

Opinion on the notification for prior checking received from the Data Protection Officer of the European Commission on "SYSPER 2: Time Management Module"

Brussels, 29 March 2007 (Dossier 2007-63)

1. Proceedings

On 1 February 2007 the EDPS received a notification for prior checking relating to data processing operations carried out in the context of SYSPER 2 - Time Management Module. A meeting to give a general presentation of these processing operations was organised at the request of the EDPS on 15 February so that all necessary questions could be asked and some of the facts set forth could be brought up to date.

2. The facts

As part of its administrative reform, the Commission has devised a new staff management system called SYSPER 2¹ to manage the Commission's human resources. SYSPER 2 comprises a series of modules each covering precise and specific functions. These modules process personal data.

The purpose of the Time Management Module (TIM) is to enable all the time-related aspects of the work environment of the holder of a post to be managed in a legal, uniform and centralised way:

- (1) management of dossiers and applications (and the production of the corresponding statistics) relating to part-time work, and parental and family leave;
- (2) management of entitlements to annual and special leave and absences and the production of the corresponding statistics. This electronic management is an integral part of SYSPER 2 and its modules which back up all the procedures used in "traditional" staff management (with particular reference here to defining individual rights in respect of working conditions);
- (3) management of daily working hours in the context of flexitime whilst complying with obligations as regards working hours in general; flexitime data may also be used by the immediate superior and HRO (Human Resources Officer) for managing/planning resources (workload indicator).

In brief, the various types of leave that can be granted are annual leave, parental leave (leave granted for a maximum of 6 months within the 12 years following the birth of a child), family leave (the possibility of taking 9 months' leave - the maximum period over an official's entire career - in the event of serious illness or severe handicap of a spouse, relative in the ascending line, relative in the descending line, brother or sister), special leave (for family reasons, i.e.

¹ See opinion of the EDPS 2005-218 (SYSPER 2 – REC), opinion 2005-406 (SYSPER 2: e-CV).

marriage, birth of a child, adoption, maternity, death and other specific situations such as leave to work for a trade union, elections, removal, taking part in a competition, etc), absences, part-time work and flexitime.

Regarding flexitime, the following remarks may be made: as one of the important aspects of its administrative reform is to make its working methods more flexible in order to make it easier to reconcile the demands of private life and work, the Commission has decided to encourage flexitime in its services by allowing all its staff to work flexitime within a working week of 37½ hours, whilst complying fully with the Staff Regulations and the interests of the service. In this way, the Commission intends to increase the motivation of its staff by making them more responsible for organising their working time.

Flexitime applies in all the Commission's services. However, certain units, parts of units or groups of people may, because of constraints specific to their own department, not apply the flexitime scheme at all or only to a certain extent. Such cases must be justified and submitted for agreement to DG (Directorate-General) ADMIN which will inform beforehand the Central Staff Committee (made up solely of elected representatives of the staff).

2.1. Presentation of the system

2.1.1. Management of dossiers before the TIM

DG ADMIN is responsible for determining policy on working conditions for Commission staff (preparing Commission decisions, decisions of the Director-General or interpreting the rules). The Directorates-General are appointing authorities for dossiers relating to individual working conditions, which include: applications for part-time working, parental and family leave, annual and special leave, and whether or not flexitime is worked.

Before the TIM was introduced:

- leave/absences were managed via the "SIC Congés" system (one application per DG); this application ceased to exist on 1 January 2007;
- management of parental/family leave (in particular input) - as DGs have no access to SYSPER - was centralised and carried out by ADMIN (unit B3) on their behalf;
- management of working hours (in DGs using flexitime) was carried out by each of those DGs individually and separately from the other time-related aspects; its main feature was "pre-planning".

2.1.2. Advantage of the TIM

The TIM provides a way of rectifying the "inconsistency" between the policy of decentralisation which has been decided on and the actual management of these dossiers and certain changes to the Staff Regulations in May 2004 concerning reconciling the demands of work and private life. The essential feature of the TIM is that, whatever the nature of the application made by an employee - leave, working time, or organisation of working hours - it recalculates that person's entitlements immediately and automatically. It is an encoding system which involves automatic recalculation. SYSPER 2 is updated once a week and any serious error and/or problem can be rectified the same day.

Development of this tool permits a move to electronic management and brings a number of advantages:

- for the institution:

- greater ease/efficiency in managing these dossiers. In particular, abolishing applications on paper forms, and the integration of parameters establishing a correct and uniform application of the relevant rules of the Staff Regulations will considerably improve the reliability of these processes;
- for the official:
- easier access than the present way of making applications², actual access to the dossier so that it can be tracked up to the final decision;
 - direct access to the time account, and the capacity to track and check it continuously;
- for user services:
- direct access (which HROs in the DGs did not have before the TIM);
 - more efficient and simpler management;
 - automatic entry into digitised personal files of decisions of the appointing authority; this does not mean data processed by the TIM but decisions taken by the appointing authority during procedures managed via the TIM interface, relating, for example, to special or parental leave, part-time work, etc.;
 - direct entry of data into the NAP (New Payroll System) (payment of salaries) without manual intervention (before the TIM the encoding of data in SYSPER by ADMIN B3 led to a number of errors): each group of users in the DG will input its own data directly;
 - central storage of data, which will simplify the work of ADMIN and the production of statistics;
 - a high level of security and protection of personal data;
 - electronic management of entitlements over the long term. Before the TIM certain information concerning the right to parental/family leave was not automatically kept up to date. This related to:
 - (1) identification of the child, not available in the current SYSPER 2³ (even though the entitlement to parental leave is linked to the child)
 - (2) management of the duration of entitlement to parental/family leave (Articles 42a and 42b of the Staff Regulations);
 - (3) certain aspects of part-time work (the limited duration of half-time work in preparation for retirement (Annex IVa (Article 4) of the Staff Regulations), the total period of part-time work for certain reasons where authorisation is automatic (Article 55a(2) of the Staff Regulations);
 - a communication facility/(at a later stage of the development of the TIM) electronic transfer of relevant data between institutions (at present no information is available via SYSPER when an official takes up a post at another institution);
 - simplified management of working hours with a summary drawn up monthly for each unit.

2.1.3. Situation before the TIM: data processing

2.1.3.1. Part-time work, parental and family leave

² For parental/family leave and part-time working by means of a form available on the Commission's Intranet to be filled in and submitted manually via the immediate superior for authorisation by the appointing authority.

³ Before the TIM this information was kept up to date manually by the Administration in an Excel file.

Until the TIM is introduced, the holder of the post introduces his or her application for part-time working or parental/family leave "manually" by filling in an application form (paper version available on the Commission's Intranet, where explanatory notes may also be consulted). The completed form is then forwarded via the immediate superiors to the appointing authority (for parental leave, the sensitive part of the "single parent" declaration is covered by a separate form and sent directly to the appointing authority without intervention from anyone else).

As soon as the appointing authority has given its authorisation or refusal, the paper version of the application is sent to the Administration which "encodes" it (as Directorates-General have no access to the SYSPER database). If the application is refused, the Administration simply takes note of it for statistical purposes.

The Administration then sends the original paper form to the applicant (official decision by the appointing authority), places a copy in the applicant's personal file and sends a copy to the persons responsible in the HR units in the DGs.

If the application is refused, as soon as the applicant has been informed of the appointing authority's decision, he or she may refer the decision to the CPTTP (Joint Committee on Part-time Work) by applying to its chairman in writing. The chairman convenes the CPTTP which - after studying the dossier - may ask the appointing authority to reconsider the application. This part of the procedure (reference to the CPTTP) will also be automated.

2.1.3.2. Management of annual leave

The "SIC Congés" system allows each member of staff to submit applications for annual/special leave, which are approved by the head of unit and/or by the GECO (for the checks required for special leave). At the beginning of the year, the GECO (leave and absences manager) enters the leave entitlements of each person (entitlements under the Staff Regulations and entitlements granted by the Administration), keeps the record up to date during the year, and deals with carryovers at the end of the year. The "SIC" also allows statistics to be produced for each unit.

2.1.3.3. Management of working hours/flexitime

The DGs/Departments that have chosen to adopt or experiment with flexitime on the basis of the Commission decision of 1991 have done this either via manual input (entry of the data into a file, paper or electronic) or, as a pilot project, via automatic input (magnetic badge reader).

The data collected have been stored in local databases (an electronic file linked to an application, an Excel spreadsheet, or a simple handwritten page). The processing (checking of hours worked and any anomalies, recording credit/debit hours) has been done automatically, semi-automatically or manually in each unit (head of unit or secretariat) or Directorate-General (by the HROs or the GECO).

2.1.4. Situation once the TIM is introduced: electronic data processing

2.1.4.1. General data processing

The processing of all data relating to conditions of employment (absences and leave, applications for part-time work, parental and family leave, flexitime) is necessary for staff management and the functioning of Commission services. It is based on the rules governing the relations between the Institution and its staff, in particular the Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities, the general implementing provisions of those Regulations and the internal management rules followed by the services to perform the tasks that the Commission has assigned to them. Accordingly, the Commission considers that none of the data requested from staff will be used for any other purpose than staff management.

2.1.4.2. Duration of storage of data

In general, data are kept for 5 years (more in the event of an appeal) except where a different time limit is specified below.

Retention of data relating to sick leave for at least 3 years is justified by Article 59(4) of the Staff Regulations but is extended to 5 years to cover cases in dispute. Where an employee moves to another institution, only data concerning sick leave over the previous 5 years are passed on. The 5 year-period is justified by the need to cover cases in dispute. Where a case may be referred to the Invalidity Committee, this is not always possible at the end of 3 years (Article 59 of the Staff Regulations: 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 3 years) and may take place later; this is why the Commission must transfer data on sick leave over the previous 5 years.

Retention of data relating to days of annual leave is justified in particular for the carryover of days not taken from one year to another, but will not exceed 2 full years; this is to ensure consistency where an employee moves to another institution (at the beginning of calendar year "n" the data for year "n-3" are erased).

Data on part-time work, parental and family leave are, as a general rule, kept at least until employment at the Commission has ceased and even beyond that (as they relate to a continuing entitlement and the possibility of an appeal remains).

Data concerning flexitime are kept for the current calendar year. They are erased once the procedure for transferring days of annual leave not used to the following year is completed, and at the latest at the end of March in that year. Where daily working hours are entered by the head of unit/sector and are based on intermediate records, those records are destroyed once the head of unit has validated the monthly balance, and no later than the 15th of the following month.

There is no provision for keeping data for historical, statistical or scientific purposes.

2.1.4.3. Entering data in the Time Management Module

- Part-time work, parental and family leave

Via the TIM staff enters relevant information concerning their applications for part-time working or parental/family leave. Data on the time-related aspects have to be entered by each group of users (the holder of the post, the hierarchy up to the appointing authority) in the light of their specific profile. Another part of the data (data relating to the identification and characteristics of the applicant) will be automatically supplied by SYSPER 2 (before the TIM is used for the first time, the existing data on the time-related aspects will be transferred from the SYSPER database and the Excel file used by ADMIN to the TIM).

Each user (the holder of the post, his or her superiors, HROs) is guided in the process by a "workflow" until the decision to grant/refuse the application is taken by the appointing authority (as parameters ensuring that the relevant rules are correctly applied are integrated and explanatory notes are included).

- Management of annual leave

At the beginning of the year, the TIM is initialised on the basis of the entitlements and status of the employee in question and he or she is credited automatically with an allowance of days of leave. The quota can be changed manually by the GECO to correct or add entitlements granted by the Institution (e.g. member of first aid team – 2 extra days). Via the TIM staff enter in the course of the year the relevant information on their "consumption" of annual leave, travelling time or applications for special leave. Absences are entered by the head of unit (or this task is delegated to someone else). Applications for leave or absences are normally validated by the immediate superior (or the person to whom this is delegated).

When the TIM is introduced there is no plan to include old data from the "SIC". When the TIM is initialised, entitlements at the beginning of 2007 and carryovers of annual leave from 2006 will be transferred. No application for leave in 2007 – which may have been made during 2006 – will be carried over and this will have to be allowed for when the system is introduced.

Each user (the holder of the post, his or her superiors, HROs) is guided in the process by a "workflow" until the decision to grant/refuse the application is taken by the appointing authority (as parameters ensuring that the relevant rules are correctly applied are integrated and explanatory notes are included).

- Working hours/flexitime

The flexitime system is intended to allow staff to choose the time they arrive at work, their lunch break and the time they leave the office within a working week of 37½ hours. This flexibility is limited to the hours forming the "flex-periods" and must take into account the interests of the service. Compensation in the form of days or half-days of leave is granted subject to certain conditions.

For flexitime the TIM must manage the beginning and end of the working day and the lunch break. These data can be entered by the employee directly or by the immediate superior (usually the head of unit, in large units the head of sector) who may delegate that task. How daily data are entered is decided by the head of unit. At the meeting on 15 February 2007, it was also explained that data may be encoded only once a week, as some staff cannot enter their timetables on the day itself (e.g. when they are on mission); the system therefore relies primarily on trust rather than verification. The same procedure is followed for encoding mission days. Correction of data already encoded or the entry of exceptions to the normal rules, e.g. weekend work, is carried out manually. These two cases are specifically provided

for in the rules; the data can be encoded only by the head of unit and in principle they do not require more detailed instructions.

The standard system for managing flexitime as advocated by DG ADMIN, which is the subject of this notification, does not provide for automatic entry (e.g. via a security gate and magnetic cards). Use of such equipment would require separate notification of the Data Protection Officer by the DGs concerned. Applications for (days or half days of) compensatory leave are made in the same way as applications for leave; they must also be validated by the immediate superior. Members of staff can consult their working hours account at any time.

At the beginning of each month, managerial staff check and approve the detailed breakdown of hours worked by each member of their teams, and the breakdown displays all data recorded during the previous month.

2.1.4.4. Access to data in the Time Management Module

All personal data will be accessible and in part supplied by the data subject, so he or she will be able to check and, if need be, correct them directly or ask for an administrator (identification data) or his or her immediate superior (flexitime data) to correct them. Some time-related data (in principle supplied by the holder of the post, or by the immediate superior in the case of absences) must be validated by an HRO/the hierarchy. This concerns in particular data affecting the financial entitlements of the holder and/or the length of time such entitlements are granted for (in particular in the case of parental leave, the increased allowance and/or single parent allowance), but also any item of data (leave, etc.) which, if wrongly attributed, would falsify the work relationship between the staff member and the employer. The balance of flexitime credit/debit hours and its transfer to the following month must be validated at the end of each month by the immediate superior.

Access to these personal data is controlled by precise rules in the light of the role and responsibilities of the players (profile) and is based on the need and purpose defined. Granting a right of access to the application is thus governed by the "need to know"/"need to do" principle. Rights of access are attached only to the post and the holder has rights of access only via his own workstation. Apart from the holder's access to his own information, access to applications is thus restricted to immediate superiors, the superiors of immediate superiors, HROs in DGs up to the appointing authority, the Operations Division of DG ADMIN (ADMIN B.3) and members of the CPTTP (who have access only to dossiers expressly referred to the CPTTP). If one of the users other than the holder of the post changes jobs, the right of access is lost.

Each holder of a post can delegate his or her rights to a person of trust. Such delegation of rights is transparent and reversible and anyone who delegates rights bears responsibility for the consequences. Such delegation of rights is also linked to the post and is lost if the data subject changes jobs. Only data to which the person has access can be viewed, printed and saved, etc.

2.1.4.5. Transfer of data

When a staff member changes jobs, data relating to working conditions are passed on to/(at a later stage of the development of the TIM transferred to) another institution, enabling that institution - as there is a common legal basis - to manage them as necessary. Flexitime data

are part of the day-to-day internal management of services; they will not be passed on if a staff member moves to another institution.

2.2. Other information arising from notification

Data subjects

Part-time work and parental and family leave are available to Commission staff covered by the Staff Regulations and the CEOS (officials, temporary staff, contract and auxiliary staff) in employment (except parental and family leave for auxiliary staff). Management of leave and absences covers the same categories of staff. In due course, it is planned that other categories such as seconded national experts, trainees, etc. will also be covered. Flexitime concerns all staff covered by the Staff Regulations and CEOS (officials, temporary, contract and auxiliary staff) and seconded national experts.

We must also remember the special case of persons who choose not to work flexitime, and are not obliged by the Guide to Flexitime to record their hours of work. Even so, a head of unit may decide that all his or her staff, including those who have chosen not to work flexitime, must record their presence every day in the way specified by the Guide to Flexitime, so that working time conditions are complied with overall.

Data

The types of data on staff processed by the TIM (including flexitime): surname, forename, service number, sex, seniority, personnel number, unique payroll number (NUP), address, telephone, position in the Commission's hierarchy, category, grade, status, date of birth, civil status, cohabitation recognised by the Administration, identity and dates of birth of dependent children and date of their adoption if applicable, place of origin, hours worked, timetable, data on contributions to the pension scheme (part-time work in preparation for retirement) and information on absences: for health reasons (absences with or without medical certificate - NB: medical certificates are not data processed by the TIM, only by the Medical Service), special leave, annual leave, parental and family leave and the result of calculations: in particular on balances of entitlements (absences, leave, entitlements to parental and family leave, "purchased" credit), daily attendance (working hours: time of arrival, lunch break, departure).

The data processed are not intended to play a part in the evaluation process. Flexitime data are not used directly for the payment of overtime. They might, however, be referred to by the immediate superior when validating statements of overtime worked.

Information given to staff

Two "Administrative Notices" have been published on this subject:

- New SYSPER 2 Time Management Module (Administrative Notice No 61 of 21.12.2006)
- Guide to Flexitime (Administrative Notice No 62 of 21.12.2006)

Documents containing general information on part-time work, parental leave, family leave, annual leave and absences and on flexitime can be consulted on the Commission's intranet site.

The "Flexitime" site will be changed when the SYSPER 2 application is introduced in April 2007. The specific declaration of confidentiality will be accessible from the SYSPER 2 application itself. This specific declaration of confidentiality concerns the purposes of the Time Management Module and the relevant legal bases, rights of access and rectification, recipients, entry of data, period of retention of data, nature of data collected, technical means used and contact points.

The Commission has also organised public meetings with the staff of the Institution to present this new project.

Automated procedure

Some data come from SYSPER 2 (identification aspects) and others are entered in the application by the different parties involved (time-related aspects).

The Flexitime application in SYSPER 2 automatically compares the hours worked by a member of staff (as entered by him or her, 4 times a day or at least once a week, or by the secretariat) with his or her reference timetable. The record is made in a list which is not public and is kept by someone given that task by the head of unit. These data are recorded at least once a day in SYSPER 2. The lists must be destroyed after the monthly balance (credit/debit hours) has been approved by the head of unit and no later than the 15th of the following month. A credit balance of more than 15 hours is automatically reduced to 15 hours. For someone working full time the reference timetable is always 7½ hours per day, 3¾ hours in the morning and 3¾ hours in the afternoon. For someone working part-time, the reference timetable is that authorised in the application for part-time working and entered in the TIM.

A day's absence on annual leave, special leave or sick leave is automatically counted as 7½ hours for someone who works full time, and as the number of hours planned for that day for someone who works part-time. A day on mission is automatically counted as 7½ hours. If a day on mission is longer or shorter manual adjustment is necessary.

The application permits a member of staff to view at any time his credit/debit hours balance on the basis of the latest information entered.

Manual processing

Supporting documents containing personal data are not forwarded electronically via the TIM.

Supporting documents relating to parental leave, applications for part-time working, leave and absences are forwarded manually by the applicant to the appointing authority, hiding any information of a medical nature, for example a doctor's speciality.

For family leave, the applicant sends the medical certificate directly by post to the Medical Service. The Medical Service, as appointing authority for the medical aspect, issues its opinion (refusal or acceptance) in the TIM workflow. For sick leave, the certificate is sent directly to the Medical Service by the data subject.

In addition, in cases of absence for medical appointments (including recognition as working time under the flexitime system), the head of unit may request proof that the member of staff has attended the medical appointment and must return it to him or her without any register or

such absences being kept or any other monitoring system. The document need not state the speciality of the practitioner and it may be hidden by the member of staff concerned.

Data storage medium

Relational data base on a central server, with individual access via a browser.

Recipients

Depending on their role and their responsibility the following players will have access to the specific data necessary for the processing to be performed:

- job holder/holder of the post
- the immediate superiors of the data subject (head of unit, director) and the superiors of the immediate superiors (up to the appointing authority)
- the Human Resources Officers in the Directorates-General as appointing authorities for these dossiers
- the central Human Resources Officers (Administration ADMIN B3)

All data except flexitime data can be accessed by or forwarded to:

- another institution when a member of staff changes jobs and moves (an extract from the data on paper) so that, as there is a common legal basis, they can be managed as necessary;
- members of Joint Committees - in particular members of the Joint Committee on Part-time Work (CPTTP) (with access only to the dossier expressly referred to the Committee) (data on part-time work and parental and family leave);
- the Medical Service;
- the Pay Master Office (PMO - for the purposes of payments), ADMIN (for storing decisions in the digitised personal file in which are entered all decisions taken on part-time work and parental and family leave).

Blocking and erasure

Requests for blocking or erasure are dealt with in the month following acceptance by the data controller, except where a particular IT development is required that needs more time; in that case other equivalent solutions are proposed.

Security

Security measures - both technical and organisational - are taken in order to guarantee that processing operations are secure. Access to personal data is protected by the management of access rights on the basis of the "need to know" principle in the light of the tasks assigned to those who have access.

[...]

Finally, the data are stored in the Commission's data centre in Luxembourg and are therefore protected by the numerous security measures set up by the Directorate-General for Data Processing to protect the integrity and confidentiality of the Institution's electronic property.

3. Legal aspects

3.1. Prior checking

Management of data relating to absences, the different types of leave and attendance timetables constitutes processing of personal data ("any information relating to an identified or identifiable natural person (...)": Article 2(a) of Regulation (EC) No 45/2001). Such data processing is carried out by an institution and is implemented for the performance of activities falling within the scope of Community law.

Data managed by the TIM, a Commission application, are processed both automatically and manually. Thus this is partly automated processing (Article 3(2) of the Regulation).

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

Article 27(1) of Regulation (EC) No 45/2001 submits to prior checking by the EDPS processing operations likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) contains a list of processing operations likely to present such risks. Article 27(2)(a) lists as processing operations likely to present such risks "processing of data relating to health ...", 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".

Dossiers managed by the TIM interface constitute processing of personal data covered by Article 27(2)(a) and are therefore subject to prior checking by the EDPS. Article 27(2)(a) applies as data relating to health are processed (e.g. family and special leave, absence on medical grounds).

The EDPS does not carry out prior checking because data relating to health may occasionally appear, but because in this case the TIM is structurally designed to collect data relating to health included in the various processing operations performed by the TIM as a whole. Flexitime and other aspects structurally include data relating to health (medical appointment during working hours) so that they may be regarded as working hours. This is not an occasional occurrence, it will always be so.

Article 27(2)(b) also applies as the system evaluates periods of attendance at work and leave, which define the conduct of the data subject.

As for the other aspects examined, the EDPS includes everything which makes prior checking possible so that no aspect of the dossier is neglected.

Mention must be made of the specific nature of the processing performed and notified for prior checking by DG ADMIN. On 1 April 2007 the European Commission wishes to introduce a new Flexitime project in all its Directorates-General. The Commission's decentralised structure means that one could imagine a Directorate-General using its own system to manage flexitime separately from the rest. DG ADMIN intends to use the SYSPER 2 flexitime module, with hours of attendance entered directly by the data subject or centrally by the secretariat, but in both cases without an electronic clocking-in system at the entrances to its buildings. A large majority of DGs will probably use this system.

However, at least one DG intends to use a system of badges and security gates, using the SYSPER 2 module at the same time to keep a record of hours of attendance and carryovers.

To reduce the burden of notification, it has been suggested that all DGs that follow DG ADMIN's directions should be covered by its notification, whilst retaining local responsibility (a sort of sub-contractor/responsible for processing relationship). If a DG uses a different system, it will have to notify separately the aspects which are different⁴. This was the method used for the evaluation system (CDR)⁵.

This notification contains a draft note from the Director-General of ADMIN to his colleagues explaining this approach; the draft will be amended in the light of comments received on the occasion of the prior checking.

The new decision has been applicable since January 2007 but the central tool will not be available until 1 April. ADMIN will not put in place any interim solution that does not comply with Regulation No 45/2001 before that date, but some DGs have either extended existing practice or set up ad hoc interim solutions to cover the period January-March 2007. Afterwards they will use the system set up by DG ADMIN.

The EDPS appreciates the warning in the draft note by the Director-General of DG ADMIN to all Directors-General at the European Commission against making significant changes in the system set up by DG ADMIN (e.g. magnetic badging devices) so that processing operations not compatible with Regulation No 45/2001 are not wrongly introduced, and also welcomes the fact that all processing operations will be submitted to the Commission DPO to assess whether it should be submitted for prior checking by the EDPS.

This opinion is also a response to consultation of the EDPS on 21 December 2006 by Mr Claude CHENE, Director-General of DG ADMIN, on the basis of Article 28(1) of Regulation 45/2001, sending him the Guide to Flexitime for information⁶ and as a future basis for this notification.

The recommendations of the EDPS on the aspect of the system concerning the management of leave and working time should be implemented even though it amounts to ex-post checking as that system existed before the EDPS was appointed. Only the part concerning Flexitime is a genuine prior checking before the Institution implements it.

Official notification was received by e-mail on 1 February 2007. A meeting was organised at the request of the EDPS for a general presentation of the processing operations and so that all the necessary questions could be asked. In accordance with Article 27(4) of the Regulation, the EDPS will issue his opinion by 2 April 2007.

3.2. Lawfulness of the processing

The lawfulness of the processing must be considered in the light of Article 5(a) of Regulation (EC) No 45/2001 which reads: "*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 institutions or body or in a third party to whom the data are disclosed*".

⁴ See dossier 2007-206 consultation on "Flexitime specific to DG INFSO" (in progress).

⁵ See EDPS opinion 2005-218.

⁶ Dossier 2007-021 with the EDPS.

In the present dossier, the persons in charge of managing the TIM module are performing a task in the public interest on the basis of the Staff Regulations of the European Communities and the Conditions of Employment of Other Servants of the European Communities. The proposed processing is therefore lawful.

The legal basis for the data processing under consideration is found in the following articles:

Legal basis for annual leave entitlements:

- Commission Decision of 28 April 2004 introducing implementing provisions on leave (C(2004) 1597/12) - A.N. 102-2004 of 28 July 2004.
- Commission Decision of 28 April 2004 introducing implementing provisions on absences as a result of sickness or accident (C(2004) 1597/11) - A.N. 92-2004 of 6 July 2004.
- Articles 57 to 61 of the Staff Regulations of Officials of the European Communities.
- Annex V to the Staff Regulations.

Legal basis for part-time work:

- Article 55a and Annex IVa to the Staff Regulations. Commission Decision of 14 April 2004 laying down the entitlements and detailed rules for part-time work.

Legal basis for parental leave:

- Article 42a of the Staff Regulations. Commission Decision of 15 April 2004 laying down the entitlements and detailed rules for parental leave.

Legal basis for family leave:

- Article 42b of the Staff Regulations. Commission Decision of 14 April 2004 laying down the entitlements and detailed rules for family leave.

Legal basis for flexitime:

- Article 55 of the Staff Regulations
- "Guide to Flexitime", SEC(2006) 1796 (Commission Decision of 19 July 2006 and final adoption on 19 December 2006).

All these legal bases are thus appropriate and back up the lawfulness of the processing.

Furthermore, data relating to health are described in Article 10 of the Regulation as "special categories of data".

3.3. Processing of special categories of data

Dossiers managed by the persons in charge of the TIM module may include, among others, data relating to the health of an official or other servant.

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) applies to the present case: "*Paragraph 1 (prohibiting the processing of data relating to 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 ...*". The Commission as employer is in fact complying with Article 10(2)(b) by performing the data processing operations submitted for checking.

Article 10(2)(c) also applies to this case: "*Paragraph 1* (prohibiting the processing of data relating to health ...) *shall not apply where processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent*", as the families of officials or other servants may be concerned by the processing of these data. In the case of family leave, the vital interests of the children may be concerned; Article 10(2)(c) therefore applies.

Finally, in the present case, certain data relating to health originate from or are sent to the Joint Sickness Insurance Scheme (JSIS) or to the Medical Service. Because these are data relating to health, Article 10(3) of Regulation 45/2001 relating to special categories of data applies. It states: "*Paragraph 1* (prohibiting the processing of data relating to 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 healthcare 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*". By virtue of their functions, the doctors and other staff of those services are subject to the obligation of professional secrecy. Article 10(3) of the Regulation is therefore fully complied with.

But persons in the administrative services (all Human Resources Officers, Joint Committees, PMO, ADMIN) who deal with dossiers that might include data relating to health are recipients of these special data. All these staff must be informed that they are subject to the obligation of professional secrecy, to guarantee that these special data are processed appropriately; this is done, for example, when an application for psycho-social aid is being considered: the applicant is told that the social welfare assistant is subject to an obligation of professional secrecy and that all the interviews will be completely confidential. Nevertheless, the EDPS would like all persons who may have knowledge of and/or be in charge of dossiers in the framework of the TIM to be explicitly reminded of the importance of the obligation of professional secrecy and 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)(c) of the Regulation).

Data processed in SYSPER 2: Time Module Management, described in point 2.2 of this opinion and as explained at the meeting on 15 February 2007, seem overall to be relevant and adequate even given their volume which results from the purpose of the module.

Personal data relating to dependants or family members (such as the handicap or illness of a child) may give entitlement to leave or different working hours (part-time work). In general, the EDPS would point out that only special situations due to medical reasons may lead to the Time Management system processing sensitive personal data relating to members of an official's family; such processing must be performed only for managing working hours and leave, and only to the extent necessary for that purpose. Article 10 authorises the processing of such data only within such limits.

Furthermore, data must be "processed fairly and lawfully" (Article 4(1)(a) of the Regulation). Lawfulness has already been analysed in point 3.2 of this opinion. Fairness refers to information which must be supplied to the data subject (see below point 3.10).

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). At the information meeting on 15 February, it was explained that the system was updated very regularly (short-term updates are carried out once a week and, where serious errors and/or problems are found, they can be rectified the same day) in order to correct any fault.

Rights of access and rectification by the data subject are also a way of ensuring the accuracy and updating of the data concerning him or her (see also "right of access and rectification", point 3.9).

3.5. Data retention

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). In accordance with Article 4(1), where personal data are kept for longer for historical, statistical or scientific reasons, they should either be kept in anonymous form or the identity of the data subject should be encrypted.

In general, data relating to sick leave will be kept for 5 years (or more in the event of an appeal) and data relating to annual leave for 2 full years; data relating to part-time work and parental and family leave will, as a general rule, be kept at least until the data subject ceases employment at the Commission and even beyond that (as they relate to a continuing entitlement and an appeal is possible).

Data relating to flexitime are kept for the current calendar year. They will be erased once the procedure for transferring unused leave days to the following year is completed, and no later than the end of March of that following year. Where daily working hours are entered by the head of unit/sector on the basis of intermediate records, those records will be destroyed once the head of unit has validated the monthly balance, and no later than the 15th of the following month.

The EDPS has already drawn up guidelines. Keeping data relating to annual leave may be justified where leave entitlement is carried over from one year to the next but should not go beyond the following year⁷. The EDPS considers it acceptable to keep data relating to annual leave for 2 full years.

Keeping data relating to sick leave for at least 3 years is justified because of Article 59(4) of the Staff Regulations. Similarly, when an employee moves to another institution, only the data relating to sick leave over the previous 3 years are passed on. Beyond those 3 years, justification for keeping data for 5 years as argued at the meeting on 15 February is based on the need to allow for cases in dispute. When there is a possibility that a case may be referred to the Invalidity Committee, this cannot always be done at the end of 3 years (Article 59 of the Staff Regulations: 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 3 years) and may occur later; therefore the Commission must be able to pass on data concerning sick leave over

⁷ See the opinion on dossier 2004-278 concerning the "SIC Congés" of the Court of Justice of the European Communities (point 2.2.5).

the previous 5 years. In any event, the data should be erased no later than the end of the period during which they may be contested or revised⁸.

Even though the notification emphasises that there is no provision for historical, scientific and/or statistical use of data, it is also stated that statistics are produced on applications for part-time working and parental and family leave, and on the management of entitlements to annual and special leave and absences. The data are erased at the end of the retention period laid down for each type and statistics cannot be produced from that time on. The only possibility would be to produce statistics from balances that had already been aggregated, which implies that the statistics would be anonymous when they were used.

Nevertheless, the EDPS would emphasise that where such data are used beyond the retention period, they must be made anonymous (Article 4(1)(e) of the Regulation).

3.6. Change of purpose/compatible use

Data are extracted from or entered in staff databases. The purpose of processing the data is to manage the flexitime rules and working hours and absences via an automated system. The processing operations analysed do not imply any general change of the purpose laid down for staff databases since managing social and financial aid forms only part of it. This means that Article 6(1) of Regulation (EC) No 45/2001 does not apply here and that Article 4(1)(b) of the Regulation is complied with, as the purposes are compatible.

3.7. Transfer of data

Processing operations must also be examined in the light of Article 7(1) of the Regulation. Processing operations with respect to Article 7(1) concern transfers of personal data within or between 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, as the transfers are carried out in the first instance within the Institution (immediate superiors, Human Resources Officers at Directorate-General level and centrally, Medical Service, PMO and ADMIN). Such transfers form part of the decision-taking process on the dossier submitted on the basis of the Staff Regulations.

Furthermore, the Joint Committee on Part-time Work (CPTTP) and other institutions may receive the data, particularly other institutions when data are transferred.

The TIM is one of the SYSPER 2 modules and all the SYSPER 2 modules are interconnected. Recording a decision to work full time instead of part-time (or to take parental leave) in the TIM which is part of the SYSPER 2 career module will enable the PMO to obtain the relevant information and make payments accordingly.

Transfers within the Commission or to other institutions are legitimate in this case as they are necessary for the legitimate performance of tasks covered by the competence of the recipient(s). Article 7(1) is therefore complied with.

⁸ See the opinion on dossier 2004-278 concerning the "SIC Congés" of the Court of Justice of the European Communities (point 2.2.5).

3.8. Processing including the personnel number or identification number

For applications incorporated into the TIM, the Commission uses the personnel number and the NUP (unique payroll number). Such use of an identifier is, in itself, only a means - legitimate in this case - of facilitating the work of the personal data controller. However, such use may have significant consequences. This is why the European legislator laid down rules on the use of identifiers in Article 10(6) of the Regulation, which states that the EDPS must be involved.

We are not trying here to determine the conditions under which the Commission may process the identifier; we are simply pointing out that attention must be paid to this point in the Regulation. Use of the personnel number ensures the consistency and accuracy of the data recorded in the databases. The unique payroll number (NUP) is used for transferring data from the central database to the Pay system. In this case, the use of an identifier by the Commission is reasonable as the number is used for the purposes of identifying a person and tracking the dossier to facilitate the processing operations. The EDPS considers that this number may be used in the context of the Commission's Time Management Module.

But the Pay system is also based on the personnel number (service number). It would appear superfluous to keep the 2 staff identifiers in the central database if the data can be transferred using the personnel number alone. The EDPS would like the data controller to reconsider whether the use and processing of the NUPs are strictly necessary for transferring data from the central Time Management system to the Pay system. Using the personnel number could be preferable as long as it guarantees the reliability of the transfer of data.

3.9. Right of access, rectification, blocking and erasure

Article 13 of the Regulation deals with the right of access - and its detailed rules - at the request of the data subject. Article 14 of the Regulation deals with the data subject's right of rectification.

For the record, the right of access, the right of rectification and the right to object are granted in the following ways: all personal data (leave/absences/part-time work/parental and family leave/flexitime) are accessible to the holder (and partly supplied by him or her); he or she can thus check them and if necessary correct them directly or ask for them to be corrected by an HRO manager (data relating to identification) or by his or her immediate superior (flexitime). As regards time-related data (supplied in principle by the holder of the post), some must be validated and corrected, if need be, by a leave manager (GECO) or the appointing authority, especially if they have a bearing on financial entitlements and/or the duration of the entitlements of the person who entered the data (in the case of parental leave the increased allocation and/or single parent status).

The EDPS considers that the conditions of Articles 13 and 14 of the Regulation are fulfilled. As for the rights of access for persons other than the data subject, see security measures below (point 3.11).

With reference to the right of rectification and blocking, the EDPS would make the following comment: on some occasions, the right to rectify data is associated with the right to block data, for example when the data subject claims they are inaccurate. Article 14 of the Regulation stipulates that "the data subject shall have the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data". During the time

needed for the data controller to check the accuracy of the data, they must be blocked (at the request of the data subject).

Because the rectification right is "without delay", the blocking right must be too and must even precede it.

SYSPER 2 is an old system into which new modules have been incorporated. Management of the blocking of data may be complicated from the IT point of view, especially as data cannot be blocked selectively; the result is that processing of all data relating to the data subject is blocked.

The Commission has set up the following system: each time blocking is requested for checking purposes, DG ADMIN recommends producing two copies of a "photo" of the state of the data (by printout, saving, burning a CD-ROM): one for the data subject and one for the data controller.

The EDPS can accept this solution only because it is for checking purposes (Article 15(1)(b) and 15(1)(c)) and because the IT consequences of modifying SYSPER 2 so that it can block data selectively cannot be implemented at present. In this case blocking would affect the data subject even more. Furthermore, the possibility of rectifying the accuracy of the data is applicable retroactively as are the associated rights.

Finally, the EDPS accepts the solution adopted by the Commission, i.e. effective blocking when processing the contested data is more detrimental to the data subject than not processing, perhaps even to the extent that the data cannot be rectified later (e.g. error in blood group).

3.10. Information to be given to the data subject

Regulation (EC) No 45/2001 lays down that a data subject must be informed when personal data are being processed and lists the information that must be supplied. In the case in point, some of the data is collected directly from the data subject and other data from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on informing the data subject applies in the case in point since the data subject encodes his or her data him- or herself.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on informing the data subject also applies in the case in point, as the information can be encoded by the head of unit or his or her secretariat if the task has been delegated.

Information is supplied to data subjects in the context of the TIM in this case by means of two Administrative Notices published on 21 December 2006, i.e. Administrative Notice No 61 on the "New IT module for time management" and Administrative Notice No 62 on the "Guide to Flexitime ". As soon as the project starts on 1 April 2007, a specific declaration on confidentiality will be entered in the SYSPER 2 application.

The draft of this declaration annexed to the notification includes almost all the points listed in Articles 11 and 12 of Regulation No 45/2001. The EDPS recommends indicating whether replies to the questions are obligatory or voluntary and the possible consequences of failure to reply (Article 11(1)(d)). Furthermore, the declaration of confidentiality will have to specify the "data retention periods" as recommended by the EDPS above (see 3.5).

3.11. Automated individual decisions

Article 19 of the Regulation lays down the conditions for automated individual decisions: *"The data subject shall have the right not to be subject to a decision which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or, if necessary, by the European Data Protection Supervisor. In either case, measures to safeguard the data subject's legitimate interests, such as arrangements allowing him or her to put his or her point of view, must be taken"*.

The EDPS would point out that these are not individual decisions automated when information is entered automatically in digitised personal files by decisions of the appointing authority when applications are made for leave or particular working hours. These are not data processed by the TIM but decisions taken by the appointing authority during procedures managed by the TIM interface. The TIM interface does not generate any automatic decision concerning the data subject; it simply makes a routine entry in a personal file.

On the other hand, the automatic reduction to 15 hours overtime may be regarded as an automated individual decision as it produces effects which in practice take away entitlements. The reduction amounts to a decision. The data subject knows about it as it is a rule which forms part of the processing operation. But it must be possible to rectify the decision: if there was a reduction in overtime hours for one reason or another (e.g. 11 hours overtime instead of 18 hours), the 3 hours which were initially erased automatically by the system could be restored and this would give the data subject 14 hours overtime allowance that he could take during the following month.

The Commission indicates that two separate figures will be displayed: on the one hand the total credit time at the end of the month, and on the other hand the number of hours transferred to the following month. If an automatic reduction is made, the difference between the two figures corresponds to the number of hours erased because the maximum has been exceeded.

Article 19 of the Regulation therefore applies in the case in point. In the absence of legal provisions, the EDPS considers the automatic process to be necessary for the system to be consistent with the rule. The measures guaranteeing that the legitimate interests of the data subject are safeguarded would reside simply in the fact that the automatic reduction remains visible in the system so that it can be rectified if necessary. The EDPS recommends implementing the display of the two separate figures mentioned in the previous paragraph.

3.12. Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on the 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"*.

Although access via SYSPER 2 is strictly defined (see above), the same rights ought to be defined just as precisely if Flexitime, for example, is operated in a different way (e.g. by means of EXCEL spreadsheets) by certain DGs. Users with access to the system must be able

to access only the data strictly necessary for the performance of their tasks. A situation where, for example, all the members of a unit have access to all the EXCEL spreadsheets of each of the members of the unit must be avoided. There must be safeguards so that only persons authorised to access personal data can actually do so. The mechanism permitting managers (e.g. in the event of illness) to delegate their rights of access to staff data should be accompanied by safeguards.

The Commission states that a note will be circulated to Directors-General before the system is implemented, pointing out that any change in use will have to be notified and will be under the responsibility of the Director-General concerned. A clear and precise definition of the rights of access must form part of such notification.

The European Data Protection Supervisor considers that the security measures taken as a whole, both organisational and technical, and subject to a precise definition of the access rights granted to persons other than the data subject in the context of a system other than SYSPER 2 for the management of Flexitime, may be regarded as appropriate within the meaning of Article 22 of Regulation (EC) No 45/2001.

Conclusion

The processing operations proposed do not seem to entail breaches of Regulation (EC) No 45/2001 as long as the above comments are taken into account. This means in particular that:

- all persons who may have knowledge of and/or be in charge of dossiers in the framework of the TIM must be explicitly told of the importance of the obligation of professional secrecy and the need to comply with it;
- in the event that data are used beyond their retention period, they must be made anonymous;
- the data controller must reconsider whether the use and processing of the NUPs are strictly necessary for the transfer of data from the central Time Management system to the Pay system. Using the personnel number could be preferable as long as it guarantees the reliability of the data transfer;
- the obligatory or voluntary nature of the reply to the questions and the possible consequences of a failure to reply should be stated (Article 11(1)(d)). Furthermore, this declaration of confidentiality will have to specify the "data retention periods";
- the display of the two separate figures indicating the total credit time at the end of the month and the number of hours transferred to the following month must be implemented.

Done at Brussels, 29 March 2007

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