

**Opinion on a Notification for Prior Checking received from the Data Protection Officer of the European Commission on SERIF ("Système d'Enregistrement de Rapports sur les interprètes Freelance")**

Brussels, 21 March 2006 (Case 2006-0001)

**1. Proceedings**

On 3 January 2006, the European Data Protection Supervisor (EDPS) received a notification form of the processing operations on personal data concerning SERIF- Système d'Enregistrement de Rapports sur les interprètes Freelance ("On-line freelance interpreter reporting system") from the Acting Data Protection Officer (DPO) of the European Commission.

The dossier on SERIF consists of a note to the European Data Protection Supervisor, the formal notification to the EDPS, and the attachments listed below:

- 1) A template of an evaluation report of a unit (DG Interpretation, ACI Quality Monitoring);
- 2) Guide to SERIF- on line freelance performance reporting system pp 1-15;
- 3) An excerpt from the Communication by Vice President Kinnock on the reorganisation of SCIC (SCIC/CS D(2003)61), 3. Providing interpretation in an enlarged Union", point 3.1. A new model for SCIC;
- 4) Mandate. Interinstitutional quality monitoring group-IQG (Article 1 and 2);
- 5) Regulation No. 1 of 15 April 1958 determining the language to be used by the European Economic Community (EEC Council);
- 6) A sample of an evaluation report form of a unit; and
- 7) ACI Quality Monitoring with Annex: Guidelines for monitoring quality and professional ethics. TRC 28/11/2005.

On 6 February 2006, the EDPS made a request for information. The response arrived by electronic mail on 15 February 2006. The provided information contained the documents: Mandate. Interinstitutional Quality Monitoring-IQG; and Interinstitutional Quality Monitoring Group (Rules of Procedure). In the same electronic mail the controller in DG SCIC requested the EDPS to make his position clear on two questions: 1) Whether the ACI (freelance) should receive a copy of the report written about him/her or is it sufficient to let him/her get acquainted with the report in the office of the head of unit; and 2) Whether in application of Article 12(1)(f)(iv) of Regulation (EC) 45/2001 the name of the reporting officer should be concealed from the ACI.

On 28 February 2006, two telephone information requests were made to the controller on some points of clarification regarding the dossier, which information the EDPS received immediately.

On 6 March 2006, another information request was made to the controller via the acting DPO of the Commission by electronic mail, and the responses were received promptly the same day.

On 13 March 2006, following an exchange of information with the DPO the deadline to issue the opinion was extended by 10 more days (until 23 March 2006) due to the complexity of the matter.

## **2. Examination of the matter**

### Terms used:

- In this opinion the terms freelance interpreters and Auxiliary Conference Interpreters (ACIs) are used as equivalent.
- The term Head of unit (HoU) also embraces the Heads of Departments in those interpreting units which are managed directly by the head of the relevant department.
- The acronym IQG stands for the Interinstitutional Quality Monitoring Group.
- The acronym SCIC stands for the Interpretation DG of the European Commission.
- *Relay*: The term means interpreting between two languages via a third. "When delegates speaks in a language not covered by an interpreter in an active language booth, this booth can "connect" (audio link) to another booth that does cover this language and "take the relay" of that. The interpreter works via another language without a perceptible loss of quality."<sup>1</sup>
- *Retour*: "Normally interpreters work into their mother tongue. Some interpreters know a second language well enough to be able to work into that language from their mother tongue. This is called a "retour" interpreting."<sup>2</sup>
- *Interpreting booth* is the simultaneous interpreters' workplace. The term *booth* "also refers to the active language of the interpreter or within the SCIC, the interpreting unit the person belongs to. The SCIC has one interpreting unit or booth for each official language of the union."<sup>3</sup>

### **2.1. The facts**

#### Description of the system

The Directorate General for Interpretation makes multi-lingual communication possible, which is at the core of Community decision-making, by providing quality interpretation in meetings arranged by the Commission and the other Institutions they serve. For that purpose, aside from the permanent interpreting staff, the DG employs freelance interpreters/auxiliary conference interpreters who are accredited to DG Interpretation (and, if they are on the common list of accredited interpreters, also to the interpreting services of the European Parliament and the Court of Justice)<sup>4</sup>. They are recruited on a daily contract basis to work in meetings serviced by DG Interpretation. As they fall within the scope of Conditions of Employment of Other Servants (CEOS) the assessment of their work performance and conduct is subject *mutatis mutandis* to the principles of Article 84.4 and Article 87.1 of CEOS.<sup>5</sup> The performance of the ACIs has to be verified in the same way as the performance of contract staff: by means of reports.

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<sup>1</sup> From: [http://europa.eu.int/comm/scic/interpreting/tech\\_relay\\_en.htm](http://europa.eu.int/comm/scic/interpreting/tech_relay_en.htm)

<sup>2</sup> From: [http://europa.eu.int/comm/scic/interpreting/tech\\_retour\\_en.htm](http://europa.eu.int/comm/scic/interpreting/tech_retour_en.htm)

<sup>3</sup> From: [http://europa.eu.int/comm/scic/interpreting/tech\\_booth\\_en.htm](http://europa.eu.int/comm/scic/interpreting/tech_booth_en.htm)

<sup>4</sup> With the introduction of the common list and common accreditation procedures the overwhelming majority of ACIs is now accredited to all three interpreting services: DG Interpretation, and the interpreting services of the European Parliament and the Court of Justice.

<sup>5</sup> Given the nature of the ACIs' work and the fact that they are recruited on a daily basis, the procedures referred to in the Articles of CEOS are not directly applicable.

ACIs are assigned to meetings under the same conditions as DG SCIC officials and temporary staff interpreters. The professional and ethical standards are identical to those required of permanent interpreting staff. These standards are subject to regular monitoring according to criteria relating to quality of interpreting and behaviour and attitude ("professional ethics"), both in the exercise of the profession and in contacts with DG SCIC.

The head of interpretation unit (HoU) is responsible for monitoring the quality of work and behaviour of ACIs engaged by DG SCIC, and he/she deals with any incidents which may arise. The HoU will determine, in the light of the characteristics of the unit the procedures and practical arrangements for monitoring.

The HoU may collect the relevant information directly (via reports/information from any SCIC units with which the ACI may have contact) or may entrust this task to one or more senior interpreters from the unit. The HoU or the unit's ACI quality coordinator or equivalent can request a staff interpreter (Reporting Officer-RO) working together with the ACI to write a report. The HoU makes this request before or after the event.

The HoU uses the on-line single database to select the name of the ACI to be reported from a list of all ACI having the active language at question, matches the ACI with a reporting officer from the list of all unit members, and selects the meeting. If a staff interpreter is asked to report on an ACI colleague, an e-mail message is generated automatically and may be sent to the staff interpreter requesting him/her to write a report on X in meeting Y.

Reporting obligation is part of the job description of the senior interpreters. Junior interpreters may be asked to report. If senior interpreters failed to submit requested reports, questions would be raised. The assessment whether the reporting obligation was met or not forms part of the annual staff review.

The RO can write a report on an ACI colleague if they are sitting in the same booth, or if the ACI is sitting in another booth doing a *retour* into the language of the RO, or if the ACI is sitting in another booth which the RO is using as a *relay*.

Reports (either spontaneous or routine) can be written to draw the HoU's attention to an unacceptable standard of work or behaviour, or to especially outstanding work. These reports are written after the event. There seems to be no time limit to write such a report. The application imposes no restraint and the RO may key in any dates when writing a report. In practice a RO would normally write a spontaneous report no more than a day or so after working with the ACI. They are frequently written on the same day. If an RO does not know the name of the ACI on whom he/she wishes to write a spontaneous report (as sometimes occurs in the case of a report on a relay in another booth), it can be obtained either by asking the person directly or from the team sheet distributed to all interpreting team members before the meeting.

Reports are drawn up using an on-line application named "SERIF". The system uses its own separate tables in DG SCIC's single relational database, importing only the necessary elements such as a list of the access names of ACIs, access names of reporting officers, active language(s) and date(s) of meetings from elsewhere in the general database. Factual data such as language combinations have been verified by the ACIs themselves, in connection with the amalgamation of the three institutions lists into a single common list. All ACIs were sent a data sheet to return amended as appropriate and signed. Write or modify access to such data is strictly controlled and is currently being examined by the Commission's DPO.

The reporting system constitutes part of the unit's ongoing quality assurance effort. It can aim to give a second or third opinion in the event of a problem, or a RO can give his/her impression of a beginner. Beginners will be monitored more closely than experienced interpreters. In addition to ongoing quality assurance monitoring, the system is intended to provide an early warning of problems and also identify consistently weak or consistently excellent performance in various categories shown on a reporting form (see below).

The quality monitoring contains the following fields of assessment: data relating to the interpreting performance and behaviour of freelance interpreters.

In more detail:

- Reporting officer's opinion on the difficulty of the meeting (average, difficult, very difficult)
- Reporting officer's overall impression on:
  - Did the quality meet the SCIC standard? (yes/no/needs watching)
  - Did the behaviour and attitude of the colleague meet the SCIC standard? (yes/no/needs watching)
- Quality of interpretation:
  - Use of active language (excellent/ good/needs watching/not adequate);
  - Faithfulness to the original, accuracy (excellent/ good/needs watching/not adequate);
  - Presentation (excellent/ good/needs watching/not adequate);
  - Comments, if any;
  - Knowledge of passive language (excellent/ good/needs watching/not adequate/not able to judge this language);
  - Comments, if any;
  - Performance as relay (excellent/ good/needs watching/not adequate);
  - Performance into a retour language (excellent/ good/needs watching/not adequate);
  - Comments if any;
- Booth manners:
  - Preparation for the meeting (excellent/ good/needs watching/not adequate),
  - Ability to follow the meeting (excellent/ good/needs watching/not adequate),
  - Ability to work in team(excellent/ good/needs watching/not adequate),
  - Absences from the booth (acceptable/needs watching/not acceptable),
  - Punctuality (good/needs watching/not good),
  - Comments, if any.
- There is a section for the RO to make any further comments or to provide more details.

ACIs are identified by their access name in the report.

According to the instructions, if a RO is writing a report and is satisfied with the ACI's performance, he/she needs to complete only two sections: difficulty of the meeting, and RO's overall impression. However if the RO filled up the "No" or "needs watching" column in the section "Reporting Officer's overall impression", the RO is asked to explain why he/she was not satisfied with the ACI's work quality or behaviour<sup>6</sup>. In the template of the reporting form, in contrast to the on-line guide, the possibility to complete all the other sections is optional: "If you wish to make more detailed comments please complete the rest of this form. If not, click on the "Submit" button at the bottom of the form." The application will accept a "No" or

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<sup>6</sup> Guide to SERIF, p5

"Needs watching" with no other explanation as valid. In practice ROs do give more details since the HoU would immediately question a report which did not explain such an evaluation. The controller is considering a modification to the system which will prevent a RO from entering a "No" or "Needs watching" and leaving all other explanatory fields blank.

The reporting officer may fill in the box for "uncompleted task" if he/she was unable to complete a report because he/she did not work with the person or did not hear enough of the person's work to be able to form a judgement.

If unsolicited reports are created by the RO the minimum sections to be filled in, depending on the type of work assessed, is: in the case of evaluating a *relay*, the "performance as *relay*" should be filled in; or in the case of writing a report on a *retour*, the RO should complete at least the section of the report "Performance into a retour language".

The reporting officer has the opportunity to make further comments on the work of the freelance interpreter.

ACIs wishing to acquaint themselves with the contents of their reports should request an interview with the HoU. The purpose of this procedure is that the ACI examines the report together with the HoU and they discuss it. The freelancers are normally shown the entire report by the HoU and are able to see the name of the reporting officer.<sup>7</sup> They can examine the reports in the HoU's office and after discussion submit written comments which the HoU can then cut and paste into the box. The comments form an integral part of the reports.

It may happen that the ACI has no assignment in Brussels for the following 6 months or more after the event took place. Thus a longer time may pass before reading the report written on him/her and making comments on it.

The controller plans to add a disclaimer to prevent ACIs from using the reports written on them for another purpose, e.g. as a "recommendation" to an employer.

The reports are used to help to determine a freelance's competency rating. This rating is determined by the HoU who will take into account a variety of factors. There is no mechanical link between the reports and the rating. The advancement of the freelancers from a beginners' payment rate to the standard rate occurs automatically after 100 days of work in the Institutions, and it does not depend upon the report.<sup>8</sup>

If the HoU concludes that the ACI is failing to meet the required standard(s), he/she will invite the ACI to an interview or "professional dialogue". The aim of this dialogue is to guide the ACI in his/her efforts to remedy the observed failings in interpreting quality or behaviour. Following this dialogue, the HoU will draw up a note in the file setting out the jointly agreed conclusions and follow up. This note will be sent to the person concerned as well as to the HoU's counterparts in the other institutions. Each institution may take the interim measures it deems necessary.

If the quality of interpretation and/or behaviour no longer meets the criteria and if the professional dialogue fails to produce the desired result, the HoU shall, on the basis of a duly

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<sup>7</sup> Initially, the name of the RO was concealed (even before the introduction of SERIF, when reports were filled in manually) to overcome the reticence of certain staff interpreters to write reports. Now that the reporting system has been in operation some time and both staff and freelancers have become accustomed to it, the name of the RO is not concealed any more.

<sup>8</sup> The "advancement" procedure described in Article 87.2 and 87.3 of the CEOS do not apply to the freelancers.

constituted file, initiate an inter-institutional quality monitoring procedure. The drawing up of a common list of Auxiliary Conference Interpreters led to the creation of an Interinstitutional Quality Monitoring Group, which has the mandate to examine such a case.<sup>9</sup>

#### Access rights to the system and/or reports:

An ACI can access the report written on him or her in the office of the HoU.

Reporting officers can have access to reports written by themselves on the ACI colleagues, but it does not mean access to all the reports written on a particular ACI. Although the option for a RO to print or send a report has been removed from the application,<sup>10</sup> there may be other ways to copy the content of a report, and thus use it for other purposes.

The Head of the Interpreting Unit can assign a reporting task for any interpreter using the language of the unit. Only the heads of units and unit quality co-ordinators can have access to all the reports relating to interpreters of that unit or written by interpreters from that unit. A Unit Quality Co-ordinator is a Reporting Officer and senior staff member, to whom the Head of Unit has granted access rights equal to those of Head of Unit. They also have the access right to search all reports on an ACI in question, irrespective of the RO. The unit quality coordinator can assign a reporting task for any interpreter in his or her unit and has access to any reports relating to interpreters of that unit or written by interpreters from that unit. .

Only the heads of departments can access reports on all booths. This option enables the heads of departments to select all of the reports relating to one or more booths.

Designated members of the departmental secretariats also have access in order to be able to input data. Their role is to input relevant comments received occasionally from reporting officers in the form of e-mails or in writing.

Members of the Inter-Institutional Quality Group (IQG) and senior management have no direct access to the system but, if necessary, may be given the data in the form of a hard copy.

#### Statistical output:

Only the heads of interpreting units and department can access statistics, which can be general or individual statistics. Due to a recent modification the unit quality coordinators are granted access mainly in order to be able to check the frequency of reporting on a particular ACI.

Not all statistics generated are anonymous. Individualised statistics are also created on the performance of a particular reporting officer or a particular ACI. There are two options to make statistics:

- 1) Listing the number of reports, reporting officers and ACIs for the selected period and booth(s). The results can be grouped (selected) by the booths of the reporting officers, the booths of the ACIs or the active languages of the ACIs.
- 2) Listing the summaries of the reports of each reporting officers and on each ACI for the selected period and booth(s).

*1) Listing the number of reports, reporting officers and ACIs for the selected period and booth(s).*

Three types of information are currently available:

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<sup>9</sup> Article 1- Introduction. In: Interinstitutional Quality Monitoring Group (Rules of Procedure)

<sup>10</sup> The documentation attached to the notification for prior checking contained such an option.

- a) Statistics on the number of reports per unit per month and in total during the period selected.
- b) For each ACI on whom a report has been written: the number of tasks set in respect of that person; the number of reports written; the date of last report; the number of "excellent/insufficient/needs watching" ratings given.
- c) For each reporting officer: the number of tasks set for that person; the number of reports written; the date of last report; the number of "excellent/insufficient/needs watching" ratings given.

Statistics can be generated as a file in PDF format and it can also be printed or e-mailed.

*Statistic on reports* gives a list, subdivided by month, of the number of tasks assigned per unit(s) selected, together with the number of reports written during the specified period. Annual totals, where appropriate, and a grand total can also be shown.

*Lists of ACIs* provides an alphabetical list of all of the ACI who have the selected language(s) as their active language and on whom a report has been written during the period.

*List of reporting officers* provides an alphabetical list of the staff members in the selected unit who have written a report during the period.

If the radio button *Reporting officer's booth* is clicked, the lists of RO is limited to the selected unit and the Lists of ACIs shows only those on whom reports were written by the staff of that unit.

If the *ACI's booth* radio button is clicked, the list of ACIs shows all the ACIs on whom reports were written during a selected period, irrespective of the "home booth" of the RO.

If the *ACI's active language* radio button is clicked, the list of ACIs shows all those reports written during a selected period, irrespective of the unit of the RO. Likewise, the list of ROs contains the names of all staff members who have written reports, irrespective of their unit. A composite report of the above three sections can be obtained.

## 2) *Listing the summaries of the reports of each reporting officers and on each ACI for the selected period and booth(s).*

After selecting the period and the unit(s) at question, two lists appear:

- a) An alphabetical list of all freelancers in the selected unit showing, for each one, a list of reports received during the specified period, sorted chronologically, and giving for each report the name of the RO and ratings in the principal categories.
- b) An alphabetical list of all ROs in the selected unit showing, for each one, a list of the reports written during the specified period, sorted chronologically, and giving for each report the name of the freelancer and ratings in the principal categories.

In both cases totals are provided at the end of the report.

Statistics would normally be generated annually to meet reporting obligations regarding the number of reports per unit and for staff career development review purposes: Did the senior interpreter comply with the job description by helping to maintain quality by submitting reports?

### Information given to data subjects

The ACI section of the SCIC website ([http://www.scic.cec/aic\\_en.htm](http://www.scic.cec/aic_en.htm)) includes information on the DG's policy and procedures with regard to quality monitoring and assurance, as well as an explanation of the functioning of the system. More of the general information is now available on the ACI page of the SCIC website. The information on the unit websites relates to procedural questions.<sup>11</sup>

The Guide to SERIF, the ACI Quality Monitoring document (TCR 28/11/2005) and the template of the reports provide most of the basic information listed in Article 11 and Article 12 of the Regulation (on the purposes of the data processing, categories of data concerned, right of access, rectification, etc); however, according to the available documentation to the EDPS, some important information seems to be missing.

### Data retention/ blocking and erasing data :

Data are retained for a rolling period of 10 years. A report is stored in XML-format in one record. This record can be blocked or deleted immediately following an instruction from the relevant head of unit or the controller. The controller recently proposed reducing the period of 10 years to 3 years, which corresponds to the freelance reporting cycle in place before SERIF came into operation.

### Security measures

Various technical and organisational measures are taken to meet the security and confidentiality requirements.

## **2.2. Legal aspects**

### **2.2.1. Prior checking**

The notification received on 3 January 2006 relates to the processing of personal data ("any information relating to an identified or identifiable natural person"- Article 2 (a)) of Regulation (EC) No 45/2001.

The processing operation by the Commission is carried out in the exercise of activities falling within the scope of Community law (Article 3(1) of Regulation (EC) No 45/2001).

The on-line reporting system constitutes in itself automated processing. Manual processing can take place at various instances: when data subjects consult the reports written on them in the office of the HoU; or when a hardcopy version of the reports is sent to the senior management or to the IQG. Statistics generated can also be printed and used further. This processing is done manually but the content is intended to form part of a filing system. Article 3 (2) of Regulation (EC) No 45/2001 thus applies.

Article 27 (1) of Regulation (EC) 45/2001 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) of the Regulation contains a list of processing operations that are likely to present such risks. Article

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<sup>11</sup> Since the submission to the Commission's DPO, the website text has been changed in the way described above.



27 (2)(b) subjects to prior checking "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". Article 27 (2)(d) requires that "*processing operations for the purpose of excluding individuals from a right, benefit or contract*" should be prior checked by the EDPS.

The reporting system on the quality of the ACI's work and on their behaviour in the booth clearly is designed with the intention to evaluate their ability, efficiency and conduct. Moreover, data subjects are evaluated not only based on their work and conduct during a particular meeting. The reports constitute part of a broader evaluation framework of their professionalism when ACI's competency rating is determined. The conduct of staff interpreters is also evaluated: they should comply with the job description to maintain quality by submitting reports. The statistics generated on that activity of the RO will be taken into account in the annual staff review. In this context reporting officers are therefore also data subjects, and their conduct is evaluated. Because of the intention to evaluate the conduct of both the ACIs and the ROs, the case qualifies for prior checking under Article 27 (2) (b) of Regulation (EC) No 45/2001. Thus, the processing operations are likely to present specific risk to the rights and freedoms of data subjects in the sense of Article 27 (1) of the Regulation.

According to the EDPS, the reporting system itself is not subject to prior checking under Article 27 (2)(d), because the data processing in SERIF does not seem to result in excluding ACIs (or ROs) from future contracts, but is merely designed to collect data on whether ACIs meet the quality requirements of the DG and whether ROs comply with their job description. However the EDPS would like to draw the controller's attention to the inter-institutional quality monitoring procedure, which may have such an aspect of excluding ACIs with low quality performance from future contracts.<sup>12</sup> Because of that negative aim and also because of the evaluation aspect of those operations, the EDPS requests the competent DPO(s) to submit the data processing operations in the framework of the inter-institutional quality monitoring for prior checking by the EDPS.

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

The notification of the DPO was received on 3 January 2006. According to Article 27(4) the present opinion must be delivered within a period of two months that is no later than 4 March 2006. An e-mail requesting additional information was sent by the EDPS on 6 February 2006 and the answer was received on 15 February 2006. These 9 days extend the deadline to issue the opinion to no later than 13 March 2006. Due to the complexity of the case, the deadline was extended by 10 days, which means the opinion is to be issued no later than 23 March 2006.

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<sup>12</sup> In Article 2.1 of Mandate. Interinstitutional Quality Monitoring Group: The EDPS draws the attention to the inter-institutional quality monitoring procedure. In the quality monitoring procedure, when in case the HoU determines that there is a problem with the quality of work or with behaviour, and he/she establishes a professional dialogue, the HoU drafts a note to the file containing the conclusions drawn by the parties and the professional guidance to be followed. *This note is also sent to the HoU's counterparts in other institutions, and as needed each institution may take the interim measures it deems necessary.* Article 3.3 of the document called Inter-institutional Quality Monitoring Group: *Proposals are made at the end of the inter-institutional quality monitoring group to the heads of services.*

### 2.2.2. Legal basis for and lawfulness of the processing

The controller refers to the Communication of Vice President Kinnock on the reorganisation of SCIC,<sup>13</sup> approved by the Commission, that mentions the "*management of the interpretation staff, with particular emphasis on quality control (...)*." He refers also to the mission statement of DG SCIC: "*The Directorate General for Interpretation makes possible multi-lingual communication, which is at the core of Community decision-making, by providing quality interpretation in meetings arranged by the Commission and the other Institutions we serve (...)*."<sup>14</sup> Regulation 1 of 1958 determining the languages to be used by the EEC with subsequent amendments is also referred to as legal basis in the notification. However there seems to be no specific legal basis for the processing operation other than the application *mutatis mutandis*, to the assessment of the ACIs work performance and conduct, of the principles of Article 84.4 and Article 87.1 of the Conditions of Employment of Other Servants (CEOS).

As the relationship with the ACIs is based on a contract, the EDPS recommends that the contract concluded with the ACI contains a clause making reference to the main features of the reporting procedures.

On the contrary, the legal basis to assess whether staff interpreters (ROs) complied with their job description by helping to maintain quality by submitting reports, which duty also forms part of their annual staff review, is grounded in Article 43 of the Staff Regulation of Officials of the European Communities (periodical reports on their ability, efficiency and conduct made at least once every two years).

The analysis of the legal basis and the lawfulness of the processing operation go together. Article 5(a) of Regulation (EC) No 45/2001 states that personal data can be processed only if "*processing is necessary for the 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 institution (...)*".

Report procedures involving the collection and processing of personal data concerning ACIs' quality of work and their behaviour and the assessment whether staff interpreters comply with their job description constitute part of the legitimate exercise of the official authority vested in the institution. Article 43 of the Staff Regulation, applicable to staff interpreters, supports the lawfulness of the processing. It would be also the case for the contracts with the ACIs, provided that they include a reference to the main features of the quality monitoring procedure.

### 2.2.3. Data Quality

Data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed (Article 4(1)c)).

Data are collected for evaluating data subjects with the aim to constitute part of the interpretation unit's ongoing quality assurance effort, or can aim to give a second or third opinion in the event of a problem, or to give RO's impression of a beginner. The purpose of creating statistics is to see whether reporting obligations were met regarding the number of reports per unit and for staff career development review purposes (whether staff interpreters

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<sup>13</sup> SCIC/ CS D (2003) 61 which was approved by the Commission on 8 October 2003.

<sup>14</sup> Available at: [http://intracomm.cec.eu-admin.net/home/dgserv/scic/index\\_en.html](http://intracomm.cec.eu-admin.net/home/dgserv/scic/index_en.html).

complied with their job description by submitting report). From the information presented to the EDPS it can be concluded that the categories of data processed in the reports and in the single database of SERIF are adequate, relevant and not excessive in relation to the purpose for which they are collected and further processed.

Data must be *"processed fairly and lawfully"* (Article 4 (1) (a) of Regulation (EC) No. 45/2001). The issue of lawfulness has already been examined. As to fairness, this must receive a great deal of attention in this sensitive context. It relates to the information which has to be transmitted to the data subject and to the access of the ACI to the identity of his/her appraiser (see below in 2.2.8 and 2.2.7).

Data must also be *"accurate and where necessary kept up to date; 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 further processed, are erased or rectified"* (Article 4 (1) (d) of Regulation (EC) No 45/2001).

The EDPS would like to draw the controller's attention to the significance of accurate data uploaded in the system. Since RO uses the on-line database containing the name, languages (active or relay) of the ACIs, when writing their reports they fully rely on the information imported from the general database of the service into the single database of SERIF. The verification of factual data by the ACIs (such as language combinations) was a reasonable step to ensure accuracy of data. If any changes occurred in the data already entered, the controller must provide for a mechanism to keep data accurate and updated in the on-line database.

Furthermore, the completeness and fairness require that, if the RO marks the section "no" or "needs watching" regarding the quality, behaviour and attitude of the colleague in the reporting form, reasons should be given for such an observation. Thus, the on-line guide and the template of the reporting form should be harmonised in this respect, both of them requiring details as to why the quality or the behaviour/attitude was not acceptable according to the RO or why more watching of the ACI's performance is needed. The EDPS welcomes the proposed modification to the system which will prevent a RO from entering a "No" or "Needs watching" and leaving all other explanatory fields blank.

A means of keeping data accurate and updated is also the exercise of the right of rectification by the data subject in the form of commenting on their reports (See below 2.2.7).

The EDPS draws attention to the fact that the more time elapses before recording the data, the higher the risk of inaccuracy or unreliability of that data. A task to report may be assigned by the HoU either before or after an event. There is no explicit rule in place to set up a time restraint for a RO to write a report after the event took place. The current practice of writing reports not more than a day or so after working with the ACI is endorsed by the EDPS. However, in order to meet the data quality requirement under Article 4 (1)(d) of Regulation (EC) No 45/2001 the EDPS recommends putting clear rules in place explicitly requiring a reasonable time-limit within which a HoU may request a reporting task from the RO after an event took place and to set up an explicit reasonable time-limit within which the RO can make reports after the event took place. The EDPS encourages laying down the current practice (same day or a few days after) in the respective rules.

#### **2.2.4. Conservation of data**

Article 4 (1) (e) of Regulation (EC) No 45/2001 sets forth the principle 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 are collected or for which they are further processed".*

SERIF data are retained for a rolling period of 10 years. The EDPS finds that in order to be in line with Article 4 (1) (e) of Regulation, the controller should establish the time limit in relation to the period during which the data subject can react to the assessment of his/her work and behaviour. Since the on-line reports are to be used in the broader evaluation framework for assessing the ACIs' conduct or for periodical reports evaluating the ROs' conduct, the period of contesting these procedures and decisions should guide the controller in determining the storing period for the on-line reports. Thus, the EDPS invites the controller to reconsider the data conservation period in line with Article 4(1)(e) of Regulation No 45/2001. The 3 years period recently proposed by the controller may be adequate if it corresponds to the deadlines for the evaluation procedures and to the deadlines to contest such procedures/decisions.

Printed reports and the statistics generated on individual ACIs or ROs (and the related print outs) should be conserved in a form which permits identification of data subjects for no longer than is necessary for the assessment purposes, and until the evaluation procedures and decisions can be contested.

#### **2.2.5. Compatible use**

"SERIF" uses its own separate tables in DG SCIC's single relational database, importing only the necessary elements from elsewhere in the general database. In view of that, it must be concluded that the processing operation under analysis involves no general change of the specified purpose of the various databases affected and is not incompatible with that purpose. Thus Article 4 (1)(b) is fully respected.

The fact that ROs may copy the content of the reports carries the risk that the content of the reports may be used in a way incompatible with the defined purpose. There is also a possibility that ACIs may use the reports written on them by the RO for other purposes (e.g.: as a "recommendation" to an employer). Therefore, the EDPS is of the opinion that in order to ensure compliance with Article 4 (1)(b) of the Regulation, there should at least be an explicit statement reiterating the purposes of the report: they are to be used solely in the framework of quality monitoring, determination of competency rating (for ACIs) and annual staff review (for ROs). A disclaimer to prevent ACIs from using reports for another purpose can be an additional means to prevent incompatible use of the reports.

#### **2.2.6. Transfer of data**

The data processing must also be scrutinized in the light of Article 7 (1) of Regulation (EC) No 45/2001. Transfer of personal data within or to other Community institutions or bodies is possible *"if the data are necessary for the legitimate performance of tasks covered by the competence of the recipients"*. This applies regardless of the specific administrative structure of every institution.

Data transfer takes place within the institution: once the co-ordinator or the HoU has automatically received the notification of the submission of a report, they can look it up in the SERIF database. Senior managers can receive a hardcopy version of data; the Unit Quality Co-ordinator has access rights granted equal to those of the HoU and can create a reporting task for any interpreter in his or her unit. Designated members of the departmental secretariats

also have access in order to be able to input relevant comments received occasionally. Statistics can be sent in e-mails.

In general the system seems to meet the requirements of Article 7(1) of the Regulation, but some aspects of the system should be reconsidered. When statistics are generated in PDF format (for example on the RO: how many tasks he/she had, number of reports written, number of "excellent/insufficient/needs watching" ratings given), these can also be printed or e-mailed. Clear rules should be put in place to safeguard that those statistics are transferred (either by e-mail or sent as a printed copy) only to persons who need it for the legitimate performance of their tasks covered by their competence.

In addition, it should be explicitly mentioned in the rules that the recipients will process the personal data only for the purposes for which they were transmitted (Article 7(3) of Regulation (EC) No 45/2001).

From the available information, it seems that transfer of personal data to another institution may take place in the broader framework of inter-institutional quality monitoring. 1) When concluding a note with the HoU at the end of the professional dialogue, the note is sent to the HoU counterparts in the other institutions. 2) The HoU can initiate the inter-institutional quality monitoring, and within that framework the hard-copy version of the on-line reports can be sent to the inter-institutional quality monitoring group. Also, the Head of the Interpretation Unit responsible may submit a file on the basis of a request made, with justification, by another HoU.<sup>15</sup> The EDPS finds that such an inter-institutional data transfer may be legitimate under the Regulation, but because of the risk of excluding individuals from a contract, and because of the evaluation aspect of those data processing operations, the EDPS requests - as mentioned above- the competent DPO(s) to submit the inter-institutional quality monitoring procedure for prior checking by the EDPS.

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

Article 13 of Regulation (EC) 45/2001 establishes a right of access upon request by the data subject and specifies it in more detail. Article 14 of the Regulation provides for the right of rectification of personal data.

The system should provide for a mechanism for correction of the reports in case the RO detects a mistake he/she made in the report submitted. If a correction is made by the RO consequent changes should be made accordingly: the ACI should receive the corrected report; or if in the evaluation framework hardcopies of the report are already circulating, it should be ensured that those who have already received the previous version, receive the corrected version as well.

*As to the issue raised by the controller whether the Auxiliary Conference Interpreter/freelance should receive a copy of the report or it is sufficient to allow him/her to get acquainted with the report in the office of the HoU, the EDPS notes the following.*

According to the case dossier, the freelance interpreters may obtain information on the contents of their reports at any time by applying to the HoU, and after discussion with the HoU, the ACIs' comments are copy-pasted in the reports. It may happen that the ACI has no assignment in Brussels for the following 6 months or more, thus a longer time may pass until they see the report written on them in the office of the HoU and discuss it together. The

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<sup>15</sup> FN2 of the Interinstitutional Quality Monitoring Group (Rules of Procedure).

comments of the data subjects form an integral part of the reports. Enabling data subjects to comment on their on-line report is a means of exercising the right of rectification of inaccurate or incomplete data. ACIs should be enabled to exercise their right to access and rectification.

On the other hand, the controller finds it important that the HoU examines and discusses the report together with the ACI.

The right of accessing the reports by the data subject, under Article 13 of Regulation (EC) 45/2001, combined with the accuracy requirement embodied in Article 4 (1)(d) is meaningful if as soon as data was recorded the data subjects can have access to that report and make their comments on it. If a long time elapses between the event (and recording) that took place and the access and rectification rights are exercised, the accuracy of the data may not be provided. This can be the case, if ACI has no assignment for a long time in the same workplace, and goes to see and discuss the report only after several months has passed.

Since the on-line reports form part of the competency rating of the ACIs, in order to guarantee fairness of data processing and for the proper use of the rectification right by the data subject, the ACIs should receive a copy of the report written on them. They should have sufficient time to reflect on the content of the report and if they wish to make comments, those comments should be introduced in the system.

In practice, this procedure can mean either that 1) the ACI is able to go immediately to the office of the HoU and access his/her report and after discussion with the HoU can add his/her comments; or 2) the ACI has time to reflect on his/her report until he/she has an assignment in the same workplace again, and when he/she is assigned in the same workplace, he/she can examine and discuss the reports together with the HoU and add his/her comments. With the second alternative, even if long time passes before ACIs can discuss the report with the HoU, data accuracy is guaranteed. ACIs receive the report at the time of recording the data, thus having the possibility to reflect on it (e.g.: by putting down their own notes for their own records), and if they are assigned to the same workplace again, they can examine the report and discuss it together with the HoU, and add their comments.

The EDPS however notes that following the second alternative should not jeopardize added comments to the on-line reports by the time reports are considered for the competency rating.

*As to the other issue raised by the controller whether the name of the reporting officer should be concealed in the version presented to the ACI, the EDPS notes the following:*

In principle, Article 12 (1) (f) (iv) of Regulation No 45/2001 requires that the data subject is informed about the *origin of the data* (except where the controller cannot disclose this information for reasons of professional secrecy, which is not the case), *insofar as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject*. Article 13 (c) of the Regulation grants access to the data subject to any available information as to the source of data.

When the reporting system was initially put in place, the name of the reporting officer was concealed from the ACI colleague to overcome the reticence of certain staff interpreters to write reports. In principle, it is to be noted, that Article 20 (1) of Regulation (EC) No 45/2001 provides for possible restrictions on that right to access and right to information. Paragraph (c) for example permits the restriction where such restriction constitutes a necessary measure

to safeguard the "*the protection of the rights and freedoms of others*". Since anonymity is exception to the main rule, a justified reason should always be given for that: it should be necessary for protecting any of the interests listed in Article 20 (1) of the Regulation.

Furthermore, the EDPS would like to express his doubts, in general, as to whether the identity of the reporting officer can be kept secret in practice because of the nature of the work of conference interpreters. As it is defined, a reporting officer can be a staff member, who writes a report on an ACI colleague with whom he/she is sitting in the same booth, or when the reporting officer is sitting in another booth and the ACI is doing a *retour* into the language of the reporting officer, or when the reporting officer is sitting in another booth as he/she is using a *relay*. The date of the meeting is also given in the on-line reports. Thus, it seems possible that the ACI can figure out the identity of the RO. Therefore, if a decision is ever made by the controller to keep the identity of the RO secret from the ACI colleague for a justified reason mentioned in Article 20 of the Regulation, the RO should be warned in the email requesting the report that, even if his name will be kept secret from the ACI colleague, the system can not guarantee that his/her identity remains untraceable.

The EDPS endorses the present practice, that an ACI can access the name of the RO who has written a report on him/her, in order to have fair processing in respect of the auxiliary conference interpreter. To make the system transparent, especially when the reports form part of an evaluation process with potential impact on the ACI's life and rights, appraisees should have access to the name of their appraiser.

#### **2.2.8. Information to the data subject**

Article 11 provides for a list of information, when data is obtained from the data subject. Article 12 of Regulation (EC) No 45/2001 sets out the information to be supplied where the data have not been obtained from the data subject. The various categories of information to be provided are not complete.

Since information about the ACIs' conduct is collected from the Reporting Officer, Article 12 of the Regulation applies. On the other hand, Article 11 applies to that situation when the data to assess the ROs' compliance with his/her duty to submit reports is directly obtained from the RO.

The EDPS notes that general information is provided via the Intranet to the data subjects as to the DG's policies and procedures with regard to quality monitoring and assurance, and explanation of the functioning of the system. However, the Regulation requires that all information listed in Articles 11 and 12 of the Regulation, except (f), regarding the data processing operations has to be made available permanently on-line to the data subjects. But for reasons of fairness also the provisions of Articles 11 and 12 (f) should be available, namely

- the legal basis of the processing operation for which the data are intended,
- the time-limits for storing the data,
- the right to have recourse at any time to the European Data Protection Supervisor.

Reporting officers should be also informed specifically:

- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply,
- the consequence of their failure to submit a report on an ACI at the request of the HoU,

- the existence of the right to rectify the data in the report written by him/her and the procedures to exercise their right to correct erroneous data.

Finally, a drafting detail has to be pointed out. Article 2.4 of the document called "ACI Quality Monitoring" (TRC 28/11/2005) mentions that: "The data collected are subject to the requirements of Directive 45/2001 on the protection of personal data". Even if it is evident that the reference was meant to be made to Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, for the sake of accuracy of information provided to the data subjects, the EDPS requests that the necessary correction be made.

### **2.2.9. Security measures**

Under Article 22 of Regulation (EC) No 45/2001 *"having regard to the state of art and the cost of their implementation, 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"*. Article 35 lays down the security requirements for the protection of personal data in the context of an internal telecommunication network.

The system seems to meet the security requirements if it follows the recommendations of the EDPS.

### **Conclusion:**

The processing operation does not seem to involve any breach of the provisions of Regulation 45/2001 provided that the observations made above are taken into account. This means in particular that:

- The contract concluded with the ACI contains a clause making reference to the main features of the reporting procedures.
- If any changes occurred in the data already entered in the database, the controller must provide for a mechanism to keep data accurate and updated.
- The on-line guide and the template of the reporting form is harmonised, both requiring the RO to give details on why the quality or the behaviour/attitude of the ACI was not acceptable or why more watching of the ACI's performance is needed.
- The proposed modification, which will prevent a RO from entering a "No" or "Needs watching" and leaving all other explanatory fields blank, is introduced in the system.
- Explicit rules are put in place requiring a reasonable time-limit (same day or a few days after) within which a HoU may request a reporting task from the RO after an event took place, or within which the RO can make reports.
- The controller establishes the time limit for conserving data (on-line reports, printed reports and statistics generated) in line with the evaluation procedures and the period within which these procedures and decisions can be contested.



- An explicit statement reiterates the purposes of the reports: they are to be used solely in the framework of quality monitoring, determination of competency rating (for ACIs) and annual staff review (for ROs). A disclaimer to prevent ACIs from using reports for another purpose can be an additional mean.
- Clear rules are put in place to safeguard that statistics (sent either by e-mail or as printed copies) are transferred only to persons who need them for the legitimate performance of their tasks.
- It is explicitly mentioned among the rules that the recipients will process the personal data only for the purposes for which they were transmitted.
- The system provides for a mechanism of correction of the reports in case the RO detects a mistake he/she made in the reports submitted. If a correction is made by the RO consequent changes should be made accordingly in all other data processing operations.
- The ACI receives a copy of the report written on him/her at the time of creating the report. He/she has sufficient time to reflect on it and, after discussion with the HoU, his/her comments are integrated into the reports (database as well).
- The ACI can access the identity of the RO unless restriction on that right becomes necessary in line with Article 20 of Regulation (EC) No 45/2001. If it becomes necessary to keep the identity of the RO secret from the ACI, the fact that his/her anonymity may not necessarily be ensured is mentioned in the e-mail requesting him/her to write a report.
- All information listed in Articles 11 and 12 of the Regulation is made available permanently on-line to the data subjects.
- Staff interpreters receive information on the consequences of failing to submit a report on an ACI colleague, on the existence of the right to rectify the data in the report written by them and on the procedures to exercise their right to correct those data.
- The reference to Regulation (EC) No 45/2001 in Article 2.4 of the document called "ACI Quality Monitoring" (TRC 28/11/1005) is corrected.

Furthermore, the competent DPO(s) should see that the data processing operation taking place in the context of the inter-institutional quality monitoring procedure is submitted for prior checking by the EDPS.

Done at Brussels, 21 March 2006

Peter HUSTINX  
European Data Protection Supervisor