



## **Opinion on the notification for prior checking received from the Data Protection Officer of the European Commission on the "IRIS: Family allowances" dossier**

**Brussels, 5 December 2008 (Case 2008-439)**

### **1. Procedure**

On 15 July 2008 notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 was given by the Data Protection Officer (DPO) of the European Commission on the "IRIS: Family allowances" dossier.

Questions were put to the DPO on 19 September 2008. The replies were received on 15 October 2008. On 7 November 2008 the draft opinion of the EDPS was sent to the DPO for comments. The response was received on 3 December 2008.

### **2. Facts**

The Commission has introduced an integrated information system for the management and settlement of individual rights to emoluments known as IRIS, which consists of a series of modules, each covering precise and specific functionalities. These modules process personal data.

The IRIS family allowance module is the computer tool designed to ensure the eligibility, admissibility, rating and payment authorisation of family allowances for all the staff covered by the PMO.

Family allowances include:

- education allowance.
- household allowance
- allowance for a dependent child or a person treated as a dependent child
- birth grant.

Use of this tool is not obligatory. All the front office services are in fact always duplicated by traditional paper systems to ensure that a beneficiary who is unwilling, unable or ill-equipped to use online services is never penalised. In such cases, as soon as information on paper is received by the back office, it is encoded by the managers concerned so that all the processing operations can be carried out electronically.

The Director of the PMO is the controller for such operations.

The stages of the process are as follows:

Stage 1 (Manual): Declaration by the beneficiary;

Stage 2 (Manual): The manager ensures that the beneficiary's declarations are correct (receipt of supporting documents and scrutiny);

Stage 3 (Automatic): Automatic check to ascertain whether the social benefits are different or not and see whether they must be updated (for the manager's information);

Stage 4 (Manual): The manager confirms or rejects the automatic proposal:

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Stage 5 (Automatic): The manager's manually input decision is forwarded to the salary payment system.

#### *Purpose of the processing activity*

The purpose of the processing activity is to determine eligibility for entitlements, to determine the admissibility of applications and to allow the rating and payment authorisation of family allowances. In other words, to pay the correct salary and social entitlements.

#### *The legal basis for the processing*

The processing is based on the rules and regulations governing the institution's relations with its staff, in particular: the Staff Regulations of Officials of the European Communities (Staff Regulations), the Conditions of Employment of Other Servants of the European Communities (CEOS), the various institutions' general provisions for implementing them, the conclusions of the Board of Heads of Administration, the internal management rules followed by the institutions and the Rules on Sickness Insurance for Officials of the European Communities.

In particular, the rules governing the granting of family allowances are laid down in Articles 67 and 68 of the Staff Regulations and Annex VII, Section 1 and Annexes X and XIII to the Staff Regulations. These provisions are applicable by analogy to other servants pursuant to Article 20(2), Article 65 and Article 96 of the CEOS.

#### *Data subjects*

The data subjects are beneficiaries of individual entitlements, i.e. all those covered by the Staff Regulations or the CEOS (officials, contract staff, temporary staff, auxiliary staff and Members of the Commission) or who have a contract of employment with the institutions or agencies, and all other persons (partners, ex-spouses, descendants, legal persons, etc.) linked to them by a link described by the Staff Regulations or the CEOS.

The concept of "beneficiary" covers:

- The assignee: the person whose professional activity (present or past) confers entitlement to benefits.
- The payee: the person or group of natural persons or the legal person to whom the benefits are paid.
- The beneficiary: the person or group of natural persons or the legal person for whom the benefits are paid.

#### *Categories of data processed*

### **Household allowance**

1. In the case of a marriage or civil partnership:

- Date of the marriage/civil partnership
- Type of relationship: marriage/civil partnership
- Country where the ceremony took place
- In the case of a civil partnership: declaration of whether a marriage between two partners is authorised in the country of partnership
- Information concerning the partner (full name, surname at birth and initials, date, place and country of birth, sex, language for correspondence, mobile telephone

number, email address, type of occupation if employed or unemployed, gross annual income and address for tax purposes)

- Any changes to the surname or nationality of one of the partners
- Designation of contact person
- If both partners are EC employees: grade/step

2. If there are one or more dependants (the information concerning dependent children is set out in the "dependent child allowance" process):

- Marital status (widowed/divorced/separated/single)
- In the case of divorce or separation:
  - Type (separation or divorce)
  - Date of divorce
  - Place and country of divorce
  - Any changes to surname
- Data concerning financial support for the child: breakdown of responsibility for lodging, maintenance and education
- In the case of a person treated as a dependent child (does not concern adopted or natural children)
  - Address of the person
  - Relationship to the assignee
  - Age of the person
    - If aged between 18 and 26: occupation (training or job-seeker).
  - Medical condition in the case of a non-autonomous person
- The declaration for a dependant includes the following:
  - Information concerning the payee:
    - Date of document certifying responsibility for the dependent person
    - Type of obligation and percentage (guardianship, maintenance or educational responsibility)
  - Compulsory information concerning the beneficiary:
    - Full name
    - Date of birth
    - Address and country of residence
    - Activity: educational or professional (details are given in the "education allowance" process)
  - The amount of similar allowances paid from sources other than the European institutions

Supporting documents:

In the case of a marriage or civil partnership:

a certified copy of the certificate of marriage or civil partnership.

In the case of divorce or separation: a certified copy of the divorce or separation judgment or a letter signed by both parties concerning child custody if no judgment has been handed down.

In the case of a dependant:

- Birth certificate.
- Where the dependant is a child of a previous marriage: proof of financial support (divorce certificate and agreements and certificate for the second marriage).

- If the person does not live under the same roof as the payee: Proof of financial support.
- Proof that the dependant has no income or declaration of a low income.

### **Birth grant**

- Amount of birth grants from sources other than the EU institutions
- Child's full name, sex, date, place and country of birth and parents' identity (social security number)

Supporting documents: birth certificate, supporting documents in the case of adoption, "Declaration of birth" form, certificate in the case of a stillbirth

### **Education allowances**

- Full name of the child
- Period of education
- Level of education (pre-school, primary school, secondary school, university, higher education, apprenticeship, compulsory work experience, distance learning or sabbatical year)
- Establishment: Name, address, country and type of establishment
- Section
- Title of level
- Academic year
- Title of diploma
- Number of hours per week
- Type of education (residential, non-residential or unregistered student)
- Type of course (day, evening or correspondence course)
- Distance between the school and the assignee's place of employment
- Distance between the school and the address of residence
- Monthly enrolment fee
- Total enrolment fee
- If using transport:
  - Type of transport (train, bus, etc.) and description (public, private or European school bus)
  - Length of journey
  - Monthly transport costs
- If the child lodges alone (information not required for university and higher education):
  - Type of lodging: Residential or private
  - Address of lodging: address, town and country
  - Monthly rent
- If education allowances are paid by sources other than the institutions:
  - Type of allowance
  - Period covered
  - Frequency of payments
  - Source (institution, insurance or paying agency)
  - Amount

- Where income linked to studies is received (information not required for pre-school and primary education and sabbatical years)
  - Amount of income
- Where income is received from an extra-curricular professional activity:
  - Period of activity
  - Status: employed, self-employed, job-seeker, houseperson or retired
  - If in employment:
    - The employer's name or indication if self-employed
    - Description of work
    - Type of contract
    - Gross annual salary
    - Date of expiry of the contract
    - Description of function
    - Activity sector
  - If seeking employment:
    - Country in which unemployment benefit is paid
- If the allowances are to be paid directly to the child:
  - Number of the child's bank account
  - Percentage of the allowance to be paid to the child
- Child's identity profile: Address, date of birth and mother tongue (reply optional)
- Description of the establishment: Address, language of communication<sup>1</sup>- Information concerning financial responsibility: Date of the judgment (including divorce), percentage for custody, maintenance and educational allowance.

Supporting documents:

- Document signed by the establishment confirming enrolment and attendance;
- Invoice and proof of payment (at the manager's request);
- Proof of payment for transport;
- Proof of payment for lodging outside the family home;
- Copy of the contract or certificate in the case of work experience, training or a thesis.

**Allowance for a dependent child or a person treated as a dependent child**

- In the case of a dependent child (concerns adopted and natural children)
  - The child's profile as a natural person:
    - Full name of the child
    - Sex
    - Date, place and country of birth
    - Telephone number and email address (optional)
    - address of one of the parents
  - Social link with the declarant (payee)
  - Share of the educational costs borne by each parent
  - The child's educational profile as described in the "dependent child allowance" notification
- In the case of a person treated as a dependent child (does not concern adopted or natural children)

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<sup>1</sup> The language of the establishment is requested in order to generate an attendance certificate in the appropriate language.

- The date from which the person has been deemed to be dependent
- Family or other relationship
- Type of obligations and respective percentages (responsibility for maintenance/education)
- The dependant's profile:
  - Full name
  - Date, place and country of birth
  - Telephone number and email address (optional)
  - full address
- Educational profile as described in the "dependent child allowance" notification
- Professional details: period of activity, status (employee, self-employed, job-seeker, houseperson, retired)
  - If in employment:
    - Employer's name or indication if self-employed
    - Description of work
    - Type of contract
    - Gross annual salary
    - Date of expiry of contract
    - Description of function
    - Activity sector
    - Absences: type and period
  - If seeking employment:
    - Country in which unemployment benefit is paid
- In the case of a child suffering from a serious disease or invalidity, medical details will first be checked.

#### Supporting documents:

- In the case of a parent/child relationship: certificate of adoption or evidence of judgment or birth certificate.
- Where there is no parent/child relationship:
  - Composition of the family.
  - Where the dependant is a child from a previous marriage: proof of financial support (divorce certificate and agreements and certificate for second marriage), judgment document.
  - If the person does not live under the same roof as the payee: proof of financial support.

#### *Information to data subjects*

A specific privacy statement is accessible on the PersAdmin page of the Commission's Intranet site.

That statement contains information concerning the purpose of the processing, the categories of data processed, the recipients of the data, the existence of a right of access to and the right to rectify data and the procedure for servicing those rights, the data retention period, the identity of the controller and the right of recourse to the DPO and the EDPS.

#### *Rights of data subjects*

Each beneficiary is given access to the system. He may consult his file and data on line, see the progress of his applications and inform the manager of any corrections to be made. Any data subject may exercise the rights enshrined by Articles 13 to 19 of Regulation 45/2001 at any time by contacting the controller.

#### *Recipients of data*

- Employer within the institutions and Community agencies. The PMO informs DG ADMIN about the composition of the family (children). These data are included in Sysper 2 to enable DG leave managers to manage parental leave and to manage special leave granted on account of the illness of a child. In order to grant such leave, the DG leave manager must know about the composition of the family.
- Supervisory bodies: IAS, Court of Auditors, OLAF, IDOC, the Ombudsman, Community courts and the EDPS.

#### *Data retention*

Data are destroyed 30 years after the death of any beneficiary. This period is linked to the fact that a member of the staff of an institution (assignee) confers entitlement to social benefits for the beneficiaries in his family unit, subject to certain conditions governing eligibility. The file of an assignee, even if deceased, must always be available as long as beneficiaries are still alive and/or are still entitled to social benefits.

#### *Security measures*

[...]

### **3. Legal aspects**

#### **3.1. Prior checking**

The notification received on 15 July 2008 relates to processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a) of Regulation (EC) No 45/2001). The data are processed by a Community body and processing is carried out in the exercise of activities within the scope of Community law (Article 3(1)).

Processing is essentially automated; the data subjects provide their personal data using a computer tool.

Consequently, such processing comes under Regulation (EC) No 45/2001.

Article 27(1) of the Regulation makes "*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*" subject to prior checking by the European Data Protection Supervisor.

Article 27(2)(a) subjects to prior checking: "*processing operations ... likely to present such risks: processing of data relating to health.....*", which is structurally the case here because certain data unquestionably fall with the scope of "data relating to health". In fact, in the case of nonautonomous dependants, information concerning the medical status is requested. Similarly, the medical profile must be supplied for a child suffering from a serious disease or invalidity.

In principle, checks by the European Data Protection Supervisor should be performed before the processing operation is implemented. In this case, checking is ex post due to late notification. 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 Commission Data Protection Officer's notification was received on 15 July 2008. Pursuant to Article 27(4) of the Regulation, the European Data Protection Supervisor should have delivered his opinion within two months. Owing to the 83 days of suspension plus the month of August, the European Data Protection Supervisor will give his opinion on 8 December 2008 at the latest.

### **3.2. Lawfulness of the processing**

The lawfulness of the processing operation should be scrutinised in the light of Article 5(a) of Regulation (EC) No 45/2001. Article 5(a) provides that the processing operation may not be carried out unless *"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 ..."*. In this regard, Recital 27 of the Regulation also states that *"Processing 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"*.

The procedure devised to ensure the eligibility, admissibility, rating and payment authorisation of family allowances is carried out not only in the context of the management and functioning of the institution but also on the basis of the Staff Regulations, which were adopted under the Treaties. The processing operation is therefore lawful.

As stated in the "Facts" section, processing is based on Articles 67 and 68 of the Staff Regulations and Annex VII, Section 1 and Annexes X and XIII to the Staff Regulations<sup>2</sup>.

The legal basis thus supports the lawfulness of the processing.

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

According to Article 10 of the Regulation, the processing of personal data concerning health or sex life is prohibited unless grounds can be found in Article 10(2) and 10(3) of the Regulation. Personal data relating to health are processed in certain cases. Similarly, sexual orientation may be revealed when the sex of the spouse/partner and the nature of their union is declared.

In this case, Article 10(2)(b) applies: *"Paragraph 1 [prohibiting the processing of data relating to 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 case, the processing operation has been put in place in compliance with the provisions of the Staff Regulations concerning family allowances with regard to dependants who are not autonomous or suffer from a serious disease or invalidity.

The processing operation is therefore in conformity with Article 10 of Regulation (EC) No 45/2001.

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<sup>2</sup> These provisions are applicable by analogy to other servants pursuant to Article 20(2), Article 65 and Article 96 of the CEOS.



### **3.4. Data quality**

Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001).

With regard to the data requested from the data subjects, as presented in the "Facts" section, and after obtaining clarifications from the controller, the EDPS considers that the data are adequate, relevant and not excessive for the purpose of determining eligibility for entitlements, the admissibility of applications and allowing the rating and payment authorisation of family allowances. The EDPS points out that the collection of data concerning the language of correspondence or nationality, collection of which is not necessary in the light of the purposes of the processing operation, may only be optional.

If the controller must collect proof of earned income in order to determine eligibility for entitlements, the EDPS points out that the collection of such documents must be limited to "*adequate, relevant and not excessive*" data. The data subjects must therefore be able to obliterate information which is clearly unnecessary for determining such income.

Under Article 4(1)(d) of the Regulation, personal data must be "*accurate and, where necessary, kept up to date*", and "*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.*" The procedure in place gives sufficient cause to believe that the data are accurate and kept up to date. Data are in fact entered by the data subject. Each beneficiary is given access to the system. He may consult his data on line, see the progress of his applications and inform the manager of any corrections to be made. Finally, rights of access to the content of files and their rectification may be exercised by the data subject (see point 3.8 below).

Finally, the data must be *processed fairly and lawfully* (Article 4(1)(a)). The matter of lawfulness has already been analysed (see section 3.2 above). Given the sensitivity of the subject, fairness is an issue which warrants considerable attention. It is linked to the information to be given to the data subject (see section 3.9 below).

### **3.5. Data retention**

Article 4(1)(e) of Regulation (EC) No 45/2001 lays down the principle that 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*".

In this case, the data retention period is particularly long. Data are destroyed 30 years after the death of any beneficiary. The controller's justification for this period is fact that a member of the staff of an institution (assignee) confers entitlement to benefits for the beneficiaries in his family unit, subject to certain conditions governing eligibility. The file of an assignee, even if deceased, must therefore always be available as long as beneficiaries are still alive and are still entitled to social benefits.

The EDPS considers that the retention of data for 30 years after the death of any beneficiary is excessive in relation to the purposes of the processing operation. The EDPS considers that the retention of the data is perfectly justified throughout the duration of the payment of the allowances. Similarly, data may be retained after that period in order to deal with any appeals by data subjects or to comply with financial control obligations. It would therefore be appropriate to

set a retention period starting from the last payment of the allowance concerned rather than the death of the beneficiary. The EDPS considers that it is reasonable to set the retention period at a maximum of 10 years, starting from the last payment of the allowance to the beneficiary.

This is also a suitable period for the dependent child allowance. In fact, although payment of this allowance may be extended pursuant to Article 2(5) of Annex VII of the Staff Regulations in respect of a child prevented by serious illness or invalidity from earning a livelihood and continue throughout the period of that illness or invalidity, irrespective of age, the ten-year period may start from the last payment, either due to the death of the child concerned or because the child is no longer dependent at the time of death of the parent who was a staff member or former staff member.

The EDPS therefore recommends reconsidering the retention period in the light of the purposes of the processing operation.

Furthermore, long-term retention of data must be accompanied by appropriate safeguards. The data stored are personal. The fact that they are archived for long-term storage does not divest them of their personal nature. For that reason, data kept over a long period must be covered by adequate measures for transmission and storage, as with any other personal data.

According to the notification, storing data for statistical, historical or scientific reasons is ruled out.

### **3.6. Transfer of data**

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies *"if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

In this case, the transfer of certain data to the human resources department of the data subject's institution/agency is justified by the need to know the composition of his family in order to manage parental leave and special leave granted on account of the illness of a child.

With regard to transfers in exceptional cases to other parties such as audit services, the Civil Service Tribunal, the European Ombudsman or the EDPS, the EDPS considers that such transfers comply with Article 7 of the Regulation because they are in principle necessary for the legitimate performance of tasks covered by the competence of the recipient. However, the European Data Protection Supervisor wants particular attention to be paid to ensuring that personal data are not transferred unless the transfer is strictly necessary for the legitimate performance of tasks covered by the competence of the recipient. This is particularly important with regard to the transfer of data concerning health.

### **3.7. Right 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. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source.

Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification. In the same way that the data subject has a right of access, he or she may also directly change personal data or have them changed, if necessary.

Access to data is facilitated by each beneficiary being given access to the system and thereby to all the data concerning him. He may consult his data on line, see the progress of his applications and inform the manager of any corrections to be made.

Data may be updated or corrected at any time by contacting the manager.

This set of provisions satisfies the conditions laid down in Articles 13 and 14 of Regulation (EC) No 45/2001.

### **3.8. Information to data subjects**

Articles 11 and 12 of Regulation (EC) No 45/2001 provide 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. Article 11 applies in this case because information is collected directly from the data subject.

For the record, data subjects are informed by a specific privacy statement on the PersAdmin page of the Commission's Intranet site. It is quite likely that persons who have to enter their data in the system do not spontaneously consult the relevant page on the Intranet site. The EDPS therefore recommends that, at each connection to IRIS, either the statement should pop up automatically on the screen or a link to it should appear. Moreover the title of the statement (privacy) may cause confusion as data protection is not limited to privacy.

The data subject is notified of the information specified in Article 11(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) and (f) (timelimits for storing the data, right to have recourse at any time to the European Data Protection Supervisor). The reference to the *"legal basis of the processing operation"* provided for in (f), on the other hand, is not mentioned in the specific privacy statement.

The statement must therefore be supplemented by indicating the legal basis for the processing (relevant provisions of the Staff Regulations and CEOS).

With regard to point (d) of Article 11 (the obligatory or voluntary character of replies to the questions), the relevant indication is given beside each question when data are entered.

### **3.9. 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"*.

Having examined all of these measures, the EDPS considers that they are appropriate for the purposes of Article 22 of Regulation (EC) No 45/2001.

### **Conclusion**

The proposed processing does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. This means in particular that the European Commission should:

- ensure that the data collected are strictly "*adequate, relevant and not excessive*" with regard to the purpose of the processing operation;
- reconsider the data retention period in the light of the purpose of the processing operation;
- pay particular attention to ensuring that personal data are not transferred unless the transfer is strictly necessary for the legitimate performance of tasks covered by the competence of the recipient;
- supplement the notice on personal data protection and ensure its dissemination in accordance with point 3.8 of this opinion.

Done at Brussels, 5 December 2008

**(Signed)**

Joaquín BAYO DELGADO  
Assistant European Data Protection Supervisor