



Opinion on a notification for prior checking received from the Data Protection Officer of the Court of Justice of the European Communities on the "SIC Congés" system

Brussels, 28 September 2005 (Case 2004-278)

1. Procedure

- 1.1. On 20 July 2004 the European Data Protection Supervisor (EDPS) sent a letter to data Protection Officers (DPOs) asking them to make an inventory of data processing that might be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) No 45/2001. The EDPS requested communication of all processing operations subject to prior checking, including those that commenced before the Supervisor was appointed, for which checking could never be regarded as prior, but which would be subject to "*ex post*" checking.
- 1.2. On 24 September 2004, the Data Protection Officer of the Court of Justice of the European Communities (ECJ) listed the processing of data in the "SIC Congés" system as subject to prior checking, since it contained data relating to health (Article 27(2)(a)).
- 1.3. The EDPS identified certain priority topics and selected a number of processing operations subject to checking *ex post*. The "SIC Congés" system is among them.
- 1.4. On 9 December 2004 the EDPS requested notification of the system for the purposes of prior checking.
- 1.5. The EDPS received the notification for prior checking on 11 May 2005.
- 1.6. The EDPS requested further information from the DPO on 11 May 2005.
- 1.7. On 14 June the EDPS received a reply to the additional questions he had put. He also received a detailed description of the "SIC Congés" system from Mr Patrice MARCELLI, data protection coordinator in DG ADMIN at the European Commission.
- 1.8. On 23 June the EDPS made a further request for information, which was answered by the Court of Justice DPO on 9 August.

2. Examination of the case

2.1. Facts

SICs (Systèmes d'Informations Communs) are IT applications developed at the request of the Commission of the European Communities. They are installed to facilitate in-house administration.

The Court of Justice's "SIC Congés" system is designed to:

- enable every member of staff to enter, amend or cancel data necessary for a leave application and make a summary estimate in order to find out how many days of leave he/she has left in the current year;
- enable line managers to monitor leave for their administrative entities;
- enable leave administrators to administer basic entitlement;
- enable administrators to register and monitor documentation submitted in connection with special leave;
- enable line managers or leave administrators to administer staff absences (other than absence on leave);
- send leave application forms for approval electronically, via the approval chain;
- print out leave application forms so that they can be filled in by hand if necessary;
- carry forward excess leave at the end of the year, if appropriate.

The rules on leave are set out in the Staff Regulations.

When a person accesses the SIC, he or she does so in a particular role.

Roles are administered by the Database Administrator in the SIC Common Data.

Each of the roles defined in the application is associated with different consultation and updating rights.

There are four roles assigned in the "SIC Congés" system:

- *leave originators*, who can consult and amend data concerning their own leave and make new leave applications for themselves. Any person (official, temporary staff member, etc.) can have the role of an originator.
- *line managers*, who can consult, amend and create any data on leave and absence in their unit/DG/Directorate. They must enter absences for everyone for whom they have responsibility.
- *approvers*, who can consult all data on leave in their unit/DG/Directorate and who are also authorised to sign applications for leave/absence or a leave carryover;
- *administrators*, who have the right to consult and amend all data on leave and absence.

All users have consultation access to applications for leave/absence. However, the content of the list of applications varies according to the user's role.

The following data are entered by staff in the Personnel Division:

- name;
- staff number;
- date of birth;

- sex;
- department;
- in-house address;
- date of sick leave;
- date of entry into service;
- status/grade;
- place of origin (and distance);
- language;
- total sick leave, with or without medical certificate, since 1994.

The above data, which are purely administrative, are taken from the Centurio database (Personnel Management Application).

The information given on medical certificates is not included in the "SIC Congés" database.

A secretary in the Personnel Department is responsible for entering data on annual and special leave. Two accredited nurses are responsible for entering data on sick leave, maternity leave and special leave on medical grounds.

Each day heads of department are given automatic e-mail notification of staff members who are absent, including those on sick leave.

They can also phone the medical service to ask for more information about the length or starting date of the sick leave of members of their department.

The Director of Personnel and Finance, the Director of the Personnel Division and the section head of the division of the Personnel department responsible for medical matters receive a daily list of absentees from the medical service, so that they can see that Article 59 of the Staff Regulations of Officials is applied.

Members of the IT and New Technologies Division also have maintenance access to the database.

When someone is transferred from one institution to another, the new institution is informed of the number of days of sick leave taken during the three previous years.

If a complaint is made, the data may be received by the Court's legal counsel, the complaints committee (in the event of a complaint lodged pursuant to Article 90(2) of the Staff Regulations) and the Court of First Instance (in the event of legal proceedings).

The data are not erased from the database, but kept indefinitely.

All access to the database is via a user name and a password. All manipulations are registered in the Oracle database.

Certain boxes on leave application forms are marked as compulsory.

There are no headings giving information on the processing of data in the system itself. However, the Court of Justice intranet refers under the heading "Medical Questions" to a series of items of information covering the identity of the controller, the purposes of the processing, the categories of data concerned, the recipients or categories of recipients of data, the existence of a right of access to data on the data subject, the legal basis for the processing, the length of time the data are kept (not yet defined), the possibility of lodging complaints with the EDPS and the origin of the data.

2.2. Legal aspects

2.2.1. Prior checking

The database under consideration constitutes the processing of personal data within the meaning of Article 3(2) of Regulation (EC) No 45/2001 insofar as it includes the collection, registration, consultation and organisation of personal data.

Article 27(1) of Regulation (EC) No 45/2001 subjects "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" to prior checking by the EDPS. Article 27(2) contains a list of processing operations which may present such risks, such as processing relating to health (27(2)(a)). These are clearly data relating to health since they include a list of absences on sick leave.

Article 27(2)(c) also requires prior checking of "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes" since they may pose a risk to the rights and freedoms of data subjects. As stated above, purely administrative data are taken from the Centurio database (Personnel Management Application). There is therefore a linkage between databases. However, the purposes of the data processing operations are not fundamentally different since, in both cases they concern personnel management. Article 27(2)(c) does not therefore apply.

The checking concerns the administration of leave in the "SIC Congés" data base. It does not cover the administration of medical certificates, which are kept in the medical files, which have themselves undergone separate prior checking (case 2004/280).

In principle, checks by the European Data Protection Supervisor should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was set up, the check necessarily has to be performed *ex post*. However, this does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

Notification was received from the DPO on 11 May 2005. Pursuant to Article 27(4), this opinion must be delivered in the following two months. Requests for further information have suspended the deadline for 34 + 47 days. The Supervisor will therefore deliver his opinion by 30 September 2005 at the latest.

2.2.2. Legal basis and lawfulness of processing

Leave allowances are set in the Staff Regulations of Officials of the European Communities (Staff Regulations - Articles 57 to 60). There are special rules for sick leave.

Pursuant to Article 59 of the Staff Regulations "if, over a period of 12 months, an official is absent for up to three days because of sickness for a total of more than 12 days, he shall produce a medical certificate for any further absence because of sickness. His absence shall be considered to be unjustified as from the thirteenth day of absence on account of sickness without a medical certificate" (Article 59(2)).

Furthermore, "the Appointing Authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than 12 months in any period of three years" (Article 59(4)).

Articles 16, 59 and 91 of the Conditions of Employment of Other Servants provide that Article 59

should apply to temporary, auxiliary and contract staff.

The "SIC Congés" system was set up to implement the rules laid down in the Staff Regulations and to monitor days of sick leave with or without a certificate.

Alongside the legal basis, the lawfulness of the processing operation, as defined in Article 5 of Regulation (EC) No 45/2001, must also be considered. Article 5(a) stipulates that personal data may 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". The preamble (§ 27) states that this "includes the processing of personal data necessary for the management and functioning of those institutions and bodies". The legal basis found in the Staff Regulations supports the lawfulness of the processing.

2.2.3. Processing of special categories of data

"The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited" unless grounds can be found in Article 10.

Although these are not medical data in the strict sense of the term, they are health data in that they reveal information about the data subject's state of health (e.g. sick leave). Grounds under Article 10 must therefore be found to allow the data to be processed.

Article 10(2)(b) stipulates that the ban on processing sensitive data does not apply if "processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof". Since the processing of health data in the database is founded on application of Article 59 of the Staff Regulations, it may be deemed necessary to comply with the rights and obligations of the controller in this matter.

2.2.4. Data quality

Pursuant to Article 4(1)(c) "data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed".

According to our information, the data seem appropriate to the administration of sick leave.

Article 4(1)(d) also stipulates that the data must be "accurate and, where necessary, kept up to date". Hence, 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 for which they are further processed, are erased or rectified. The best way of ensuring that data are accurate is precisely to allow data subjects access to their own data.

2.2.5. Conservation of data

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

Under the "SIC Congés" system, data can be kept indefinitely.

The EDPS takes the view that there is no justification for keeping the data indefinitely, given the initial purpose of collecting it.

The initial purpose of the database is to be found in the Articles on officials' leave allowances in the Staff Regulations.

Keeping data on days of annual leave can be justified if leave is carried over from one year to the next, but not beyond the year after that.

Keeping data on sick leave for at least three years is justified by the implementation of Article 59(4) of the Staff Regulations. This view is confirmed by the fact that, when a person is transferred to another institution, only data on sick leave in the previous three years are forwarded. After these three years, there is some doubt as to whether keeping the data is justified. In any event, the data should be deleted at the latest at the end of the period during which they can be contested or revised.

If data are kept for historical, statistical or scientific purposes, they must be rendered anonymous or encrypted.

2.2.6. Transfer of data

Any transfer of personal data within or between Community institutions or bodies must comply with Article 7 of Regulation (EC) No 45/2001, whereby data can only be transferred if necessary for the legitimate performance of tasks covered by the competence of the recipient.

Every day heads of department are automatically notified of staff members who are absent, including those on sick leave. This transfer may be regarded as justified on the grounds that it is necessary for the performance of tasks within the recipient's sphere of competence, i.e. the internal organisation of the department.

The Director of Personnel and Finance, the Director of the Personnel Division and the section head of the division of the Personnel department responsible for medical matters receive a daily list of absentees from the medical service. This transfer is also justified by the performance of tasks within the recipients' spheres of competence, since they are responsible for implementing the Staff Regulations, in particular Article 59(2) and 59(4) thereof.

When someone is transferred from one institution to another, the new institution is informed of the number of days of sick leave taken during the three previous years. This transfer is justified by application of Article 59(4) of the Staff Regulations.

If a complaint is made, the data may be received by the Court's legal counsel, the complaints committee (in the event of a complaint lodged pursuant to Article 90(2) of the Staff Regulations) and the Court of First Instance (in the event of legal proceedings).

The EDPS considers this sharing of information to be necessary for the legitimate performance of the recipient's duties; it does not pose any problem. However, it should be ensured that the recipient does not process the data for any purpose other than that for which it was transferred, i.e. the administration of sick leave or a complaints procedure under Article 90(2) of the Staff Regulations.

2.2.8. Processing including a personal number or identifying number

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".

The "SIC Congés" database contains the data subject's staff number as the unique identifier within the institution. The number does not seem to be used for any purpose other than identifying the data subject, and it is not used for cross-checking with other information sources. The EDPS has therefore no comment to make on the use of the personal number.

2.2.9. Information to be given to the data subject

Pursuant to Article 11 of the Regulation, if personal data are to be processed, the data subject must be given adequate information. The information to be provided must include at least the identity of the controller, the purposes of the processing operation, the recipients or categories of recipients of the data, whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply and the existence of a right of access and rectification. The information should normally be provided at the latest when the data are obtained from the data subject, except where he or she already has it.

Apart from the boxes on the leave application form which are marked as compulsory, there are no headings giving information on the processing of data in the system itself.

However, the Court of Justice intranet refers under the heading "Medical Questions" to a series of items of information. Apart from acknowledgement that data subjects have a right to have data rectified, this information corresponds to that itemised in Articles 11 and 12. It is suggested that a sufficiently clear link be created from the "SIC Congés" application to this information on the intranet.

2.2.10. Right of access and rectification

Under Articles 13 and 14 of Regulation (EC) No 45/2001, data subjects have a right of access to their own personal data and the right to rectify it.

The "SIC Congés" system allows any user to consult data on his or her absences. This enables data subjects to spot any mistake in the administration of leave. The administrator has the right to consult and amend any data. The data subject has to be informed of this right.

2.2.11. Security and confidentiality

Article 22 of Regulation (EC) No 45/2001 stipulates that the controller must implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. After careful scrutiny of the security measure taken, the EDPS has come to the conclusion that these measures are adequate in the light of Article 22 of Regulation (EC) No 45/2001.

In addition, people working at the Court are under a duty of confidentiality under Article 20 of the Court's Rules of Procedure.

Conclusion

The proposed processing operation does not seem to involve any breach of the provisions of Regulation (EC) No 45/2001, as long as account is taken of the observations below. This means in particular that:

- A limit on the length of time that data are kept should be set in the light of the purposes for

which the data are processed. If data are kept for historical, statistical or scientific purposes, they must be rendered anonymous or encrypted.

- As regards the provision of information on the processing of data in the "SIC Congés" system, the EDPS would like to see some mention of the data subject's right to rectify incomplete or inaccurate data. It is also suggested that there should be a sufficiently clear link from the "SIC Congés" application to the information provided on the intranet.

Done at Brussels, 28 September 2005

Peter HUSTINX
European Data Protection Supervisor