data Protection Regulation.

2.2. Legal aspects

2.2.1. Prior checking

Applicability of the Regulation. Pursuant to its Article 3(2), the Regulation applies to the processing of personal data by Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law. Personal data is defined as any information relating to an identified or identifiable natural person. Article 3(2) further provides that the Regulation applies to the processing of personal data wholly or partly by automatic means.

ETF is a Community body, and the Competence Inventory exercise forms part of the management of its own internal activities, and therefore, it is within the scope of Community law. There is also no doubt that the evaluation data collected during the Competence Inventory exercise constitute personal data. Finally, the fact that the competence data are collected through a large-scale IT database means that the processing is carried out by automatic means. The Regulation, therefore, applies.

Grounds for prior checking. Article 27(1) of the Regulation subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27(2) contains a list of processing operations that are likely to present such risks. This list specifically includes, under paragraph (b), processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency, or conduct.

The Competence Inventory exercise involves processing operations intended to evaluate personal aspects relating to the data subject, and therefore, requires prior checking by the EDPS. Indeed, the notified processing operation involves evaluation on several levels. First, an evaluation of competences is carried out by the sparring partner inasmuch as he or she critically reviews the staff member's self-assessment. A second evaluation is carried out by the moderation panel when establishing the final moderated profile, taking into account the self-assessment of the staff member, the comments of the sparring partner, as well as its own criteria. Finally, in cases when the moderated competence profile is used to assist in decision-making that may directly and individually affect the staff member, a third evaluation is carried out, using the data in the Competence Inventory database as one input to inform the decision. This is the case, for example, where management assesses a staff member's application for internal mobility.

Timing of the Notification and due date for the EDPS Opinion. The Notification was received on 29 September 2006. According to Article 27(4) of the Regulation this Opinion must be delivered within a period of two months. The procedure was suspended for a total of 166 days and was also extended by one month. Thus, the Opinion must be rendered no later than 13 June 2007.

The processing operations had started before the EDPS was notified. The Competence Inventory exercise was defined and tested during the second half of 2005. This included a pilot phase. The procedure was fully deployed for the first time between the end of 2005 and the middle of 2006.

The EDPS emphasizes that since prior checking is designed to address situations that are likely to present risks, the opinion of the EDPS should be requested and given prior to the start of the processing operation. Therefore, notifications should be submitted at the planning stage, in such time that considering the time available for the EDPS to issue his Opinion, as well as the eventual time needed for ETF to fulfil any requests for information, the case could be brought to an end before the processing operations begin. Timely notifications may also help prevent controllers investing efforts and resources in setting up processing operations which will subsequently need to be significantly modified to comply with data protection rules, or may, in some cases, even found altogether unlawful.

With that said, taking into account that (i) the system is still under revision, and considering also that (ii) the data obtained as a result of the Competence Inventory exercise have not yet been used, the EDPS does not view the delay as an insurmountable problem in the current case, provided that all recommendations that the EDPS makes in this Opinion will be fully taken into account.

2.2.2. Lawfulness and proportionality of the processing

Introduction. 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 public interest task provided for in 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 indeed necessary for the performance of such a task. When analysing this second issue, Article 4(1)(c) of the Regulation must also be taken into account, which requires that data must not be "excessive in relation to the purposes for which they are collected and/or further processed."

To address the first 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". Taken together, thus, the issue in the present case is whether the processing is necessary, or, on the contrary, excessive, for the management and functioning of ETF.

Recruitment, staff training, and staff development are necessary in any Community body including ETF to ensure the proper management and functioning of the organization. To fulfil these tasks, it is also within the discretion of ETF management to adopt a competence based human resources strategy.

The remaining question, and which is at the core of the analysis in the present case, is whether establishment of a large-scale IT database such as the Competence Inventory and carrying out the comprehensive moderated competence evaluation exercise can be considered as necessary for the accomplishment of the tasks of recruitment, staff training, and staff development, in the framework of a competence based human resources strategy.

Answering this question requires a proportionality analysis. In order to find the processing operation proportional, it is not sufficient to make a general statement that the data contained in the Competence Inventory may potentially be of some use to support the decision-making of ETF management regarding human resources issues. The proportionality analysis requires analysis of each use to which the data will be put, and determining whether there is a less privacy intrusive solution to achieve the declared purposes, without the establishment of the database itself, or perhaps with privacy enhancing modifications of the Competence Inventory exercise. If alternative, less intrusive methods are available to achieve the same purposes, the processing infringes Article 5(a) and Article 4(1)(c) of the Regulation.

ETF should consider less intrusive alternatives due to the major compliance problems of the Competence Inventory database. The EDPS is not against use of efficient management tools even when they involve significant data processing activities. The mere fact of establishing and using a second, competence based evaluation system, in parallel to the performance-based annual appraisals, but for different purposes, would not, in itself, raise insurmountable data protection concerns.

The EDPS, however, sees several major problems with the Competence Inventory exercise as it is currently set up, even taking into account the changes that ETF introduced during the prior checking procedure in reaction to the comments of its staff and the EDPS. Some of these problems may have been already remedied, or may be remedied by further modifying certain aspects of the Competence Inventory exercise. However, some other problems appear to be deeply ingrained in the nature of the exercise, and therefore, it is doubtful whether they can be solved without a major revision of the system. The most important concerns of the EDPS are as follows:

- **There are not sufficient guarantees for the accuracy and reliability of the data entered into the Competence Inventory database. Neither is it guaranteed that the data are consistent, that is, comparable across the organization.** The EDPS describes his reasons for this conclusion under Section 2.2.3 discussing data quality and accuracy. As also discussed in Section 2.2.3, while certain improvements can be made, it is unrealistic to expect that the data can be reliably and conclusively used for purposes that may individually affect the data subjects. In particular, while a reliable evaluation of competences can normally only be done through observation of the employees' performance of their work over an extended period of time, it is inherent in the Competence Inventory exercise that staff members are evaluated on competences, many of which have never been tested during their work with ETF. As a result, sparring partners and members of the moderation panel have no reliable means of verifying the accuracy of such untested competence levels. **Therefore, the data in the Competence Inventory database cannot reliably and conclusively be used for purposes that may individually affect data subjects.** This includes use of the data to evaluate applications for internal mobility.
- **The purposes and uses of the Competence Inventory database are not sufficiently clearly designated. Therefore, staff members cannot ascertain to what extent the competence mapping exercise can influence their performance-based appraisals or other decisions which individually affect them,** for example, decisions rejecting applications for internal mobility, allocation of tasks, or contract renewals. **Clear specification of the purposes of the Competence Inventory exercise and clear limitations on the uses of the data in the database is indispensable.**
- However, while clarifications and limitations certainly go a long way in helping to ensure compliance with the Regulation, even if certain uses of the competence data (e.g., use of data for performance evaluation) are specifically prohibited, line managers will still have continued access to the data for other purposes (e.g., approval of training plans). Therefore, as a matter of fact, considering the availability of the data, it is likely that they will be influenced by them in all cases. Such **unlawful spillover use of the data may have a significant impact on the future career of staff members.** At worst, management access to individual competence data could lead to dismissal, exclusion from contract renewal, exclusion from promotion, exclusion from training opportunities, side-lining when tasks are allocated or team leaders are selected, or other significant prejudices, all without staff members being clearly warned of such possibilities.
- Restrictions on access, while they may lessen the problem, cannot solve this issue conclusively, as it is often the same person (the line manager) and at the same time (time of the annual appraisals) who has lawful access to data for one purpose (e.g., approval of training plans), while being prohibited from using the data for another purpose (e.g., performance evaluations). **In data protection parlance, this means that the principle of purposes limitation provided for in Article 4(1)(b) of the Regulation cannot be guaranteed.**

Based on the foregoing, considering the significant risks that the processing entails, and the difficulties in reducing or eliminating those risks, the EDPS recommends that before it decides to go ahead with the 2007 Competence Inventory exercise, ETF reconsiders whether the purposes as described in Sections 2.1.3 could not be achieved using simpler and less intrusive methods than carrying out the complex Competence Inventory exercise.

The EDPS briefly describes below two possible alternatives to accomplish the purposes sought to be accomplished by ETF. These are for illustrative purposes only, as the EDPS acknowledges that ETF's decision-making involves a complex evaluation of several aspects beyond compliance with data protection requirements.

With respect to the use of the database for decisions that affect data subjects individually, ETF could consider, for example, whether staff members could simply prepare un-moderated competence profiles if and when needed, and only with respect to those competences which are relevant for their current positions or for the position that they aspire to. No database or moderation would then be necessary. Any evaluation of the self-assessment would be carried out there and then, by the people who will actually make the decision of accepting applications for internal mobility or approving individual training plans.

When it comes to use of the database for strategic planning, ETF could consider, for example, whether data could be obtained simply by requesting staff to grade their competences anonymously, without moderation. Staff members, considering the anonymity, would have little incentive to understate or overstate their competences.

If ETF concludes, after a thorough proportionality analysis that there are no other reasonable, less intrusive alternatives available, ETF should be able to go ahead with the 2007 roll-out of the Competence Inventory exercise. However, it should ensure, at the minimum, that the limitations of the reliability of the data are recognized by the users of such data. This should mean that data included in the database should never be used for pre-selection or exclusion but only as one of several, only informative, rather than decisive, factors to be considered in the decision-making process. For the same reason, the use of the database should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members. Additional recommendations to address the shortcomings of the Competence Inventory exercise will be detailed and explained in more detail further in this Opinion.

Other possible uses of the database. The EDPS calls the attention of ETF that it should carry out a proportionality analysis in each case, should it wish to use the data collected in the Competence Inventory database for purposes which ETF has not thus far specified. The EDPS is available for consultation, should doubts arise in ETF regarding the lawfulness and proportionality of any additional use of the database.

Restrictions on use of data already in the Competence Inventory database. Due to the concerns that arose with respect to the processing, the EDPS emphasizes that no data collected prior to the date when the procedures will have been revised to fully reflect the recommendations set forth in this Opinion should be used for purposes that may *individually* affect data subjects. This includes, without limitation, use of the data for facilitation of internal mobility, or the dialogue between line managers and staff members regarding their career development plans.

If ETF nevertheless wishes to use any such data for any specific purpose that might individually affect the data subjects, this may only be permissible if the data subjects give their unambiguous consent pursuant to Article 5(d) of the Regulation. This consent, however, must be entirely voluntary, and failure to give consent should not, in any case, jeopardize the rights of data subjects who decided not to give their consent. For example, if voluntary consent were to be used to establish the lawfulness of the use of 2005 or 2006 data for

purposes of evaluation of applications for internal mobility, ETF must not exclude or prejudice the applications of those staff members who refuse to authorize the use of their personal data for purposes of assessment of their applications for internal mobility.

2.2.3. Data Quality

Adequacy, relevance, and proportionality. According to Article 4(1)(c) of the Regulation personal data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed."

The function of the Competence Inventory is to map staff competences. The main issue, thus, is what competences and skills are likely to be relevant to the efficient management of human resources at ETF. All information collected during the Competence Inventory exercise should be adequate and relevant for this purpose.

As for the range of various competences included in the database, there is no entry which appears to be *prima facie* inadequate or irrelevant, considering the purposes of the processing and the mission of ETF. The EDPS, however, notes that during this prior checking procedure he did not scrutinize separately and in detail all categories and subcategories of data to be entered in the Competence Inventory database. The EDPS, in the absence of categories that would have appeared *prima facie* irrelevant or inadequate, accepted that ETF management relied on its own know-how, independent expert advice, and feedback from the Staff Committee when deciding which categories to include or omit from the database. The EDPS encourages further dialogue with stakeholders in view of further refinement of the categories in order to better capture real staff competence and potential.

