



Opinion on the notification for prior checking from the European Commission's Data Protection Officer regarding social and financial assistance

Brussels, 13 March 2006 (Case 2004-223)

1. Procedure

On 20 July 2004 the European Data Protection Supervisor (EDPS) sent a letter to the Data Protection Officers (DPOs) with a request that they draw up a list of data processing operations likely to be subject to prior checking by the EDPS, as provided for under Article 27 of Regulation (EC) No 45/2001 (hereinafter referred to as "the Regulation"). The EDPS asked to be notified of all processing operations subject to prior checking, including those which had started before the EDPS was appointed and the checking of which could under no circumstances be regarded as prior in nature, but which would undergo *ex-post* checking.

The EDPS used the lists received to pinpoint priority areas, namely data processing in the context of disciplinary files, staff appraisal or medical files. On 10 November 2005 the EDPS sent all DPOs a request for updated lists and mentioned two new priorities: social services and e-monitoring. The dossier on the Commission's social and financial assistance comes under this fourth new priority.

On 22 December 2005 the EDPS received notification for prior checking regarding data processing operations in relation to social welfare service files.

Questions were asked on 13 January 2006 and replies received on 31 January 2006.

2. Facts

2.1. Types of assistance

The Commission pursues a social welfare policy under which it may be called on to grant certain forms of assistance. Personal data processing operations within the unit Social Welfare Policy and Actions Relations with Former Officials Unit are set out below and broken down by the type of assistance provided.

Financial assistance

1. Sector responsible for social financial assistance

The procedure relates to the provision of the following **social financial assistance**:

- home help (partial reimbursement of help in the home where the beneficiary is no longer able to perform household tasks),
- assistance for pensioners (exceptional aid in particularly difficult circumstances),
- assistance for a surviving spouse (in the case of a disability or a serious or protracted illness),

- assistance for disabled officials or disabled dependants of officials (reimbursement of care, education, transport and residence costs or of certain equipment not reimbursed under the JSIS),
- loans and aid granted on social grounds (special assistance in extreme circumstances),
- reimbursement of exceptional education costs (for children unable to attend a European school for imperative educational reasons),
- advances on salaries: the Appointing Authority gives its view on the grounds for granting an advance, in the light of an assessment and a proposal by the social worker regarding the applicant's social circumstances. The decision is taken by the Paymaster's Office (PMO).

As a rule, personal data are processed in the following manner:

- (1) The relevant data (including private data) are compiled by the official in charge of the case using a **form** filled in by the applicant. All relevant forms can be found on the "Personnel and Administration" website.

In respect of assistance for pensioners, loans and aid granted on social grounds, assistance for a surviving spouse, home help on social grounds or an application for an advance on a salary, data are compiled by a social worker, who looks into the case and, where appropriate, advises the Appointing Authority to grant assistance. Social workers are not consulted on cases relating to home help on medical grounds, assistance for disabled persons or the reimbursement of exceptional education costs; these are dealt with directly by the officials authorised to take a decision thereon.

- (2) Where necessary, additional information (regarding income) is requested from the Office for the administration and payment of individual entitlements (Paymaster's Office – PMO).
- (3) If need be, medical advice may be sought from the Medical Service (in respect of assistance for disabled persons and for a surviving spouse with a disability) or from the JSIS's medical officer (in respect of home help, assistance for disabled persons and assistance for a surviving spouse with a serious illness). Medical data are provided in a sealed envelope by data subjects and passed on to doctors.
- (4) A **decision**, drawn up by the official in charge, is submitted to the Appointing Authority (Head of Unit ADMIN.C.1) for signature.
- (5) The decision is forwarded to the beneficiary.
- (6) As regards home help or assistance for disabled persons, invoices are collected by the official in charge, who then makes arrangements for payment.
- (7) **Payments** are made as laid down in the decision and are subject to a financial procedure involving four parties (the operational initiator, financial initiator, verifier and authorising officer by subdelegation). Those involved in this financial procedure must see all data so as to ensure that the decision, the payment and the supporting documents all tally.
- (8) Data are stored in full in paper form (in a locked cupboard) and electronically on a hard disk (in a password-protected directory on a server). The data stored on paper include applications, decisions, calculations, supporting documents, correspondence and

invoices. The electronic data consist of statistics in the form of Excel tables (names of the beneficiaries and financial data).

Psychosocial support

2. Sector comprising social workers, psychologist and budget adviser

The psychosocial support offered professionally by the social workers amounts to more than mere information provision. More often than not the person seeking support is hoping to confide his or her concerns, emotions and personal problems to a social worker. This helping relationship is unique insofar as it involves two people, i.e. the applicant and the social worker. It is desirable – a basic principle in fact – that others are not involved in this relationship.

The issues raised may relate to financial matters (such as family or personal finances, debts or distraint), but may also include personal problems (such as relationship difficulties with partners, physical or mental health problems, problems with children, stress and so forth).

The social worker, psychologist and budget adviser offer **psychosocial support** to officials and their families.

- (1) When the social worker, psychologist and budget adviser meet with the client, personal and private data is compiled:
 - using the aforementioned form for cases involving financial assistance (assistance for pensioners, loans and aid on social grounds, advances on salaries and assistance for a surviving spouse),
 - using a personal record for cases involving psychosocial support (information, guidance, etc.).
- (2) In instances of psychosocial support, the personal record is computerised and entered into a restricted-access "duty" database which the social workers alone can consult. The database is housed on a server operated by the Directorate-General for Informatics (DIGIT) Data Centre in Luxembourg. Access to the database is login- and password-protected. Access rights are managed by the social worker team coordinator, who determines which users enjoy access rights (i.e. social workers).
- (3) Personal records in the "duty" database serve two purposes:
 - directing a client to the social worker who has already dealt with his or her case,
 - enabling another social worker to take up the case if necessary.
- (4) The personal records in the database are updated every time a social worker has engaged in contact or taken action.
- (5) These records are used to generate monthly statistics (anonymous in nature).
- (6) They are destroyed three years after the death of the data subject.

Practical assistance

3. Sector responsible for assistance for disabled persons and for persons with a disabled dependant

This sector provides **practical assistance** (chiefly in the form of information as to the availability of places in special establishments) to disabled officials and officials with disabled dependants.

- (1) In an initial survey, private data were compiled from a questionnaire sent to officials with disabled dependants, with their full consent (see the attached document on disabled persons). The survey was launched to pinpoint any problems affecting disabled persons and arrive at suitable solutions tailored to their needs (such as finding places for them in special homes).
- (2) The replies to the survey and the individual cases outlined are stored:
 - electronically on a password-protected hard disk. The questionnaires need to be stored so as to ensure that detailed data forms the basis for action (i.e. practical assistance). The maximum retention period is 7 years;
 - in paper form in a locked cupboard in the unit's archives, which are also kept locked.
- (3) E-mails processed on a daily basis are stored in the same manner as questionnaires/files and are retained for a maximum of 7 years.
- (4) Data are not forwarded to external recipients (when looking for a place in a home for the disabled, for instance).

4. Sector responsible for relations with former officials

This sector processes personal data as a result of its task of dealing with:

- applications for permits for pensioners,
- applications for access codes for IntraComm (the Commission's Intranet site) for pensioners.

▶ Applications for permits

The data subject submits a paper application form stating his or her surname, first name, address and pension number, together with a photograph. The form is then passed on to the Security Office for processing, before being returned to the sector with the permit. The permit is sent to the applicant by post. Application forms are retained, filed once a month in the C1 archives and kept under lock and key. They are kept in the archives for one year.

▶ Applications for access codes

The data subject submits a paper or electronic application form stating his or her surname, first name and pension number. The application is encoded electronically and then destroyed. The database used is extracted from the SYSPER pensions system.

2.2. Information for data subjects

The Social Welfare Policy and Actions/Relations with Former Officials Unit publishes a notice aimed at the data subjects referred to below which is placed on the "Personnel and Administration" section of the Commission's Intranet website.

The services offered by the Social Welfare Policy and Actions/Relations with Former Officials Unit – and in particular the provision of psychosocial, practical and financial assistance – require the compilation, processing and storage of personal data.

In the interests of transparency, and with due consideration for the data submitted, the Unit will supply the following information, pursuant to Articles 11 and 12 of Regulation (EC) No 45/2001¹ on the protection of personal data: **the identity of the controller; the purposes of the processing operation for which the data are intended; the other departments involved; whether replies to the questions are obligatory or voluntary;** and, lastly, **the legal basis of the processing operation.**

Data subjects may exercise their right of access to, and the right to rectify, the data concerning them by contacting the controller.

Furthermore, they have the right to have recourse at any time to the European Data Protection Supervisor.

2.3. Other information stemming from notification

The data subjects of processing operations are working and retired staff of the European institutions and their families. This encompasses officials, auxiliary staff, temporary staff, seconded national experts, trainees, contract staff and retired officials, together with the families of people in these categories.

The categories eligible for assistance depend on the service and the type of assistance; in other words, there is a separate definition of the group of beneficiaries for each form of assistance.

The data relating to the data subjects are:

- surname and first name,
- staff number,
- address,
- family situation,
- income and expenditure,
- and any relevant financial, social, psychological and family information, etc., and in some cases the medical opinion of the JSIS or Medical Service, together with the assistance proposed.

The data categories are private data, financial data and social data.

As regards access rights and rectification: during the interview with the client, and using the attached document, the social workers, psychologist, budget adviser, financial assistance managers and heads of the "Disabled persons" and "Relations with former officials" sectors inform clients that their personal data are to be stored securely and that they are entitled to obtain a copy of those data and request that they be blocked or erased. Any individual may gain access to his or her data by contacting the controller.

Description of the processing operation:

- Production and examination of personal files for granting financial assistance.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

- Production, examination and management of personal files to provide for psychosocial support for applicants (social workers, psychologist, budget adviser).
- Production and examination of personal files in the context of provision of practical assistance ("Disabled persons" and "Relations with former officials" sectors).

Processing operations for social workers managing the duty database to provide ongoing information on contacts are automatic. Statistics are generated.

Manual processing is performed for the following categories:

- Social financial assistance: an application is examined, a decision or a calculation is made and the application is filed. Where necessary, medical data are received in a sealed envelope and passed on to the Medical Service or the medical officer of the Joint Sickness Insurance Scheme for an opinion, but no medical data are processed within the service.
- Psychosocial support (social workers): a personal file is put together and examined, with a Sysper2 extract attached thereto (relevant data: name, number of children, administrative post held, marital status).
- Psychosocial support (psychologist, budget adviser): a file is produced and examined in paper and electronic form. Statistics are generated.
- Practical assistance (disabled persons and relations with former officials sectors): data are compiled (chiefly from questionnaires and/or personal interviews) and personal files produced. Statistics are generated.

The data are stored on the following media:

- Psychosocial support (social workers): on paper and electronically (database).
- Psychosocial support (psychologist, budget adviser): on paper and electronically (Word files).
- Financial assistance: on paper and electronically (Excel files).
- Practical assistance (disabled persons and relations with former officials sectors): on paper and electronically (Excel/Word files).

The recipients of the processing operations are as follows:

- social financial assistance: medical certificates pass via ADMIN.C.1 to the Medical Service and the medical officer of the Sickness Fund for their opinion.
- Psychosocial support (social workers, psychologist, budget adviser): in some cases the name of the person and a description of the problem are sent to external specialised social services for professional advice.

These external services are deemed to be recipients in that they are given the names of the persons directed to them so that they can help them. They are not considered to be processors by the Commission.

In some instances the Commission's social welfare service suggests consultation of external specialised social services. In most cases the clients themselves contact the services. In certain exceptional cases (less than 1% of all cases) the social welfare service contacts the relevant external service, always with the client's express consent. As a rule, contact is made by telephone. No written communication ever contains personal data.

Such contact with external specialised services is necessary to ensure that specific problems are dealt with appropriately (by a debt counsellor, lawyer, psychotherapist, etc.).

Given the informal, one-off nature of the contacts, there are no contracts with these external services.

The following arrangements govern data retention:

- Financial and psychosocial support: for social financial assistance and psychosocial support (social workers, psychologist, budget adviser), familiarity with a client's background is vital. Data must therefore be retained until the data subject's death and, if need be, for a further 3 years, since assistance may continue to be given following the person's retirement, or even after his or her death (assistance for spouses of deceased officials), or the rights and interests of the family and close relatives must be taken into account in the event of death.
- Practical assistance: in the "Disabled persons" sector the storage limit is 7 years, since professional oversight for a long-term case requires background knowledge. After 7 years or so the data will no longer be up-to-date and will be destroyed. In the "Relations with former officials" sector the storage limit for permit applications is 1 year.
- Note: as regards psychosocial support (social workers, psychologist, budget adviser), financial assistance and practical assistance (disabled persons and relations with former officials sectors), to ensure follow-up applicants' personal files are not closed until their death (plus a further 3 years if dependants are involved).

Decisions in response to requests for blocking or erasure of data are taken within one month of receipt of such requests.

Security measures:

- Social financial assistance: personal files are stored, calculations are made and, where appropriate, data are transferred to other Commission services.
- Psychosocial support and practical assistance: personal files or lists containing personal data of a target group (disabled persons, pensioners, etc.) are stored.

The documents are stored in locked cupboards or on password-protected PCs. The social workers' database is housed on a server operated by the Data Centre in Luxembourg. It is protected by means of restricted access (available only to social workers) managed by the social worker team coordinator and is password-protected. Transfers to other departments are performed by e-mail or post. The social workers' database keeps a record of the authors of entry updates.

3. Legal aspects

3.1. Prior checking

The management of data in respect of social welfare service files constitutes processing of personal data ("any information relating to an identified or identifiable natural person", as stated in Article 2, subparagraph (a) of Regulation (EC) No 45/2001). The data processing in question is performed by an institution and is carried out in the exercise of activities which fall within the scope of Community law.

The types of social or financial assistance granted by the Social Welfare Policy and Actions Unit are processed both by automatic means and manually. This results in

processing partly by automatic means (see Article 3(2) of the Regulation).

It follows that such processing falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes processing operations posing specific risks to the rights and freedoms of data subjects subject to prior checking by the European Data Protection Supervisor. Article 27(2) lists the processing operations likely to present such risks, which are detailed in Article 27(2)(a) as being "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures", and in Article 27(2)(b) as being "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct".

The provision of social and financial assistance involves the processing of personal data as covered by Article 27(2)(a) and (b) and is therefore subject to prior checking by the European Data Protection Supervisor. Article 27(2)(a) applies insofar as data from the "special categories" referred to in Article 10 (and data concerning health in particular) may be processed. Article 27(2)(b) also applies, in that processing operations by the social welfare service may be intended to evaluate personal aspects relating to the data subject. Ability, efficiency and conduct are just some of the personal aspects that may be evaluated.

In principle, checks by the European Data Protection Supervisor should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was set up, the check necessarily has to be performed *ex post*. However, this does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

The formal notification was received by e-mail on 22 December 2005. An e-mail requesting additional information was sent on 13 January 2006. In accordance with Article 27(4) of the Regulation, the two-month period within which the European Data Protection Supervisor must deliver an opinion was suspended. Replies were given by e-mail on 31 January 2006, thus there were 18 days' suspension. The European Data Protection Supervisor will therefore deliver his opinion by 13 March 2006 (i.e. 23 February plus 18 days' suspension).

3.2. Legal basis for and lawfulness of the processing

The legal basis for the processing consists of Articles 1e, 76 and 76a of the Staff Regulations of officials of the European Communities (the Staff Regulations), together with Articles 30, 71 and 98 of the Conditions of employment of other servants of the European Communities (CEOS).

Article 1e stipulates that:

- 1. Officials in active employment shall have access to measures of a social nature adopted by the institutions and to services provided by the social welfare bodies referred to in Article 9. Former officials may have access to limited specific measures of a social nature.*
- 2. Officials in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties.*
- 3. Measures of a social nature adopted in accordance with this Article shall be*

implemented by each institution in close cooperation with the Staff Committee, on the basis of multi-annual proposed actions. These proposed actions shall be transmitted each year to the budgetary authority in the framework of the budget procedure.

