



Opinion on a notification for prior checking received from the Data Protection Officer of the Joint Research Centre (JRC) concerning psychosocial and financial assistance at the ITU JRC in Karlsruhe

Brussels, 10 May 2010 (Dossier 2008-713)

1. Procedure

On 25 November 2008, the Commission's DPO issued a notification under Article 27(3) of Regulation (EC) No 45/2001 ('the Regulation') on the 'psychosocial and financial assistance' dossier at the Joint Research Centre (ITU in Karlsruhe).

Questions concerning data transfers and the tasks of the social and medical services were sent to the DPO on 14 January 2009. The European Data Protection Supervisor (EDPS) received a reply on 29 April 2010.

2. Facts

For a general description of the facts of the data processing operation in question, we would refer you to opinion 2004-223 delivered by the EDPS on 13 March 2006. In fact, a similar case was analysed by the EDPS in its opinion 2007-304 delivered on 24 July 2007 for the Ispra JRC. Both of these opinions help to clarify the facts of the current situation. Indeed, there are certain differences with regard to the processing implemented by the European Commission that are common to the facts concerning the Ispra JRC, such as the period of time during which data on 'financial assistance' or information on the person concerned are stored (five years), which is complete in the case of the JRC sites. Finally, the data subject is ensured right of access and rectification at both JRC sites by the opportunity to send a request for access and/or correction of the data to a contact email address.

Transfers are somewhat different to those in the opinions mentioned above. The Karlsruhe JRC also uses the competent services of the Ispra JRC which will process the dossiers on social financial assistance of staff in active service in cooperation with the medical service of the RCAM in Luxembourg and the dossiers on financial social assistance of retired staff of the competent Commission services in Brussels (the social service, HR.DDG.C.1). The Appointing Authority for both types of applicants is always unit HR.DDG.C1. The categories of recipients concerned therefore comprise the medical officer of the RCAM in Luxembourg, the Appointing Authority of DG HR, the social services of Ispra and the Commission and the Pay Master Office (PMO). The consultative committee for awarding loans and aid for social reasons may also receive data. In the same way as in the two opinions mentioned above, data may be transferred to external social services for psychosocial assistance.

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Data is stored for five years after the financial assistance dossier has been concluded. Medical and psychosocial data are stored for the same length of time as the medical dossier.

3. Legal aspects

3.1. Prior checking

The JRC is a Directorate-General of the European Commission. As indicated above, the data processing operations discussed here are very similar to those established by the Commission and the Ispra JRC. The ITU JRC even uses the Commission services (social service, HR.DDG.C.1, etc.) and those of the Ispra JRC. These data processing operations have thus already been checked by the EDPS (opinions 2004-223 and 2007-304). The analysis below will therefore be limited to checking the differences between the data processing operations in question against those already checked. It goes without saying that the recommendations made by the EDPS concerning dossiers 2004-223 and 2007-304 also apply to the data processing operations in question.

These operations, like those of the Commission and Ispra JRC, fall under the scope of Article 27(2)(b) of the Regulation. In fact, management of psychosocial and financial assistance involves the processing of personal data (Article 2(a); implemented by a Community institution (Article 3(1); partly automated (Article 3(2); and intended to evaluate personal aspects relating to the data subject, such as their conduct (Article 27(2)(b), and is therefore subject to prior checking by the EDPS.

In principle, the checks made by the EDPS occur prior to processing, if not, then they must necessarily be subsequent. This does not in any way affect the desirability of implementing the recommendations made by the EDPS.

The notification was received by email on 25 November 2008. The two-month deadline by which the EDPS must issue its opinion pursuant to Article 27(4) of the Regulation was suspended for 457 days until 29 April 2010. The EDPS will therefore issue its opinion on 12 May 2010 (26 January 2009 plus 457 days of suspension).

3.2. Data storage

Personal data must be 'kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed (...)' (Article 4(1)(e) of the Regulation).

Data concerning financial assistance are kept for five years after the dossier is closed. The ITU JRC considers this deadline to be reasonable in view of the aim of granting financial assistance.

However, the EDPS harbours doubts about the time during which medical and psychosocial data are stored. The medical dossier is a 'container' with data that can have different storage periods according to the purposes for which they were obtained. The JRC should be aware of this and should determine the duration of storage of the data categories under Article 4(1)(e). Although it does seem proportional to store certain data types over a long period for certain purposes, we do not feel that it is justified to store medical and psychosocial data systematically for a long time.

3.3. Data transfer

Under the Regulation, the transfer of personal data within or between Community institutions or bodies must meet the conditions listed under Article 7. Personal data may be transferred only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

The EDPS is in no doubt about the competence of the various recipients or the legitimacy of their tasks in this case; these services are processing the same data for the Commission and JRC Ispra. However, the data transferred may be of a sensitive nature, hence the importance of transferring only data that are strictly necessary to allow the social and medical services, the Appointing Authority and the consultative committee for granting loans and aid to form their opinions. Likewise, the PMO should be sent only such details as are strictly necessary to perform its task.

Moreover, the European Ombudsman, the EDPS, internal auditor and the JCR's DPO can also receive these data. Finally, the Civil Service Tribunal (CST) and the Court of First Instance (CFI) can receive such dossiers in the event of an appeal. In this case, transfers are justified because they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

Under Article 7(3), the recipient may process personal data only for the purposes for which they were sent. The EDPS therefore recommends that anyone receiving and processing data concerning social and financial assistance must be informed that such data may not be used for any other purpose, if this has not already been done.

The data can also be transferred to specialist external social services for psychosocial support. The transfer of such data falls under Article 8 as regards their being forwarded to recipients, other than the institutions, subject to Directive 95/46/EC. Such data may be transferred only *'if the recipient establishes the need to have the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced'*. In this case, the JRC's social service suggests that, generally speaking, the data subject should contact the specialist external social services concerned or establish the first contact between the data subject and the external service. In this case, no effective data transfer has occurred as yet. However, when data are effectively transferred to the external services, the need for this transfer must be analysed on a case by case basis.

4. Conclusion

The data processing operation in question does not appear to be in breach of Regulation (EC) N° 45/2001 as long as:

- the recommendations of opinion 2004-223, which are relevant to the dossier in question, are taken into consideration;
- the length of time during which the various categories of medical and psychosocial data are stored respect Article 4(1)(e) of the Regulation;
- everyone who receives and processes data connected to social and financial assistance is informed that they may not use such data for any other purpose;
- when data are actually sent to external social services, the need for the transfer is analysed on a case by case basis pursuant to Article 8.

Done at Brussels, 10 May 2010

(signed)

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