The proportionality of the establishment of the database itself in the first place is discussed above under Section 2.2.2. As for the issue whether the data collected during the Competence Inventory exercise are themselves excessive, ETF explained to the EDPS that the current version of the Competence Inventory already includes a "lighter" version than in its first pilot phase, as noted in Section 2.1.12 above. The EDPS welcomes this, as well as all future refinements of the categories, which may aim to simplify and clarify the system or decrease the number of data collected.

Fairness and lawfulness. Article 4(1)(a) of the Regulation requires that data must be processed fairly and lawfully. The issue of lawfulness was analysed above (see Section 2.2.2). The issue of fairness is closely related to what information is provided to data subjects (see Section 2.2.5 below).

Accuracy. 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."

In this case the data include the results of a complex competence assessment procedure carried out by multiple actors, including the staff member evaluated, the sparring partner and members of the moderation panel. Given the nature of these data, it is not easy to ensure, assess, or prove accuracy.

The EDPS also acknowledges that a certain subjectivity and certain inaccuracies are inherent in any type of evaluation of personal aspects of data subjects, and thus, in the assessment of competences as well. Whereas some competences, such as language skills, are capable of

being reasonably objectively tested, measured, and verified, most competences such as communications or coaching skills are difficult to quantify and measure objectively. Depending on what use the data gathered during the Competence Inventory exercise will be put, different levels of inaccuracies and inconsistencies can be tolerated.

From the data protection perspective, it is especially important to ensure a high level of accuracy for data whose use may directly and individually affect the data subject. In this case it is essential that those who are carrying out the evaluation of competence levels would have a good knowledge of the level of each and every competence of the staff member on which he/she is evaluated. It is equally important to ensure that the results would be comparable and consistent across the organization. To carry out such an evaluation for the entire ETF staff based on written evidences and their subsequent moderation is a challenge similar to the design and organization of the annual performance appraisals.

Given the daunting task of establishing this second, parallel evaluation system, and the lack of clarity regarding the ultimate purposes of the exercise, it is not surprising that the system as currently in place fails to produce data of the requisite level of accuracy, reliability, and consistency across the organization.

The EDPS identified the following major sources of inaccuracies in the Competence Inventory database:

- **Lack of reliable on-the-job evaluation to establish competence levels.** A person's competence can ultimately and reliably be assessed only through on the job observations over a longer period of time and by assessing the work done by this person. A reliable assessment can only be carried out by someone who is intimately familiar with the work of the individual, such as his or her immediate supervisor, team members, clients, or other persons who work with such person on a regular basis. In addition, it is equally important that the results of the evaluation would be consistent, that is, comparable, across the organization. The Competence Inventory is not based on such on-the-job assessment, for the following reasons:
 - Sparring partners and members of the moderation panel do not directly work with the staff members evaluated. Therefore, they are not well-placed to verify the on-the-job competences of the staff members.
 - Evaluators have even less means to verify whether staff members accurately graded those of their competences which were tested only outside their current jobs.
 - In fact, it is doubtful on what factual basis other than their "impressions" sparring partners and members of the moderation panel bring their decisions when they are overriding the self-assessment of staff members.
- **Lack of other trusted methods to estimate competence levels.** Rather than constituting a genuine on-the-job evaluation, the Competence Inventory exercise resembles assessments during recruitment where the evaluators rely on the self-assessment of the candidates.
 - At the same time, however, the Competence Inventory exercise fails to incorporate into the procedure trusted methods used for verifying competence claims made during the recruitment process, such as obtaining written or oral

references from former supervisors, clients or co-workers, presentation of academic background, face-to-face interviews, or eventual written or oral tests.

- As a result, while the Competence Inventory exercise fails to deliver a reliable on-the-job evaluation, at the same time, it also fails to take advantage of other methods that could increase the reliability of the information provided.
- **Absence of a genuine dialogue between staff members evaluated and the moderation panel.** Apart from the phase involving the critique of the sparring partner, which may include a genuine discussion between the sparring partner and the self-assessor, the whole process is based on written data entries made by the staff members, sparring partners and the moderation panel. Neither the staff members nor the sparring partners are heard by the moderation panel before it reaches its final decision (although, according to the revised procedures, some of the sparring partners will be present at the moderation panel). There is no interview, hearing, or other opportunity provided for discussion.
- **Absence of an appeal procedure.** Although the data are used to influence at least some decisions that may individually affect staff members, the Competence Inventory procedure, as initially notified and subsequently explained to the EDPS, **did not provide the same procedural safeguards and legal remedies** to staff members as are available under the Staff Regulations with respect to the **performance-based annual appraisals**. This includes the **absence of an appeal procedure**. When commenting on the draft EDPS Opinion, ETF mentioned that it will now introduce an appeal procedure, without, however, providing details on that procedure.

As a result of these problems, the Competence Inventory database may contain inaccurate data, which do not fully reflect the individual competences of staff members. Neither are the data consistent across the organization. While such data can give some direction to management as to overall staff competence levels and competence gaps, the data may not be sufficiently reliable to be used to inform the decision-making of ETF management in cases which individually affect staff members, as noted in Section 2.2.2 above. This remains true despite the measures that ETF has already taken or that it currently plans to take to ensure reliability and accuracy of data and consistent results across the organization.

With that said, the EDPS welcomes that ETF is conducting a constructive dialogue with the Staff Committee. The EDPS welcomes the re-thinking and re-design of the system, taking into account the points noted in Section 2.1.11. In particular, he welcomes ETF's efforts to increase reliability and consistency of data by providing staff training, a Handbook, Frequently Asked Questions, a helpdesk facility, guidance of sparring partner, optional peer review, training for sparring partners, weekly meetings among sparring partners, and participation of some sparring partners in the work of the moderation panel, as ETF explained when commenting on the draft EDPS Opinion.

In addition to these points already envisaged, the EDPS makes the following recommendations to improve data quality:

- ETF should provide for **additional possibilities to establish and verify accuracy of the competence levels claimed by staff members**. Current on the job experience, previous job experience, as well as educational and training experience should all be open for consideration among the evidences. Certificates of studies, references from previous supervisors, co-workers or clients, feedback from current supervisors, co-workers, or

clients should all be considered as potential sources to verify and complement the written evidences provided.

- **ETF should provide possibilities for a genuine dialogue** between the staff members evaluated and the moderation panel, for example, by including an oral phase into the evaluation process, during which the staff members could directly discuss competence levels with the moderation panel. ETF should also introduce **an appeals procedure**. (As noted earlier, ETF is already in the process of introducing an appeals procedure.)
- ETF should **reconsider who should be designated as sparring partners and who should be on the moderation panel**. The various possibilities to involve in the evaluation process those directly working with the staff member (supervisors or team members) should be explored further. In order to carry out a meaningful evaluation, at least some of the evaluators should be directly familiar with the work of the employee. At the same time, it must be taken into account that it is difficult to have comparable and consistent results throughout the organization if different evaluators are used. (As noted above, ETF already took some steps in this direction.)
- To help ensure consistency across the organization, ETF should introduce **clear benchmarks for each competence** at each level, in the form of examples of acceptable evidences. Training of staff members as well as evaluators is also essential. (Here again, ETF appears to have taken steps towards increased compliance with data protection principles.)

In addition to the problems noted above, another difficulty arises from the fact that the Competence Inventory exercise is carried out in 24-month cycles, with updates made only every two years. **The periodic nature of the exercise makes it impossible to guarantee that the data contained in the database will be hundred percent up to date**. Two years is a sufficiently long period for a staff member to acquire new competences or skills, or increase his/her level of proficiency within a particular skill or competence, and therefore, not all of these changes may be reflected in the database at any given point of time.

While taking note of this inherent difficulty, ETF must nevertheless take every reasonable step to ensure that data are as up to date as realistically feasible and necessary for the purposes of the processing. For this reason, the EDPS recommends considering the following, or similar, measures:

- So as to ensure that newly gained competences will be expeditiously included in the profile, an additional possibility may be built into the database for the staff member to include **additional, not-yet-moderated comments** into his/her profile. For example, staff members may wish to indicate that their knowledge of certain languages progressed to a higher level since the data of the last moderation. This could be done via a simple database entry for comments that is open for the employee at any time. It should also be made clear to the viewers of the database that such information is not (yet) moderated.
- Before each use of the data for purposes that may individually affect the data subject (for example, when an internal mobility vacancy is announced), staff members should be requested to confirm whether their competence levels in the database are accurate, and allow them an opportunity to make additional observations as mentioned above.
- Alternatively, should they request, at that time, that certain specific competence levels be "officially" re-evaluated on grounds that they acquired new competences or a higher level

of competences with respect to certain categories, **a partial Competence Inventory exercise could be carried out** with respect only to these newly acquired competences.

2.2.4. Recipients of the data. The EDPS also welcomes ETF's efforts to provide rights of access strictly on a need-to-know basis, and subject to central allocation of usernames and passwords, as described in 2.1.6 above. He also welcomes further efforts noted by ETF when commenting on the draft EDPS Opinion, such as raising awareness of data protection by having employees sign declarations of confidentiality. In addition, the EDPS makes the following recommendations:

Recipients during the moderation phase. The EDPS recommends that sparring partners and members of the moderation panel who will be granted access to staff data for purposes of finalizing staff members' competence profiles, will no longer have access to those profiles once the competence profiles will have become final (following moderation).

Recipients following the moderation phase. As explained in Section 2.2.2, once the data are available, line managers may be tempted to use them also for prohibited purposes, such as performance evaluation. Therefore, the EDPS recommends additional measures to be taken to ensure that line managers do not have unlimited access to data of their staff for any purpose and at all times. In particular, it should be considered whether their password-protected access should be limited to the times where the data can actually be used for a specified and legitimate purpose. Based on the Notification, these occasions would be limited to the times when decisions are made regarding internal vacancies and individual training plans. Access could, in addition, also be tracked by a logging feature if deemed necessary.

Further, it should be considered whether it is sufficient if members of the Senior Management Team have access only to aggregate, rather than individual data, considering that according to the Notification, they use the data for strategic management purposes, which appears not to necessitate access to individual data.

Internal publicity. As for "internal publicity", that is, the free availability of the data within ETF, the EDPS had serious concerns regarding its legal basis and therefore welcomes that ETF, when commenting on the draft EDPS Opinion, took a data-protection friendly position by confirming that no data will be made "internally public" unless upon initiative of the data subject.

The EDPS indeed emphasises that if any part of the Competence Inventory database is to be shared with anyone else other than the persons specifically designated as recipients in Section 2.1.6, the appropriateness of such data sharing must be separately evaluated and is only permissible if it is proportionate compared to the specific purposes it is intended to achieve. Failing that, data sharing may only be possible based on the unambiguous and informed consent of the data subjects. The EDPS also emphasises that staff members must also be notified of the data sharing prior to, rather than after, the collection of the data. The information must specify the range of data to be shared across the organization and the purposes that such data sharing serves. The EDPS will be unlikely to find proportionate blanket data sharing obligations merely to "ensure transparency" or "promote a competence culture".

Recipients outside ETF. The EDPS welcomes that the use of data is strictly limited to the internal use of ETF.

2.2.5. Information provided to data subjects. Articles 11 and 12 of the Regulation require that certain information be given to data subjects in order to ensure the transparency of the processing of personal data.

Timing and format of the data protection notice. Article 11 provides that when the data are obtained from the data subject, the information must be given at the time of collection. For the case when the data have not been obtained from the data subject, Article 12 provides that the information must be given when the data are first recorded or disclosed, unless the data subject already has it.

The EDPS welcomes ETF's good practice of issuing in hard copy and also making available online its Competence Inventory Introductory Handbook, as well as a set of frequently asked questions, both prior to the start of the Competence Inventory exercise. The EDPS also welcomes ETF's practice of carrying out informational sessions for staff members prior to the start of the Competence Inventory exercise.

Content of the data protection notice. Articles 11 and 12 of the Regulation provide a detailed list of information that needs to be provided to data subjects. In essence, the controller must inform data subjects about who processes what data and for what purposes. The information must also specify the origins and recipients of data, must specify whether replies are obligatory or voluntary and must alert the data subjects to the existence of the right of access and rectification. Further information, including the legal basis of processing, the time limits for storing the data, and the right of recourse to the EDPS must also be provided if necessary to guarantee fair processing. This may depend on the circumstances of the case.

Finally, both Articles 11 and 12 allow exceptions from the notification requirement when the data subject already has the information. Article 12 allows for further exceptions in a limited number of cases, including when the provision of information proves impossible or would involve disproportionate effort.

Considering that (i) none of the Article 11 or 12 exceptions apply to the facts of the case (data subjects do not already have the required information available to them, and the provision of information would not involve disproportionate efforts), and that (ii) all items listed in Articles 11 and 12 (including the legal basis of processing, time-limits for storing the data, and the right of recourse to the EDPS) are necessary to guarantee fair processing, the EDPS is of the opinion that all items listed under Articles 11 and 12 respectively must be provided in the data protection notice.

As explained in Section 2.1.7, the latest version of the Competence Inventory Introductory Handbook provides only limited information on data protection. The EDPS welcomes ETF's promise that information with respect to these missing elements will be set forth explicitly in the next issue of the Handbook. This will allow data subjects to embark upon the exercise with the reassurance that their data will be processed fairly and lawfully. The Handbook should be available before the start of the next Competence Inventory exercise.

Among the information to be provided to data subjects, the EDPS especially emphasises the importance of providing clear information on the purposes of the exercise and the use of the data included in the Competence Inventory database. These include the following:

- Clarification of any intended use of the data prior to the data collection.
- Strict limitation of the use of the Competence Inventory at the individual level, to staff development and internal mobility. In particular, ETF should clearly state that

the Competence Inventory cannot be used for purposes of performance appraisal, promotion, or assessing contract renewal, and that the use of the database should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members.

- Should ETF wish to use the results of the Competence Inventory for allocation of staff to teams and projects or other additional purposes, the lawfulness and proportionality of these uses must be separately evaluated, and information to staff must be provided prior to data collection.
- Clarification of the use of the information at a corporate level. Based on the Notification, this use appears to be limited to identifying competence gaps for the organisation and defining strategies for future recruitment.

2.2.6. Right of access and rectification. According to Article 13(c) of the Regulation, the data subjects have the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing the processing and any available information as to their source. In this respect, the EDPS welcomes ETF's practice that read-only access to their data is provided to staff members at all times.

Article 14 of the Regulation provides the data subject with a right to rectify inaccurate or incomplete data. In this respect, the EDPS welcomes ETF's practice that any "clerical" errors are corrected in the database without delay at the request of the data subject. For example, should it be mistakenly noted in the database that the data subject managed a project with a budget of EUR 50,000 and in fact, the budget was EUR 500,000, these changes will be corrected without delay.

See also the EDPS recommendations in Section 2.2.3 discussing accuracy of data and in Section 2.2.7 discussing conservation of data.

2.2.7. Conservation of data. The general principle in the Regulation is that personal data may 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 (Article (4)(1)(e) of the Regulation). The EDPS has the following specific recommendations in this respect:

First, all data relating to a staff member whose employment relationship with ETF comes to an end should be immediately deleted, or, if the data are considered useful for strategic management, historical, scientific, or statistical purposes, should be rendered anonymous. In this respect, ETF must take into account that merely deleting names does not necessarily render data anonymous. For example, staff members could be identified indirectly, by reference to their job functions and the dates during which they carried out those functions.

Second, once the profile has been finalized at the end of the moderation procedure, and after any appeal against the decision of the moderation panel has been decided on, previous entries into the database, which were used to establish the final profile, will no longer be necessary. This includes the text of all evidences and other initial entries made by the data subject himself/herself, the comments of the sparring partner, the comments of the moderation panel, as well as any grades other than the final moderated grades. These entries, therefore, should be deleted. The text of the evidences may be preserved until the next Competence Inventory exercise so that data subjects could use them as a starting basis when they are preparing their self-assessment at that time. ETF must make sure, however, that once the moderation has been carried out, the evidences will only be available to the data subject.

For the case in which the data subject continues to be in disagreement regarding his/her final profile after the moderation exercise, and pending an appeal, the EDPS recommends that a text entry would be provided for "observations of the staff member" in the database, where the data subject, if he/she chooses to, could voice any disagreements with the profile accepted by the moderation panel. The staff member should be able to delete or modify this entry at any time, and this entry should be visible to all recipients when they are using the database to individually evaluate that particular staff member's profile for any specific purpose. This entry would not be necessary, and could be deleted, once the appeal procedure has been closed.

Third, there appears to be no need for viewing the development of any particular employee's competences or skills over the course of time. For example, when an application for internal mobility is considered, it is the applicant's current competence that matters, rather than his or her competence five or ten years ago. Similarly, in order to establish competence gaps and annual training plans, current, up-to-date, rather than historic data should be used. Therefore, the EDPS recommends that as soon as a new competence profile has been created as a result of the moderation process, the previous profile should be automatically deleted. If ETF wishes to preserve any data about prior years' competence profiles to help management develop strategies, or for historical, scientific, or statistical purposes, the data must be aggregated and kept only in anonymous form.

2.2.8. Security. According to Articles 22 and 23 of the Regulation, the controller and the processor 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. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

The EDPS considers that the security measures adopted by ETF, and complemented as planned, are adequate in the light of Article 22 of the Regulation, provided that confidentiality of communications is guaranteed.

Conclusion

The Competence Inventory exercise in its current form raises significant data protection concerns. In particular, there are strong doubts as to the proportionality of the establishment of the database, the principles of purpose limitation are not guaranteed, and the data do not appear to be sufficiently reliable to inform decisions that may individually affect data subjects. For these reasons, ETF should reconsider whether it is indeed necessary to carry out the complex, moderated Competence Inventory exercise or whether there are less intrusive alternatives available to achieve its contemplated purposes.

For the case in which ETF should reasonably conclude that there are no less intrusive alternatives available, the EDPS requires, at a minimum, full implementation of the recommendations noted in Sections 2.2.2 through 2.2.8.⁷ These recommendations include, most importantly, the following:

- **Purposes of processing:**

- ETF management must clearly and explicitly recognize the limitations of the reliability of the data to inform decisions that may individually affect data subjects.
- Therefore, data included in the database should never be used for pre-selection or exclusion but only as one of several, only informative, rather than decisive, factors to be considered in the decision-making process.
- For the same reason, the Competence Inventory cannot be used for purposes of performance appraisal, promotion, or assessing contract renewal, and the use of the database should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members.
- The remaining, permissible purposes of the processing must be clearly specified. They may include assessment of competence gaps and planning for training and recruitment needs. Data may also be used to inform certain decisions that may individually affect data subjects. In particular, data may be used to support applications for internal mobility and to facilitate discussing training plans with supervisors.
- Unless the data subjects unambiguously consent, no data should be used for purposes that may individually affect the data subject if such data were obtained prior to the date on which full compliance will have been achieved with the recommendations made in this Opinion.

- **Data Quality:**

- The procedures for the Competence Inventory exercise must be significantly revised to ensure a higher level of accuracy, reliability, and consistency of the data. This includes clear benchmarks, enlargement of the evidence-base, revision of who should serve as a sparring partner or on the moderation panel, provisions for a genuine dialogue with staff members, as well as an appeal procedure, and a possibility for staff members to introduce observations or updates in the database.

- **Conservation of the data:**

- Conservation periods must be strictly limited to what is necessary to achieve the purpose of the processing operation. Previous competence profiles should be deleted once the new ones are available.

⁷ The EDPS welcomes that when commenting on the draft EDPS Opinion, ETF already reported that it made a decision to implement some of the recommended measures.

- **Information to data subjects:**

- Clear and specific information needs to be provided to data subjects regarding all items listed under Articles 11 and 12 of the Regulation. The EDPS especially emphasises the importance of clear specification of the purposes and uses of the data as well as any limitations on such uses.

Done at Brussels, on 13 June 2007.

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