



## **Opinion on the notification for prior checking received from the Data Protection Officer of the Council of the European Union relating to the case ‘*Management of the Service Vehicles Office*’.**

Brussels, 27 June 2012 (Case 2012-0157)

### **1. Procedure**

On 17 February 2012, a notification within the meaning of Article 27(3) of Regulation 45/2001 (‘the Regulation’) was made by the Data Protection Officer (‘the DPO’) of the Council of the European Union (‘the Council’) concerning the processing of personal data in connection with the management of drivers by the Vehicles Office.

In the context of that notification, questions were put to the Council’s DPO by an e-mail dated 5 March 2012 and, following a meeting with the controller, answers were received on 12 April 2012. Supplementary questions were posed on 15 May 2012 and, following one of a number of additional exchanges of information, final clarifications were provided on 31 May 2012.

The draft Opinion was sent to the Council’s DPO on 14 June 2012 for comments. Comments were provided on 27 June 2012.

### **2. Facts**

#### **Purpose**

The processing in question is carried out by the Council’s ‘Service Vehicles’ Office, which is part of the Protocol, Conferences, Buildings and Logistics Directorate (‘DGA2b’). The specific activity of the Office relates to the management of drivers, in particular supervising the use of the vehicles by drivers and following up accidents and other incidents, such as road traffic offences.

#### **Data subjects**

According to the notification, the data subjects are the drivers, who are officials and other servants and whose role consists of driving automotive vehicles on a regular basis on the public highway on behalf of the Council.

In the event of an accident, the EDPS has established that witnesses, policy holders and other drivers involved could also be potential data subjects in the accident report, since their data may be included in that report.

#### **Legal basis**

The notification makes reference to the following provisions:

- Articles 235(4) and Article 240(2) of the Treaty on the Functioning of the European

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- Union;
- Articles 13(1) and 23 of the Council's Rules of Procedure; and
  - the Staff Regulations of Officials of the European Union.

The Council has concluded a contract with an insurance company in order to insure its own vehicles and a contract with a rental company which hires vehicles to the Council. Both contracts are governed by Belgian law and include provisions relating to the confidentiality, security and protection of data.

### **Procedure**

According to the notification, the drivers undertake training programmes and attend training courses relating to the driving of automobiles, which are managed by the Training Unit. The Logistics Unit (a Unit which is part of DGA2b) sends the first names and surnames of the drivers to the Training Unit (a Unit which is part of a different Directorate, 'DGA1a') for registration. The Training Unit communicates the results of the training courses, namely a score out of 100 points for each driver, to the administrative assistant of the Logistics Unit, who is also the training coordinator.

Under Belgian law, when renewing their driving licence, the drivers must sit an aptitude test every five years at a medical establishment approved by the Belgian authorities. Once the licence has been renewed, the driver presents it to the Head of the Vehicles Office of DGA2b. No medical data or copies of any medical certificate are sent to the Council.

Incidents which occur whilst the vehicle is in use, for example breaches of the highway code, administrative parking fines and road traffic accidents, are logged by the Vehicles Office. Depending on the type of offence, the necessary contact is made with the authorities that issued the related report. The driver must pay any related fine. In the event of a justified objection lodged by the driver, and in cases of very serious offences or of non-payment, the Privileges and Immunities service is notified by the Vehicles Office.

### **Data collected in the course of the processing**

The following data are collected:

- administrative data, such as surname, first name, place and data of birth, staff number and administrative situation;
- data relating to assessment notes; and
- data connected with the driving licence, such as the licence number, the issuing authority, the date of issue, the start and end dates of validity per category.

The general administrative data are sourced from the IT systems which manage administrative information relating to staff. The assessment notes are communicated by the Training Unit. The data connected with the driving licence are either collected from the data subjects or received from Belgian or foreign police services, Belgian or foreign public prosecutor's offices or EU foreign affairs services.

