



Opinion on the notification for prior checking from the Data Protection Officer of the European Commission concerning INFSO Staff Competencies and Aspirations Mapping Database

Brussels, 23 September 2011 (case 2011-0614)

1. Proceedings

On 24 June 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Commission a notification for prior checking concerning DG INFSO Staff Competencies and Aspirations Mapping Database in the context of voluntary internal mobility. It was accompanied by the following documents:

- Privacy Statement,
- model questionnaire on Competencies and aspirations,
- explanatory note by the DG INFSO Director General.

The notification was preceded by a consultation on the need for prior checking of this database submitted by the DPO on a basis of Article 27(3) of Regulation 45/2001 in May 2011¹. On 2 August 2011, the draft Opinion was sent for comments which were provided on 6 September 2011.

2. Facts

This prior checking Opinion deals with the establishment of a database on competencies and aspirations of DG INFSO staff for the purpose of facilitating voluntary internal mobility within this specific Directorate General.

The database should enable central and structured storage of information on staff members' abilities and aspirations and thus allow for better management of human resources, such as filling vacant posts, identification of staff members with specific profiles for potential task forces and allocation of urgent or unforeseen tasks.

Participation in this activity is entirely voluntary and the database will neither be used in the context of the appraisal exercise, nor to measure staff performance or productivity.

The controller is the European Commission represented by the Head of the Human Resources Unit at DG INFSO.

All data will be provided by the data subjects themselves by completing an online IPM² questionnaire. They consist of the following information:

- education,
- work experience,
- language knowledge,

¹ cf. EDPS n. 2011-469.

² Interactive Policy Making.

- other key competencies, such as ability to lead a team, capacity to plan and manage resources, coordination skills, drafting skills etc.,
- aspirations in terms of preferred type of job, domain, timing and work site.

Data subjects will be able to access, modify and delete the data they have provided at any time. Unless the data subject decides to delete his personal data, the data will be stored in the database until the end of his career at DG INFSO.

Access to the database for the purpose of searching on behalf of the controller can be given to other relevant staff in the Human Resources Unit of DG INFSO (referred to as 'processors') on a strictly need-to-know basis via specific delegation. Upon request, access to the actual search results may be provided to the members of DG INFSO Management for the purpose of allocation of urgent or unforeseen tasks.

All recipients will be informed of their obligation to comply with the data protection requirements in terms of Regulation 45/2001, including the obligation not use the data for other purposes than those compatible with the database.

Information to data subjects will be provided on the first screen of the actual questionnaire, as well as in the enclosed Privacy Statement.

(...)

3. Legal aspects

3.1. Prior checking. Regulation 45/2001 applies to the processing of personal data by EU institutions wholly or partly by automatic means carried out in the exercise of activities which fall within the scope of EU law and are intended to form part of a filing system. The processing of personal data in terms of its Article 2(b) means any operation performed on personal data, such as collection, storage, retrieval, consultation, use, alignment or combination.

The processing of personal data in the context of the Staff Competencies and Aspirations Mapping Database by the European Commission falls within the scope of Regulation 45/2001. It is subject to prior checking by the EDPS pursuant to its Article 27(2)(b) referring to processing operations intended to evaluate personal aspects relating to data subjects, including their ability, efficiency and conduct. In fact, the database is intended to evaluate data subjects' abilities to determine which staff member corresponds to a given profile in terms of vacant posts or allocation of specific tasks.

The notification of the DPO was received on 24 June 2011. According to Article 27(4) of Regulation 45/2001, the EDPS Opinion must be delivered within a period of two months. The procedure was suspended for 35 days to allow for provision of comments on the draft opinion. Therefore, the present Opinion must be delivered no later than on 29 September 2011.

3.2. Lawfulness of the processing. The EDPS notes that the processing in question is considered to be lawful in terms of Article 5(a) of Regulation 45/2001 (read together with its recital 27) since necessary for the performance of tasks carried out on the basis of the Staff Regulations and CEOS No 31/1962 and 11/1962, namely the human resources management at DG INFSO.

Furthermore, consent by the data subject can be considered as an additional ground supporting the lawfulness of the processing, as provided for in Article 5(d) of Regulation 45/2001. Such consent should consist of any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed (as outlined in Article 2(h) of the Regulation).

In the present case, all staff members are informed about the data processing and its entirely voluntary nature, as well as invited to complete the questionnaire. By doing so, the data subject is clearly giving his consent to the processing of his personal data in this context.

3.3. Data quality. Pursuant to Article 4(1)(a), (c) and (d) of Regulation 45/2001, personal data must be processed fairly and lawfully, be adequate, relevant and not excessive in relation to the purpose for which they are collected and further processed, as well as accurate.

The lawfulness of the data processing has been already discussed (cf. point 3.2), whereas its fairness has to be assessed in the context of information provided to data subject (cf. point 3.7). The proportionality of the data processed seems to be ensured since they may be considered as relevant for the purpose of facilitating voluntary internal mobility at DG INFSO. Due to the fact that all data are provided by data subjects who can also modify or delete them at any time, the accuracy of the data processed seems to be also guaranteed.

3.4. Data retention. The storage of the data provided in the Competencies and Aspiration database until the end of career at DG INFSO is in full compliance with Article 4(1) (e) of Regulation 45/2001.

3.5. Transfer of data. As indicated above, the data processed in this context may be transferred to designated staff of the controller's unit and - upon request - to the DG INFSO managers.

Given the facts that these transfers are necessary for the performance of the respective task (searching or specific tasks' allocation) and the recipients have been reminded of their obligation not to use the data for other purposes, compliance with Article 7 of Regulation 45/2001 is being ensured.

In this context, the EDPS would like to mention that the reference to the designated staff of the controller's unit as 'processors' seems to be misleading since these recipients are the direct hierarchical subordinates of the controller. Therefore, he would like to invite the Commission to refrain from it.

3.6. Right of access and rectification. As indicated above, the data subjects will be able to access, modify and delete the data processed in this context.

3.7. Information to the person concerned. The EDPS notes that almost all information requested in terms of Article 11 of Regulation 45/2001 will be provided in the Privacy Statement referred above. In order to ensure full compliance with the Regulation, information about the recourse to the EDPS should be added to the existing Privacy Statement, whereas information about possible recipients should be revised in order to refer correctly to all data recipients (designated staff of the controller's unit and DG INFSO managers).

(...)

4. Conclusion

The proposed processing operation would not appear to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. In particular, the existing Privacy Statement should be revised in order to provide for information about the recourse to the EDPS, as well as all possible data recipients.

Done at Brussels, 23 September 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor