

Opinion on the notification for prior checking from the Data Protection Officer of the European Commission concerning the Safety Inspections at the JRC Ispra Site

Brussels, 6 September 2010 (case 2009-682)

1. Proceedings

On 22 October 2009, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Commission a notification for "ex post" prior checking relating to the processing operation "Safety Inspections at the JRC Ispra Site". The notification was accompanied by a Privacy Statement.

On 29 October 2009, the EDPS sent a request for additional information to the DPO. The replies provided on 6, 12 and 27 November 2009, as well as on 8 January and 30 March 2010, which partially answered the request for information, were accompanied by the following documents:

- *Decreto legislativo 09 Aprile 2008 n° 81,*
- *Art. 16, 31, 39 Legge 1° Agosto 1960, n° 906,*
- *Regolamento PdC - Consultation Procedure Regulation (PG-52 of 12 October 2009),*
- *Procedura "Partiamo bene" - "Safe Start" Procedure Regulation (PG-53 of 23 October 2006),*
- *Procedura gestionale per le sostanze e preparati etichettati pericolosi - Regulation on Procedure for Management of Dangerous Substances and Preparations (PG-50 of 24 November 2006),*
- *Procedura in caso d'infortunio - Regulation on Procedure for the Case of Injury (Safety Document N° 1/97 Rev.0 of 20.1.97),*
- Communication from the Commission - Draft Commission decision establishing a harmonised policy for health and safety at work for all Commission staff - C (2006) 1623/3,
- Injury or Accident Report templates (for external-contractor workers and JRC employees),
- *Notifica d'infortunio* (Incident Notification fax sample by Medical Service).

The remaining issues have been clarified during a videoconference with DG JRC Ispra organised by the DPO on 13 April 2010, as well as in the controller's email of 4 May 2010 to which the following documents were attached:

- sample of an Accident Inquiry report,
- Article 2 Sentence IV of Ministerial Decree of 12 September 1958,
- 2009 Safety Inspector's Report,
- Medical Certificate template,
- Accident Declaration template (for insurance purposes)

The draft opinion was sent to the EC DPO for comments on 23 June 2010 which were provided on 9 August 2010.

2. Facts

The present opinion analyses the data processing operations carried out for the purpose of maintaining, as well as improving safety standards at the DG JRC Ispra Site. It focuses on the examination of the "Procedure for the case of an injury" that involves processing of health related data¹.

The actual data processing taking place in this context can be summarised as follows:

- a fax alert about an incident ("incident notification") is sent by the Medical Service to the Safety at Work Inspection Service,
- an Injury or Accident Report is completed by the injured person and his/her hierarchy²,
- after an investigation in terms of causes and possible responsibilities, a Final Inquiry Report is drafted by the Safety at Work Inspector and delivered to the line management, as well as the Safety Manager of the injured person so that appropriate actions can be taken in order to minimise the consequences and/or prevent similar incidents;
- the relevant incident data are also recorded in an excel file ("incident register") used for statistical purposes.

The anonymous "statistical data report" ("Safety Inspector's Report") is delivered during the first Joint Committee for Health and Safety meeting of the following year.

The data controller is the Head of the "Safety and Security" Unit C2 at the DG JRC of the European Commission. The delegated data controller is the Head of the "Safety of Work Inspection" Sector.

Data subjects are all persons entering the JRC Ispra Site, i.e. internal and external staff, as well as visitors.

The following personal data may be processed in this context:

- name and surname,
- date of injury or accident,
- description of injury and accident (including consequences, such as days of absence and body-parts injured),
- name and surname of the hierarchical superior,
- name and surname of the JRC contract managers (for external staff),
- contractors name (for external staff).

The following data retention policy is applicable to personal data processed within the health and safety incident investigations:

- Final Inquiry Reports are being kept (in their original signed form) for at least four years after the respective inquiry,
- the incident register in excel format is to be kept for at least ten years following the year of the incident for further reference in case of a court case against the European Commission.

Data processed within the incident investigation procedure can be disclosed to the following recipients:

- Directors, Heads of Unit, Heads of Sector,

¹ cf. in detail below (point 3.1)

² Absences of more than one day after the incident are considered as injuries, one day absences as accidents.

- Safety Managers,
- JRC Contract Manager (for external staff),
- JRC Legal Service in case of legal proceedings.

Data subject's rights of access and rectification can be exercised upon a request to the controller. The functional mailbox jrc-safety-inspections@ec.europa.eu can be used in this respect.

The Privacy Statement posted on the Intranet of the Safety at Work Inspection Service that was submitted for review contains the following information:

- (functional) identity of the controller (together with his functional mailbox),
- some information about the purpose of the processing,
- categories of data processed,
- some data recipients,
- existence of rights of access and rectification,
- legal basis of the processing,
- time-limit for storage of the data processed,
- information about the right to have a recourse to the EDPS.

(...)

3. Legal aspects

3.1. Prior checking: The processing of personal data within safety inspections at the JRC Ispra Site falls within the scope of Regulation 45/2001. The data processing within the "procedure for the case of an injury" is subject to prior checking by the EDPS pursuant to its Article 27(2)(a) since it clearly involves processing of health relating data³.

The notification of the DPO was received on 19 April 2010. According to Article 27(4) of Regulation 45/2001, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 234 days (187 + 47) to allow for provision of additional information, as well as comments on the draft opinion. Therefore, the present opinion must be delivered no later than on 6 September 2010.

3.2. Lawfulness of the processing: The processing of personal data in the framework of the "procedure for the case of an injury" is necessary for compliance with the European Commission's legal obligations in the area of safety at work in terms of Article 5(b) of Regulation 45/2001. These obligations are set out in the Italian Legislative Decree 81/08⁴ which is applicable by virtue of Article 31 of the Italian Law 906/1960.

3.3. Processing of special categories of data: Processing of data concerning health is prohibited unless it could be justified on grounds mentioned in Article 10(2) and (3) of Regulation 45/2001. In principle, the processing of health related data must be necessary in order to comply with the controller's obligation set out in legal instruments adopted on the basis of the Treaties or must be carried out by health professionals subject to specific

³ The other procedures, namely safety audits, consultation procedures, management of the "chemical substances" and "safe start" databases, consist solely of collection and storage of the names of the persons concerned (names mentioned in minutes of an audit or inspection, names of persons appointed as responsible for the respective laboratories, as well as names of newcomers acquainted with the procedure).

⁴ This national act implements Directive 89/391/EEC of 12 June 1989 on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work, as well as the respective complementary directives.

professional secrecy obligation for certain clearly defined purposes, such as provision of care or treatment.

The European Commission's obligations in the area of safety at work are based on Article 1e of the Staff Regulations, read together with the respective provisions of Directive 89/931 on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work, Commission's Decision C(2006) 1623/3 Establishing a Harmonised Policy for Health and Safety at Work for All Commission Staff, as well as the respective JRC Internal Rules, such as the Regulation on Procedure for the Case of Injury.

In this respect, the processing of personal data within the incident investigation procedure is necessary for maintaining and improving the safety standards at JRC Ispra.

3.4. Data Quality: Pursuant to Article 4(1)(a), (c) and (d) of Regulation 45/2001, personal data must be processed fairly and lawfully, be adequate, relevant and not excessive in relation to the purpose for which they are collected and further processed, as well as accurate.

The data processed within incident investigations at JRC Ispra listed above seem to be adequate, relevant and proportional with respect to the aim to ensure that appropriate corrective and preventative actions in the area of safety at work are being established and applied.

Lawfulness has been already discussed (cf. point 3.2), whereas accuracy and fairness have to be assessed in the context of data subject rights and information (cf. points 3.7 and 3.8 respectively).

3.5. Data retention: According to Article 4(1)(b) and (e) of Regulation 45/2001, personal data may be kept in a form enabling the identification of data subjects for no longer than necessary for the purposes for which they were collected or further processed, whereas the further processing must be compatible with the original purposes. Any further processing for statistical purposes has to occur in anonymous form only.

The EDPS notes that personal data collected for the deployment and/or adaptation of respective corrective and preventative measures in the area of health and safety at work at the JRC Ispra Site have to be stored for at least four years⁵, as well as that it is "proposed to store the respective excel files and the Final Reports for at least ten years for further reference in case of a court case against the European Commission".

He also notes that although it is not a current practice, the anonymisation of the excel register, as well as the deletion of names in the incident notifications might be possible following the establishment of the "statistical data report".

Therefore, the EDPS would like to invite the DG JRC to establish appropriate maximum storage periods for personal data processed within health and safety incident investigations. These should be set out in relation to the time-limits set out for the possible review of the decision taken.

In addition, the anonymisation and/or identity encryption with respect to data processed for further (statistical) purposes should be considered.

⁵ According to Article 2 Sentence IV of Italian Ministerial Decree of 12 September 1958

3.6. Transfer of data: Pursuant to Article 7 of Regulation 45/2001, any data transfers within institution(s) have to be necessary for the legitimate performance of the competence of the recipient who can process them only for the purpose for which they were transmitted.

As indicated above, personal data processed within safety investigations at JRC Ispra can be disclosed to the line management of the injured person concerned, to his Safety Manager and - in the case of legal proceedings - to the JRC Legal Service. Personal data of external staff may also be transmitted to the respective JRC Contract Manager.

The EDPS notes that the data transfers to the respective Director, Head of Unit and/or Head of Sector, JRC Contract Manager, as well as to the respective Safety Manager are considered as necessary for the performance of the safety at work task of the respective actors. The transfer to the JRC Legal Service is considered as necessary for the defence of the European Commissions interests in the case of a particular legal proceeding.

In order to ensure full compliance with Regulation 45/2001, the EDPS recommends that all recipients are reminded of the purpose limitation set out in Article 7(3) of the Regulation.

3.7. Right of access and rectification: Articles 13 and 14 of Regulation 45/2001 provide for data subject's rights of access and rectification with respect to their personal data processed. The EDPS notes that these rights can be exercised upon request via the functional mailbox and that the Regulation is therefore duly respected.

3.8. Information to the person concerned: Articles 11 and 12 of Regulation 45/2001 require that certain information is provided to the data subject. As indicated above, the Privacy Statement posted on the Intranet provides for the majority of information as requested. In order to ensure full compliance with the Regulation, the EDPS recommends that information about purpose of the processing and the recipients are completed, as well as information about the applicable data retention period is being adjusted in accordance to the substantive recommendations made in this opinion.

(...)

4. Conclusion

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

- establish an appropriate maximum storage period (Article 4(1)(e) of the Regulation),
- consider anonymisation and/or identity encryption with respect to the further processed data for statistical purposes (Article 4(1)(b) of the Regulation),
- ensure that all data recipients are being reminded about the purpose limitation of the respective transfer (Article 7(3) of the Regulation),
- revise the Privacy Statement in light of Articles 11 and 12 of the Regulation.

Done at Brussels, 6 September 2010

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor