

Opinion on the notification for prior checking received from the Data Protection Officer (DPO) of the European Commission on "Traffic violations with official vehicles of the Commission managed by the Infrastructure and Logistics Office – Brussels (OIB)"

Brussels, 3 November 2008 (Case 2008-395)

1. Procedure

On 24 June 2008, the Data Protection Officer (DPO) of the European Commission gave notification under Article 27(3) of Regulation (CE) No 45/2001 on *"Traffic violations with official vehicles of the Commission managed by the Infrastructure and Logistics Office – Brussels (OIB)"*.

Questions were put to the Commission's DPO by e-mail on 4 September 2008. Replies and clarifications were sent on 10 October 2008. On 24 October 2008 the draft opinion was sent to the DPO of the Commission for comments. Comments were supplied on 31 October 2008.

2. The facts

The Mobility and Supplies Unit (OIB.OS.3), which is responsible for managing the car pool, deals with violations of the highway code committed by the drivers of official Commission vehicles managed by the OIB.

Purpose

The purpose of the processing operation is:

- to examine whether, when traffic violations are committed by the drivers of official Commission vehicles, the immunity granted by the Protocol on Privileges and Immunities can be invoked, and
- to provide administration and follow-up.

Data subjects

The data subjects are defined as any member of staff who drives an official vehicle: this means drivers from the transport pool, Commissioners, Directors-General, and any other member of staff duly authorised to drive these vehicles in connection with their duties.

Legal basis

According to the notification, the legal basis for the processing operation is Article 24 of the Staff Regulations and the Protocol on Privileges and Immunities. Account must also be taken

of Article 11 of the Commission Decision on the duties of Commission drivers, which lays down that: *"Drivers shall comply with the road traffic laws of the country where they are driving. The Commission shall, as far as possible, assist drivers in any proceedings brought against them by the national authorities for offences committed while exercising their duties. Where drivers infringe the Highway Code in the exercise of their duties, the Commission shall consider the circumstances of the event and, if appropriate, notify the competent national authorities that it intends to invoke the Protocol on Privileges and Immunities. Where appropriate, the person carrying out the mission may give the driver, in writing, any instructions needed for the mission to proceed successfully."*

On 28 February 2003, Mr G-J Koopman, the Head of Cabinet of Vice-President Kinnock, set out a framework for handling such violations. By analogy, that framework applies to anyone driving official Commission vehicles. Cabinets, Directors-General and departmental heads have all received the note. E-mails have also been sent to Cabinets and to all drivers to make them aware of how violations are handled.

Procedure

An agreement has been reached with the Belgian (mainly the Brussels) authorities that penalty notices and payment demands relating to violations will be sent to the European Commission (Mobility and Supplies Unit) for the attention of the data controller.

On receipt of a penalty notice, the Mobility and Supplies Unit will establish who committed the violation.

Four possible scenarios might arise:

1. A violation for which a driver in the transport pool is responsible: the department informs the driver (who countersigns the penalty notice for information); the payment demand is sent to him for payment.
2. A violation for which a Director-General is responsible: the penalty notice and payment demand are sent for him to deal with.
3. Violation with a vehicle made available to a Commissioner (three possible situations):
 - (a) Violation for which a driver driving the Commissioner or a member of the Cabinet is responsible: the penalty notice and payment demand are sent to the Cabinet for payment.
 - (b) Violation for which a driver not driving the Commissioner or a member of the Cabinet is responsible: the department informs the driver (who countersigns the penalty notice for information); the payment demand is sent to him for payment.
 - (c) A violation for which a Commissioner is responsible: the penalty notice and payment demand are sent to the Cabinet for payment.
4. Violation for which a member of staff, properly authorised to drive the vehicle, is responsible: the penalty notice and payment demand are sent to the member of staff for payment (with a copy to his head of department for information and follow-up). Penalty notices for which staff posted to the Security Office is responsible are handled

exclusively by that office; the Mobility and Supplies Unit is not informed of the outcome.

The Mobility and Supplies Unit keeps all the data relating to penalty notices in a folder and enters them in an Excel file.

In very special and exceptional cases, confirmed by the Commissioner in charge of the Administration, a request to benefit from immunity from jurisdiction may be made.

Data processed

All the penalty notices from the competent authorities (and documents and/or notes relating to them) are archived in the secretariat of the head of the mobility section in the Mobility and Supplies Unit. The penalty notices for which drivers in the transport pool are responsible are countersigned by them, to confirm that they have been made aware of their existence.

The Excel file contains the reference of the penalty notice, the date of the violation, the number plate of the vehicle concerned, the type of violation, the name of the person who committed the violation, and the state of the dossier. For violations committed by staff in the Security Office, the name of the person who committed the violation is not communicated to the Mobility and Supplies Unit.

When making up the traffic violation file and throughout the existence of the dossier, no use is made of the personnel number of the person who committed the violation.

Data recipients

The data recipients are as follows:

- the individual who committed the violation;
- the head of department of the individual who committed the violation;
- staff in the departments designated as "responsible" for the use of official vehicles.

If the fine is not paid by the person who committed the violation, the Mobility and Supplies Unit may decide to send data identifying that person (having first informed them) to the competent authorities for road traffic violations.

The "competent authorities" are the national authorities competent for road traffic violations in the country in which the violation was committed (i.e. the police, prosecutors, Ministry of Foreign Affairs).

Information given to data subjects

The drivers in the transport pool have all received the Decision on their duties. All drivers of an official vehicle are systematically told when a penalty notice is received.

An update of the "Arrangements for the use of official cars" published on the Commission intranet site (Intracomm) is planned. It will be drawn to the attention of all departments and individuals concerned (by e-mail). The section on the handling of traffic violations will explicitly mention that the Mobility and Supplies Unit is responsible for the administration and follow-up of violations committed when driving official vehicles, and for archiving all the related data.

Rights of the data subjects

The file containing the documentation on all the violations committed is available in the Mobility and Supplies Unit. Any driver may ask to consult the penalty notices concerning him on request. Rectification of the data is possible with the agreement of the data controller.

Storage of data

The Excel file is on the personnel network disk (not shared) of the secretary of the head of the mobility section of the Mobility and Supplies Unit.

It is planned that, in an annual exercise, any information relating to these violations will be destroyed and erased five years after the closure of each dossier. This has not concerned any dossiers to date.

The Excel file will be archived with the same time-limit, and will only contain data which has been rendered anonymous (by deleting the boxes containing the names of those who committed the violations).

The notification explains that general annual statistics are kept, based on all the penalty notices received. This is anonymous and only contains the date, type of violation, amount of the fine (if known) and category of driver (staff, Commissioner, Director-General etc.).

According to the notification, the institution feels that blocking is not really relevant as regards the penalty notice sent to the institution. Moreover, those concerned receive a copy. The Excel file may be blocked for a disputed record, contested by a data subject. This blocking is almost immediate after the agreement of the data controller. A copy of the record in question may be given to the data subject.

Similarly, a record in the Excel file may be erased. For penalty notices, erasure is not relevant since they are addressed to the institution by the national authorities.

Security

The physical file is kept in a locked cupboard in the office of the secretary of the head of department, and the Excel file is in the personal directory on her PC; they are only accessible via the secretary of the head of the mobility section of the Mobility and Supplies Unit.

Use of the Commission's secure IT infrastructure. Access to the PC protected by a user name and password.

3. Legal aspects

3.1. Prior checking

The notification received on 29 June 2008 relates to the processing of personal data ("*any information relating to an identified or identifiable natural person*" – Article 2(a) of Regulation (CE) No 45/2001) by a Community body in the exercise of activities all or part of which fall within the scope of Community law. The management of data concerning violations of the highway code committed by persons driving official Commission vehicles managed by the OIB involves the collection, recording, organisation, storage, retrieval, consultation, etc.. of personal data (Article 2(b) of the Regulation). These activities constitute

manual processing and the data are contained in a file within the meaning of Article 3(2). The data processing therefore falls within the scope of Regulation (CE) No 45/2001.

Article 27(1) of Regulation No 45/2001 requires prior checking by the EDPS of all *"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"*.

Article 27(2) contains a list of processing operations that are likely to present such risks. Article 27(2)(a) mentions *"processing of data relating to health and to suspected offences, offences, criminal convictions or security measures"* as processing operations likely to present such risks.

