

## **Opinion on a notification for prior checking received from the Data Protection Officer of the European Economic and Social Committee regarding applications to work part time**

Brussels, 24 July 2009 (Case 2009-0322)

### **1. Procedure**

On 8 May 2009, the European Data Protection Supervisor (EDPS) received a letter from the Data Protection Officer (DPO) of the European Economic and Social Committee (EESC), containing a notification for prior checking regarding applications to work part time.

On 7 July 2009 the EDPS' draft opinion was sent to the DPO for comments. Those comments were received on 23 July 2009.

### **2. Facts**

The Staff Support Services, Individual Rights and Equal Opportunities Unit of the Directorate for Human Resources and Internal Services ("the data controller") handles applications by EESC staff to work part time. The data are processed by automatic and manual means. Staff fill in a form on paper and the data of each staff member are then entered in the Centurio database. The data are processed in accordance with Articles 55a and 55b and Annex IVa of the Staff Regulations of Officials of the European Communities, and with Articles 16, 57 and 91 of the Conditions of Employment of other servants of the European Communities. The Appointing Authority at the EESC wishes to adopt a new decision on part-time work, amending the current Decision No 470/04 A of 1 December 2004; in future, such processing will be carried out on the basis of that new decision, which is therefore the version taken into account in this opinion (a copy of the draft decision amending Decision No 470/04 A was forwarded to the EDPS).

The data subjects in relation to applications to work part time are officials, temporary staff and contract staff at the EESC. In exceptional circumstances, to justify an application to work part time, the family members of those staff may also be concerned (e.g. spouse, relative in the ascending line, relative in the descending line, brother, sister or child).

The staff member must make the application by filling in the standard form and sending it through official channels at least two months before the desired starting date, to the Working Conditions office of the Directorate for Human Resources and Internal Services, which forwards it, together with the opinion of the immediate superior, to the

Appointing Authority for a decision. That opinion must give reasons if it is negative or if it changes the start or end date of the part-time work. If, on the basis of the views of the person's hierarchical superiors, the Appointing Authority decides not to grant its authorisation or to postpone the date of effect, that decision is notified to the person concerned. However, authorisation to work part time may not be refused or delayed in the following cases: (i) to care for a child under 9 years of age, (ii) to care for a child aged between 9 and 12, if the reduction in working time is no more than 20 % of normal working time, and (iii) to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister. Authorisation to work part time cannot be refused or delayed, except in exceptional circumstances and for overriding service-related reasons, after receiving the opinion of the Joint Committee, if such authorisation is sought in the following cases: (i) to take part in further training, or (ii) as of the age of 55 during the last five years before retirement. Authorisation to work part time is granted in the form of a decision laying down the period for which the authorisation is granted. Except where the authorisation is granted in one of the cases listed in Article 2(3) of the draft decision, in exceptional circumstances in the interest of the service, the Appointing Authority may withdraw the authorisation before the expiry of the period for which it was granted, subject to two months' advance notice.

The form requesting authorisation to work part time contains the following data: surname and first name, personnel number, category and grade, Directorate/Division/Department, administrative status, date of end of contract (for temporary and contract staff), part-time arrangement requested, period requested, reason for the application, level of contribution to the pension scheme chosen, application to renew an authorisation, date of application and signature, dated and signed opinion of the immediate superior giving reasons, dated and signed decision by the Appointing Authority. For applications made under Article 4 of Annex IVa to the Staff Regulations, a calculation of the basic salary received by an official aged over 55 authorised to work part-time, made by the pensions section of the Finance Directorate, is also collected for data processing purposes.

Data may be transferred to the following recipients or categories of recipient:

- the immediate superior, for his reasoned opinion;
- the head of the Staff Support Services, Individual Rights and Equal Opportunities Unit, leave and overtime section, for drawing up the decision;
- the medical service for justifications on medical grounds;
- the pensions section of the Finance Directorate for calculation of the basic salary received by an official aged over 55 authorised to work part time;
- the President or Secretary-General (Appointing Authority) for signature of the decision to grant or extend authorisation to work part time;
- the Joint Committee, if the Appointing Authority refuses the application to work part time;
- the Personnel Files department, for the filing of the original documents in the personnel file of the official/staff member.

The decision is also sent to:

- the recruitment department, to recruit a replacement if need be;
- the pay department, to make a proportional adjustment to the pay of a person authorised to work part time;
- if the decision is contested, the Legal Service, the Civil Service Tribunal or the Court of Justice.

The original of the Appointing Authority's decision to authorise or refuse part-time work, and the original application, are forwarded to the Personnel Files department for filing in the personnel file of the person concerned. A copy of the application and of the decision, and the supporting documents, are kept by the leave and overtime section for five years in locked cupboards. The data are kept throughout the career of the official/staff member in the personnel file and on computer in Centurio in the part-time module. The data stored in Centurio only concern the decision, the arrangement chosen, the percentage, the pension contribution (100 % or pro rata) and the grounds (parent of a child < 9 years/12 years; caring for ill or disabled relative; further training; medical/school assistance for < 12 years; > 55 years; exceptional circumstances; other). The EESC considers that it is necessary to know the total duration of periods of part-time working, to take account of the limits in the Staff Regulations.

As regards the provision of information to data subjects, a specific statement on personal data protection for applications to work part time is available on the intranet, in the same place as the application form. The statement is drafted on the basis of Decision No 470/04 A.

This specific statement indicates that, during the processing, data subjects may contact the leave and overtime section of the Staff Support Services, Individual Rights and Equal Opportunities Unit to exercise their rights of access to and rectification of their data. The notice also states that the time-limit for the blocking and erasure of data is 15 days. As regards access to original documents held in the personnel files, data subjects are informed in the specific statement that the rules on access to personnel files apply.

The office where the files are kept is locked whenever the office is empty; the cupboards are also locked. The computer drive is only accessible to staff in the leave and overtime section and to the head of the Staff Support Services Unit and his assistant. The PCs are only accessible with individual passwords. In the part-time module (Centurio), data on part-time work are only accessible to the staff of the Directorate for Human Resources and Internal Services.

### **3. Legal aspects**

#### **3.1. Prior check**

The prior check relates to the processing of personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001 ("The Regulation") by the Staff Support Services, Individual Rights and Equal Opportunities Unit of the Human Resources and Internal Services Directorate of the EESC in the context of the examination of applications to work part time. The processing includes the collection, consultation and storage of data.

The data are processed by a Community body and the operation is carried out in the exercise of activities within the scope of Community law (Article 3(1) of the Regulation).

The processing of applications to work part time is both manual (application form, supporting evidence) and automatic (entry of data in Centurio). Article 3(2) of the Regulation is therefore applicable in this case.

Accordingly, the processing falls within the scope of Regulation (EC) No 45/2001.

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"*. Article 27(2) lists processing operations that are likely to present such risks. Article 27(b) refers to *"processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct"*. In effect, the processing involves an evaluation of the data subject, insofar as it is based on the interest of the service and takes into account the grounds given in support of the application, but also insofar as it is possible for part-time work to be refused. It is also possible for applicants to justify their application to work part time by referring to their own state of health and/or the state of health of members of their families. The processing of data relating to health is therefore also potentially concerned (Article 27(2)(a)).

The processing is therefore subject to prior checking by the EDPS.

This is in fact a true prior check relating to the new procedure for the examination of applications to work part time, which will be finalised once the EDPS's recommendations have been made.

Notification from the DPO was received on 8 May 2009. In accordance with Article 27(4), this opinion must be delivered within two months of receipt of the notification. Because of the 16 days of suspension for comments, the EDPS will give his opinion on 25 July at the latest.

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

Under Article 5(a) of Regulation (EC) No 45/2001, personal data may be processed *"if processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body"*.

The procedure for the granting of part-time work comes within the framework of the legitimate exercise of the authority invested in the EESC, particularly as regards the management of the working hours of staff and the allocation of those staff in the interest of the service. The processing operation proposed is therefore lawful.

In this case the processing of personal data is necessary for the EESC to grant the right to work part time, as provided for in Articles 55a and 55b and Annex IVa of the Staff Regulations of Officials of the European Communities, and in Articles 16, 57 and 91 of the Conditions of Employment of other servants of the European Communities, and in the EESC's implementing rules. The legal basis thus supports the lawfulness of the processing.

### **3.3. Processing of special categories of data**

Article 10(1) of the Regulation prohibits the processing of personal data revealing political opinions, trade-union membership or data concerning health, unless one of the reasons listed in Articles 10(2) or 10(3) can be invoked.

In connection with some applications, supporting documents concerning the state of health of data subjects or members of their families have to be provided.

In this case, the draft decision indicates that supporting documents relating to the state of health must be given by the person concerned to the medical officer. The processing of medical data by a health professional subject to the obligation of professional secrecy for the purposes of medical diagnosis or the management of health-care services comes within the scope of Article 10(3). The passing of supporting documents of a medical nature directly by the person concerned to the medical officer therefore complies with Article 10(3) of the Regulation.

The EDPS also notes that other special categories of data may be collected on the form in the field relating to the reason for the application, such as for example data about trade-union membership or political opinions. In this case the collection of such data is covered by Article 10(2)(b) of the Regulation, since it is necessary to comply with the specific rights and obligations of the controller in the field of employment law. In the event that such data are collected, the EDPS recommends that the recipients of the data should be reminded that they must only process them for the purposes of dealing with applications to work part time.

### **3.4. Data quality**

Article 4(1)(c) of Regulation (EC) No 45/2001 states that personal data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.*" In this case, the data are collected and processed for the purposes of managing applications to work part time.

The EDPS finds that the personal data which have to be provided are necessary to establish the right to work part time, and that their processing cannot be regarded as excessive.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (see point 3.2 above). The issue of fairness of the processing is linked to the information given to the data subject (see point 3.9 below).

Under Article 4(1)(d) of the Regulation, personal 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 procedure in place gives sufficient reason to believe that the system itself ensures the quality of the data. As the written observations by the immediate superior are subjective by their very nature, it is hard to assess their accuracy. In any case, the invitation to exercise the rights of access, rectification and appeal helps to ensure that the data are accurate and up to date (see point 3.8).

### **3.5. Data retention**

Article 4(1)(e) of the Regulation establishes the principle that 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".*

The original of the Appointing Authority's decision to authorise or refuse part-time work, and the original application, are forwarded to the Personnel Files department for filing in the personnel file of the person concerned. A copy of the application and of the decision, and the supporting documents, are kept by the leave and overtime section for five years in locked cupboards. The data are kept throughout the career of the official/staff member in the personnel file and on computer in Centurio in the part time module. The data stored in Centurio only concern the decision, the arrangement chosen, the percentage, the pension contribution (100 % or pro rata) and the grounds (parent of a child < 9 years/12 years; caring for ill or disabled relative; further training; medical/school assistance for < 12 years; > 55 years; exceptional circumstances; others).

The EDPS considers that it is necessary for the controller to keep the copy of the application to work part time, the Appointing Authority's decision and the supporting documents for five years, in order to manage the career of the person concerned and to allow him all his rights under employment law, and that this therefore complies with Article 4(1)(e) of Regulation (EC) No 45/2001.

### **3.6. 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"*.

The personal numbers of the staff concerned may be collected in connection with the processing of applications to work part time. The EDPS considers that the personal number can be used in this context since it allows the identification of the staff member and facilitates the proper administration of the file. There is no reason to lay down other conditions in this case.

### **3.7. Transfers of data**

Article 7(1) of Regulation (EC) No 45/2001 provides that *"personal data shall only be transferred 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"*.

The whole application form for part-time work is transferred within the institution to: (i) the immediate superior, for his opinion; (ii) the head of the Staff Support Services, Individual Rights and Equal Opportunities Unit, and the leave and overtime section, to draw up the decision; (iii) the President or Secretary-General for signature of the decision to grant or extend authorisation to work part time; and (iv) the personnel files department for the filing of the original documents in the personnel file of the official/staff member, and also to the pensions section of the Finance Directorate for the calculation of the basic salary; the Joint Committee, if the Appointing Authority refuses the request to work part time; the recruitment department, to recruit a replacement if need be; the pay department, to make a proportional adjustment to the pay of a person authorised to work part time; and finally, if necessary, to the Legal Service.

Medical supporting documents are also sent directly by the person concerned to the medical officer/medical service. In each case, the transfer of data is necessary for the recipients to be able to carry out the tasks of a confidential nature entrusted to them.

The EDPS notes that as such these transfers of personal data comply with Article 7(1) of Regulation (EC) No 45/2001. Nevertheless, he recommends that in accordance with Article 7(3), each of the recipients should be reminded that he may process personal data received in connection with the procedure for applying for part-time work for that specific purpose.

If the decision is contested, the Civil Service Tribunal or the Court of Justice may be recipients of the data. In this case such transfers are justified since they are necessary for the legitimate performance of the tasks covered by the competence of the recipient. The EDPS recommends that these recipients be mentioned in the specific statement on personal data protection for the processing of applications to work part time (see point 3.9).

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

Article 13 of Regulation (EC) No 45/2001 gives data subjects a right of access to personal data held concerning them. Article 14 lays down the right to have such data rectified.

In the specific statement on personal data protection in connection with the processing of applications to work part time, the paragraph headed "access to data" indicates that data subjects are able to have access to the data concerning them, and to have them rectified. Only Article 13 of the Regulation is mentioned. For the sake of completeness there should also be an explicit reference to Article 14 of the Regulation, on the right of rectification.

The EDPS notes that the opinion of the Joint Committee must be sought in certain exceptional cases, where a refusal to grant authorisation to work part time is based on the overriding interests of the service, for some of the types of application listed in Article 2.3 of the draft decision. The EDPS recommends that the person concerned should be able to have access to the Joint Committee's opinion, for data concerning him or her.

As regards access to original documents kept in personnel files, the EDPS would point out that members of staff must be informed, in accordance with Article 11 of the Regulation, of the rules relating to access to those documents.

### **3.9. Information given to the data subject**

Article 11 of Regulation (EC) No 45/2001 provides for certain information to be supplied where the data have been obtained from the data subject. Article 12 of the Regulation provides for certain information to be supplied where the data have not been obtained from the data subject.

In this case, staff members will be informed by means of the decision governing part-time work and the specific statement on personal data protection in relation to the processing of applications to work part time. However, this statement was drafted on the

basis of the current EESC Decision No 470/04 A governing part-time work, and should therefore be amended to refer to the new decision which is to be adopted by the EESC.

Regarding the communication of information to family members whose personal data are processed in the context of an application to work part time, the EDPS admits that to communicate such information directly would involve a disproportionate effort by the EESC. However, amongst other appropriate steps, the EDPS could ask officials/staff members submitting such data to inform the family members concerned about the processing of their personal data and their rights in that respect.

The EDPS therefore recommends that the EESC make the following changes to the specific statement on data protection:

- amend the legal basis to refer to the new EESC decision governing part-time work;
- add a reference to Article 14 of the Regulation on the right of rectification;
- allow family members access to data concerning them, and ask that officials/staff members providing such data inform the persons concerned of those rights;
- add the Legal Service, the Civil Service Tribunal and the Court of Justice to the list of potential recipients (see point 3.7).

Furthermore, the EDPS recommends that the draft decision and the specific statement on data protection should be harmonised concerning the transmission of medical supporting documents, which according to the draft decision must be sent to the "medical officer" and according to the specific statement on data protection are to be sent to the "medical service".

### **3.10. Security measures**

Article 22 of Regulation (EC) No 45/2001 on the security of processing states that *"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"*.

On the basis of the information provided, the EDPS has no reason to believe that the EESC has not implemented the security measures required under Article 22 of the Regulation.

### **Conclusion:**

The proposed processing operation does 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:

- each recipient should be reminded that he/she may process personal data received in connection with the procedure for applying for part-time work only for that specific purpose;
- if authorisation to work part time is refused and the opinion of the Joint Committee has to be obtained, the person concerned should be allowed access to the Joint Committee's opinion as regards the data concerning him or her;



- the information concerning access to personnel files should be clearly set out and available to staff members, in accordance with Article 11 of the Regulation;
- the specific statement on data protection should be amended in accordance with the recommendations made in points 3.8 and 3.9 of this opinion.

Done at Brussels, 24 July 2009

*[Signed]*

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor