



Opinion on a notification for prior checking received from the Data Protection Officer of the European Commission
Brussels, 21 December 2004 (File 2004/0196)

1 Proceedings

1.1. On 26 November 2004, the European Data Protection Supervisor (hereinafter "the EDPS") was informed¹ that Eurostat planned to collect data on the staff of the European institutions and bodies in order to carry out actuarial calculations for the pension scheme for officials of the European Communities. The EDPS was notified, as an institution, at the same time as all the other EU institutions and agencies being asked to supply data.

The information note sent by Eurostat consisted of a note presenting the project, describing its purpose and methodological approach and listing the data to be collected, and a number of annexes containing:

- a draft note to the Directorate-General for Informatics (DGIT), authorising it to send Eurostat the data processed under the New Payroll System (hereinafter "the NAP");
- a list of the data to be collected directly from the institutions and the Paymaster Office (PMO) (because they are not available from the NAP);
- a draft simplified notification of a personal data processing operation²;
- a draft administrative notice addressed to data subjects.

1.2. The EDPS took the view that the information received required closer scrutiny, in that it could provide grounds for prior checking or an opinion on the basis of Article 10(6) of Regulation (EC) No 45/2001³ (use of a personal number or identifier of general application). Aware of Eurostat's tight schedule, the EDPS's aim was to deal with this matter as swiftly and as efficiently as possible. It was accordingly agreed, as a first step, to call a meeting enabling the EDPS to obtain the necessary clarification of certain points.

1.3. A videoconference was held on Commission premises at 11 o'clock on 6 December 2004. The participants were: Mr OLIVARES RAMOS, Mr LEMAIRE and Mr LIOTTI (Eurostat) in Luxembourg, and Mr BAYO DELGADO (Assistant EDPS), Ms HAVELANGE and Ms LOUVEAUX (EDPS staff), Mr HILBERT (Assistant to the Commission's Data Protection Officer) and Mr MARCELLI (Data Protection Coordinator for the Commission's Directorate-General for Personnel and Administration (DG Admin)) in Brussels. The purpose of the meeting was to gather all the information necessary for the EDPS to reach an early decision.

The following questions were discussed:

- use and storage of personnel numbers and unique payroll numbers (hereinafter "NUP");
- the processing of the data collected in 2003;

¹ The information note arrived first by email. Via ordinary mail it was received on 2 December 2004.

² The simplified notification is for the "data-protection coordinators" in the various Commission Directorates-General or for all persons responsible for disclosing data to Eurostat under the project. In principle, such notification should be made to the Data Protection Officer (DPO) in each institution and not to the EDPS. See section 2.2.6 below.

³ Hereinafter "the Regulation".

- the data sources;
- the draft simplified notification of a processing operation mailed in Eurostat's initial information note;
- the security measures accompanying the processing operation itself, especially the security surrounding Eurostat's disclosure of data to the experts and external contractors validating and checking the computations or methodology. It should be noted that, when disclosing data to third parties, Eurostat replaces identifying numbers by "statistical numbers", which in principle makes identification of data subjects impossible.

At the close of the meeting it was agreed that Mr HILBERT would send the EDPS notification of a processing operation as soon as possible (notification would not prejudice the EDPS's decision as to the file's status). A note giving detailed information on the use and storage of identifying numbers would be attached to the notification.

1.4. After a number of further exchanges, it was finally decided that the EDPS's action would take the form of prior checking. The processing operation was duly notified, reaching the EDPS on 20 December 2004.

2 Examination of the matter

2.1 The facts

2.1.1 Eurostat's data collection operation

In January 2005 Eurostat will collect data on staff (permanent staff and trainees, temporary and contract staff, recipients of invalidity allowances) in order to carry out actuarial calculations for the European civil service pension scheme on the basis of the population at 31 December 2004. The institutions send the Commission certain data which are necessary for processing staff pay slips; that information is sent via the NAP. Eurostat needs the same data for its actuarial calculations and is seeking to obtain them from the NAP so as to avoid the institutions having to send them twice.

Eurostat intends to collect the following data via the NAP: the NUP, personnel number, date of birth, sex, nationality, country of residence, basic salary used for calculating pension contribution, etc. (the full list of the data proposed for collection was provided in Eurostat's information note). However, the data do not necessarily have to be collected via the NAP, and institutions may continue to send them to Eurostat directly.

In addition to the data collected via the NAP, a small number of data (also listed in Eurostat's information note) which are not available in that system are to be collected directly from EU institutions and agencies.

2.1.2 Use of a personal identifier

Eurostat wants to obtain NUPs and personnel numbers as personal identifiers. NUPs will provide the key for linking data from different sources (NAP, institutions, etc.). NUPs, moreover, will be stored for the purpose of linking successive years' data.

It will be remembered that in 2003 Eurostat collected depersonalised data (the institutions and bodies depersonalised the data they sent by replacing NUPs and personnel numbers with fictitious numbers). Eurostat would now like to obtain the files correlating fictitious and identifying numbers so as to be able to process the 2003 data under same methods and the same conditions as data collected later. In other words the data will be "repersonalised".

2.1.3 Transparency of the processing operation

Eurostat intends to comply with the information provisions of Regulation (EC) No 45/2001. To that end it plans to :

- provide data subjects with information by means of an administrative notice, a draft of which was sent to EU institutions and bodies;
- notify the processing operation to the DPO of each institution. Eurostat has drawn up a draft simplified notification for that purpose (see section 2.2.6 below).

2.2 Legal aspects

2.2.1 Prior checking

Under Article 27(1) of the Regulation, 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.

Article 27(2) lists the processing operations likely to present such risks. As the EDPS pointed out in the opinion delivered on 4 May 2004 in another prior-checking case (File 2004/013), the list in Article 27(2) is not exhaustive.

In other words, some processing operations, although not explicitly mentioned in the Article, may nevertheless involve risks. The EDPS believes that there are risks in this case, in particular on account of the following:

- Eurostat generally applies identifying numbers. While the use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the data-processing task, its effects may nevertheless be significant. This was why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the EDPS. In this case, the use of the personnel number may allow the linkage of data processed in different contexts. Personnel numbers are constantly used in data processing operations carried out by EU institutions' personnel administration departments. On the other hand, an official's NUP, which remains unchanged throughout his career and beyond, enables administrations to store data which would otherwise be anonymous in a readily personalisable form. It is this aspect which the EDPS wishes to consider more closely; it is dealt with in section 2.2.3 below. It should be noted, however, that this opinion does not aim to lay down the general conditions under which a personal identifier may be processed (as provided for in Article 10(6) of the Regulation), but applies specifically to the case in hand.
- Eurostat will be processing a large volume of data, since the operation will include all the data needed to calculate the pensions of all pension scheme members. Eurostat will be provided with all the data which were hitherto processed locally by the various institutions, data which, while not being sensitive within the meaning of the Regulation, are not indifferent either, since they concern staff's salaries, their civil status and changes therein, and so on.
- Storage is to be for an unlimited period. Again, although this processing operation may require data to be stored indefinitely, this is not without risk, which the EDPS had a duty to evaluate.
- Article 12(2) of the Regulation, covering information to be supplied to data subjects, stipulates that where the recording or disclosure of information is expressly laid down by Community law (which is the case here, see section 2.2.2 below), "the Community institution or

body shall provide for appropriate safeguards *after consulting the European Data Protection Supervisor*".

2.2.2 Legal basis for the processing operation

The legal basis for this processing operation is to be found in Annex XII to the Staff Regulations of Officials of the European Communities, implementing Article 83a of those Regulations.

Article 83a provides that: *"the scheme shall be kept in balance in accordance with the detailed rules set out in Annex XII"*.

Article 9 of Annex XII gives a more precise definition of the necessary data and their collection: *"The demographic parameters to be taken into consideration for the actuarial assessment shall be based on observation of the population of participants in the scheme, comprising staff in active service and pensioners. **This information shall be collected annually by the Commission using information received from the different institutions and agencies whose staff are members of the scheme.**"*

The legal basis is sufficiently clear and raises no particular questions.

2.2.3 Use and storage of identifying numbers

Article 10(6) of the Regulation stipulates that *"The European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body"*.

Eurostat uses two main identifying numbers: the NUP and the personnel number. The NUP remains the same throughout an official or other servant's career, but the personnel number changes depending on the institution or agency of employment.

Eurostat maintains that it needs a single identifying number for two main reasons:

- For the current year: Eurostat needs a single number so as to be able to link data on the same person collected from different sources, e.g. from the NAP and the relevant institution;
- over a number of years: actuarial calculations are largely based on past data. When notifying the processing operation, Eurostat summarised (Annex to point 17 of the notification) the reasons why identifying numbers have to be stored and stored for an indefinite period. This is necessary for:
 - (a) calculating the total number of years of pensionable service to be taken into account for the calculation of pensions by addition of recorded monthly contributions;
 - (b) tracing the progression of an individual professional career over time, so as to produce statistics on career development and individual salary progression;
 - (c) observing mortality and invalidity in order to update the corresponding tables of actuarial assumptions when the time comes;
 - (d) outcome sensitivity studies following demographic changes in the population of members of the scheme.

The EDPS considers that the need to use one identifying number is sufficiently demonstrated. It is a moot point, however, whether it is indispensable that two numbers (NUP and personnel number) be stored. The EDPS wishes Eurostat to consider the possibility of erasing the personnel number once the data-validation period is over. For data-linkage purposes the NUP would appear to be sufficient.

2.2.4 Legality of data collection through the NAP

Data collected via the NAP are processed for the purpose of paying salaries. Eurostat wants to obtain those data precisely because they represent the bulk of the data it needs for its actuarial calculations. The data will thus be further processed for a purpose other than the original one. It is useful in this connection to refer to Article 4(1)(b) of the Regulation, which specifies that:

"Personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual."

The operation under consideration constitutes further processing for statistical purposes and Eurostat must accordingly comply with the above provision, an obligation which is especially strong because Eurostat will have a large volume of data at its disposal, enabling it to build up detailed individual career profiles. Even if Eurostat has the technical means to link data with data subjects, it may under no circumstances perform that operation except for statistical purposes.

2.2.5 Information to be supplied to data subjects

Article 12(2) of the Regulation is applicable here. Article 12(1) lists the types of information which must be given to data subjects where the data have not been obtained from data subjects themselves. Under Article 12(2):

"Paragraph 1 shall not apply (...) if recording or disclosure is expressly laid down by Community law. In these cases the Community institution or body shall provide for appropriate safeguards after consulting the European Data Protection Supervisor."

Annex XII to the Staff Regulations, the legal basis for this processing operation, authorises the recording of such data. Appropriate safeguards should be provided in the form of information to data subjects that is specifically adapted to the operation's purpose and of security measures (see section 2.2.7 below).

Eurostat plans to inform data subjects by means of an administrative notice. Providing data subjects with information may be regarded as an appropriate safeguard on condition that it actually reaches them all. This implies that Eurostat should conduct a proactive information policy and not, for example, simply supply information on request. The EDPS wants Eurostat to spell out how it intends to ensure that all data subjects are properly informed and wishes to be informed himself of the steps taken by Eurostat to that end.

The EDPS would point out that the information note does not mention the data collected in 2003. As stated earlier, those data were depersonalised, but Eurostat intends to use a correlation table in order to repersonalise them. Technically speaking, this is a new data collection exercise. The information given to data subjects should therefore state that the data will be processed on an annual basis, beginning with 2003.

One passage in the information note may also be misleading, namely the reference to other data providers. The EDPS was told that these could only be providers within European institutions or bodies, which would always be acting in the framework of the pensions scheme, but this should be specified in the text.

As an additional safeguard the EDPS wishes to be advised of any further modification of the data processing operation which may impact on the data being processed (data sources, disclosure to third parties, categories of data processed, etc.).

2.2.6 Simplified notification

As mentioned earlier, Eurostat attached a draft simplified notification of a data processing operation to its information note. This was for use by data protection coordinators in the various Commission Directorates-General, or by anyone responsible for disclosing data to Eurostat under this project. That notification should in principle be sent to the DPO of each institution and not the EDPS.

The EDPS would stress that the institutions' data transfers to Eurostat should be included in the notification regarding the payroll system that each institution makes to its DPO.

2.2.7 Security measures

Given the scale of the planned data processing operation, strict security measures must be put in place in accordance with Article 22 of the Regulation. Such measures should cover both Eurostat's own processing operations and any work done by processors on its behalf.

It is essential that identifying data be accessible solely to those who need access in order to perform their tasks. The data must then be completely depersonalised, for example for transfer to external processors.

The information received by the EDPS in this connection enables him to say that the security measures would appear sufficient in this case. In any event, the EDPS intends very shortly to carry out a general survey of Eurostat's processing operations.

3 Conclusion

The proposed processing operation would not appear to be in breach of Regulation (EC) No 45/2001, provided that the following comments are taken into account. In particular, Eurostat:

- should spell out how it plans to ensure that all data subjects are informed and should notify the EDPS of the steps taken to that end;
- should modify the information note as regards the data sources and the fact that the processing operation will include the 2003 data;
- may under no circumstances re-identify data subjects, except for the purpose of statistical calculations, and should specify this restriction in its notification;
- should keep the EDPS informed of any subsequent modification to the data processing operation affecting the data being processed (data sources, disclosure to third parties, categories of data processed, etc.);
- should undertake to consider the possibility of erasing personnel numbers once the data-validation period is over.

Brussels, 21 December 2004,

European Data Protection Supervisor

Peter HUSTINX

Follow-up Note

25 February 2005

Eurostat has followed the comments provided in the conclusion of this opinion.

The follow-up of the last point is still in progress.

The European Data Protection Supervisor