



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)

1. Proceedings

1.1. On 6 January 2005 the European Data Protection Supervisor received from the Data Protection Officer of the European Parliament a notification for prior checking relating to the reports procedure and the central database (RAPNOT).

The Data Protection Officer referred the Supervisor to the European Parliament's Internet site for more information on the reports procedure and in particular the Secretary-General's report on improvements to Parliament's staff reports and promotions system (adopted on 1 September 2003); the Bureau's decision of 3 May 2004 on promotion policy and careers; the general implementing provisions applicable to staff reports; the guide to staff reports; and the RAPNOT user's manual.

1.2. On 18 January 2005 Ms LOUVEAUX (EDPS) met Mr J. STEELE in Brussels and was able to ask him a number of questions concerning the reports procedure. Following that meeting, Mr J. STEELE sent the European Supervisor a list of data transferred from ARPEGE (EP Staff management) to RAPNOT.

1.3. On 2 February 2005 Mr J. STEELE sent the European Supervisor a note from the Directorate-General for Personnel on the 2004 reporting exercise.

2. Examination of the matter

2.1. The facts

The reports and promotions procedure meets the obligation to assess the work of every member of staff laid down in Article 43 of the Staff Regulations and Article 15(2) of the Conditions of Employment of Other Servants. A database (RAPNOT) has been added, to computerise part of the procedure for reporting on officials and temporary staff of the European Parliament.

The HS (hierarchical superior) is provided with the list of staff members on whom he/she has to report within 10 days of receiving that list.

To log on to the RAPNOT system, the HS must enter his/her username and a password. This brings up a screen divided into three parts: the menu, information on the assessee (staff number, surname, forename, category, grade) and the beginning and end of the reporting period.

The HS completes sections 2, 3.1 and 3.2 (description of tasks assigned and work performed outside the standard job description; detailed assessments, general assessment) of the report and validates it. Validation "freezes" the data entered by the HS (who can no longer make any changes).

The first assessor is the immediate hierarchical superior in category A* with rank N+1. The first assessor may, possibly after an interview with the HS, amend or amplify the staff report thus

prepared by the HS. He/she may not, however, amend the contents of the heading "General assessment by the immediate hierarchical superior".

The assessee may then complete sections 4 and 5 of the report (assessment by the staff member and change requested) and section 3 of the Annex to the report (professional training and professional experience prior to joining the European Parliament).

The first assessor holds an interview with the assessee. Following the interview, the first assessor completes sections 2 to 5 of the report and sections 2 and 3 of the Annex to the report (language knowledge, professional training). The data are fed into the central database (RAPNOT). Validation of the data "freezes" them as far as the first assessor is concerned (he/she can no longer make any changes). Validation is equivalent to manual signature.

For the General Secretariat, the final assessor is the Director-General or a Director designated by him or her or, in administrative units not taking the form of a Directorate-General, the most senior member of staff of the administrative unit. For political groups, the final assessor is the Secretary-General of the group.

The final assessor has 10 working days in which to endorse or modify the report. If he or she modifies it, he or she must discuss the matter with the first assessor and with the staff member. After any such discussions have taken place, the data are entered in the central file by the final assessor's correspondent. Validation of the data generates a signal to the Personnel Division and "freezes" the staff report.

The Personnel Division prints out the report and forwards it to the Director-General concerned, who has it signed by the various hierarchical superiors specified in the report, the first assessor and the final assessor. The report, once dated and signed, is forwarded to the assessee in return for a signed acknowledgement of receipt. The assessee has 10 working days within which to return the report signed, together with any comments. This period is extended in the event of duly justified absence.

If the assessee makes comments, the final assessor must reply to them. The final assessor's correspondent enters the reference "comments by the assessee" in the computer file. The final assessor's reply is sent by e-mail or in paper form to the assessee and the original of the report is sent to the Personnel Division. Where the assessee disagrees with the final assessor's reply, he/she may refer the matter to the Reports Committee in a signed letter.

Within one month of the referral, the Reports Committee delivers a reasoned opinion on the report submitted to it. The committee's proceedings are held in secret. The committee's opinion is sent to the Secretary-General. It is also sent to the assessee and to the final assessor. The committee secretariat updates the central file (RAPNOT) with details of the date of receipt of the referral, and the number and date of the opinion delivered.

The Secretary-General adopts the final staff report within eight working days. He must give grounds for his decision if he departs from the Reports Committee's opinion. He informs the assessee, the assessors, the Reports Committee and the Director-General of Personnel in writing of his decision. His secretariat updates the central database (RAPNOT), entering the date of the decision and indicating whether the report was confirmed or amended.

The supervisor (Secretary-General/Director-General/political group Secretary-General) can view all the reports for the relevant Directorate(s)-General/group. Up until the moment it is printed, the supervisor for each DG (or his/her correspondent) can access the report so that the assessors may make amendments to it.

Some data are transferred from ARPEGE to RAPNOT. These are administrative data such as name, nationality, date of birth, administrative address, administrative position, grade, seniority, date of taking up duties and country of employment. ARPEGE is a personnel management system and the data are purely administrative.

The security measures applicable to processing operations are the general measures applied at the European Parliament. In addition, the RAPNOT system is protected by restricted access and the use of a password.

2.2. Legal aspects

2.2.1. Prior checking

Article 27 of Regulation (EC) 45/2001 states that processing operations presenting specific risks to the rights and freedoms of data subjects are to be subject to prior checking by the European Data Protection Supervisor. Article 27(2) sets out a list of processing operations likely to present such risks. One such type of operation, referred to in Article 27(2)(b), is "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

Clearly the reports procedure is processing of personal data intended to evaluate personal aspects relating to the data subjects, such as their competence, their performance or their conduct and, as such, is subject to prior checking by the European Supervisor. Furthermore, the RAPNOT system is the medium for exchange of information during the reports procedure and, as such, must also be regarded as data processing for the purposes of personal evaluation. However, the RAPNOT system is not a substitute for evaluation by the assessors and no automatic decision is taken on the basis of the data fed into it.

The Supervisor has duly noted the changes made to the 2004 reports procedure, as set out in the note from the Directorate-General for Personnel forwarded by Mr STEELE on 2 February 2004. However, since he has not had sight of all the amendments, this opinion relates solely to the system as notified to the Supervisor. Any substantial amendments to the system which is the subject of this opinion should be notified to the European Parliament's DPO, who will inform the European Supervisor if appropriate. The European Supervisor received the notification for prior checking on 6 January 2005. This opinion must be delivered within two months of the date of receipt of that notification, i.e. by 6 March 2005.

2.2.2. Legal basis for and lawfulness of processing

The legal basis for the data processing in question may be found in Article 43 of the Staff Regulations (under Article 15 of the Conditions of Employment of Other Servants, Article 43 applies by analogy to temporary staff). Article 43 states that "*the ability, efficiency and conduct in the service of each official shall be the subject of a periodical report made at least once every two years as provided for by each institution in accordance with Article 110*". General implementing provisions on staff reports were adopted on 8 March 1999 in accordance with Article 110 of the Staff Regulations. The legal basis is sufficiently clear and raises no particular questions.

Analysis of the legal basis and analysis of the lawfulness of the processing go together. Article 5, point (a), of Regulation (EC) 45/2001 stipulates that "*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 in the legitimate exercise of official authority vested in the Community institution*".

Reports procedures involving the collection and processing of personal data concerning members of staff are part of the legitimate exercise of the official authority vested in the institution. The legal basis provided by the Staff Regulations confirms that the processing is lawful.

2.2.3. Collection of data and change of purpose

The processing analysed does not involve any general change in the intended purpose of the staff databases and is not incompatible with that purpose. Staff assessment is an activity which is part of the general duties of any personnel department. Accordingly, Article 6, point 1, of Regulation (EC) 45/2001 does not apply in this instance and there is no breach of Article 4(1)(b) of the Regulation.

2.2.4. Transfer of data

Processing must also be examined in the light of Article 7, point 1, of Regulation (EC) 45/2001, since the data circulate among a number of different people at the European Parliament. Personal data may be transferred between institutions or *within them* only if they "are necessary for the legitimate performance of tasks covered by the competence of the recipient". In this instance, transfer of data to the various assessors, the Personnel Division, the Secretary-General and, possibly, the Reports Committee, is consistent with the legitimate performance of the tasks of the various parties. In addition, Article 7, point. 3 of the Regulation stipulates that the recipient must process the personal data only for the purposes for which they were transmitted. Explicit guarantees must be obtained that anyone receiving and processing data as part of an assessment may not use them for any other purpose.

2.2.5. Use of identifying numbers

Article 10(6) of the Regulation states that "*the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body*".

Reports mention the personal number of the assessee. Since the number is used to identify the person and keep track of the file, no particular issues seem to arise. The Supervisor considers that the number may be used in the context of staff reports.

2.2.6. Information to be supplied to data subjects

The Regulation states that a data subject must be informed of the processing of data relating to himself/herself and lists a range of compulsory items of information which must be provided. In this instance, some data are collected directly from the data subject and some from other people. Articles 11 and 12 of the Regulation apply.

Information for a data subject on the existence of data collection comes from various sources. Article 43 of the Staff Regulations, the legal basis for processing, presupposes the collection and recording of data. The European Parliament's intranet contains over 140 pages of information on the reports procedure or the RAPNOT system. And the general implementing provisions for staff reports and the guide to staff reports of 2000 explicitly list the sections to be completed. That information covers at least those compulsory items provided for in Articles 11 and 12.

2.2.7. Right of access

Under Article 13 of Regulation (EC) 45/2001, the data subject has the right to obtain from the controller, at any time and without constraint, communication in an intelligible form of the data undergoing processing. In addition, Article 43 of the Staff Regulations states, on the subject of staff reports, that: "The report shall be communicated to the official. He shall be entitled to make any comment thereon which he considers relevant."

The right of the data subject to see the information contained in his/her report is ensured several times in the course of the assessment procedure (in particular when the assessee completes sections 4 and 5, at the assessment interview, when the report is printed and sent to the assessee). The European Data Protection Supervisor has no comments to make on this point.

2.2.8. Storage of data

The Regulation states that data may not be kept in a form which permits identification of the data subject for any longer than is necessary for the intended purpose (Article 4(1)(e)). On the basis of the information received, there is no precise rule as to the period during which data processed under the reports procedure may be kept. The description of RAPNOT simply states that the data are printed out at the end of the procedure and filed in the personal file.

The DPO's notification for prior checking states that Article 10 of Annex IX to the Staff Regulations may be deemed to justify storage of data in that it stipulates that the severity of the disciplinary penalties imposed must be commensurate with the seriousness of the misconduct. To determine the seriousness of misconduct and decide upon the disciplinary penalty to be imposed, account is taken in particular of: (i) the conduct of the official throughout the course of his career. However, that seems a less than convincing argument. Since the results of a staff report are placed in the official's personal file, there is no obvious need to store it in the reporting system. The data must not therefore be kept in the reporting system for any longer than is necessary for the reports procedure. Rules must be drawn up on the subject.

The European Supervisor calls therefore for rules on the storage of data to be adopted in accordance with the principles laid down in Regulation (EC) 45/2001 and for clear information on the subject to be made available to users of the system.

2.2.9. Security measures

The security measures applicable to the RAPNOT system are those which apply within the European Parliament. In addition, a username and specific password are required to log on to the RAPNOT system. Access is restricted, depending on the role of the individual concerned. The RAPNOT system also guarantees the integrity of data, for data validated cannot subsequently be amended by the person who entered them.

The European Supervisor considers that the security measures may be deemed adequate within the meaning of Article 22 of Regulation (EC) 45/2001.

Conclusions

The processing operations examined do not appear to be in breach of Regulation (EC) 45/2001, subject to action being taken on the comments made above. This means in particular that:

- explicit guarantees must be obtained that anyone receiving and processing data as part of an assessment cannot use them for any other purpose;
- rules concerning the storage of data should be adopted in accordance with the principles laid down in Regulation (EC) 45/2001 and the users of the system given clear information on the subject.

Done at Brussels, 3 March 2005,

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Assistant Supervisor