



Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Parliament concerning "Manual filing of disability-related documents of visitors"

Brussels, 16 March 2010 (Case 2009-564)

1. Proceedings

On 8 September 2009, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Parliament a notification for prior checking concerning manual filing of disability-related documents of visitors.

The notification was accompanied by several background documents including the notification received by the DPO from the data controller, information notices, forms for the use of visitors groups as well as the European Parliament Bureau documents on visitor arrangements.

On 15 September 2009, the EDPS sent a request for additional information to the DPO, who responded on 29 October 2009. On 3 December 2009, additional questions were sent to the DPO. Additional information was received on 16 December 2009. The draft opinion was sent to the DPO for comments on 17 December 2009 and comments were received from the data controller on 15 March 2010.

2. Facts

The present case deals with the manual processing by the European Parliament of disability-related documents of visitors. The processing operations are carried out under the supervision of the Head of Visits and Seminars Unit, DG Communication.

The *purpose* of the data processing is to collect evidence of disability of visitors to the European Parliament in official subsidised visitor groups in order to assess their entitlement to an additional subsidy based on disability and to allow for specific arrangements to be made for their visit. The European Parliament rules¹ regarding reception of visitors groups entitle visitors with a recognised disability belonging to official subsidised visitors groups to an additional subsidy in certain cases where they need special assistance, i.e. where accompanied by a sign language interpreter, where they are in a wheelchair and/or where they require special arrangements to be made, within reason, to travel comfortably. To

¹ European Parliament rules governing the reception of groups of visitors and the Euroscola and Euromed-Scola programmes, Bureau decision of the European Parliament of 16 December 2002, modified on 3 July 2006, on 10 October 2007 and on 7 July 2008, PE 339.476/BUR.

benefit from such subsidy, visitors are required to provide official evidence of their disability.

The *data subjects* are visitors belonging to official subsidised visitors groups who are eligible for an additional subsidy based on disability.

The *data processing* is both manual and automatic. Information about the visit is collected online, through a web form accessible on the European Parliament's internet via the software applications FIVISIT and VISEP. When the visit is sponsored by a member of the European Parliament, an application form for a subsidised group visit must be filled in by the MEP. The Group leaders are informed through the European Parliament internet site of the need to inform the Visit and Seminar Units if there are persons with disability in their group. They usually provide this information on a voluntary basis. When the application for an additional subsidy is introduced by an MEP, the Linguistic unit contacts the group leader to inform him/her that the additional subsidy for visitors with a disability will be granted further to the transmission of the relevant documents attesting of the disability. Documents evidencing the disability are processed manually in a structured set of data relating to the disability of visitors accessible according to given criteria. It is not excluded that information about visitors with a disability may be processed through automated means (such as emails). On the basis of the information collected, the financial personnel of the Visits and Seminar Unit evaluates the entitlement to an additional subsidy.

The *categories of data processed* about visitors to the European Parliament include for all visitors name, address, date of birth and, on a voluntary basis, email address. In addition to that the visitor's personal identification number and information concerning his health (disability) are collected and stored where necessary. Data are collected through various means as follows:

- **Visitor form:** Data about visitors' group are collected from the visitor's group leader through a form. The visitor form contains personal identification of the group's leader (name, telephone, address, email address, date of birth) as well as information about the group (number of persons, language of the visit, country and town of origin) and the date and place chosen for the visit.
- **Application form for a subsidised group visit to the European Parliament sponsored by a member.** The MEP concerned fills in a form which contains the following data: name of MEP, date and location of the visit, name of visitors' group, town of origin, overall size of group, number of visitors to be subsidised and number of disabled people, and the contact details of the group leader (name, birth date, address, telephone, e-mail, fax).
- **Official evidence of the disability:** Official evidence of the disability is collected by the Unit Visits and Seminars, which can be: (i) an invalidity card, (ii) a certificate delivered by a public body (e.g. Ministry of Health) or (iii) a recent certificate delivered by a doctor.

Regarding the *retention periods*, the paper files related to payments of disability subsidies are kept for five years and then archived in a central location at the place of work of Visits and Seminars Unit and DG COMM Budgetary Coordination respectively. Photocopies of original documents evidencing the disability are also kept for five years. Data indicating

whether or not a participant has a disability may be stored for longer periods for statistical purposes, and is processed on an anonymous basis.

Individuals will be *informed* of the processing through a standard document, which is still to be created. For the time being, general information about data protection is provided on the website of the European Parliament through a general legal notice.

Regarding the *rights of the data subjects*, the notification does not mention anything.

The data processed are *disclosed* to the Budgetary Coordination Unit of the DG Communication for purpose of payment and financial verification. This Unit also keeps a copy of the files.

As concerns *security measures*, [...]

3. Legal aspects

3.1. Prior checking

Applicability of Regulation No 45/2001: The processing of disability-related data of visitors to the European Parliament constitutes a processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation). The data processing falls under Article 3(1) of the Regulation as it is performed by the European Parliament in the exercise of activities which fall within the scope of former "Community law". The processing of the data is both automatic and manual; in the latter case, such processing forms part of a filing system (Article 3 (2) of the Regulation). Therefore, Regulation No 45/2001 is applicable.

Grounds for prior checking: According to Article 27 (1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27 (2) (a): "*processing of data relating to health*". The processing of disability-related data of visitors clearly represents such a processing operation and is therefore subject to prior checking by the EDPS.

Ex-post prior checking: Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should have been given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, all recommendations made by the EDPS should be fully taken into account and the processing operations should be adjusted accordingly.

Deadlines: The notification of the DPO was received on 8 September 2009. According to Article 27 (4) of the Regulation, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 143 days. Consequently, the present opinion must be delivered no later than on 2 April 2010.

3.2. Lawfulness of the processing

Article 5 of Regulation No 45/2001 provides criteria for making processing of personal data lawful. One of the criteria provided in Article 5 (a) is that the processing is necessary for performance of a task carried out in the public interest or in the legitimate exercise of official authority vested in the institutions or bodies. The processing of personal data for performance of tasks carried out in the public interest includes *"the processing necessary for the management and functioning of those institutions and bodies"* (recital 27).

The processing of disability-related data of visitors to the European Parliament is a part of the legitimate exercise of official authority vested in the European Parliament. The processing is necessary for purpose of facilitating the visit of persons with a disability to the European Parliament by providing to them an additional subsidy if they meet the criteria set forth by the European Parliament in its rules governing the reception of groups of visitors. The processing is therefore legitimate.

The legal basis is provided in Article 19 of the European Parliament rules governing the reception of groups of visitors and the Euroscola and Euromed-Scola programmes set forth in its Bureau decision of 16 December 2002, modified on 3 July 2006, on 10 October 2007 and on 7 July 2008, PE 339.476/BUR, which confirms the lawfulness of the processing.

3.3. Processing of special categories of data

Processing of personal data concerning health is prohibited under Article 10 (1) of the Regulation unless grounds can be found in Article 10(2) and/or Article 10(3) of the Regulation.

Visitors are asked to provide information about their disability to facilitate their visit as well as evidence of their disability in order to obtain an additional subsidy. The data related to disability as well as the documents produced to evidence the disability and to make the necessary arrangements for the visit must be considered as health-related data since they attest of the physical disability of the person and are likely to reveal information on the nature of the disability (e.g. request for a sign language interpreter, request for assistance with a wheelchair, etc.). This is not, however, an issue as Article 10(2)(a) permits the processing of such data when the "the data subject has given his or her express consent to the processing of such data".

According to Article 2(h) of the Regulation, consent means *"any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed"*. The European Parliament informed the EDPS that the collection of data and evidence concerning the disability of visitors is done a voluntary basis. However, such collection is usually done indirectly through the visitors' group leader. For such collection to be deemed adequate in view of Article 2(h) of the Regulation, it is particularly crucial that the data subject is adequately informed that the collection of data relating to disability by the European Parliament is done a strictly voluntary basis. The EDPS therefore recommends that the information notice concerning the data processing provides clear information about the voluntary collection of data concerning disability of visitors.

3.4. Data Quality

Adequacy, relevance and proportionality: According to Article 4 (1) (c) of the Regulation, personal data must be "*adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed*". The information presented to the EDPS on the data processed appears to meet those requirements. The processed data are necessary to evaluate the disability of visitors to the European Parliament and to provide them with a subsidy.

Accuracy: Article 4 (1) (d) of the Regulation provides that personal data must be "accurate and, where necessary, kept up to date" and that "every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified". Most of the data processed is provided on behalf of visitors, through the group leader and/or an MEP. The rights of access and rectification are therefore important means that should be available to data subjects to ensure the accuracy of their personal data processed (cf. point 3.7).

Fairness and lawfulness: Article 4 (1) (a) of the Regulation also provides that personal data must be "*processed fairly and lawfully*". Lawfulness has already been discussed (cf. point 3.2) and fairness will be dealt with in relation to information provided to data subjects (cf. point 3.8).

3.5. Data retention

Article 4 (1) (e) of the Regulation states 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 paper files related to payments of disability subsidies and photocopies of original documents evidencing the disability are kept for five years and then archived for a long term period in a central location at the place of work of Visits and Seminars Unit and DG COMM Budgetary Coordination respectively.

The EDPS considers that the 5 years retention period of personal data and evidence of a disability is reasonable in view of the financial regulation of the European Union which imposes to keep evidence of payment for 5 years after budgetary discharge.

The EDPS however considers that archiving on a longer term period personal data and evidence of the disability does not seem necessary or justified. As in other prior check opinions (2009-332), the EDPS invites the European Parliament to establish a procedure for the selection and verification of data whereby personal data may only be kept in the archives if of historical value. Furthermore, the EDPS disagrees with the practice of double retention of the data by two different units, and recommends that all data related to disability and payment of disability-related subsidies are maintained in only one place under the responsibility of one designated unit.

The EDPS takes note that certain data may be stored for a longer period for statistical purposes, which processing should only take place on the basis of strictly anonymous data.

3.6. Transfer of data

In line with Article 7 of the Regulation, personal data can be transferred within or to other institutions or bodies *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient can process the data *"only for the purposes for which they were transmitted"* (paragraph 3).

As mentioned above, the data are transferred within the European Parliament to the Budgetary Coordination Unit of the DG Communication for purposes of payment of the disability subsidy.

The EDPS considers that this transfer is necessary for the legitimate performance of the tasks covered by the given recipient. Therefore, Article 7 (1) of the Regulation is being complied with.

In order to ensure the full compliance with Article 7 (3) of the Regulation, the EDPS recommends that the recipients are reminded of their obligation not to use the data received for any further purposes than the one for which they are transmitted.

3.7. Rights of access and rectification

Article 13 of the Regulation establishes a right of access upon request by the data subject. Article 14 of the Regulation provides the data subject with a right of rectification.

The EDPS notes that no specific measure to ensure the right of access and rectification has been implemented in relation to the processing at stake.

The EDPS recommends that the European Parliament ensures that visitors can exercise their rights of access and rectification to their data, and that visitors are provided with information on how to exercise their rights of access and rectification. This can be done through the specific information notice relating to the data processing (see 3.8 below).

3.8. Information to the person concerned

Articles 11 and 12 of the Regulation provide for information to be given to data subjects in order to ensure the transparency of the processing of personal data. Article 11 provides that when the data is obtained from the data subject, the information must be given at the time of collection. When the data have not been obtained from the data subject, the information must be given when the data are first recorded or disclosed, unless the data subject already has it (Article 12).

In the present case, data are mainly collected indirectly through the group's leader and/or the MEP, but it is possible that certain data are collected directly from data subjects. The European Parliament informed the EDPS that it will create a data protection statement concerning this processing. The EDPS insists that a data protection notice compliant with Articles 11 and 12 of the Regulation be adopted by the European Parliament, which must be provided at the time of collection of the data and which must remain easily accessible at all times. Such notice should also duly integrate the comments of the EDPS provided in sections 3.3 and 3.7 of this opinion.

3.9. Security measures

According to Article 22 of Regulation No 45/2001, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected."* These measures must *"in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing"*.

On the basis of the information available, the EDPS has no reason to believe that the measures implemented by the European Parliament are not adequate in light of Article 22 of the Regulation.

4. Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation No 45/2001 provided the above considerations are fully taken into account. In particular, the European Parliament should:

- provide clear information in the data protection notice concerning the voluntary collection of data concerning disability of visitors in order to comply with Article 10 (2) (a) of the Regulation;
- only retain personal data and evidence relating to disability for the time necessary until budgetary discharge. The EDPS invites the European Parliament to establish a procedure for the selection and verification of data whereby personal data may only be kept in the archives if of historical value. The EDPS further recommends that all data related to disability and payment of disability-related subsidies are maintained in only one place under the responsibility of one designated unit;
- only process data for statistical purposes on a strictly anonymous basis;
- remind all recipients of their obligation not to use the data received for any further purpose than the one for which they were transmitted (Article 7 (3) of the Regulation);
- ensure that visitors can exercise their rights of access and rectification to their data and that visitors are provided with information on how to exercise their rights of access and rectification (Articles 13 and 14 of the Regulation);
- adopt a data protection notice compliant with Articles 11 and 12 of the Regulation that should be provided at the time of collection of the data and which should remain available at all times, in accordance with the recommendations made in section 3.8 of this opinion.

Done at Brussels, 16 March 2010

(signed)

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