In the case of an automobile accident, the Council's driver, the other driver involved and, where applicable, the police service of a Member State complete an accident report which includes the following data: names and addresses of the witnesses, identity of the insurance underwriter, the make, model and registration of the vehicles, names of the insurance companies and policy numbers, surname, first name and address of the driver and information relating to his/her driving licence. The circumstances of the accident, the point of initial impact on the vehicle and the apparent damage to the vehicle(s) are also stated.

The processing is partly automated; the copy of the driving licence and the details relating to the offences committed are collected manually and then encoded into the Office's computer files.

### **Recipients:**

According to the procedure, the following persons/units/services are the recipients of the processing in question here:

- the Training Unit, which receives the surname and first name of the drivers for registration purposes;
- the Director of the Security Office and the members of that office, in the case of an inquiry;
- the Privileges and Immunities service, which receives the data included in the accident report;
- the two insurance companies, which receive the accident report; and
- the competent national authorities in the EU in the case of road traffic offences (police, public prosecutor's offices, foreign affairs services), which also receive the accident reports and the fines.

### **Right of access, rectification, blocking and erasure**

The notification refers to Section 5 of the Council Decision of 13 September 2004 on the procedures established by the Council and guaranteeing the rights of data subjects. The note entitled 'Confidentiality Statement', which contains information for the drivers of the Council's service vehicles, states that any driver may consult the data relating to him by means of a simple request. Rectifications to data may be made after obtaining the controller's agreement.

### **Conservation of data**

According to the notification and the note entitled 'Confidentiality Statement', the drivers' administrative data and the copies of the assessment notes are retained for as long as the individual works for the 'Vehicles Office'. Any references recorded will be deleted within three months of the departure of the data subject.

Following the questions put by the EDPS, the controller stated that the data relating to the driving licence, the offences and the accident report will be held for a period of five years from the date of the offence.

The data relating to the drivers' assessment notes are kept for an unspecified duration.

### **Right of information**

The note entitled 'Confidentiality Statement, Information for the attention of the drivers of the Council's service vehicles' is sent by e-mail to the existing drivers and to the new drivers when they are hired. It contains the following information:

- the identity of the controller;
- the purpose of the processing;
- the recipients of the data;
- the origin and categories of data;
- the existence of a right to access and rectify the data of the data subjects;
- as the legal basis, the provisions referred to in the notification;
- reference to the data conservation period, as stated below; and
- the right to have recourse to the EDPS at any time.

### **Storage and security measures**

The data held on physical media are stored in filing cabinets in a safe located in a locked cabinet. The electronic data are saved on the Council's server in directories accessible depending on the rights of access determined by the applicable hierarchical levels.

## **3. Legal aspects**

### **3.1 Prior checking**

**The application of the Regulation:** The data processing operation under analysis involves the processing of personal data ('any information relating to an identified or identifiable natural person', pursuant to Article 2(a) of the Regulation). The data processing is carried out by an institution of the European Union ('the EU'), the Council, in the exercise of activities falling within the scope of EU law.<sup>1</sup> The processing is partly automated; the Regulation therefore applies.

**Grounds for prior checking:** Article 27(1) of the Regulation subjects to prior checking by the EDPS any '*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) includes a list of the processing operations likely to present such risks, such as the '*processing of data relating to ... offences*' (Article 27(2)(a)) and '*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability*' (Article (2)(b)).

The processing in question here involves both the collection of data relating to offences committed by the Council's drivers and assessment notes relating to the competence of those data subjects in the context of the training programmes and further professional training courses relating to the driving of vehicles. It is for that reason that that processing must form the subject-matter of a prior check on the basis of Articles 27(2)(a) and (b) of the Regulation.

In principle, the check conducted by the EDPS takes place prior to the implementation of the processing. The EDPS regrets that it was unable to give its opinion prior to the start of the processing. In these circumstances, as a matter of necessity, the check becomes an 'a posteriori' check. This in no way changes the fact that it is desirable that the recommendations made by the EDPS be implemented.

The official notification was received on 17 February 2012. In accordance with Article 27(4) of the Regulation, the two-month period within which the EDPS must deliver his Opinion was suspended. On account of the 67 days of suspension, the EDPS will therefore deliver its Opinion no later than 28 June 2012 (54 days of suspension + 13 days for comments).

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<sup>1</sup> Following the entry into force of the Treaty of Lisbon on 1 December 2009, the concepts of '*Community institutions and bodies*' and '*Community law*' can no longer be used. Article 3 of the Regulation must therefore be read in the light of the Treaty of Lisbon.

### 3.2 Lawfulness of the processing

Pursuant to Article 5 of the Regulation, data may be processed only on one of the bases stipulated.

Of the five bases specified in Article 5, the processing at issue here satisfies the conditions laid down in Article 5(a) of the Regulation, under which data may be processed if '[the] 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 in the legitimate exercise of official authority vested in the Community institution or body'.

Accordingly, under Article 5(a), it is necessary to determine, first, whether there is a specific legal basis to justify the processing and, second, whether the processing of personal data is necessary for the performance of a task carried out in the public interest.

In its notification, the Council makes reference, as the **legal basis** of the processing, to Articles 235(4) and 240(2) of the Treaty on the Functioning of the European Union, to Articles 13(1) and 23 of the European Council's Rules of Procedure and to the Staff Regulations of Officials of the European Union. The EDPS is of the view that those provisions are general and relate to the management, functioning and organisation of the Council. As it did a similar Opinion<sup>2</sup>, the EDPS mentions, as the specific legal basis, Article 23 of the Staff Regulations of Officials, which provides that '[s]ubject to the Protocol on Privileges and Immunities, officials shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force'. In the present case, the processing of the data relating to the offences committed, the driving licence and the accident reports comes under the legitimate exercise of the official authority vested in the institution, in particular in connection with the Council's collaboration and exchange of data with the national competent authorities in accordance with the laws and national police regulations in force. The EDPS therefore recommends that Article 23 of the Staff Regulations of Officials be clearly stated in the notification as the specific legal basis for the processing.

**The necessity** of the processing is also mentioned in recital 27 in the preamble to the Regulation, which states that '[p]rocessing 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 present case, the processing of personal data relating to the assessment notes is necessary in order to improve the training of drivers in the driving of vehicles in accordance with the highway code. As far as the data relating to offences are concerned, those data are also necessary so that the Council may manage the follow-up of accidents and other offences in which the drivers are involved. That processing is therefore necessary to ensure the sound management and functioning of the Council in the context of its tasks in the public interest.

The processing proposed is therefore lawful.

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<sup>2</sup> Opinion of the EDPS of 3 November 2008 on the case relating to 'traffic violations with official vehicles of the Commission managed by the Infrastructure and Logistics Office – Brussels (OIB)', Case 2008-395.

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

Part of the processing at issue here concerns data relating to offences and it may be carried out only subject to the conditions laid down in paragraph 5. Article 10(5) of the Regulation provides that '[p]rocessing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof ...'. The EDPS observes that the processing in question is authorised by Article 23 of the Staff Regulations of Officials and the Protocol on Privileges and Immunities in accordance with Article 10(5) of the Regulation.

### **3.4 Data quality**

In accordance with 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'. It is therefore necessary to establish that the data are related to the purpose of the processing operation for which they are processed.

The EDPS is of the view that the data processed and described in this Opinion satisfy those conditions regarding the purposes of the processing explained above.

In addition, Article 4(1)(d) of the Regulation provides that the data must be 'accurate and, where necessary, kept up to date'. According to that article, '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'. In the present case, the rights of access and rectification are available to the data subjects, so that the file can be made as complete as possible (see paragraph 3.7 on the rights of access and rectification).

Moreover, the data must also be 'processed fairly and lawfully' (Article 4(1)(a)). The lawfulness of the processing has already been assessed in paragraph 3.2 of this Opinion. As for the concept of fairness, that concept is linked to the information which must be communicated to the data subject (see paragraph 3.8 on the right of information).

### **3.5 Conservation of data**

The general principle laid down in 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) of the Regulation).

The EDPS observes that the conservation periods applied by the Council in relation to the drivers' administrative data are deemed to be necessary and reasonable in the light of the purpose of the processing, and are in line with Article 4(1)(e) of the Regulation.

As for the data relating to the offences committed, driving licences and accident reports, the EDPS recommends that the Council adopt a conservation period of five years from the date of the offence (provided that the data in question do not form the subject-matter of pending legal proceedings) and inform the data subjects of that period (see also paragraph 3.8 on the right of information of the data subject).

In addition, the EDPS questions the need to retain the drivers' assessment notes for as long as they work for the 'Vehicles Office'. The controller explained that that period makes it possible to track the development of the drivers' skills over the course of the years working in the 'Vehicles Office'. The controller added that that period of time is necessary because the training programmes/courses are not necessarily organised on a systematic basis more frequently than every five years. The EDPS cannot accept that the drivers' assessment notes are held for an unspecified period of time, because that practice runs counter to the principle laid down in Article 4(1)(e) of the Regulation. It is for this reason that it invites the Council to establish a reasonable and necessary period having regard to the purpose of the data collection and their subsequent use.

### **3.6 Transfer of data**

Articles 7, 8 and 9 of the Regulation lay down certain obligations which apply where personal data are transferred to third parties. The rules differ depending on whether the transfer is carried out between or within institutions or bodies of the European Union (Article 7), to recipients subject to Directive 95/46 (Article 8) or to other types of recipients (Article 9).

#### ***Internal transfers***

In order to comply with the provisions of Article 7(1), the Council must ensure both that all the recipients have the appropriate competences and that the transfer is necessary. The present case concerns a transfer within the Council, in particular the Training Unit, which receives the surname and first name of the drivers for training registration purposes, the Director of the Security Office and the members of that office and the Privileges and Immunities service, which receives data necessary in the context of their inquiries, for example the accident report. Each recipient falls under a specific competence and the data transferred to each of them appear necessary for the legitimate performance of tasks covered by their competence within the meaning of Article 7(1) of the Regulation.

The Court of Justice (in the case of a dispute), OLAF, the Court of Auditors, the EDPS and the Ombudsman might also be potential recipients. The EDPS therefore points out that only the data necessary for the performance of their tasks must be transferred. The legality of the transfers will have to be established on a case-by-case basis.

Article 7(3) of the Regulation provides that '[t]he recipient shall process the personal data only for the purposes for which they were transmitted'. It is for this reason that the EDPS recommends that the Council remind all the recipients, by means of a note, that they are to process the data only for the purposes for which they were transmitted within the meaning of Article 7(3) of the Regulation.

#### ***External transfers***

##### ***i) Insurance companies***

The Council has concluded a contract with an insurance company to insure its own vehicles and a contract with a rental company which hires vehicles to the Council. Both external companies are governed by Belgian law. This transfer is therefore a transfer of data to external recipients subject to Directive 95/46/EC and it will have to be assessed in the light of Article 8 of the Regulation. In the present case, that transfer may be justified by Article 8(b), which states that the transfer may be made if 'the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced'. The necessity of the transfer of the data to the company which insures the vehicles and to the rental company is justified by the subject-matter of the contract concluded between the Council and the two companies, in order for the latter to be able to perform the

tasks assigned to them under those contracts. The transfer will not prejudice the legitimate interests of the data subjects, provided that the accident report complies with the principle of data quality.

***ii) The competent national authorities of the EU in the area of road traffic offences (police, public prosecutor's offices and foreign affairs services)***

In the present case, where the transfer is requested by the competent national authority, that transfer may be justified for the purposes of Article 8(a) of the Regulation if the recipients (national authorities) establish that the data are necessary for the performance of their tasks carried out in the public interest or subject to the exercise of public authority, as provided for in Article 8(a) of the Regulation.

If the transfer is decided upon by the Council, it is the Council which must establish the necessity of the transfer. In the present case, the EDPS is of the view that the condition of necessity is, in principle, established, since the data to be transferred by the Council are necessary in the context of the performance of its tasks carried out in the public interest within the meaning of Article 8(a) of the Regulation.

In any event, in both cases, the Council should examine the necessity of the transfer on a case-by-case basis.

### **3.7 Rights of access and rectification**

Article 13 of the Regulation lays down the principle of the right of access to data – and the arrangements for such access – at the request of the subject of the data processing. Article 14 of the Regulation lays down a right of rectification on the part of the data subject.

The Council has adopted a Decision on the procedures which guarantee the rights of the data subjects, and the notification makes reference to them. In addition, the notification and the 'Confidentiality Statement' state that the data subjects may consult their data by means of a simple request, and that they may also rectify those data after obtaining the controller's agreement.

The EDPS is of the view that the rights of access and rectification have been provided for and that they will have to be observed in practice in accordance with Articles 13 and 14 respectively.

### **3.8 Information to be given to the data subject**

Articles 11 and 12 of the Regulation concern the information to be provided to the data subject in order to guarantee the transparent processing of his or her personal data. In the present case, some of the data are collected directly from the data subject and other data are collected from others.

In the present case, a note entitled 'Confidentiality Statement, Information for the attention of the drivers of the Council's service vehicles' is sent by e-mail to the existing drivers and to the new drivers when they are hired. The EDPS recommends that the title of that note should reflect its content, as provided for in Articles 11 and 12 of the Regulation, and that instead it should therefore be entitled 'Information note on data protection'.



As for the content of that note, the EDPS observes that it contains the majority of the elements mentioned in Articles 11 and 12 of the Regulation. Nevertheless, the EDPS is of the view that the information relating to conservation periods is incomplete. The Council should:

- specify the conservation periods for each type of data, namely data on the assessment notes, offences committed, driving licences and accident reports; and
- add the specific legal basis for the processing, as examined in paragraph 3.2.

The EDPS notes that, in the event of an accident, according to the accident report, the Council receives and retains data from other potential data subjects, in particular witnesses, policy holders and other drivers involved. The Council, as the controller, is therefore required by Regulation 45/2001 to provide information to those people, in the event of an accident, if data are collected from them. Accordingly, the EDPS recommends that the Council prepare a short information note in line with Article 11 of the Regulation.

In addition, the EDPS recommends that the Council add to the notification the potential data subjects in the event of an accident, as identified by the EDPS.

### **3.9 Security measures**

In accordance with Article 22 of the Regulation on the security of processing, ‘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’.

In the light of all the security measures adopted with a view to ensuring a level of security appropriate to the processing in question here, which is in particular carried out by the administrative managers within the Council, the EDPS has no reason to believe that the Council has failed to comply with the security measures required under Article 22 of the Regulation.

#### **Conclusion:**

The processing proposed does not appear to entail any infringement of the provisions of Regulation 45/2001, provided that account be taken of the observations made above. This means, in particular, that the Council should:

- state the specific legal basis for the processing in the notification;
- adopt a conservation period of five years in the case of data relating to the offences committed, driving licences and accident reports (provided that the data in question do not form the subject-matter of pending legal proceedings);
- establish a conservation period which is reasonable and necessary with regard to the purpose of the conservation of the assessment notes, in particular in the light of the development of the drivers’ skills and the organisation of training sessions in that regard;
- remind, by the means of a note, all the recipients that they are to process the data solely for the purposes for which they were transmitted;

- specify in the information note the conservation periods for each type of data and the specific legal basis, as explained in paragraph 3.8;
- in the case of an accident, inform the potential data subjects of their rights having regard to Article 11 of the Regulation; and
- add to the notification the potential data subjects in the event of an accident.

Done at Brussels, 27 June 2012

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor