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TA03/0035
Court of Justice of the EU
L-2925
LUXEMBOURG

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GB/XK/cj/D(2015) 0483 C 2012-1091
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**Subject: Notification for prior checking regarding processing in connection with the
'Asbestosis screening programme', Case 2012-1091.**

Dear Sir,

The EDPS has analysed the notification received from the Court of Justice of the EU ('the Court') under Article 27(2)(a) of Regulation 45/2001 ('the Regulation') concerning the case '*Asbestosis screening programme*'.

As requested by the EDPS, the DPO and the controller subsequently supplied additional information.

As this is an ex post notification, the two-month deadline within which the EDPS is required to give his opinion does not apply.

The processing in this case will be analysed in the light of the EDPS Guidelines of 28 September 2009 concerning the processing of health data in the workplace by EU institutions and bodies. The EDPS also refers to his Opinion of 27 July 2007 concerning the notification from the Commission regarding asbestosis screening and follow-up (Case 2004-0227). For those reasons, this Opinion does not contain a full analysis of all the aspects of the processing from the data protection perspective, but focuses on the points where improvement is needed. In his analysis, the EDPS highlights the practices that do not appear to conform with the Regulation and makes the relevant **recommendations** to the Court regarding those matters.

The facts

According to the notification and Staff Note No 12/12, following the discovery in December 1996 of risks connected with the presence of asbestos in the Court Building, the Staff Regulations, Social and Medical Affairs and Working Conditions Unit ('the SRS') of the Court's Directorate for Human Resources and Personnel Administration carried out screening programmes in 1996-1998, 2002, 2007 and 2012 in order to determine the consequences of potential exposure to asbestos. The data subjects are clearly targeted; they include in particular members of the Court and Court staff (officials and servants) who worked in the Court Building between 1972 and 2000. Screening programmes are carried out every 5 years.

In Staff Note No 12/12, the SRS invites data subjects to complete an application form for screening tests. That form requires the data subject's forename, surname, date of birth, employee number, place of work and office telephone number. The data subject is also required to state the department in which and period during which he/she worked in the Court Building, whether he/she underwent screening tests during previous programmes and, if so, the year and screening centre. The data subject also has to state whether he/she wishes to have the tests at the Centre hospitalier de Luxembourg [Luxembourg Central Hospital] or at another centre.

The data subject has to send the form to a nurse at the Court's Medical Service. The Medical Service will then write to the data subject explaining the procedure to be followed. The Medical Service asks the data subject to come for a medical examination by the Court's Medical Officer in order to assess whether testing at the screening centre is justified. Depending on the results of the examination, the data subject will then undergo tests at a screening centre, either at the Centre hospitalier de Luxembourg or at another centre. The Medical Service sends the data subject's forename, surname and date of birth to the screening centre for identification purposes. The screening centre then sends the test results to the Court's Medical Service. The data subject may make an appointment with the Medical Officer in order to obtain a copy of the results or for further examinations.

The Court has not signed any contracts with the Centre hospitalier de Luxembourg and/or another screening centre.

Data subjects can consult an information note on personal data protection in the Staff Handbook on the intranet site.

Recommendations

1) Information to be given to the data subject

Articles 11 and 12 of the Regulation concern the information to be given to the data subject in order to guarantee transparent processing of personal data. Those articles list the information that must be supplied and further information that is optional. That further information will be supplied insofar as it is necessary, having regard to the specific circumstances (of the processing), to guarantee fair processing in respect of the data subject.

In this case, the Court obtains the data directly from the data subjects (i.e. from the application forms), and so Article 11 is applicable.

The data processed by the Court's Medical Service (i.e. obtained from medical examinations) are transmitted by its processors, the screening centres, and so Article 12 is applicable.

The information note contains the majority of the information listed in Articles 11 and 12 of the Regulation.

The EDPS notes that the Court simply refers to the existence of the right of access and the right of rectification in connection with the processing carried out in this case and to the relevant provisions. However, it is important to provide information on the procedures for exercising those rights in the context of the processing of medical results in this case.

Regarding the right of access, the Court should refer in its information note to the three conditions laid down in Conclusion 221/04 of the Board of Heads of Administration¹. The EDPS also draws attention to the possible restrictions on the right of access under Article 20(1)(c) of the Regulation, which should not be absolute, but should be applied strictly in each individual case on the basis of the principle of proportionality.

Regarding the right of rectification, the EDPS recommends that the Court should state in the information note that data subjects have the right not only to correct administrative errors in their medical file, but also the right to add to it, by adding a second medical opinion, thereby ensuring that their personal data are kept up to date.

Consequently, the EDPS recommends that the Court should add the above information to the information note.

2) Security

The SRS HR managers collect the application forms for screening tests completed by the data subjects (see above for the exact data they contain). In view of the sensitivity of the data processed by the SRS HR managers, the EDPS recommends that the Court should draw up confidentiality statements to be signed by those managers, stating that they are subject to a professional secrecy obligation equivalent to that applying to health professionals. This is an organisational measure within the meaning of Article 22 of the Regulation intended to protect the confidentiality of health data and to prevent unauthorised access to those data (*need-to-know principle*).

3) Processing by way of a processor

According to the notification, the Court's Medical Service sends the data subject's forename, surname and date of birth to the Luxembourg screening centre or to another screening centre. The screening centre sends the test results to the Court's Medical Service.

The screening centres act on behalf of the controller (the Court) and so they are deemed to be processors. Under Article 23 of the Regulation, processing of personal data by way of a processor must be governed by a contract binding the processor to the controller. The contract must stipulate in particular that: the processor shall act only on instructions from the controller and that the obligations with regard to confidentiality and security (Articles 21 and 22) shall also be incumbent on the processor, unless the Centres are subject to similar obligations under their

¹ '... officials and temporary staff shall have the widest possible access to their medical file subject to the following conditions: 1. The file must be consulted on the premises of the Medical Service of the institution, in the presence of a person designated by the Medical Service. 2. An official or other servant may have access to psychiatric and psychological reports relating to him/her via a doctor appointed by him/her. 3. Officials or servants may not have access to personal notes by doctors if, under the terms of Article 20(1)(c) of Regulation 45/2001 and on the basis of a case-by-case examination, this is necessary to guarantee the protection of the data subject or the rights and freedoms of others'.

national law implementing Directive 95/46/EC. In this case, the obligations with regard to confidentiality and security are laid down in the Luxembourg legislation.

Consequently, the EDPS recommends that the Court should conclude with the screening centres a contract or a legal act which fulfils the conditions laid down in Article 23 of the Regulation.

Conclusion

In the light of the foregoing and on the basis of the principle of accountability, the EDPS expects that the Court will implement the recommendations made above.

The EDPS has therefore decided to close this case. We will of course be pleased to provide you with any further information that you may require.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Sabine HACKSPIEL, Deputy Data Protection Officer.