

## **Opinion on a notification for prior checking received from the Data Protection Officer of the European Parliament regarding "Welfare assistance and guidance in the event of dependence"**

Brussels, 30 April 2007 (Case 2006-269)

### **1. Procedure**

On 1 June 2006 Mr Jonathan STEELE, Data Protection Officer (DPO) of the European Parliament, acting under Article 27(3) of Regulation (EC) No 45/2001 notified the dossier "Welfare assistance and guidance in the event of dependence".

A number of questions were put to the European Parliament's DPO by e-mail on 9 June 2006 and answered in part by e-mail on 10 July 2006. Further questions were asked by e-mail on 20 July 2006. The final answers were given in a letter received on 14 February 2007.

### **2. The facts**

The processing concerns data used to help colleagues, in particular with any personal or family problems, problems of dependence or other difficulties.

The data subjects are officials and other staff, in active employment or retired, and their families.

The data processed are as follows: identification numbers, data on the subject's health, family, private life (data regarding non-working life, e.g. home address, private mobile, phone number, etc.), pay, allowances, bank account particulars, career, leave and absences, social security and pensions, medical treatment received and medical expenses, and any other relevant information that can help resolve the case. In addition, data for evaluating personal aspects and information on suspected offences, offences, criminal convictions or security measures may also be processed.

Data subjects receive the following information: on arrival, new recruits are informed by social workers and counsellors, departmental heads and the head of the Social Affairs Unit (welcome brochure, attendance at welcome and information meetings) of the existence of social workers and counsellors and about the services they provide; it is stressed that consultations are confidential, that their particulars will not be divulged without their consent and that the services in question are bound by strict professional secrecy.

Information on the identity of the controller, the purposes of the processing operation and the existence of the data subject's rights is contained in the notification to the DPO and published in the register of processing operations. Social workers' particulars are published on the

Intranet. Some of this information is found in the brochure "Welcome to the social services of the European Parliament in Luxembourg".

Regarding rights of access and rectification, there is indirect access in some circumstances.

Processing is manual within a structured set of data which are accessible according to specific criteria.

The procedures for awarding economic assistance are as follows:

– Aid for disabled persons:

The Appointing Authority receives the application for aid for disabled persons and the information necessary in order to grant it. That includes a detailed description of the individual's situation and a medical report by the physician in charge of the case (in a sealed envelope) proposing, as far as is possible, a rate of physical and/or mental invalidity. The Appointing Authority forwards the medical report to the medical officer for his opinion. The medical officer ascertains whether the condition qualifies as a disability and sets the period of validity of his opinion. Once the Appointing Authority has obtained the medical officer's opinion, it may refer the question to an ad hoc Committee, which assesses the difficulties of social integration arising from the disability and issues an opinion on the measures requested by the person concerned or his representative to alleviate the effects. Personal data are entered in a form and a grid in order to calculate the amount of the aid. Those data are: the amount of the invoice, the calculation of the family's monthly taxable income (salary, allowances, relief and amounts withheld), according to the scale as laid down.

NB: action by the social worker who sits on the ad hoc Committee is required before aid for disabled persons can be granted. The aid is administered by the Social Insurance and Pensions Department.

The legal basis consists of Article 76 of the Staff Regulations, the wording of the European Parliament's budget and an interinstitutional text, adopted by the college of heads of administrations, entitled "Provisional guidelines for the execution of the aid for disabled persons budgetary heading – expenses not refunded by the Joint Insurance Sickness Scheme".

The Appointing Authority/ authorising officer (= head of the Social Affairs Unit) adopts a formal decision on the basis of the ad hoc Committee's opinion. This system has been set up in the interests of a multidisciplinary approach (medical, social and administrative) and to avoid subjective decision-taking. The decision, which is taken by the authorising officer, is open to complaint and appeal before the Community judicature. The Complaints Unit, senior members of DG Personnel, the Legal Service and the Secretary-General are informed of any appeal.

Aid for disabled persons generates financial and accounting documents, which are approved and classified in accordance with the Financial Regulation and the detailed rules for its implementation.

A paper file is opened for each beneficiary, in which are placed the application, the Committee's decision, the Appointing Authority's decision and the mail sent to the person concerned and the unit disbursing the aid payments (Pay and Allowances Unit).

If the beneficiary transfers to another institution, the file may be forwarded at his request so as to ensure continuous provision of aid. The file is kept throughout the period in which the aid is being paid and as long as the beneficiary may have call on the service.

No decision or other document relating to this form of aid is placed in the official's personal file.

- Aid for home help provided by the Committee on Social Activities (CSA): this aid is interinstitutional and is granted on the basis of the applicant's remuneration and number of dependants. It is administered by the CSA and, as far as the EP is concerned, is recorded only in the social worker's personal records. The official concerned, the social worker through whose action the aid was granted and the CSA treasurer are the only people apprised of the measure.
- Aid under Article 76 of the Staff Regulations: i.e. gifts, loans or advances on salary, for which applications are considered on a case-by-case basis in accordance with Article 76, which stipulates 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 disability or family circumstances*". Such aid is granted under a heading in the European Parliament budget.

The Aid and Social Protection Department prepares the files in order for the Appointing Authority (Head of the Social Affairs Unit) to take its decision after consulting the joint welfare committee. The committee's proceedings are secret and its members bound by strict professional secrecy. The committee's opinion is notified to the applicant and the Appointing Authority, which takes the decision whether or not to grant aid, such decision being open to complaint or appeal.

The grant of aid in the form of loans or gifts takes place after a financial procedure involving the issue of financial and accounting documents which are checked, approved and classified according to the Financial Regulation and the various rules for its implementation.

A file is opened containing the aid application, the file sent to the Committee, the Committee's opinion, the Appointing Authority's decision and a copy of the accounting documents. The file is kept in paper form with an identification number until the procedure is completed either by the gift being paid out or by clearance of the loan. At this point the paper file is destroyed. The electronic version is stored for three years in case the same beneficiary applies for further financial assistance; it is accessible to the manager, who in the event of a long absence may grant his substitute access to it.

The data are not placed in the beneficiary's personal file.

The social services also provide individuals and families with information, advice and guidance to help them adapt to their social and/or work environment, to respond to their economic, social and cultural needs and to enhance their interpersonal relations in all areas of their lives.

The data are filed, if appropriate, in the individual social worker's personal records, to which he or she alone has access (notes taken during interviews and kept in the paper file). Such data are kept in paper form.

Potential recipients of this information are doctors, psychologists and other external social agencies. Collaboration between the institution's social workers and medical office can be useful in some cases. Social workers work most closely with the Medical Service, the Medical Absences Department, the Pensions Service, the Sickness Insurance Department and the Individual Rights Unit. Communication is mainly oral.

Data are kept while the case is being dealt with and no longer. Storage for historical or statistical purposes is not permitted. Procedures of this type by their very nature are very often conducted orally and leave few traces in writing. Any written files that do exist are therefore locked away by the social workers and accessible only to them.

Security measures consist in keeping files under lock and key; continuity is ensured by appointing the other social worker as the identified substitute.

### **3. Legal aspects**

#### **3.1. Prior checking**

The management of data concerning all types of welfare assistance provided to colleagues constitutes processing of personal data ("any information relating to an identified or identifiable natural person (...)") under Article 2(a) of Regulation (EC) No 45/2001). The processing operation in question is carried out by an institution in the exercise of activities which fall within the scope of Community law.

Welfare-assistance related data are processed manually but intended to form part of a structured set of data accessible according to specific criteria. These are therefore data which are processed partly by automatic means (Article 3(2) of the Regulation).

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

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

Welfare-assistance data represent personal data processing operations covered by Article 27(2)(a) and 27(2)(b) and as such are subject to prior checking by the EDPS. Article 27(2)(a) applies in that health-related data are often processed and Article 27(2)(b) is also applicable in that data processed by the social services are designed to evaluate personal aspects relating to the data subject. Ability, efficiency and conduct are just some examples of personal aspects which are evaluated.

In principle, checking by the EDPS should be carried out before the processing operation is implemented. In this case, as the EDPS was appointed after the system was set up, the checks necessarily have 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 June 2006. An e-mail requesting additional information was sent on 9 June 2006. In accordance with Article 27(4) of the Regulation, the two-month period within which the EDPS must deliver an opinion was suspended. Partial replies were sent by e-mail on 10 July 2006. Further questions were put by e-mail on 20 July 2006. The final replies were received by letter on 14 February 2007, i.e. a suspension of 250 days. The case was suspended for twelve days in order to allow the DPO and the controller to comment on the draft decision. The controller asked for the suspension period to be extended by a further eight days given the number of people involved in reviewing the draft opinion. The EDPS will therefore deliver his opinion by 30 April 2007 (2 August 2006 plus 270 days of suspension).

### **3.2. Lawfulness of the processing operation**

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 social services are acting in the context of a task carried out in the public interest. The processing operation is therefore lawful.

The legal basis for the processing operation is Article 1e (not mentioned in the notification) and Articles 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 cooperation 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.*

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).

The European Parliament thus has solid grounds for organising a system to manage welfare assistance provision for staff. The legal basis deriving from the Staff Regulations and the CEOS is valid and supports the lawfulness of the processing. However, the EDPS would recommend that the full legal basis be clearly stated in the Parliament's register of notifications.

In addition, health-related data are among those classified by Article 10 of Regulation (EC) No 45/2001 as "special categories of data".

### 3.3. Processing of special categories of data

Files drawn up during the processing of welfare assistance may include data regarding officials' or other staff's health and/or religious or philosophical beliefs, sex life or any other aspect of their private life. (cf. supra)

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 on 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 this case. The European Parliament, in its capacity as employer, is complying with Article 10(2)(b) by processing the data submitted.

Lastly, in this case, certain health-related data are provided by the JSIS or the Medical Service (medical opinions). Given the nature of such data (concerning health), Article 10(3) (special categories of data) of Regulation (EC) No 45/2001 is applicable here. That provision stipulates that "*Paragraph 1* [prohibition on 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*". By definition, the doctors and staff of the services concerned are bound by professional secrecy. In this context Article 10(3) is duly complied with.

But social workers are also recipients of those special data. All such staff know that they are bound by professional secrecy for the purposes of processing special categories of data. This is made clear in the brochure "Welcome to the social services of the European Parliament in Luxembourg" addressed to European Parliament officials, temporary and auxiliary staff and trainees in Luxembourg, which states that: "The social worker is available to listen to staff and **is bound by professional confidentiality**" and which is given to staff who come to consult the social workers.

Article 10 of Regulation (EC) No 45/2001 regarding the processing of special categories of data is thus duly complied with.

### 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).

The data processed in connection with social services' files described in the "Facts" section above can be very wide-ranging, making it quite difficult to determine whether they are

"adequate, relevant and not excessive". They may concern an individual's health, finances, family relations and psychology.

It is therefore important that persons processing the data relating to the different files should be properly informed of their obligation to respect the principle established by Article 4(1)(c), and that they should take that principle into account when processing the data. This also applies to the social worker's personal notes taken during interviews with the data subject and to the entire paper file drawn up for each beneficiary. The EDPS recommends that everyone processing such data should be informed of the obligation to observe the principle set out in Article 4(1)(c) of Regulation (EC) No 45/2001.

The data must also be "processed fairly and lawfully" (Article 4(1)(a) of the Regulation). Lawfulness of the processing operation has already been considered in section 3.2 of this opinion. Fairness relates to the information which has to be given 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 welfare files, this provision mainly concerns factual data. However, the EDPS considers that data subjects should as a rule have the opportunity to express their views on the subjective elements contained in individual files, particularly in cases where subjective assessments may have a bearing on the exercise of their rights (see point 3.9).

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

### **3.5. Storage 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).

The data are kept as long as the file is being handled. The file is kept in paper form with an identification number until the procedure is completed, either by the gift being paid over or by clearance of the loan. At this point the paper file is destroyed. The electronic version of the file is stored for three years in case the same beneficiary applies for further financial assistance; it is accessible to the manager, who, in the event of a long absence, may grant his substitute access to it. The data are not placed on the beneficiary's personal file. Storage for historical, statistical or scientific purposes is not permitted.

The EDPS finds three years acceptable as a time-limit for storing data, in that it provides enough time for various potential appeals, but considers it rather short given that that payments could be allocated more than three years from the first payment. The data could be kept until the problem in question had completely disappeared. The EDPS requests a proportionate time-limit be set for storing the data, one which will cover the disappearance of the problem being handled.

### **3.6. Change of purpose/compatible use**

Data are retrieved from or entered into the staff databases. The processing operation under discussion involves no general change to the specified purpose of staff databases, the management of welfare assistance being 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, since the purposes are compatible.

### **3.7. Transfer of data**

The processing operation has also to be scrutinised in the light of Article 7(1) of the Regulation. The aspect 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, in that the data are initially transferred within the institution (Medical Service, Medical Absences Services and Individual Rights Unit. Most communication is oral. If there is a complaint, the Complaints Unit, superiors in DG Personnel, the Legal Service and the Secretary-General are also informed). Interinstitutional transfers also take place (Pensions Department, Sickness Fund, other European institutions' social services and the Community judicature if action is brought against the decision taken by the head of the Social Affairs Unit on the basis of the joint welfare committee's opinion). Such transfers of data take place, on the basis of the Staff Regulations, in order to enable a decision to be reached in a given case.

However, in some cases the person's name and a definition of the problem are sent to specialist social agencies outside the institution to ensure professional follow-up. In such cases Article 8 of the Regulation applies. External agencies of this type are regarded as recipients, since the purpose of sending them the names of individuals is to obtain assistance for them. They are not considered as subcontractors. In addition, the social worker asks for the data subject's consent to have data transferred should it prove necessary to seek the assistance of an outside specialist.

In the (very rare) cases where there is written communication with an external agency, the data subject's name and the definition of the problem are inevitably mentioned in the letter. These are both items of personal data per se and, as such, they fall within the scope of Article 8 when being transferred to recipients, other than Community institutions, subject to Directive 95/46/EC. Such data may 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 clearly met in this instance since the aim is arrange assistance for the data subject.

The EDPS points to the need to exercise extreme vigilance in all communications with external agencies given the personal nature of the data being transferred and to remind the institution's social services of this fact.

### **3.8. Processing including the personnel or identifying number**

The European Parliament uses the personnel or pension 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 controller of personal data, but it may 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 use of identifying numbers can enable data being processed in different contexts to be interconnected. The point here is not to establish the conditions under which the European Parliament may process identifying numbers, but rather to emphasise the attention that must be paid to that provision of the Regulation. In the present case, the European Parliament's use of identifying numbers is reasonable, as its purpose is to identify the individual concerned and to keep track of the file, thereby facilitating the processing task. The EDPS considers the use of this number permissible as part of the management of the various types of welfare assistance granted by the European Parliament.

### **3.9. Right of access and rectification**

Article 13 of the Regulation makes provision, and sets out the rules, for exercising a right of access at the data subject's request. Under Article 14 the data subject has a right to obtain rectification of inaccurate or incomplete personal data.

No social services' decisions are stored in the staff's personal files. Data are filed where appropriate among a social worker's personal records (interview notes), to which only he or she has access. In answer to his question regarding the procedures whereby data subjects could access and rectify their personal data, the EDPS was told that the rights of access and rectification were those applying to medical files.

The EDPS cannot accept that data subjects' rights of access and rectification should be limited to those granted for the consultation of medical files. All the relevant documents are held outside the medical file, in particular in the social workers' records.

While the exception under Article 20(1)(c) may be relevant in some cases dealt with by the social services, the EDPS considers that it cannot be applied across the board. The exception, a departure from the general rule set out in Articles 13 and 14, should be interpreted restrictively and its use examined on a case-by-case basis, after consulting the DPO if necessary. Accordingly, the general rule with respect to both files and social workers' personal records must be to apply the principles of the right of access and of rectification.

The EDPS recommends that data subjects be granted all the rights established under Articles 13 and 14, in particular with regard to the entirety of the social worker's file. The data subject must at all times have the possibility of giving his point of view on the social worker's personal notes and subjective assessments contained in them, especially where such subjective judgment could affect the exercise of the data subject's rights.

### **3.10. Information to be given to the data subject**

Regulation (EC) No 45/2001 stipulates that the data subject must be informed if his or her personal data are processed and specifies a series of compulsory items, for some of which the obligation depends on circumstances, to be provided to the data subject unless he or she already has such information. In the present instance some of the data are collected directly from the data subject and some from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) applies in this case: data subjects provide the information themselves in that they fill in forms and attend interviews.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) also applies in this case, since information is obtained from the different participants in the process (Medical Officer's opinions, social worker's notes, feedback from external agencies consulted).

The information referred to in Articles 11 and 12 of the Regulation can only be accessed via the notification to the DPO, which is published in the register of processing operations. New recruits are told when entering employment (welcome brochure, attendance at induction and information meetings) that social workers and counsellors are available, and are informed about their activities; it is stressed that consultation is confidential, that no particulars will be divulged without data subjects' consent and that the services concerned are bound by the strictest professional secrecy.

New recruits are not, however, given all the information referred to in Articles 11 and 12 of Regulation (EC) No 45/2001. The brochure "Welcome to the social services of the European Parliament in Luxembourg" gives the identity of the controller, the purposes of the processing operation and the recipients of the data but makes no mention of the right of access to and the right to rectify the data, nor does it give any further information, such as legal basis, time-limits for storing data and the right to have recourse at any time to the EDPS.

The EDPS recommends that, in connection with welfare assistance, data subjects should be given all the information provided for in Articles 11 and 12 of the Regulation so as to ensure full compliance with those provisions; this should be done, in particular, by adding that information to the welcome brochure and making explicit reference to Regulation (EC) No 45/2001.

### **3.11. Security**

In accordance with Article 22 of the Regulation (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".

In the light of all the security measures taken, the EDPS considers that they can be regarded as adequate within the meaning of Article 22 of the Regulation.

### **Conclusion**

In order to comply with Regulation (EC) No 45/2001, the proposed processing operation must take the comments made above into account. This means, in particular, that:

- the full legal basis should be included in the Parliament's register of notifications;
- everyone involved in processing the data in question should be made aware of his/her obligation to respect the principle set out in Article 4(1)(c) of Regulation (EC) No 45/2001;
- a proportionate time-limit should be set for storing the data to ensure coverage of the problem until it has disappeared;
- extreme vigilance should be exercised in all communications with external agencies, given the personal nature of the data being transferred, and the institution's social services must be alerted to this fact;

- data subjects must be accorded all rights under Articles 13 and 14, in particular in relation to the entirety of the social worker's file. Data subjects must at all times have the possibility of giving their point of view on the social workers' personal notes and the subjective assessments contained in them, especially where such subjective judgments could affect the exercise of the data subjects' rights;
- data subjects should be given all the information provided for in Articles 11 and 12 of the Regulation, in order to ensure they are fully complied with. The EDPS recommends that, in connection with welfare assistance, data subjects should be given all the information provided for in Articles 11 and 12, so as to ensure full compliance with those provisions; this should be done, in particular, by adding that information to the welcome brochure with an explicit reference to Regulation (EC) No 45/2001.

Done at Brussels on 30 April 2007.

Peter HUSTINX  
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