



Opinion on the notification of a prior check received from the Data Protection Officer of the Court of Justice concerning the dossier ‘Procedures for dealing with accidents and occupational diseases’

Brussels, 1 December 2010 (Dossier 2010-560)

1. Procedure

On 23 July 2010 the European Data Protection Supervisor (EDPS) received a notification within the meaning of Article 27 of Regulation (EC) No 45/2001 from the Data Protection Officer (DPO) of the Court of Justice regarding the dossier ‘Procedures for dealing with accidents and occupational diseases’.

The notification, followed by a further letter on 4 November 2010, was accompanied by the following documents:

- Joint Regulations of 13 December 2005 on the insurance of officials of the European Communities against the risk of accident and of occupational disease,
- Decision of the Administrative Committee of 10 March 2010 adopting the rules concerning traineeships at the Court of Justice, the General Court and the European Civil Service Tribunal,
- Decision of the Registrar of the Court of Justice of 12 July 2004 on access to medical files,
- An accident report blank form,
- A medical certificate blank form.

In the context of the above-mentioned dossier, the DPO sent some questions to the controller on 4 October 2010. The controller sent a reply on 4 November 2010. The draft opinion was sent to the DPO and the controller for consultation on 18 November and received on 29 November 2010.

2. Facts

This opinion is based on the description of the facts as communicated to the EDPS by the DPO.

The processing is carried out by the ‘Unit for Rights under the Staff Regulations, Social and Medical Matters, Working Conditions’ of the Court of Justice.

The purpose of the processing is the management of accident/occupational disease files at the Court of Justice of the European Communities.

The processing is generally initiated by the data subject, who submits an accident report or a request for acknowledgement of his/her occupational disease to the appropriate administrative department. The administrative department then opens a case file and requests acknowledgement of the accident/occupational disease from the insurance company (Vanbreda International). In cases of occupational disease prior investigation is carried out by the responsible department and the Court's medical officer. Data subjects should submit applications for reimbursement of medical expenses to the relevant department, which forwards them to the Joint Sickness Scheme of the EU and to the insurance company. Where a third party is responsible, the administrative department informs both the Commission department dealing with cases involving subrogation rights and the insurance company of the responsible third party.

The legal basis for the processing of data is provided by the Staff Regulations of Officials of the European Communities (Articles 73 to 85(a)), the Conditions of Employment of Other Servants of the European Communities (Articles 28 to 95) and by other measures adopted in the implementation thereof, in particular the Joint Regulations of 13 December 2005 on the insurance of officials of the European Communities against the risk of accident and of occupational disease.

This concerns both permanent and non-permanent staff of the Court of Justice.

The categories of data processed are as follows:

- data identifying the victim of the accident/occupational disease: full name, date of birth, gender, personnel number, administrative status, office and home address, telephone number;
- data identifying any third person(s) involved in the accident: full name, address, insurance company, policy number;
- detailed description of the circumstances of the accident, including the date, time and exact place;
- data identifying the doctor who issued the medical certificate to the accident victim: name, address, telephone number;
- medical data (contained in the medical certificates and reports): dates of treatment, description of injuries, presumed consequences (estimated date of recovery, percentage and nature of permanent incapacity), treatment prescribed, any additional tests required and the results, any hospitalisation required, description of any pre-existing illnesses or infirmities which have aggravated the consequences of the accident, etc.

The data are collected by means of the accident report form or a memorandum requesting acknowledgement of the occupational disease (generally completed by the victim) and by an attached medical certificate (completed by a doctor). The data are then collected further from the various medical reports drawn up by the doctors instructed by the Court.

The Unit responsible for processing passes the data on in the hierarchy (to the Director of the Human Resources and Personnel Administration Section, Director-General of Personnel and Finance), the Joint Sickness Scheme of the EU, the insurance company of the EU institutions (Vanbreda International) and, where appropriate, to the Court's medical officer, the Commission department dealing with cases involving subrogation rights and the insurance company of the responsible third party. It is also possible that the data could be transferred to the Court's internal audit and verification departments, the Court of Auditors, the EDPS, the European Ombudsman and courts with jurisdiction.

With regard to rights of access and rectification, data subjects may request access to their personal data at any time by writing to the appropriate department. The file may then be consulted at the office of that department in the presence of one of its officials. Access to psychiatric/psychological reports may be granted through the intermediary of a medical practitioner appointed by the data subject. Data subjects may at any time provide any documents or documentary medical evidence needed to manage their file. They may ask to rectify any data that are inaccurate or incomplete.

With regard to information, data subjects receive a copy of the Joint Regulations on the insurance of officials of the European Communities against the risk of accident and of occupational disease. There is also a 'Staff Vademecum' available on the Court's intranet site which contains information on the procedures in question including, in particular, a note giving all of the information required by Articles 11 and 12 of the Regulation.

The data are kept for up to five years after the death of a data subject.

[...]

3. Legal aspects

3.1. Prior check

The notification concerns the processing of personal data, within the meaning of Regulation (EC) No 45/2001. The data processing is carried out by a Community institution and implemented in the exercise of activities which fall within the scope of the Union law (Article 3(1)). It involves the collection, recording, organisation, storage, retrieval, consultation, etc. of personal data (Article 2(b)) within the context of the management of accident/occupational disease files of Court staff. These activities constitute partially automated and partially manual processing. When the processing is manual, the processed data are stored in a filing system (Article 3(2)). The processing therefore falls within the scope of Regulation (EC) No 45/2001.

Under Article 27(1) of Regulation (EC) No 45/2001, '*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*' are subject to prior checking by the EDPS.

Article 27(2) of the Regulation contains a list of the processing operations likely to present such risks. The processing of data in the context of the management of accident/occupational disease files is subject to prior checking by the EDPS under Article 27(2)(a) of the Regulation because the data contained in the files relate to health.

The notification from the Data Protection Officer was received on 23 July 2010. Under Article 27(4) of the Regulation, this opinion must be delivered within two months of that date. The period allowed for delivery of the EDPS opinion was suspended for the month of August 2010 and suspended again for 42 days while awaiting information from the relevant department. The EDPS will therefore deliver his opinion by 6 December 2010.

3.2. Lawfulness of the processing

The lawfulness of the processing must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which stipulates that personal data must be only be processed if '*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 other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution’.

The provisions referred to in section 2 of this opinion provide the specific legal basis for the processing. This processing is necessary for the performance of a task carried out in the public interest and in the legitimate exercise of official authority. The processing is therefore lawful.

3.3. Processing of special categories of data

Under Article 10.1 of Regulation (EC) No 45/2001, the processing of personal data concerning health is prohibited unless justified by the provisions of Article 10(2) or 10(3) of that Regulation.

In the present case, the processing of medical data is justified because it is necessary for the purposes of complying with the specific rights and obligations of the Court of Justice in the field of employment law, as provided for in Article 10(2)(b).

Article 10(3) of the Regulation states that paragraph 1 does not apply where the processing of data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of healthcare 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.

It should be emphasised that persons who deal with administrative files but who are not health practitioners themselves must be subject to an *‘equivalent obligation of secrecy’*. In accordance with Article 20(2) of the Rules of Procedure of the Court of Justice, the officials of the Court must take an oath (or solemn affirmation equivalent thereto) before the President, in the presence of the Registrar, to perform loyally, discreetly and conscientiously the duties assigned to them by the Court. That oath covers all of the information that officials and other servants of the Court are required to obtain in order to perform their duties, and in particular the duties referred to in the context of this procedure. However, the European Data Protection Supervisor calls on the controller to ensure the compliance of the staff in the administrative department with professional secrecy.

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)). The precise medical data contained in a file will, of course, vary according to the case. The persons handling the files should be reminded that if, in a specific case, they receive data which do not comply with Article 4(1)(c), that data must not be processed.

With regard to data collected via the forms described in section 2 of this opinion, the EDPS considers that the data collected are not obviously excessive or inadequate in terms of the purpose of the processing in question.

Data must also be *‘processed fairly and lawfully’* (Article 4(1)(a) of the Regulation). An initial analysis of the lawfulness was set out in sections 3.2 and 3.3 of this opinion. With regard to fairness, this relates to the information which must be transmitted to the data subject (see section 3.8).

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 data in question are on the one hand administrative data and on the other hand medical data, namely medical certificates arising from an accident/occupational disease or other medical reports drawn up by the doctors. As far as the administrative data are concerned, these are provided by the data subjects themselves, which contributes to their accuracy.

With regard to medical data, it is not easy to ensure or assess their accuracy. Data subjects have rights of access and rectification of their data which provides a means of ensuring that relevant data are accurate and up-to-date (see section 3.7).

3.5. Data retention

Article 4(1)(e) of Regulation (EC) No 45/2001 establishes the principle that *‘personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed’*.

It should be noted that data are kept for up to five years after the death of the data subject. In fact, in the case of accident/occupational disease insurance files, Article 21 of the Joint Regulations on the insurance of officials of the European Communities against the risk of accident and occupational disease provides that a case may be re-opened at any time after its closure following the aggravation of injuries or invalidity. The beneficiaries of a data subject may have the case re-opened after the termination of his/her service and even after his/her death. Taking that into account, keeping the files for up to five years after the death of the data subject complies with the Regulation.

If the data are kept for historical, statistical or scientific purposes (Article 4(1)(b)) as envisaged in the notification, the data must be made anonymous before being stored.

3.6. Transfer of data

The processing must be examined in the light of Article 7 of Regulation (EC) No 45/2001 which concerns 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’*.

With regard to the transfer of data within the Court, in this case within the relevant hierarchy of the Court, to the medical officer and to the departments responsible for data verification and auditing, only the relevant data may be transferred. Any such transfer is therefore lawful insofar as the purpose is covered by the competences of the recipients.

With regard to the transfer of data to the subrogation department of the Commission or, where appropriate, to the EDPS, the European Ombudsman and the EU Courts, the transfer of relevant data is lawful insofar as the purpose is covered by the competences of the recipients.

Article 7(3) of the Regulation provides that *‘the recipient shall process the personal data only for the purposes for which they were transmitted’*. The EDPS thus recommends that recipients be explicitly reminded to process the data exclusively for the purposes for which they were

transmitted. The department responsible for carrying out the processing should systematically include a clause to that effect when data are transferred.

The processing must also be scrutinised in the light of Article 8 of Regulation (EC) No 45/2001 which concerns the transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC. This involves the insurance company to the EU institutions (Vanbreda International) – a company governed by Belgian law – and the doctors it appoints, and other insurance companies (those of any third party responsible for the accident) and the doctors appointed by them (unless, in exceptional circumstances, those companies and doctors are subject to the laws of a third State which is not subject to Directive 95/46/EC, in which case Article 9 shall be applicable).

Under Article 8, the transfer of data is possible 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 need for data transfer to external doctors and to insurance companies has been demonstrated. It would appear that both administrative and medical data appear to be necessary insofar as they enable the insurance company to exercise all the rights and obligations arising from the insurance policy. Moreover, in this case it is important to take into account all the information relating to an accident/occupational disease so that the insurance company’s reports are as accurate and complete as possible. If the principle of data quality is respected (see section 3.4), the transfer will not prejudice the data subject’s legitimate interests. It is nonetheless recommended that external recipients be explicitly reminded that the data transferred may only be used in the strict and limited context of the performance of their tasks. The department responsible for carrying out the processing should systematically include a clause to that effect when data are transferred.

3.7. Right of access and rectification

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

For the record, it should be noted that data subjects may have access to their file and can add new documentary evidence, including any new medical reports, to it at any time.

The EDPS therefore considers that the obligations in Articles 13 and 14 of Regulation (EC) No 45/2001 are complied with.

3.8. Information to data subjects

Article 11 of Regulation (EC) No 45/2001 (information to be supplied where the data have been obtained from the data subject) is applicable in this case. The same is true for the provisions of Article 12 (information to be supplied where the data have not been obtained from the data subject) since the data can be collected from other sources, in particular from doctors.

The EDPS notes that data subjects are informed by means of a notice containing all the information required under the Regulation. This notice is available on the Court’s intranet site. The EDPS notes that there is no guarantee that persons who have an accident/occupational disease would find this information on the Court’s intranet site of their own accord. Consequently, the information should be made available to data subjects when they initially

contact the relevant department. For instance, a reference to the web address of the relevant page of the Court's intranet site could be inserted into the accident report.

3.9. Security

Under Article 22 of Regulation (EC) No 45/2001 on the security of processing, *'the controller implements 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'*.

Based on the information provided, the EDPS has no reason to believe that the Court has not implemented the security measures required under Article 22 of the Regulation.

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:

- persons processing files should be given a general recommendation asking them to ensure that they only process data which are *'adequate, relevant and not excessive'*;
- in the case of data transfer, recipients should be explicitly reminded to process the transferred data exclusively for the purposes for which they were transmitted;
- information that is complete and easily accessible by the data subject should be made available in accordance with section 3.8 of this opinion.

Done at Brussels, 1 December 2010

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