Article 76 states that: *Gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result inter alia of serious or protracted illness or by reason of a disability or family circumstances.*

Article 76a continues thus: *A surviving spouse who has a serious or protracted illness or who is disabled may receive financial aid increasing the pension from the institution for the duration of the illness or disability on the basis of an examination of the social and medical circumstances of the person concerned. Rules implementing this Article shall be fixed by common accord between the institutions, after consulting the Staff Regulations Committee.*

Articles 30, 71 and 98 of the CEOS refer to the application of Article 76 to temporary staff, auxiliary staff and contract staff respectively.

Alongside the legal basis in relation to Regulation (EC) No 45/2001, the lawfulness of the processing operation must also be considered. Article 5(a) of Regulation (EC) No 45/2001 stipulates that the processing must be "*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*".

In the case in point, the social welfare service is operating in the context of a task carried out in the public interest, pursuant to Articles 1e, 76 and 76a of the Staff Regulations and to Articles 30, 71 and 98 of the CEOS. The proposed processing is, therefore, lawful and backed up further by the legal basis of the Staff Regulations and the CEOS.

Furthermore, data concerning health are classed as "special categories of data" under Article 10 of the Regulation.

3.3. Processing relating to special categories of data

The data contained in social welfare service files may include details relating to the health of an official or other staff member and/or information on his or her religious or philosophical beliefs, sex life and any other aspect of his or her private life (cf. point 2.3).

Article 10(1) states that "*the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited*".

However, Article 10(2)(b) applies here, and stipulates that "*paragraph 1 (which prohibits the processing of data on health) shall not apply where processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof....*". In this instance the European Commission is acting in its capacity as an employer and processing submitted data in compliance with Article 10(2)(b).

In the present case, some health data come from the JSIS or the Medical Service (medical opinion). By the very nature of the health data, Article 10(3) of Regulation (EC) No

45/2001 (concerning special categories of data) is applicable in this instance. It states that "*paragraph 1 (prohibition on processing health data) shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy*". Because of their duties, these doctors and the staff of these services are subject to the obligation of professional secrecy. In this context, Article 10(3) is fully observed.

However, the Social Welfare Policy and Actions Unit is the recipient of these special categories of data. All the staff of the Social Welfare Policy and Actions Unit must be informed that they are subject to the obligation of professional secrecy as regards the processing of special categories of data. This is done via the Service Level Agreement for the Social Service Sector (accessible on Intracomm) which states in the second paragraph on page 3 that "*social workers ensure confidentiality during personal interviews or when drawing up social-welfare reports because they are subject to the obligation of professional secrecy*".

Article 10 of Regulation (EC) No 45/2001, concerning special categories of data, is fully observed.

3.4. Data quality

"Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed" (Article 4(1)(c) of the Regulation).

The data which are processed in connection with social welfare service files (as described in point 2.3 of this opinion) may be fairly extensive, which means it is relatively difficult to establish whether they are "adequate, relevant and not excessive". The areas that may be touched on range from health and finance to family relationships and psychology.

It is therefore important that the people who process data in connection with the various files should be correctly informed of the obligation to observe the principle laid down in Article 4(1)(c) and that they should process data in the light of that principle. This applies not only to all the data supplied in the various forms filled in by the applicant regarding financial assistance or the questionnaire in connection with practical assistance but also to the personal notes made by social workers that are placed in the personal files relating to psycho-social assistance. The European Data Protection Supervisor recommends that all staff processing such data should be informed of the obligation to observe the principle laid down in Article 4(1)(c) of Regulation (EC) No 45/2001.

The data must also be processed "fairly and lawfully" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed in point 3.2 of this opinion. As regards fairness, this relates to the information given to the data subjects (see point 3.10 below).

Lastly, the 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" (Article 4(1)(d) of the Regulation).

In the case of social welfare files, this provision primarily concerns factual data. However, the EDPS considers that, as regards the subjective aspects contained in the personal records that

are stored in connection with psycho-social assistance, the data subject should as a rule have the opportunity to express his view, especially where a subjective assessment of this kind could affect the exercise of the data subject's rights (see point 3.9).

