

Opinion on the notification for prior checking from the Data Protection Officer of the Court of Justice regarding social aid

Brussels, 21 February 2007 (Case 2006-561)

1. Procedure

On 10 November 2005, the European Data Protection Supervisor (EDPS) asked all the Data Protection Officers (DPOs) to update their inventories, mentioning two new priorities: social services and e-monitoring. The dossier relating to the social aid of the Court of Justice comes within the scope of this fourth new priority.

On 1 December 2006, the EDPS received notification regarding prior checking of data processing in the context of the social services dossier. Questions were put by e-mail on 12 and 15 January 2007. The replies were received on 23 and 26 January 2007, respectively. The time limit was extended by seven days when the draft opinion was sent for comments on 8 February 2007.

2. The facts

2.1. Types of aid

Personal data are processed within the framework of the Court of Justice's policy on social action. The Court grants certain types of social aid intended mainly for serving and retired members of staff of the Court of Justice and their families. Trainees also receive assistance but in the psychosocial and practical aid categories only (see below).

The types of aid are as follows:

A/ Financial aid

Financial aid is granted in the following categories:

- family aid (partial reimbursement of the cost of domestic help if the beneficiary is no longer able to carry out household tasks);
- aid to a surviving spouse in the event of disability or serious or prolonged illness;
- aid for pensioners (exceptional aid in particularly difficult circumstances);
- aid for members of staff with a disability or for disabled persons who are dependants of a member of staff (reimbursement of child-minding, schooling, transport and subsistence expenses, as well as the cost of certain equipment not reimbursed by the medical insurance scheme);

- loans and assistance on social grounds (specific aid in extreme cases, for example: salary advances).

The Court no longer grants financial aid for accommodation (loans).

The personal data for files concerning family aid, aid for pensioners, disability aid and salary advances are collected on a form given to the applicant by the social assistant. Depending on the type of financial aid requested, the data subject is asked to provide additional information (income, medical certificate, etc.) in support of his application.

The case is examined by the social assistant, who prepares a report for submission to the Director of the Personnel and Finances Department, the Head of the Personnel Division and the official in Section B of the Personnel Division responsible for granting aid. If the application is approved, the decision to grant the aid (only the decision, not the entire file) is sent to the Budget and Accounts Department.

An interinstitutional joint committee, the Committee on Social Activities in Luxembourg (hereinafter CSA), is responsible for paying part of the financial aid in cases where the recipient is a serving member of staff. The CSA is an instrument for dialogue between the administration and staff of the institution, contributing to the development of personnel policy. The Treasurer and the Chairman of the CSA are provided with personal data concerning the aid applicant (in the form of a document drawn up by the social assistant with the amount payable and an invoice) so that they can pay the applicant part of the aid to which he is entitled.

In the case of aid for retired staff, the Social Dialogue and Policy Unit of the Commission's Directorate-General for Personnel and Administration receives the entire file (file note and supporting documentation) so that it can arrange for the aid to be paid. This is in keeping with the Commission's implementing rules for the management of budget line A 196 relating to appropriations intended to cover social aid for retired staff.

The procedure for granting family aid and aid to care for sick children is based on the rules in place at the Commission.

Data are stored in paper files (in a locked cupboard) and in electronic form on the hard disk of a personal computer (to which access is password-protected on a server managed by the Court's Data Processing and New Technologies Division). The data on paper support consist of applications, decisions, calculations, supporting documentation, correspondence and invoices. The data in electronic form consist of the reports drawn up by the social assistant.

B/ Psychosocial aid

A social assistant may open a personal file with a view to providing applicants with psychosocial aid. Psychosocial aid involves the social assistant listening and offering advice. The matters discussed may be financial (family/individual budget, debts/attachments) but may also be personal (relationship problems – situations of the couple, physical or psychological health problems, difficulties with children, situations of stress, etc.).

Personal data relating to the data subject's problem(s) (e.g. surname, first name, family or economic situation, etc.) are recorded by the social assistant.

The data subject is informed that the social assistant is subject to the obligation of professional secrecy and that their conversations will take place in the strictest confidence.

The data are stored in a paper file (in a locked cupboard) and/or in electronic form on the hard disk of the social assistant's personal computer (in a password-protected directory). The social assistant is the sole person with access to the data subject's file. In exceptional cases, the social assistant can ask the medical officer for assistance if necessary.

C/ Practical aid

The social assistant provides practical aid (mainly information) to trainees, disabled members of staff, members of staff with disabled dependants, former officials and persons seeking accommodation (newly recruited or transferred officials, trainees, etc.).

The personal data recorded by the social assistant are the data subject's surname, first name and telephone number and/or e-mail address so that the data subject can be sent any relevant information.

Personal data of contact persons are also processed (e.g. surname, first name and telephone number of people offering rented accommodation). Personal data relating to third parties (contact persons) are provided to the applicant on request. The social assistant informs the contact person in advance that these data will be released.

The data processing procedures are partly automated. The information collected by the social assistant is stored on paper and/or on computer.

2.2. Other information from the notification

Description of the data processed

The personal data processed depend on the type of social aid involved and are described below:

1/ Financial aid

Some of the personal data for financial aid are collected by the social assistant on forms

- family aid: body providing assistance, personnel number, first name and surname, nationality, private address, telephone, duration of assistance, reason for assistance, family's net monthly income (official or servant, spouse, other income), calculation of amount of assistance made by the social assistant. These data are included in the form completed by the Court of Justice and sent to the CSA. A second form is enclosed for the attention of the medical officer of the Joint Sickness Insurance Scheme (JSIS) in Luxembourg, together with a certificate from the applicant's doctor, the latter's proposal for the duration of aid (hours, days, months and total period), the opinion on the duration proposed and the opinion of the JSIS medical officer, who must sign the form.
- aid for disability: the Institution has its own form for disability aid. Requests for disability aid are extremely rare in practice. The social assistant responsible for the file receives any such requests, together with the information necessary to grant the aid, by e-mail or telephone. The personal data are entered by the social assistant on a form and a grid in order to calculate the amount of the aid. The calculation is based on the amount of the invoice and the family's taxable income (salary, allowances, reductions and withholdings) to which a fixed scale is applied.

- aid for pensioners: the form is sent directly by the Commission (DG ADMIN – Directorate C) to the person concerned, who must complete it and forward it together with the relevant supporting documentation to the social assistant of the institution to which he belonged. Applicants are asked to provide the following data: surname, first name, pension number, pension type, institution and place of work, grade, marital status, date of birth, nationality, address, telephone number, dependants, health problems (yes/no – medical certificate if necessary), 100 % reimbursement for serious illness, questions concerning type of residence, children and whether they are financially independent and contribute to the household, means of transport, type of aid requested, aid received in the past, detailed description of financial situation (income, expenses including all monthly invoices, taxes, credits), reasons for the request, bank and bank account number.
- loans and assistance on social grounds: these are mainly salary advances (under Article 76 of the Staff Regulations), reimbursed to the Institution by the persons concerned. The social assistant draws up a report setting out the situation of the person concerned, and a file note is submitted to the Appointing Authority for a decision.

Personal data of a private, financial and social nature are also included in the aid file as justification for the aid granted.

- private data: facts of private and/or professional life provided by the aid applicant and personal views expressed by the applicant. The social assistant draws up a report setting out his or her professional opinion on the case;
- social data: comments and opinions of the social assistant on the situation in question, the person, the problem, the types of aid and the aid arrangements;
- financial data: invoices and other supporting documents required for a valid request for financial aid.

2/ psychosocial aid: the social assistant takes notes (aide mémoire) on the data subject's problem. The personal data processed are of a private and social nature (e.g. surname, first name, family situation linked to the problem, etc.).

3/ practical aid: personal data are processed in order to respond to requests for information (e.g. surname, first name, telephone number, the e-mail address of the person making the request, etc.).

Personal data relating to third parties (landlord, ergonomic retailer, etc.) are also collected and (if necessary) provided to the person making the request so that he has the requested information.

Information to be given to the data subject

Data subjects receive the following information depending on the type of social aid requested:

- financial aid: all financial aid application forms contain an information clause. If no application form needs to be completed, the information is given verbally.
- psychosocial aid: the social assistant treats personal data confidentially and asks the data subject for his or her agreement if the assistance of a specialist third party (psychologist, medical officer, etc.) proves necessary.

– practical aid: the social assistant treats personal data confidentially and asks the data subject for his or her agreement if the assistance of a specialist third party (landlord, ergonomic retailer, etc.) proves necessary.

Right of access and of rectification

Access, rectification and opposition rights can be exercised with respect to all documents in a file except for the social assistant's personal notes.

Automated and/or manual processing

The processing of personal data relating to social aid is partially automated. Application forms for financial aid together with the relevant supporting documents (copies, invoices, correspondence, medical officer certificates, etc.) are stored on paper support. The social assistant's personal notes may be stored on paper and/or on computer.

Recipients

The recipients of the personal data depend on the type of aid being granted:

– financial aid:

- the social assistant holds the complete data (private, financial and social) on aid applicants. However, arrangements will be made for another official to have access to the data in the social assistant's absence if necessary;
- the Director of the Personnel and Finances Directorate, the Head of the Personnel Division and the person in charge of Section B of the Personnel Division receive the complete file (file note, invoices and where appropriate medical certificate) for any financial aid request;
- the medical service receives the report (file note) drawn up by the social assistant for the purpose of issuing a medical certificate;
- the Budget and Accounts Department receives an order to pay the aid in question;
- in the case of aid for pensioners, the Social Dialogue and Policy Unit of the Commission's Directorate-General for Personnel and Administration receives the entire aid file (file note, invoices and medical certificates if necessary) so that it can reimburse the applicant.
- The CSA (Committee on Social Activities in Luxembourg).

– psychosocial aid: the social assistant alone holds the complete data on aid applicants. However, arrangements will be made for another official to have access to the data in the social assistant's absence if necessary. In exceptional cases, the social assistant can ask the medical officer for assistance (the medical officer receives the file in a sealed envelope).

– practical aid: the social assistant is in principle the only person to receive personal data on data subjects. In the event of an ergonomic problem with a workstation, the assistant sends a memorandum to the relevant department of the Infrastructures Directorate specifying the measures to be taken (and giving the data subject's surname, first name and office address).

Other persons may also receive personal data:

- the Court of Auditors when performing its duties under Article 248 of the EC Treaty;
- the specialised financial irregularities panel set up under Article 66(4) of the Financial Regulation and Article 8 of the internal Financial Regulation;
- the internal auditor in connection with his/her duties under Articles 85 to 87 of the Financial Regulation;

- the European Parliament within the framework of the discharge procedure; OLAF in the event of an investigation under Regulation No 1073/1999 and Court of Justice judgment of 26 October 1999;
- The Court of Justice and the Court of First Instance, as well as lawyers and agents acting for the parties in the event of litigation; the President and the Registrar of the Court, as well as any officials assisting them, in connection with the duties assigned to them under Article 23 of the Court's Rules of Procedure;
- The European Data Protection Supervisor in accordance with Article 47(2) of Regulation 45/2001;
- The Data Protection Officer of the Institution in accordance with point 4 of the Annex to Regulation 45/2001.

Time-limits for deleting the various types of data

- financial aid: 15 years following discharge by the European Parliament;
- psychosocial aid: 15 years from resolution of the problem concerned.

The data storage policy and the time limit for blocking and deleting data are the same. The data storage period is 15 years to ensure continuity of files between social assistants.

Security measures

Access to personal data stored on computer is secured by login and password. Only the social assistant has access to the data. However, arrangements will be made for another official to have access to the data in the social assistant's absence if necessary.

Paper documents are stored in locked cupboards, to which the social assistant alone has access, in the social assistant's office.

3. Legal aspects

3.1. Prior checking

The management of data concerning social aid files constitutes processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a) of Regulation (EC) No 45/2001). The data processing in question is carried out by an institution in the exercise of activities which fall within the scope of Community law.

The data relating to social and financial aid granted by the Court of Justice are subject to both automatic and manual processing. The processing is therefore partly by automatic means (Article 3(2) of the Regulation).

The processing therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes processing operations likely to present specific risks to the rights and freedoms of data subjects subject to prior checking by the EDPS. Article 27(2) contains a list of processing operations likely to present such risks. Article 27(2)(a) identifies as processing operations likely to present such risks "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures"; and Article 27(2)(b) refers to "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct".

The social and financial aid provided by the Court of Justice involves an operation for the processing of personal data which is covered by Articles 27(2)(a) and 27(2)(b) and which is therefore subject to prior checking by the EDPS. Article 27(2)(a) applies insofar as data, and data relating to health in particular, can be processed within the limits defined for "special categories of data" in Article 10. Article 27(2)(b) applies insofar as data processed in connection with the management of social aid could be used to evaluate personal aspects relating to data subjects. Ability, efficiency and conduct are just some examples of the types of personal aspect which could be evaluated.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, as the EDPS was appointed after the system was set up, the check necessarily has to be performed *ex post*. This does not alter the fact that the recommendations issued by the EDPS should be implemented.

The formal notification was received by e-mail on 1 December 2006. E-mails requesting additional information were sent on 12 and 15 January 2007. In accordance with Article 27(4) of the Regulation, the two-month period within which the EDPS must deliver an opinion was suspended. Replies were sent by e-mail on 23 and 26 January 2007, implying a suspension of 14 days. The time limit was extended by seven days when the draft opinion was sent for comments on 8 February 2007. The EDPS will therefore deliver an opinion by 23 February 2007 (2 February plus 21 days of suspension).

3.2. Lawfulness of the processing operations

The lawfulness of the processing operations must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which provides that processing must be "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 ...".

In this case, the persons responsible for the management of social aid act within the context of a task carried out in the public interest. The processing operation is therefore lawful.

The legal basis for the processing operation in question is Articles 1e, 76 and 76a of the Staff Regulations of Officials of the European Communities (the Staff Regulations) and Articles 30, 71 and 98 of the Conditions of Employment of Other Servants of the European Communities (CEOS).

Article 1e provides as follows:

1. Officials in active employment shall have access to measures of a social nature adopted by the institutions and to services provided by the social welfare bodies referred to in Article 9. Former officials may have access to limited specific measures of a social nature.

2. "Officials in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties.

3. Measures of a social nature adopted in accordance with this Article shall be implemented by each institution in close co-operation with the Staff Committee, on the basis of multi-

annual proposed actions. These proposed actions shall be transmitted each year to the budgetary authority in the framework of the budget procedure."

Article 76 states that: "*Gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result inter alia of serious or protracted illness or by reason of a disability or family circumstances."*

Article 76a adds that: "*A surviving spouse who has a serious or protracted illness or who is disabled may receive financial aid increasing the pension from the institution for the duration of the illness or disability on the basis of an examination of the social and medical circumstances of the person concerned. Rules implementing this Article shall be fixed by common accord between the institutions, after consulting the Staff Regulations Committee."*

Articles 30, 71 and 98 of the CEOS refer to the application of Article 76 of the Staff Regulations to temporary staff (Article 30), auxiliary staff (Article 71) and contractual staff (Article 98).

Furthermore, the proposal for rules common to the Community institutions laying down the procedure for granting financial assistance to supplement the pension of a surviving spouse suffering from a handicap or a serious or protracted illness was approved by the Court of Justice on 14 June 2006. These common rules will enter into force as soon as the President of the Court of Justice has been notified of the common accord of the Community institutions.

The legal basis is therefore valid and supports the lawfulness of the processing.

Moreover, data relating to health are among the data which Article 10 of Regulation (EC) No 45/2001 classes as "special categories of data".

3.3. Processing of special categories of data

The files managed by the persons responsible for social aid may contain, inter alia, data relating to the health of officials and other servants and/or data relating to their religious or philosophical beliefs, sex life or any other aspect of their private life. (see point 2.1: Types of aid)

Article 10(1) states that "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."

Article 10(2)(b) ("*Paragraph 1 [prohibition of the processing of data concerning health] shall not apply where (...) 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 (...)*") applies in the case in point. The Court of Justice, in its capacity as employer, is complying with Article 10(2)(b) by processing the data submitted.

Lastly, in the case in point, certain health-related data are provided by the JSIS or the Medical Service (medical opinions). Owing to the nature of the data involved, which concern health, Article 10(3) (special categories of data) of Regulation (EC) No 45/2001 applies in this instance. It provides that "*Paragraph 1 [prohibition of the processing of data concerning health] shall not apply where processing of the data is required for the purposes of*

preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy". Owing to their duties, the doctors and the staff of the services concerned are subject to the obligation of professional secrecy. Article 10(3) is duly complied with.

However, the persons responsible for social aid are recipients of the personal data in question. All these members of staff, including the members of the CSA, must be informed that they are subject to the obligation of professional secrecy to guarantee the proper processing of the special categories of data, which is in fact done because when, for example, a request for psychosocial aid is examined, the applicant is informed that the social assistant is subject to the obligation of professional secrecy and that their conversations will take place in the strictest confidence. However, the EDPS wishes all persons who may acquire knowledge of and/or have responsibility for social and/or financial aid files to be informed of the importance of the obligation of professional secrecy and of the need to comply with it.

3.4. Data quality

"Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed" (Article 4.1(1)(c) of the Regulation).

The data processed as part of the files relating to the social aid described in section 2.1 of this Opinion can be extensive, making it relatively difficult to determine whether they are "adequate, relevant and not excessive". The areas of health, finances, family relations and psychology may be concerned.

It is therefore important for the persons processing the data relating to the different files to be correctly informed of their obligation to observe the principle established by Article 4(1)(c), and that they take account of it in processing the data. This applies not only to all data provided in the forms completed by the applicant for financial aid or in the questionnaire completed for practical aid but also to the social assistant's personal notes. The EDPS recommends that all persons processing these data be informed of their obligation to observe the principle set out in Article 4(1)(c) of Regulation (EC) No 45/2001.

Moreover, the data must be "processed fairly and lawfully" (Article 4(1)(a) of the Regulation). Lawfulness has already been considered in section 3.2 of this opinion. As for fairness, this relates to the information which must be transmitted to the data subject (see section 3.10 below).

Finally, the data must 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 for which they are further processed, are erased or rectified" (Article 4(1)(d) of the Regulation).

In the case of social files, this provision mainly concerns factual data. However, the EDPS considers that data subjects should be able to express their opinion in relation to subjective aspects contained in individual psychosocial aid files, particularly in cases where subjective views may have a bearing on the exercise of their rights.

The data subject is made aware of his or her right of access to and right to rectify data, in order to ensure that the file remains as comprehensive as possible. See point 3.9 below on the dual rights of access and rectification.

3.5. Conservation of data

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 were collected or for which they are further processed. (...)" (Article 4(1)(e) of the Regulation).

Personal data relating to financial aid are kept for 15 years from discharge by the European Parliament; personal data relating to psychosocial aid are kept for 15 years from resolution of the problem concerned.

The ESDP considers this period to be excessive in view of the purpose for which the various types of aid are intended, particularly in the case of practical and psychosocial aid. The Commission, for example, keeps personal data relating to practical aid for 7 years.

If the aim is to ensure that social assistants handle similar cases in the same way, the Court of Justice could arrange for data to be made anonymous to ensure that files could be processed in an ad hoc manner; no such arrangements are currently in place.

The EDPS requests that a proportionate time-limit for storing data be set, particularly in the case of practical and psychosocial aid, and that data which are to be stored over the longer term be made anonymous in accordance with Article 4(1)(e) of the Regulation.

3.6. Change of purpose / compatible use

Data are retrieved from or entered into the staff databases. The processing being reviewed involves no general change to the specified purpose of staff databases, and the management of social and financial aid is only part of that purpose. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) of the Regulation are fulfilled.

3.7. Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of the Regulation. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

Article 7(1) of the Regulation is complied with because the data is initially transferred within the Institution (social assistant, Director of the Personnel and Finances Department, Head of the Personnel Division, Medical Service staff, the Budget and Accounts Department), and possibly to the Infrastructures Directorate (ergonomic workstation). The purpose of the transfer is to take a decision on the file and in the light of the Staff Regulations.

The data may also be received by an interinstitutional joint committee (the Committee on Social Activities – CSA) and by other institutions, notably the Commission's DG ADMIN in the case of aid for pensioners, the Court of Auditors, the specialised financial irregularities panel, the internal auditor, the European Parliament, OLAF, staff of the Court of Justice and the Court of First Instance, the EDPS and the DPO.

These transfers within the Court of Justice or to other Institutions are legitimate in this instance since they are necessary for the legitimate performance of tasks covered by the competence of the recipient(s). Article 7(1) is therefore complied with.

However, in certain cases, the data subject's name and a description of the problem are transferred to persons from outside the institutions. In these cases, Article 8 of the Regulation ("*transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC*") applies.

The outside services in question are considered to be recipients insofar as they are sent the name of the persons referred to them for assistance. They are not regarded as processors. In certain cases, data subjects contact the services concerned themselves. Furthermore, the social assistant asks the data subject for his or her agreement to any data transfer if the assistance of a specialist third party proves necessary. In most cases, the Court of Justice contacts specialist third parties with the explicit consent of the data subject. The contact with outside specialist services is necessary to ensure that specific problems are dealt with properly (e.g. by a debt intermediary, a lawyer, a psychotherapist, etc.).

The EDPS understands the reasons for not regarding these outside services as processors given the one-off and informal nature of the contacts between them and the departments of the Court of Justice. However, since a name is necessarily mentioned and a problem defined in the e-mail, a transfer of data takes place. These are both items of personal data per se. They therefore fall within the scope of Article 8 if transferred to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC. The data in question can be transferred if "*the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced*", requirements which are clearly met in this case given that the aim is to establish a relationship with a view to providing the data subject with assistance.

The EDPS draws attention to the need for extreme caution with respect to all communications with outside services given the personal nature of the data transferred, and to the importance of informing the social services accordingly.

3.8. Processing including the personnel or identifying number

The Court of Auditors uses the personnel number for the various forms. This use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the task of the personal data controller. Such use may, however, have significant consequences. This was why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the EDPS.

The point here is not to establish the conditions under which the Court of Justice may process the identifying number, but rather to draw attention to that provision of the Regulation. In the present case, the Court of Justice's use of an identifying number is reasonable as it is used for the purposes of identifying the person and keeping track of the file, thereby facilitating processing. The EDPS considers that this number may be used in the context of managing the various types of social aid granted by the Court of Justice.

3.9. Right of access and rectification

Article 13 of the Regulation makes provision, and sets out the rules, for right of access at the request of the data subject. Article 14 of the Regulation allows the data subject a right to rectification.

As already mentioned, rectification and opposition rights can be exercised with respect to all documents in a file except for the social assistant's personal notes. In the present case, data subjects can ask the controller for access to their data. They can also ask to have their data rectified. These rights are mentioned in the information notes given to the data subjects.

As regards the refusal of access to the social assistant's personal notes, while the exception under Article 20(1)(c) may be appropriate in certain cases dealt with by the social service, the EDPS considers that it cannot be applied across the board. As a departure from the general rule set out in Articles 13 and 14, the exception should be interpreted in a restrictive manner and its use should be examined on a case-by-case basis, after consulting the DPO if necessary. Accordingly, the general rule with respect to the files and the social assistant's personal notes should be that the principles of right of access and of rectification apply.

Furthermore, no right of rectification is provided for in the information note given to data subjects when a family aid file is opened. The EDPS requests that the right of rectification be clearly mentioned in the information note for family aid, just as it is in the information notes for disability aid, aid for pensioners and aid in the form of loans.

Finally, there is no reference to data subjects' rights of access and rectification in connection with psychosocial and practical aid. The EDPS recommends that data subjects be given those rights for aid under the two headings in question.

3.10. Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and other data from other persons.

The provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be given to the data subject apply in this case. The data are obtained from the data subject insofar as the data subject fills in forms and can be asked to attend interviews.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also apply in this case, since information is obtained from the different participants in the process (doctor's opinions, the social assistant's notes, potential assistance providers).

As already mentioned, in the case of financial aid data subjects are given information by means of the information note in the aid application forms.

However, the application form for family aid lacks (explicit) information on the right of access and contains no information on the right to rectify (which *is* nonetheless mentioned in the application forms for disability aid, aid for pensioners and loans). The EDPS recommends that the missing information be included in the form in question.

In the case of psychosocial aid and practical aid, the social assistant treats personal data confidentially and requests the agreement of the data subject if the assistance of a specialist third party proves necessary. This information does not satisfy the requirements of Articles 11 and 12 of the Regulation.

The EDPS recommends that in the case of psychosocial and practical aid all the information required by Articles 11 and 12 be provided to data subjects to ensure that these articles of the Regulation are complied with in full.

3.11. Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on security of processing, "the controller shall 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".

The EDPS considers that the full set of security measures taken are such that they can be regarded as adequate within the meaning of Article 22 of the Regulation.

Conclusion

The proposed processing operations do not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. This means in particular that:

- all persons who may acquire knowledge of and/or have responsibility for social and/or financial aid files must be explicitly informed of the importance of the obligation of professional secrecy and of the need to comply with it;
- all persons processing these data must be informed of their obligation to observe the principle set out in Article 4(1)(c) of Regulation (EC) No 45/2001;
- a proportionate time-limit for storing data must be set, particularly in the case of practical and psychosocial aid, and personal data which are to be stored over the longer term must be rendered anonymous in accordance with Article 4(1)(e) of the Regulation;
- extreme caution must be exercised with respect to all communications with outside services given the personal nature of the data transferred, and the social services should be informed accordingly;
- rights of access and rectification must be given to data subjects in the context of psychosocial and practical aid;
- all the information required by Articles 11 and 12 of Regulation (EC) No 45/2001 must be given to data subjects in the context of psychosocial and practical aid;

- the data subject's rights of access and rectification must be stated in the application form for financial aid;
- the data subject must also be granted rights of access and rectification with respect to the social assistant's personal notes as a general rule.

Done at Brussels, 21 February 2007

Peter HUSTINX
European Data Protection Supervisor