



Opinion on a notification for Prior Checking received from the Data Protection Officer of the Committee of the Regions of the European Union regarding "Career Guidance and Internal Mobility".

Brussels, 4 May 2015 (Case 2013-0901)

1. Proceedings

On 24 July 2013, the European Data Protection Supervisor ("**EDPS**") received a notification for prior checking relating to a mobility policy from the Data Protection Officer ("**DPO**") of the Committee of the Regions ("**CoR**").

The draft Opinion was sent to the DPO for comments on 27 April 2015. The EDPS received a reply on 30 April 2015. As this is an **ex-post case**, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best-effort basis.

2. The Facts provided by the CoR

This Opinion concerns the processing of personal data in the context of the CoR's career guidance and internal mobility procedure, which involves the assessment of the CV, professional experience and other personal information in order to evaluate a person's career prospective and explore possible matches between that and (upcoming) vacancies within the CoR.

The procedure has the **purpose** of facilitating the selection of staff members for new or newly vacant posts in the CoR and of improving the career development and job mobility possibilities of CoR staff whilst optimising the use of the CoR's resources.

The career guidance and professional mobility policy is largely demand driven, which means that the career guidance officers within the Mobility Cell only intervene and offers their services to members of staff who have actively sought the Mobility Cell's assistance. The Mobility Cell can also take the initiative to contact certain categories of staff, for instance certified assistants or staff for whom redeployment efforts are being contemplated, to offer its services.

The **legal basis** of the processing is:

- Article 29 (1) of the Staff Regulations¹ of Officials and the Conditions of Employment of Other Servants
- The CoR Mobility Policy Guidelines
- Article 5 (d) of Regulation 45/2001 (the "**Regulation**")
- Staff notice of 21 May 2012 and revised Career guidance and mobility policy paper under preparation

¹ Staff regulation of officials of the European Communities and the Conditions of employment of other servants of the European Communities (CE, CECA, Euratom) No. 23/2005.

The **data processed** consists of basic identification data (first name, family name), gender, function group, type of agent (official/temporary/contractual), service/unit, professional contact details (email address, telephone number), data allowing assessment against a vacancy notice's selection criteria (motivation letter, CV), academic and professional experience, fields of interests, skills and special competences and factual data relating to the career guidance request. Date of meetings with career guidance officer and career guidance actions taken may also be processed.

Regarding the **recipients of the data** candidates data are disclosed only to staff members assigned to the Mobility Cell (controller and delegated controller but other staff members may be appointed at a later stage). In the event of an interview the managers in charge of the recruiting service in question (Director, Deputy-Director and/or Head of Unit) and other staff members involved may be recipients. Once a mobility match has been established the recruitment service is informed. Regarding ad hoc exercise managers in charge of potential recruitment will only be informed about colleagues who have manifested an interest in joining their department or in working in their area of expertise. The full list of applicants is only communicated to a limited number of staff members on a need to know basis so as to bring the exercise to an end (career guidance officer within the Mobility cell, Head of Unit in charge of HR issues, Head of Sector of the recruitment service, Director and Deputy-director for Administration, the Secretary-general and his Head of Cabinet).

The **data subjects are informed** through a staff notice of 21 May 2012 on "Career Guidance and Mobility at the CoR" which is also available on the intranet. Members of staff who contact the career guidance and mobility service are informed verbally about the procedure and about the confidential clause that lies at its basis. Furthermore, a privacy statement informing staff members of the handling of personal data in this framework will be made available via the intranet site.

In the privacy statement the data subjects receive information about their **right of access and rectification**.

Regarding the **retention period** data will be kept for 12 months after the original request for career guidance.

The notification mentions, regarding the **security measures** [...]

3. Legal analysis

3.1. Prior checking

Article 27(1) of the Regulation subjects to prior checking by the EDPS "*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*", listed in Article 27(2). Article 27(2)(b) of the Regulation refers to "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". Given that the processing at hand is intended to evaluate the ability and efficiency of candidates in order to select the best suitable staff

members for new or newly vacant posts in the CoR, the processing operation at hand thus requires prior checking under Article 27(2)(b) of the Regulation.²

3.2. Lawfulness of the processing

Personal data may only be processed if grounds can be found in Article 5 of the Regulation. Under Article 5 (a) of the Regulation, personal data may be processed *inter alia* if 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 (...)*" Article 5 (d) of the Regulation stipulates that personal data may be processed if "*the data subject has unambiguously given his or her consent*".

Since the selection of candidates is based on Article 29(1) of the Staff Regulations and on the CoR Mobility Policy Guidelines, the respective processing of personal data is considered as necessary for the performance of a public interest task, namely the selection of the best suitable candidate for new or newly vacant posts in the CoR and of improving the career possibilities of CoR staff whilst optimising the use of CoR's resources, through the career guidance and mobility policy. **Article 5(a) of the Regulation should therefore be added as a ground for lawfulness to the notification and the privacy statement.**

Regarding CoR's reference to Article 5(d) as a ground for lawfulness of the processing, the data subject's consent is defined in Article 2(h) of the Regulation as "*any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed*". The EDPS stresses, considering the definition, consent would only be given in exceptional circumstances in an employment relationship when the employee has a genuine free choice and is subsequently able to withdraw the consent without detriment.³ For this reason, **Article 5(d) should not be used as a ground for lawfulness and the privacy statement should be modified accordingly.**

3.3. Information to the data subject

Articles 11 and 12 of the Regulation provide for information to be given to data subjects in order to ensure the transparency of the processing of personal data.

The notification indicates that the controller is an administrator at Unit A3. Legally speaking, CoR is the controller of the processing operation, with Unit A3 as the organisational part entrusted with the processing of personal data. The Regulation never refers to specific individuals as controllers, but always *to institutions, bodies, units and organisational entities* (Article 2(d) of the Regulation). Furthermore, the privacy statement does not mention the right to have recourse to the EDPS at any time (see Article 11(1)(f)(iii)). **This information should be added to the privacy statement.**

² The processing operation under review is similar to other processing operations which were already subject to prior-checking opinions. See, for instance, the EDPS' Opinions in cases 2013-1396 (Internal mobility at EFSA), 2012-0870 (Internal mobility of staff members at ERCEA), 2013-0870 (Internal mobility at INEA), 2009-0253 (Internal mobility at the European Investment Bank).

³ Article 29 Data Protection Working Party Opinion 8/2001 of 13 September 2001 on processing of personal data in the employment context.

4. Conclusion

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

- update the privacy statement so it includes Article 5(a) instead of Article 5(d) as a ground for lawfulness and add the missing information about the right to have recourse to the EDPS.

The EDPS expects that the CoR implements the recommendations accordingly and will therefore **close** the case.

Done at Brussels, on 4 May 2015

(signed)

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