Rights of access and rectification are available to the data subject, so that the file can be as complete as possible. Concerning these two rights, see point 3.9 below.

3.5. Data retention

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 are collected or for which they are further processed (...)" (Article 4(1)(e) of the Regulation).

There are three arrangements for retaining data according to the type of assistance:

- Data concerning financial and psycho-social assistance are kept for 3 years after the data subject's death (because of dependants who may qualify for certain benefits). After this period the data are destroyed.
- Data concerning practical assistance (assistance for officials or staff members who are disabled or have a disabled dependant) are kept for 7 years after the originating event (submission of the completed questionnaire). After this period they are destroyed.
- Data concerning pensioner permits are kept for one year.

The EDPS considers these periods to be reasonable in view of the purpose of the various types of assistance.

Some of these data are used in the preparation of statistics and therefore come under Article 4(1)(e): "[...] *The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. [...]*".

Electronic data relating to financial assistance include the names of recipients and financial data. They show statistics in the form of Excel tables. In the specific case under consideration, there is no provision for anonymising the data. The European Data Protection Supervisor recommends that the preparation of these statistics in connection with financial assistance should entail the anonymisation of data in order to comply with Article 4(1)(e) of Regulation (EC) No 45/2001.

When psycho-social assistance is given, and in managing of the "duty" database used for following up individuals who have been seen, the personal records that are drawn up are used for the production of monthly statistics. Anonymisation of the relevant data is provided for, which means that Article 4(1)(e) of the Regulation is complied with.

3.6. Change of purpose/Compatible use

Data are retrieved from or entered in the staff databases. The processing operation under review involves no general change to the stated purpose of staff databases, of which the management of social and financial assistance is only one aspect. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) are fulfilled.

3.7. Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of the Regulation. The processing covered by Article 7(1) is the transfer of personal data within or between Community institutions or bodies "if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient".

Article 7(1) of the Regulation is complied with, since the transfers are made initially within the institution (Medical Service and medical officer of the Sickness Fund for an opinion, in the case of social and financial assistance; social workers, psychologist and budget adviser, in the case of psycho-social assistance). The purpose of such transfers is to enable a decision to be taken on the dossier submitted and in the light of the Staff Regulations.

However, in some cases the person's name and a description of the problem are sent to specialist external social services to ensure professional follow-up. In this case, Article 8 of the Regulation is applicable.

External services are regarded as recipients insofar as they are given the names of the persons directed to them so that they can help them. They are not regarded as processors. In most of these cases, it is the persons themselves who contact the services.

In certain exceptional cases (less than 1% of the total) the Commission's social welfare service contacts the relevant external service, always with the client's express consent. As a general rule, contact is made by telephone. If it is made in writing, it will never involve data of a private nature. Such contact with specialist external services is necessary to ensure that specific problems are dealt with appropriately (by a debt counsellor, lawyer, psychotherapist, etc.). Given the informal, one-off nature of the contacts, there are no contracts with these external services.

The European Data Protection Supervisor is quite willing to accept that these external services should not be regarded as processors, given the informal, one-off nature of the contacts between them and the Commission's departments. But it is hard to believe that no personal data are involved in a written communication since the person's name is bound to be mentioned in the letter together with a description of the problem. Both items constitute personal data as such, and on this basis they fall 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 *"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"*, which is clearly the case here, since the object is to establish a helping relationship for the data subject.

The European Data Protection Supervisor would point out the need for extreme care to be exercised in all communications with external services, because the data being transferred are personal data, and for the social welfare service to be duly informed.

3.8. Processing including a personnel number or identifying number

For the various forms, the Commission uses the personnel number (forms for seeking recognition of a disability, requesting a contribution by the European Commission to the costs of a home help or looking after a sick child, or applying for the reimbursement of exceptional education costs) or the pension number (applications for pensioners' social assistance). In

itself, the use of an identifier is simply a means – in this case, a legitimate means – of assisting the work of the controller, although it can have important consequences. This is why the European legislator regulated the use of identifying numbers in Article 10(6), which provides for the intervention of the EDPS.

In this case, use of the number can allow the interconnection of data that are processed in different contexts. The point here is not to lay down the conditions in which the Commission may process the identifying number but to emphasise the attention that must be given to this aspect of the Regulation. In the present case, the Commission's use of an identifying number is reasonable because it is done for the purposes of identifying the person and following up the dossier, thereby simplifying processing. The EDPS considers that the number can be used in the management of financial and social welfare assistance provided by the Commission

3.9. Rights of access and rectification

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification.

In the present case, during the interview with the data subject, and on the basis of the document drawn up, the social workers, consultant psychologist, budget adviser, financial assistance administrators and the heads of the "Disabled persons" and "Relations with former officials" sectors inform the data subject that his or her personal data are to be stored securely and that he or she is entitled to obtain a copy of the data and request that they be blocked or erased. Any individual may have access to his or her data by contacting the controller. In the case of psychological assistance, and in very exceptional circumstances, it may be necessary to restrict the data subject's access to the file in order to protect his or her vital interests (Article 20(1)(c) of Regulation (EC) No 45/2001).

Articles 13 and 14 of the Regulation are fully complied with.

3.10. Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and others from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be given to the data subject applies in this case. Insofar as data subjects fill in forms and are called for interviews, they provide the data themselves.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also applies in this case, since the information is collected from the different participants in the process (opinion of the medical officer, personal record drawn up by the social worker, role of the psychologist and the budget adviser, information from the external services consulted).

In the present case, data subjects are kept informed by means of specifically-directed information notes on the Commission's "Personnel and Administration" Intranet site.

The data subject must be notified of the information specified in Article 11(a) (identity of the controller), (b) (purposes of the processing operation), (c) (recipients or categories of recipients of the data), (d) (whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply) and (e) (existence of the right of access to, and the right to rectify, the data concerning him or her). The same applies with point (f), which specifies the following: *legal basis of the processing operation, time limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*. This makes it possible to ensure that the processing is carried out completely fairly.

The data subject is notified of the information specified in Article 12(a) (identity of the controller), (b) (purposes of the processing operation), (c) (categories of data concerned), (d) (recipients or categories of recipients), (e) (existence of the right of access to, and the right to rectify, the data concerning him or her) and (f) (*legal basis of the processing operation, time limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*).

In the note on the Commission's Intranet site the information provided is almost complete. It does not specify the time limits for storing the data (Articles 11(f) and 12(f)) or the categories of data concerned (Article 12(c)).

The EDPS recommends that, in order to comply fully with Articles 11 and 12 of the Regulation, information concerning the time limits for storing the data (Articles 11(f) and 12(f)) and the categories of data concerned (Article 12(c)) should be added to the information note on the Commission's Intranet site.

3.11. Security

Under Article 22 of Regulation (EC) No 45/2001, concerning 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".

It is noted that data is transferred to other services by post or e-mail. In the case of such transfers, and given the confidentiality and sensitivity of the data, the EDPS recommends that the words "STAFF MATTER" should be stamped on all letters and that the SECEM system should be used for e-mails as soon as possible; in this way, the arrangements will be brought fully into line with Article 22 of the Regulation.

Conclusion

The processing proposed does not seem to involve any infringement of Regulation (EC) No 45/2001, as long as the above comments are taken into account. In particular, this means that:

- All persons processing these data should be informed of the obligation to observe the principle set out in Article 4(1)(c) of Regulation (EC) No 45/2001.
- When financial assistance statistics are prepared, the data should be anonymous in order to comply with Article 4(1)(e) of Regulation (EC) No 45/2001.
- Extreme care should be exercised in all communications with external services, because the data being transferred are personal data, and the social welfare service must be duly informed.

- In order to comply fully with Articles 11 and 12 of the Regulation, information concerning the time limits for storing the data (Articles 11(f) and 12(f)) and the categories of data concerned (Article 12(c)) should be added to the information note on the Commission's Intranet site.
- Given the confidentiality and sensitivity of the data, the words "STAFF MATTER" should be stamped on all letters and the SECEM system should be used for e-mails as soon as possible, thus bringing the arrangements fully into line with Article 22 of the Regulation.

Done at Brussels, 13 March 2006

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor