

Opinion on the notification for prior checking from the Data Protection Officer of the Council of the European Union regarding the "Flexitime interface-PersonaGrata (DGA3)" dossier

Brussels, 16 September 2008 (Case 2008-0324)

1. Procedure

On 19 January and 13 November 2006, the European Data Protection Supervisor (hereinafter "the EDPS") adopted opinions 2004-0258 and 2006-0359 on the Flexitime and PersonaGrata applications of the Council of the European Union (hereinafter "the Council"). On 27 November 2007 the EDPS was consulted by the Data Protection Officer (DPO) of the Council on a DGA 3 (Translation and Production of Documents) project on the development of an interface between the two applications to reuse Flexitime data in the PersonaGrata application. On 30 January 2008, the EDPS asked for a notification on the processing relating to the interface itself, along with the relevant information. On 6 May 2008 the Council's DPO consulted the EDPS on whether DGA 3 could launch a pilot project interface relating just to aspects connected with individual timetables and absences. On 7 May 2008 the EDPS took the view that the pilot project could not be launched before the EDPS had analysed the notification on the interface processing as a whole.

On 27 May 2008 the EDPS received a notification for prior checking of data processing in the framework of the Council "Flexitime – PersonaGrata(DGA) interface" dossier.

The notification was sent together with a number of documents:

- an annex concerning PersonaGrata menus;
- a copy of a letter dated 28 February 2007 from the controller for the attention of the EDPS on the measures taken in the PersonaGrata dossier (2006-0359).

By e-mail dated 7 July 2008, the Council's DPO was sent a request for a clarification of the facts and some questions. Answers were given to the EDPS on 28 July 2008. On 31 July 2008 the draft opinion was sent to the Council's DPO for comments, which were provided on 31 August 2008.

2. Examination of the case

2.1. The facts

The purposes of Flexitime data processing are: registration and management of working time and presence; calculating rights to leave and monitoring the taking of leave; entering and following up leave requests by intranet; automatically calculating overtime and exceptional

working hours. Capacity planning is also one of the purposes. The flexible timetable (Flexitime) system offers Council staff the possibility, subject to some conditions, of following a personal working timetable and enjoying a degree of flexibility which enables them to reclaim a certain number of hours worked in excess of normal working hours.

PersonaGrata is a staff management tool used to ensure that one of the essential tasks of the General Secretariat of the Council is fulfilled: the production and translation of the documents needed for meetings of the Council and its bodies to run smoothly. The purpose of the system is to facilitate the task of personnel management within the service and the units under the service's responsibility.

The interface between Flexitime and PersonaGrata has two purposes: the first is to make it possible to avoid duplicating the work of encoding data considered as equivalent between the two databases (timetables for clocking in/out and absences) with the risks of error that that entails, and thus to ensure consistency between the two databases, improve the efficiency of personnel management in the departments and units and to provide more reliable information. The interface also has a second purpose. It is designed to export clocking data from the Flexitime database to the PersonaGrata system.

As explained in the notification, to meet demand (often urgent and dynamic), the Council (DGA3) relies on IT tools, including Workflow for document management and PersonaGrata for personnel management. The two systems are linked, in that PersonaGrata provides information to Workflow, inter alia on the presence and availability of linguists and secretaries, which is essential for coordinators to do their work. For some of the data processed in PersonaGrata there are equivalent data in Flexitime, a system introduced in the GSC on 1 January 2008. The Council considers it essential to provide for an interface between Flexitime and PersonaGrata that would make it possible to use Flexitime as a source of data for PersonaGrata. Besides positive synergy effects, such an interface would make it possible to avoid duplication of encoding and to improve overall efficiency.

The data in question are the individual timetables and absences. The Council believes it would also be very helpful if it could use Flexitime clocking data to improve significantly the available information on people's presence and availability by basing it on the actual situation. The plan is for the interface to be developed and implemented in three phases: an initial phase covering the individual timetable, a second phase for data on absences and finally a third phase covering clocking data. It appears from the document provided in the notification that the clocking data are not at present processed by the PersonaGrata system.

Thus, the interface concerns three phases: (1) the individual timetable, (2) absences and (3) clocking data.

1. **Individual timetable** (phase 1): It is already possible with PersonaGrata to record weekly diagrams showing the flexible timetables of those who are not following the normal timetable. It is also possible to record specific changes to those charts by individual and by day. The data entry is done locally by the manager, or persons assisting the manager, on the basis of information provided by members of the unit.

In the Flexitime system, people have to plan, and have their manager validate, their working timetables for the following month, which establishes the individual timetables (hereinafter "ITs").

Apart from the periods covered (weekly/monthly), the idea is therefore the same, and in both cases the purpose is to have access to each person's planned work timetable. Data subjects enter their own planned timetables and the manager simply has to validate them, which helps to reduce the risk of encoding errors. If the individual timetable validated in Flexitime is automatically transferred by the interface, the considerable effort of re-encoding the IT in PersonaGrata in weekly charts and modifications is saved. Furthermore, such work always carries the risk of error, especially regarding the updating needed following later changes to ITs.

2. **Absences** (phase 2): From the beginning, the PersonaGrata management module has made it possible to enter absences and unavailabilities for people, given that such information is essential for proper staff management in terms of the internal requirements of the departments and units. Absences are obviously also a key element of the Flexitime system and, again, automatic transfer of those absences in Flexitime via the interface saves much manual entry work on the transfer of those absences to PersonaGrata with greater data reliability as a result.

There are more grounds for absence in the Flexitime system than are needed or even useful in PersonaGrata. Some grounds for absence as defined in Flexitime will therefore be combined and presented to users as a single, more general, reason for absence in PersonaGrata. The grouping will be managed by PersonaGrata. The Council has provided the conversion table between Flexitime absences and those grouped together in PersonaGrata. According to that document, the only absences arising from Flexitime that are not covered in PersonaGrata are not covered because the cases are handled differently in PersonaGrata (outside the attendance list). All other Flexitime absences are covered by the grouping carried out in PersonaGrata.

Grouping of grounds for absence: to allow identification of entries between the two systems, PersonaGrata has to retain the ground for absence as set out in Flexitime for each entry. The wordings used for the display correspond to the following types of entry already used in PersonaGrata:

- Entries for absences in the PersonaGrata context: unexplained absence – free time – family leave – parental leave – special leave – OT compensation – flexileave – sickness – prior time off: health – compensatory leave – time off: health – part time – other absence;
- Entries for unavailability in the PersonaGrata context: Language course – free time for breastfeeding – training – mission – training mission – other special task. For special leave, the reasons will be indicated by codes under "comments" as described in Ms Lacerda's note of 28 February 2007 to Mr Hustinx on dossier 2006-0359¹.

Where appropriate², the more detailed grounds for absence in Flexitime will be visible to users only in the context of statistics on functional groups.

¹ Instructions have been given to managers and users of the application on entering data on absences in the free fields. Instead of entering text, such as "sickness", the entry should employ codes, e.g. "A1", referring to the Staff Regulations and to the relevant Staff Notes. These codes may, in the future and after they have been the subjects of a notification, be used for statistical purposes.

² PersonaGrata is one of DGA3's main management tools and statistical features are very important in management for ensuring that best practice is implemented and for identifying any changes needed, as well as for documenting the extent to which best practice is followed (e.g. responding to questions from the Appointing Authority or the Court of Auditors). This is the context in which to view the utility and

3. **Clocking data** (phase 3): On the basis of each individual's timetable and their absences and unavailabilities, PersonaGrata can give a detailed display of that individual's presence and availability for the current date and the next working day. It shows for each quarter-hour from 07.00 to 20.00 whether the person is absent, present but unavailable or available (and therefore present). That information is part of the data transferred to Workflow for the staff of DGA3's Translation Department and is important for local coordinators for planning and document distribution.

From PersonaGrata it is possible to print that detailed display of the presence and availability of the people in the various functional groups, such as "translation and secretarial services". A printed list is often used in the coordination offices of the units to make manual changes to planned timetables where they have an impact on people's presence and availability, and the local coordinator has to know the present situation. In that way, coordinators try to make up for the weakness of this view, which results from the fact that it is based on people's planned timetables and that the actual timetables for the day can differ from the planned timetables.

If the Flexitime clockings were incorporated, a view of presence and availability could be given that would reflect not just prior planning but also the actual situation, and it would no longer be necessary for the coordinator to rely on a paper list with more or less up-to-date and correct handwritten corrections. It is important to note in this context that PersonaGrata users will not be able to consult Flexitime clocking data; the data will simply be used as additional information to establish the detailed view of presence and availability. Furthermore, it is not intended to change the "degree of precision" of that view, which will continue to give a single value (absent, present or available) per quarter-hour for each person. Account should also be taken here of the fact that leaving for professional reasons is not classified as an absence in PersonaGrata, since the time away is counted as working time.

The legal basis of the processing: Article 207 of the EC Treaty, Article 23(1) and (2) of the Council's rules of procedure and Article 27 of Chapter 7 ("Principle of sound financial management") of the Financial Regulation.

Data subjects: Officials and other DGA3 staff managed using Flexitime.

Description of the data or categories of data

Regarding identification of persons, the personal number will be used to identify individuals between the Flexitime system and the PersonaGrata system.

- Individual work timetable (phase 1): per person per day: time start of day, start of lunchtime, end of lunchtime, time end of day, length of time (time due).
- Absences (phase 2): per person: start date, unit for start date (day, morning, afternoon or hours), start time, duration (if unit = hours), end date, unit for end date (day, morning, afternoon or hours), end time, date of request, status (requested, refused, validated), ground for absence, manager's comments.

The following data will also be transferred, to make it possible to match entries across the two systems, but will not be visible to users of PersonaGrata: date, time, action and serial

justification of being able to keep statistics on the more detailed grounds for absences set out in Flexitime, given that such statistics always concern functional groups of persons and thus are anonymous.

number of the log record, personal number, observations entered by the person, date of validation of the request, personal number of the person who validated the request, indication of whether the absence has been generated by a Flexitime calculation.

– Clocking data (phase 3): per person per day: date of clocking, time of clocking, type of clocking (entry, exit or cancelled) and indication if exit is for professional reasons.

Procedures for automated/manual processing

The system consists mainly of automatic processing operations. There are some manual processing procedures for handling paper printouts from the system.

Data addressees

According to the notification, data addressees are those responsible for managing staff in DGA3's departments and units and those who assist in this work.

The "users" of PersonaGrata who have access to the display of presence and availability are those responsible for staff management in the departments and units of DGA3 and those who assist in this work. They will have access to the same information as at present, since the data on absences transferred from Flexitime will be grouped in accordance with the correspondence table mentioned above (point 2, absences). Persons with access to the system at central level can consult only data relating to personnel assigned to or working in the department concerned. Persons with access to the system at local level can consult only data relating to personnel assigned to or working in the unit concerned³. The local coordinators of the language units and those who assist them can consult the information transferred to Workflow to help them with allocating documents.

Delegated by the controller, the departments and units request the system administrator (DGA5) to create access for those who need to use the system. System users are generally identified by unit and surname at least. The level of access (central and/or local) and profile of the user must be specified when access is requested. The profile determines the features offered in the system.

Note that, because the presence display is transferred to Workflow, the local coordinators of the language units and those who assist them can consult the display in the context of allocating documents. However, it must be noted that that information is given in the form of small marks, each representing a quarter of an hour of presence for the person concerned. If, however, the person is not at work, no information on the ground for absence is transferred to the Workflow system, so the coordinator does not have that information.

The system provides for the following generic profiles: head, deputy head, administrative assistant, secretariat of the head, secretariat, reporting officer, consultation, consultation (including report follow-up).

There are two levels of access to the PersonaGrata system so that access to the information can be managed better. The central and the local level correspond to two different types of management need. In the Translation Department, for example, the local level covers management needs in the language unit, and users in the unit (head of unit, resource manager, etc.) see only the staff of the unit concerned. The central level takes care of the horizontal management of the Service's units, and users with access to the central level (heads of

³ When a new user access is created (login account creation), the unit abbreviation and the individual's family name are normally sufficient to identify the user. If there are a number of people in the unit concerned with the same family name, the user's forename is used as well to avoid uncertainty.

department, their secretaries, etc.) can see the staff of all the units. A user with access to both levels goes directly to the central level on logging in. He/she can then go to local level, by selecting the menu item "Local Level" from the "File" menu and return to the central level by selecting the menu item "Central Level". In both cases, the menu item is deactivated (non-functional) if the user does not have the corresponding access rights.

Rights of access and rectification

These rights are laid down in section 5 of Council Decision 2004/644/EC of 13 September 2004 (OJ L 296, 21.9.2004, p. 20).

Data subjects may at any time ask to verify the information concerning them and ask for them to be updated or corrected. Since the information referred to in the notification comes from Flexitime, which acts a source of data in this context, and PersonaGrata does not offer the possibility of entering or changing data in Flexitime (i.e. data flows only in one direction, from Flexitime to PersonaGrata), such updates or corrections must be made in Flexitime.

Information provided

A draft note to inform DGA3 staff concerning the personal data processed in the PersonaGrata application (Flexitime/PersonaGrata interface) will be distributed via Teammail (the DGA3 mail site) and will contain the following: (a) the identity of the controller; (b) the purposes of the processing operation; (c) the categories of data concerned; (d) the recipients of the data; (e) each data subject is entitled to have access to the data concerning him/her and to have those data rectified; (f) additional information concerning the legal basis for the processing, the data conservation period, the fact that each data subject has the right at any time to appeal to the European Data Protection Supervisor and the source of the data.

Storage medium

The data managed by the system are stored on the (Server's) hard disks (RAID). Paper print-outs and files generated by users of the system are managed and stored or destroyed by the users concerned.

Data conservation and blocking

The period is fixed at three years. After that period, the data in PersonaGrata are deleted.

PersonaGrata has no function that allows data concerning a particular person to be blocked. But a back-up copy of the whole database is made every night, and is kept for at least one month. According to the notification, it is therefore possible to ask the system administrator to keep a copy of the back-up for the purposes of proof.

Security measures

Data can be accessed from a workstation only after logging in: the user must specify the type of access (central or local level) and then identify himself by selecting a user name and keying in the associated password. Each user has a certain number of defined access rights: access level (central/local), department(s) to which he has access at central level, unit(s) to which he has access at local level, functional group(s) to which he has access, and his profile. The user profile determines the features available. After a period of inactivity of about twenty minutes,

the programme redisplay the log-in dialogue box. The user can also lock the application by calling up the log-in dialogue box himself.

If the user is able to create or modify data in the system, his user name is saved with a timestamp to show who created the file or modified it most recently. The server (on which the data are stored) is located in a special server room. Access is through a door with an electronic lock, activated with the service badge.

The only badges accepted are those of the individuals responsible for maintaining the equipment in the room in question. Every night a back-up copy of the whole base is stored on a separate hard disk (which retains at least the last five back-ups), and that back-up is then copied to a file server (on which the back-up is stored for at least one month). A back-up of the file server is then made on tape every working day (five tapes in rotation).

Additional information provided in the notification:

The interface between Flexitime and PersonaGrata covers some data which change fairly constantly, and which are amongst the most important data for PersonaGrata's functioning. Moreover, those data are used to generate information which is transferred to Workflow for the Translation Department; that transfer takes place at most four minutes after any addition or change has been made to the data in PersonaGrata. There therefore has to be an interface which allows an almost real-time flow of data; on the basis of experience with the interface between PersonaGrata and Workflow, a delay in the transfer of a maximum of four minutes seems to be satisfactory. To achieve that aim, two mechanisms must be provided in the interface: the first must ensure the transfer of all the data concerned for any new person, while the second must ensure the updating of everyone's data at the set frequency (currently every four minutes).

An initial bulk transfer will therefore be followed by incremental transfers for each individual as necessary, to ensure that data is synchronised within four minutes or less. In the normal configuration of Flexitime, it is not possible to see how a record looked before a change was made, and if a record is deleted no trace of it is left. Moreover, it is not possible to tell which records have been added since a particular point in time. It is clear that this constitutes a problem in the context of an interface which must enable Flexitime to play the role of a source of data for PersonaGrata.

However, in the tendering specifications for Flexitime, it is stipulated that the system must offer the possibility of tracing changes in the data. According to GFI (the company which supplied the Flexitime solution to the GSC), it is possible to activate a tracing mechanism which GFI calls the "audit trail". This mechanism creates tables in parallel to those concerned, showing the date, time, user, serial number and action. For each record added to the original table a record is then added to the parallel table, with the action marked as an addition and a copy of the data. If a record is changed, two records are added to the parallel table: a record with the previous action and a copy of the values before the change was made, and a record with the new action and a copy of the values after the change.

If a record is deleted from the original table, a record is added to the parallel table, with the action marked as a deletion and a copy of the data. The GSC intends to use this mechanism for the interface between Flexitime and PersonaGrata, creating such parallel tables for the tables concerned in Flexitime. This approach has the advantage that the development work to be done by GFI was already provided for in the tendering specifications, and that the GSC has the impression that it would be relatively simple to carry out.

Moreover, the additional fields for the date, time, serial number and action in the parallel tables make possible the second mechanism mentioned above, which is to provide the very important synchronisation of the data by incremental transfers.

2.2. Legal aspects

2.2.1. Prior checking

Regulation (EC) No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law. In the case in point, the processing of data by the General Secretariat of the Council, a Community institution, is part of activities carried out under the first pillar and therefore falls within the scope of Community law.

Article 3(2) of the Regulation applies *"to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system"*. Personal data are clearly being processed in this case, since it concerns the recording of data relating to specific individuals. The system consists mainly of automatic processing operations.

Article 27(1) of Regulation (EC) No 45/2001 requires prior checking by the EDPS of all *"processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes"*.

PersonaGrata has already been the subject of a prior check on the basis of Article 27(2)(a), in particular because the system as a whole processes health-related data concerning sick leave. Flexitime has been the subject of a prior check on the basis of Article 27(2)(a) and (b).

Although the whole of the PersonaGrata and Flexitime systems have already been the subject of prior checks, the EDPS considers that analysis of the interface between the two systems is intended to assess any risks which might arise from the establishment of the interface as a whole.

Furthermore, Article 27(2) of the Regulation contains a list of processing operations likely to present such risks. Article 27(2)(a) requires prior checking of the processing of data relating to health. PersonaGrata processes, amongst others, data relating to health through the list of absences and the grounds for absences. Moreover, Article 27(2)(c) provides for prior checking of *"processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes"*. This provision is intended above all to prevent data collected for separate purposes from being linked for a different purpose. The danger of data-linking is that quite different information may be deduced by means of the link, or that the original purpose may be distorted. Linkages not provided for pursuant to national or Community legislation therefore entail certain dangers with regard to data protection where the end purposes differ⁴. In the present case linkages are created between databases: Flexitime will feed the PersonaGrata system. These linkages are not provided for *ex ante* under national or Community legislation.

⁴ See Case 2004-319, Skills Inventory – Council (point 2.2.1)

In the information note from the data controller to the Council's DPO on the interface between Flexitime and PersonaGrata dated 27 November 2007, it is explained that for some of the data entered and processed in PersonaGrata, "equivalent" data are provided for in Flexitime.

The data in question, identified by DG A 3, are the individual timetable, absences and clockings in and out.

It is shown by the documents provided to the EDPS that the individual timetables and absences are data used in the context of both processing operations, and may be regarded as equivalent data. In this case, the use of equivalent data does not lead to any substantial change in processing and would aid compliance with the principle of data quality.

However, the data concerning clockings in and out (date, time, direction and location) are data which are linked only to the Flexitime application, and which are therefore not found in PersonaGrata. Consequently, the EDPS does not consider that the data relating to clocking in/out are equivalent for the two applications. Authorising the creation of an interface which would enable Flexitime clocking in/out data to be used for the management of the PersonaGrata application would extend the use of the Flexitime data in PersonaGrata and would therefore require prior checking.

Article 4(1)(b) of the Regulation must be complied with, and the EDPS considers that any substantial change to the purpose of a data processing operation requires a new prior check under Article 27. This applies all the more when the change relates to elements which gave grounds for a prior check.

Since prior checking is intended to address situations that are likely to present certain dangers, the opinion of the EDPS should be given before the introduction of the processing operation. This opinion constitutes a genuine prior check. This processing operation should not, therefore, be implemented until the recommendations in this opinion have been taken into account, and the EDPS has been informed of the measures implementing them.

The DPO's notification was received on 29 May 2008. Under Article 27(4), this opinion had to be delivered within the following two months. This time limit was suspended for 21 days + 30 days for comments. The EDPS will therefore deliver his opinion by 18 September 2008.

2.2.2. Lawfulness of processing

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*".

Recital 27 of the Regulation states that "*processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies*". In the current case, the processing relating to personnel management is necessary for the proper management and smooth running of the GSC, and is therefore necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities.

The legal basis for the data processing operation is Article 207 of the EC Treaty and Article 23(1) and (2) of the Council Decision of 15 September 2006 adopting the Council's Rules of Procedure⁵, i.e.:

"1. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by qualified majority.

2. The Council shall decide on the organisation of the General Secretariat. Under its authority the Secretary-General and the Deputy Secretary-General shall take all the measures necessary to ensure the smooth running of the General Secretariat.

The management of officials and other staff is necessary for the proper management and smooth running of the Council. These procedures are based on the EC Treaty and on the Council's Rules of Procedure, which are themselves based on the Treaty. The lawfulness of the processing operation stems from the Rules of Procedure since the EDPS considers that, despite paragraph 2.2.3 below, this processing operation is necessary for the proper management and smooth running of the institution. The processing is also based on Article 27 in Chapter 7 of the Financial Regulation ("Principle of sound financial management").

2.2.3. Change of purpose/Compatible use

Article 4(1)(b) of the Regulation provides that personal data must be *"collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual"*.

As explained above, the interface between Flexitime and PersonaGrata has two purposes: to prevent duplication of the work of encoding data considered as equivalent between the two databases (timetables and absences) and, as regards data on clocking in/out, to import such data from Flexitime to PersonaGrata.

When clocking data is imported into PersonaGrata, it is done in the context of a new purpose which is different from the initial purpose of PersonaGrata but which is compatible with the initial purpose of the collection of such data in Flexitime.

Regarding clocking in/out, Article 6(1) provides that, without prejudice to Articles 4, 5 and 10, *"personal data shall only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body."*

Consequently, the internal regulation referred to in the opinion on a notification for prior checking relating to Flexitime (2004-0258) should contain a clause authorising the re-use of clocking in/out records from Flexitime in the PersonaGrata system. The EDPS would also take this opportunity to stress that a similar internal regulation should be adopted in relation to the PersonaGrata system.

⁵ OJ L 285, 16.10.2006, p. 47.

2.2.4. Processing of special categories of data

The processing of data concerning health is prohibited unless there is a basis for it in Articles 10(2) or 10(3) of the Regulation.

In the current case, it is planned that information about absences will be extracted from Flexitime and transferred to PersonaGrata, resulting in more reliable data.

The PersonaGrata system may contain information on a person's state of health insofar as illness may be the grounds given for an absence. Entry of this kind of data into the PersonaGrata application within DG A 3 is justified because the application is a personnel management tool designed to facilitate the organisation of work. For the purposes of work organisation, it is appropriate for a head of unit to know whether a person is absent because of illness, in which case the length of the absence cannot always be predicted, or whether a person is absent on annual leave, in which case the length of the absence is known.

Article 10(2)(b) provides that the prohibition on processing sensitive data does 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"*. Since the need to process sick leave data in PersonaGrata is based on Article 23 of the Council's Rules of Procedure, which are themselves based on Article 207 of the Treaty, the processing of such data may be considered necessary for the functional organisation of the GSC.

Otherwise, the analysis of the data concerning health in the PersonaGrata file (2006-0359) remains valid.

2.2.5. Data quality

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

The purpose of the interface between Flexitime and PersonaGrata is to prevent the duplication of the work of encoding data with the risks of errors that entails, and to improve the efficiency of personnel management in the departments and units. The data quality aspect predominates in this processing operation.

Article 4(1)(d) of the Regulation further provides that 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"*.

The individual timetables and absences are data used in the context of both processing operations, and may be regarded as equivalent data. In this case, the use via the interface of equivalent data does not lead to any substantial change in processing and would aid compliance with the principle of data quality.

It should, however, be noted that the number of grounds for absence in Flexitime is greater than the number necessary, or indeed useful, in PersonaGrata. The data controller's solution is to group together some grounds for absence as defined in Flexitime and present them to users

as a single more general ground for absence in PersonaGrata. The fact that equivalent data are present in both systems may help ensure respect for data quality. Having analysed the correlation between absences in Flexitime and PersonaGrata, the EDPS considers that the data being processed comply with Article 4 of Regulation (EC) No 45/2001.

2.2.6. Storage of data

The Regulation provides that the 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)).

Only one storage period is stipulated: three years. After that period, the data in PersonaGrata are deleted. In the context of PersonaGrata, daily management data are kept for three years because they are used for the daily management of units but are also necessary for the preparation of staff reports. The EDPS believes that this storage period is justified in the context of the storage of data relating to clocking in/out and absences, since it complies with the recommendations in the opinion on PersonaGrata.

As regards clocking in/out, the EDPS stresses that the storage period should not be longer than the period finally established in the context of Flexitime, unless the data controller proves the need to store it for a longer period.

The notification also states that a back-up copy of the whole database is made every night, and is kept for at least one month. It is therefore possible to ask the system administrator to keep a copy of the back-up for the purposes of proof. The main reason for making a back-up is to make it possible to reinstall the system if there were to be a problem with the database. The EDPS stresses that a back-up must not normally be used for purposes of proof. Consequently, if a back-up is essentially made for purposes of proof, the EDPS considers that unacceptable. In the case in point, the system would save the entirety of the information concerning the data subjects, whereas a request for purposes of proof would be made on a case-by-case basis. The EDPS therefore considers that the system must be developed in such a way that it is more specific, so that it can serve for purposes of proof as necessary, if a request is made by a data subject. That procedure would allow a distinction to be made between the processing of the entirety of the data, to serve as a back-up, and the processing of data extracted for purposes of proof. This recommendation also takes the principle of data quality (see paragraph 2.2.5) into account.

The notification provides that the more detailed grounds for absence in Flexitime will be visible to users only in the context of statistics on functional groups. The EDPS would stress that if data are kept for historical, statistical or scientific purposes the Regulation provides that they shall be rendered anonymous. Data kept in PersonaGrata for statistical purposes must therefore be stored on an anonymous basis.

2.2.7. Transfer of data

Under Article 7 of the Regulation, personal data can be transferred within an institution only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

As regards the PersonaGrata system, extracts of data needed for verification work are sent to the administration (Leave Department). The local coordinators in the language units can consult data fed into Workflow to assist them in their task of distributing documents. These

transfers are necessary for the legitimate performance of tasks linked to personnel management and falling within the sphere of competence of the departments concerned: the monitoring of leave and the distribution of work.

The EDPS considers that this information sharing is necessary for the legitimate performance of tasks covered by the competence of the recipients.

Data can be accessed from a workstation only after logging in: the user must specify the type of access (central or local level) and then identify himself by selecting a user name and keying in the associated password. Each user has a certain number of defined access rights: access level (central/local), department(s) to which he has access at central level, unit(s) to which he has access at local level, functional group(s) to which he has access, and his profile (see section 12). The user profile determines the features available.

The persons responsible for personnel management in the Directorate-General's departments and units have access to the system. Different users have different rights of access: persons with access at central level can consult/manage only data relating to personnel assigned to or working in the department concerned. Persons with access at local level can consult/manage only data relating to personnel assigned to or working in the unit concerned. Under the authority of the controller, i.e. the Director of DGA 3, the departments and units ask the system administrator to create access for persons who are required to use the system. The EDPS considers that adequate guarantees have been put in place to ensure that access to the data is reserved exclusively to the persons authorised to have the data communicated to them. By virtue of Article 7(3), persons with access to data produced by the interface and recorded in the system must be informed that they may not use the data for purposes incompatible with the purposes of PersonaGrata.

2.2.8. Processing including the personal or identifying number

Article 10(6) of the Regulation provides that *"the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body."* This opinion will not determine the general conditions for the use of personal numbers but will examine the specific measures required in this connection within the framework of the interface.

In the interface system, the data used to identify records in the two systems will not be visible to PersonaGrata users. These data are as follows: date, time, action and serial number of the log record, personal number, observations entered by the person, data of validation of the request, personal number of the person who validated the request, indication of whether the absence has been generated by a Flexitime calculation.

The personal number will therefore be used as an identifier of individuals between the two systems, i.e. Flexitime and PersonaGrata. The use of the personal number in these cases ensures consistency and accuracy of the data recorded in the databases. The EDPS has no objection to the use of this number.

2.2.9. Right of access and rectification

Under Articles 13 and 14 of the Regulation, data subjects have a right of access to, and rectification of, personal data concerning them.

Section 5 of the Council Decision of 13 September 2004 adopting implementing rules concerning the Regulation lays down the procedure by which data subjects may exercise their rights. Since the information referred to in the notification comes from Flexitime, which acts a source of data in this context, and PersonaGrata does not offer the possibility of entering or changing data in Flexitime (data flows in only one direction, from Flexitime to PersonaGrata), such updates or corrections must be made in Flexitime in accordance with the procedure laid down for that purpose, which has already been analysed by the EDPS (Case 2004-0258).

The notification for prior checking and the draft note to DGA 3 staff on the processing of personal data within the PersonaGrata application (Flexitime/PersonaGrata interface) describe the right of access and mention the possibility offered to staff of rectifying personal data concerning them.

Articles 13 and 14 of the Regulation are thus fully complied with.

2.2.10. Information to be given to the data subject

Under Article 11 of the Regulation, whenever personal data are processed, data subjects must be sufficiently informed of the operation. That information should normally be given at the latest when the data are collected from the data subject, if the data subject has not already been informed.

Article 11 of the Regulation is concerned with cases where the data have been obtained from the data subject and Article 12 deals with cases where the data have not been obtained from the data subject. Since in this case the data are provided by the data subject, the administration and the unit of assignment, both situations arise.

The draft note to DGA 3 staff on the processing of personal data via the Flexitime-PersonaGrata interface describes the system in general and provides information on the identity of the controller, the purpose of the processing operation, the categories of data concerned, the recipients of the data, the right of data subjects to have access to and rectify the data concerning them, the legal basis, the time-limit for storing the data, the right to apply to the European Data Protection Supervisor and the origin of the data. The EDPS is satisfied that the heads of information specified in Articles 11 and 12 have been covered. He would also stress that the information communicated to the data subject must be made available in an appropriate and accessible form.

2.2.11. Security

Article 22 of the Regulation provides that technical and organisational measures must be taken to ensure a level of security appropriate to the dangers of the processing and to the nature of the personal data to be protected.

Following his careful examination of the security measures in place, the EDPS considers that those measures are adequate for the purposes of Article 22 of the Regulation.

Conclusion

The proposed processing operation would not appear to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. In particular, that means that:

- the internal regulation referred to in the opinion on a notification for prior checking relating to Flexitime (2004-0258) must contain a clause authorising the re-use of clocking in/out records from Flexitime in the PersonaGrata system; the EDPS would also take this opportunity to stress that it would be sufficient if a similar internal regulation were adopted in relation to the PersonaGrata system;
- the grounds for absence appearing in Flexitime should be used in PersonaGrata only under the conditions specified in this opinion;
- clocking data must not be kept for longer than the period finally determined for Flexitime, unless the data controller substantiates the need for it to be kept for a longer period;
- a system of saving data must be developed which is more targeted and specific than the total back-up solution, so that a data subject can make a request for purposes of proof;
- data kept in PersonaGrata for statistical purposes must be stored on an anonymous basis;
- persons with access to data produced by the interface and recorded in the system must be informed that they may not use the data for purposes incompatible with the purposes of PersonaGrata.

Done at Brussels, 16 September 2008

(Signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor