



## **Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Parliament concerning the evaluation of interpreters**

Brussels, 5 December 2008 (Case 2008-578)

### **1. Proceedings**

On 29 September 2008, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer of the **European Parliament (EP)** a Notification for prior checking concerning EP's evaluation of interpreters (**Notification**).

The Notification was accompanied by a template, the Quality Control Form (**QCF**) used for the evaluation as well as the mandate of the Interinstitutional Quality Monitoring Group, the rules of procedure of that group and the Article 25 notification to the DPO made on 23 November 2006.

On 7 and 12 November 2008 the EDPS requested additional information from EP. The responses were received respectively on 10 and 13 November 2008. On 21 November 2008, the EDPS sent the draft opinion to the EP Data Protection Officer (**DPO**) for comments, which were received on 24 November 2008.

### **2. Facts**

The present case deals with the *ad hoc* evaluation of interpreters at the EP during a given period of time to ensure the quality of the service. The data processing operations are carried out by personnel of the Interpretation Directorate (**ID**), under the responsibility of Mr. Jimenez Marin acting as the *data controller*. The **ID** is part of the Directorate-General for Interpretation and Conferences (**DG INTE**).

This prior check does not deal with related data processing operations, some of which may have already been prior checked by the EDPS. For example, this prior check does not deal with the annual evaluation, which may be affected by the outcome of this *ad hoc* evaluation<sup>1</sup>. It also does not deal with the procedure that may take place in the Inter-institutional Quality Monitoring Group in cases of persistent quality problems of freelance interpreters the control of which is outside the scope of the ID.

The *purpose* of the data processing is to assess the performance of interpreters to ensure the quality of their interpretation performance. The assessment is usually triggered by a reported problem.

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<sup>1</sup> Opinion on the notification for prior checking received from the Data Protection Officer of the European Parliament relating to the reports procedure and the RAPNOT system. Brussels, 3 March 2005 (Case 2004-206).

**Data subjects** include interpreters who may be officials, temporary agents and freelancers (usually referred to as auxiliary conference interpreters **ACI**) (altogether **interpreters**). Data subjects also include senior interpreters who act as reporting officers or evaluators (**reporting officer**), and the Head of the Language Unit concerned, to whom the interpreter reports (**HLU**).

The **data processing** is both automated and manual and can be described as follows:

(i) The interpreter under assessment is informed by his HLU of the intention to monitor her/him and the period of time over which the monitoring is to take place. This information is usually provided during a personal meeting with the interpreter.

(ii) One or more appointed reporting officers will carry out the assessment (by listening to the interpreter while he is performing his duties). They are appointed by the responsible HLU. The reporting officers will fill in the QCF. They will transfer the duly completed QCF to the responsible HLU.

(iii) At the end of the assessment period, the HLU will inform the interpreter about her/his conclusions and the measures or possibilities to resolve the perceived problems. At this point, the interpreter under assessment has the right to see the individual assessment reports, i.e. the QCFs and to add personal comments on the form(s) within a period of 2 weeks after the final report has been submitted.

(iv) If there is no reaction from the interpreter, the HLU will take a decision on his/her final views on the evaluation of the interpreter which may contain suggestions to resolve the identified problems. The interpreter will be informed of the decision. The impact of the HLU decision may vary depending on the following:

(a) If the interpreter is an official or temporary agent, confirmed problems will be taken into account in the yearly evaluation and they will be reflected in the staff report.

(b) If the interpreter is an ACI, following a discussion with the interpreter under assessment, the HLU will have to decide whether the interpreter concerned accepts his/her assessment. If the HLU considers that the problem persists, the HLU may decide to inform his/her counterparts in the other institutions and refer the matter to the Inter-institutional Quality Monitoring Group (**IQG**), in accordance with the Rules of Procedure of this Group<sup>2</sup>.

The **Categories of data processed** include (i) interpreter's details: surname, first name(s), personnel number, current position, department/unit, category and grade; (ii) reporting officer's details: surname, first name(s), department / unit; (iii) reporting officer's comments assessing the interpreter. This includes information on, among others, the interpreter's knowledge of active language, accuracy, knowledge of passive languages, meeting preparation, knowledge of the subject, ability to work in a team, presence in the booth. The reporting officer can also add at his own discretion additional information. (iv) Interpreter's comments. This information is collected by means of the QCF.

Regarding the **conservation periods**, QCFs and notes written by the HLU are kept in paper form for two years after the evaluation takes place. This period is considered necessary in

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<sup>2</sup> Interinstitutional Quality Monitoring Group Rules of Procedure of 24 July 2008.

case the interpreter contests the results (e.g. by addressing himself/herself to the Ombudsman). QCFs are not kept in electronic form.

Storage for historical, statistical or scientific purposes is not envisaged.

According to the Notification, interpreters are **informed** at the start of the period that the evaluation will take place during the meeting with the HLU. Additional information about the monitoring procedures is provided in different ways, namely: (i) by Mr Jiménez Marín in a meeting with the Delegation of Interpreters; and (ii) in an assembly of all the freelance interpreters. Moreover an official statement has been published on EpiWeb (DG INTE site) with a link to the QCF (last update 20/08/2007).

Regarding the **procedures to grant rights** (including **access and rectification**) to interpreters, the Notification describes that access occurs by providing a copy of the QCF to interpreters in their meeting with the HLU. According to the Notification, the right to rectify/object takes place by enabling interpreters to comment on the QCF ("*add personal comments on the form(s) within a period of 2 weeks after the final report has been submitted*").

The data processed within the evaluation of interpreters can be **disclosed** to the following recipients: (i) the hierarchical superiors of the interpreter and, (ii) members of the **IQG** in line with the Mandate of the Group and Rules of Procedure.

[...security measures.....].

### **3. Legal aspects**

#### **3.1. Prior checking**

**Applicability of Regulation (EC) 45/2001:** The evaluation of interpreters constitutes processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation). The data processing is performed by a Community body, in this case, by the EP, in the exercise of activities which fall within the scope of Community law (Article 3 (1) of the Regulation). The processing of the data contained in the QCFs is both electronic and manual: the latter forming part of a filing system (Article 3 (2) of the Regulation). Therefore, Regulation (EC) 45/2001 is applicable.

**Grounds for prior checking:** According to Article 27 (1) of Regulation (EC) 45/2001 "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27 (2) (b) "*processing operations intended to evaluate personal aspects relating to the data subject, including his ability, efficiency and conduct*". The evaluation of interpreters for the purpose of assessing their performance clearly represents such a processing operation and is therefore subject to prior checking by the EDPS.

**Ex-post prior checking:** Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should have been given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

**Deadlines:** The notification of the DPO was received on 29 September 2008. According to Article 27 (4) of Regulation (EC) 45/2001, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 7 days to require additional information and to allow for comments from the data controller. Consequently, the present opinion must be delivered no later than on 8 December 2009.

### 3.2. Lawfulness of the processing

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data lawful. One of the criteria provided in Article 5 (a) is that the *"processing is necessary for performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institutions or body"*. The 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"* (recital 27).

The legal basis for this data processing can be found in the following legal instruments/arguments: Firstly, the evaluation of the performance of the interpreters is a part of the legitimate exercise of official authority vested in the European Parliament *ex* Article 5(a) Regulation 45/2001. In particular, in this case, the evaluation of interpreters entails a processing of personal data which is necessary for the HLUs to manage the personnel of their respective Units and to ensure their proper functioning. Indeed, if such monitoring were not carried out, poorly trained interpreters or interpreters not carrying out their functions might not be identified. This could jeopardise the functioning of the units concerned. Secondly, Article 43 of the Staff Regulations provides the legal basis for evaluation procedures of interpreters that are officials or temporary agents which aim at assessing their ability, efficiency and conduct. This Article would legitimise the overall evaluation exercise to which staff and interpreters are subject to (which has already been the object of a prior checking Opinion) and also *ad hoc* assessments which might ultimately impact the annual evaluation. Finally, the Convention between the EP and the ACIs also provides a legal basis for the processing<sup>3</sup> insofar as ACIs are equivalent as regards their professional and ethical obligations to officials of EU institutions, including therefore such *ad hoc* evaluations as those carried out in this case.

### 3.3. Data Quality

**Adequacy, relevance and proportionality:** According to Article 4 (1) (c) of Regulation (EC) 45/2001, personal data must be *"adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed"*. The information presented to the EDPS on the data processed during the evaluation exercise which is the data included in the QCF (as described in section 2) appears to meet those requirements. The processed data are relevant for the purposes of evaluating the performance of interpreters.

**Accuracy:** Article 4 (1) (d) of Regulation (EC) 45/2001 provides that personal data must be *"accurate and, where necessary, kept up to date"* and that *"every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified"*. As indicated above, basically all the information processed within the initial evaluation exercise is provided by persons other than the data subject, particularly by the reporting officers. In

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<sup>3</sup> Convention fixant les conditions de travail et le régime pécuniaire des agents interprètes de conférence recrutés par les Institutions Européennes.

this respect, it is important that the data subjects can make use of their rights of access and rectification to ensure the accuracy of their personal data processed (see section 3.6).

***Fairness and lawfulness:*** Article 4 (1) (a) of Regulation (EC) 45/2001 also provides that personal data must be "*processed fairly and lawfully*". Lawfulness has already been discussed (section 3.2) and fairness will be dealt with in relation to information provided to data subjects (section 3.8).

### **3.4. Data retention**

Article 4 (1)(e) of Regulation (EC) 45/2001 states that personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

Regarding the ***conservation periods***, QCFs and reports drafted by the HLU are kept in paper form for two years since they were drafted. This period is considered necessary in case the interpreter contests the results. The EDPS is satisfied with this conservation period.

The EDPS understands that there is no electronic database containing all QCFs and he is satisfied with this practice. In order to avoid the electronic storage of QCFs, the EDPS recommends that reporting officers are reminded of their obligation to erase the electronic version of QCFs once they have been forwarded to the HLU.

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

In line with Article 7 of Regulation (EC) 45/2001, personal data can be transferred within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient*" (paragraph 1). The recipient can process the data "*only for the purposes for which they were transmitted*" (paragraph 3).

As mentioned above, the data may be transferred to: (i) the hierarchical superiors of the interpreter namely the HLU and, to the (ii) members of the IQG in line with the Mandate of the Group and Rules of Procedure.

The EDPS considers that these transfers are necessary for the legitimate performance of the tasks covered by the given recipient. In fact, the data transmitted to the HLU is necessary for him to carry out his/her tasks which include the correct management of his/her staff. Therefore, Article 7 (1) of the Regulation is being complied with. The transfer to members of the IQG in line with the Mandate of the Group and Rules of Procedure and it also fulfils the requirements of Article 7 of Regulation (EC) 45/2001.

In order to ensure full compliance with Article 7 (3) of Regulation (EC) 45/2001, the EDPS recommends that members of the IQG be reminded of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

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

The following provisions are applicable in the present case: (i) Article 13 of Regulation 45/2001 that provides a right of access to personal data being processed; (ii) Article 14 of Regulation 45/2001 that provides a right to rectification without delay of inaccurate or incomplete data.

As indicated above, interpreters are given a copy of the QCF, which constitutes a kind of proactive access to the information contained thereto. Notes written by the HLU summarising his or her views are also made available to interpreters. Regarding the right to rectification, interpreters are asked to add their comments directly on the QCF so that these comments are clearly visible, including to the HLU.

The EDPS considers the current practice as compliant with Articles 13 and 14 of the Regulation 45/2001. In particular, he welcomes the fact that interpreters are allowed to add comments related to their (by nature subjective) evaluation data provided by the reporting officers.

As a suggested measure to improve the rights of access and rectification, the EDPS recommends informing interpreters of the possibility to access the information by contacting the HLU, for example, in the event that an interpreter had lost the form and would like to obtain a copy of it.

### **3.7. Information to the person concerned**

Article 12 of Regulation 45/2001 provides for certain information to be supplied where the data processed have not been obtained from the person concerned (unless she is already in possession of such information).

According to the Notification, in the present case, interpreters are informed of the procedures through various meetings with hierarchy (HLU, etc) and also through the Intranet. However, these information sources do not contain all of the information items that must be provided under Article 12 of Regulation 45/2001. Among others, the identity of the controller is not clear, the existence of the rights of access and rectification and the procedures to establish are not mentioned (except in the QCF), the right of recourse to the EDPS is not mentioned either. In order to ensure the transparency and fairness of the processing in question and to comply with Article 12 of Regulation 45/2001, the EDPS recommends that the following information be provided to interpreters:

- (i) Identity of the data controller;
- (ii) Existence of the right of access and the right of rectification; for the sake of transparency it would also be useful to inform individuals how to exercise them;
- (iii) Recourse to the EDPS;.
- (iv) The recipients of the information, in case particular reference to HLU and to members of the IQG for ACIs;
- (v) The legal basis of the data processing;
- (vi) The time limits for the data storage

This information must be provided before the evaluation has started. For example, it could be provided when the interpreter is informed by the HLU of the decision to monitor him/her for a certain period. It can be provided, for example, as part of the QCF or as a separate document. In addition, it would be appropriate to upload this information in the Intranet together with the official announcement on EpiWeb (DG INTE site).

### **3.8. Security measures**

According to Article 22 of Regulation (EC) No 45/2001, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected"*. These security measures must *"in particular prevent any unauthorised disclosure or access,*

*accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing".*

*[...security measures.....].*

#### **4. Conclusion:**

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

- remind members of the IQG of their obligation not to use the data received for any further purpose than the one for which they were transmitted;
- remind reporting officers to erase the electronic version of QCFs once they have been forwarded to the HLU;
- set up a procedure to enable interpreters to access QCF by requesting a copy from the data controller (or his/her delegate);
- provide to interpreters the information suggested in this Opinion;
- raise awareness among reporting officers regarding the need to ensure the confidentiality of the information. This should include training and signing of a specific confidentiality declaration;
- implement appropriate measures with regard to the transfer of data, to ensure an appropriate level of security.

Done at Brussels, 5 December 2008

*(Signed)*

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