The data processed in the context of the processing of traffic violations with official Commission vehicles managed by the OIB relate to offences and their processing must therefore be subject to prior checking by the European Data Protection Supervisor in accordance with Article 27(2)(a) of Regulation (CE) No 45/2001.

In principle, checking by the EDPS 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 carried out ex-post. 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 on 24 June 2008. An e-mail requesting additional information was sent on 4 September 2008. In accordance with Article 27(4) of the Regulation, the two-month period within which the EDPS must deliver an opinion was suspended. The replies were received on 10 October 2008. The EDPS will therefore deliver his opinion no later than 7 November 2008 (24 June plus 36 days + August + 7 days for the DPO's comments).

3.2. Lawfulness of the processing

The lawfulness of the processing is based on Article 5(b) of Regulation (CE) No 45/2001 which provides that personal data may only be processed if the processing is necessary for compliance with a legal obligation to which the controller is subject. In this case, the processing of road traffic violations meets a legal obligation of the institution towards the national judicial authorities of the country where the violation was committed.

The lawfulness of the processing operation must also be examined in the light of Article 5(a) of Regulation (CE) No 45/2001, which provides that 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 in the legitimate exercise of official authority vested in the Community institution"*. 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"*.

It is therefore necessary to determine whether the processing operation has been carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments on the one hand, and whether that operation is necessary in order to perform the task involved on the other.

The procedure for processing road traffic violations committed with official Commission vehicles managed by the OIB, which involves collecting and processing personal data, is to be regarded as the legitimate exercise of official authority vested in the institutions. This processing is necessary for the good management and proper functioning of the institution.

Contrary to the notification, which considers the legal basis for the processing operation to be found in Article 24 of the Staff Regulations (threats, insulting or defamatory acts or utterances, attacks on the person), the EDPS considers that the legal basis on which the processing operation in question is based may be found in Article 23 of the Staff Regulations ("Subject to the Protocol on Privileges and Immunities, officials shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force") and in the Protocol on Privileges and Immunities. Account must also be taken of Article 11 of the Commission Decision on the duties of Commission drivers. The legal basis, which is clear enough, raises no particular issues.

The legal basis complies with the Regulation and supports the lawfulness of the processing.

3.3. Processing of special categories of data

Article 10 of the Regulation 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"* except where grounds are identified in Article 10(2) or the subsequent paragraphs.

In particular, Article 10(5) lays down that: *"Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof (...)".*

In this case, the processing of road traffic violations, which may include the data mentioned in Article 10(5) of the Regulation, is authorised so that Article 23 of the Staff Regulations may be complied with. The processing operation is therefore lawful.

3.4. Data quality

Article 4 of Regulation (CE) No 45/2001 sets out a number of obligations regarding the quality of personal data.

The data must be *"processed fairly and lawfully"* (Article 4(1)(a)). The lawfulness of the processing has already been discussed (see point 3.2 above). Fairness relates to the information provided to data subjects (see point 3.8 below).

According to Article 4(1)(c) of the Regulation, personal data must be *"adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed"*. In this case, the data required are necessary for the procedure relating to road traffic violations to be properly conducted.

In this respect the EDPS considers that Article 4(1)(c) of Regulation (CE) No 45/2001 has been complied with.

Finally, under Article 4(1)(d) of the Regulation, 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". The system itself helps guarantee that data are correct and kept up to date. The data subject has the rights of access and rectification, which helps ensure that data are kept up to date and that the file is as complete as possible. This is a second way of ensuring the quality of data. See point 3.7 below on the rights of access and rectification.

3.5. Storage of data

Article 4(1)(e) of Regulation (CE) No 45/2001 states 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, it is planned that, in an annual exercise, any information relating to these violations will be destroyed and erased five years after the closure of each dossier. The EDPS considers that the storage period as described is proportionate to the purposes of the processing operation, and complies with the Regulation.

The Excel file will be archived with the same time-limit, and will only contain data which has been rendered anonymous (by deleting the boxes containing the names of those who committed the violations).

The notification explains that general annual statistics are kept, based on all the penalty notices received. This is anonymous and only contains the date, type of violation, amount of the fine (if known) and category of driver (staff, Commissioner, Director-General etc.). This complies with Article 4(1)(b) of the Regulation.

3.6. Transfer of data

The data recipients are as follows:

- the individual who committed the violation;
- the head of department of the individual who committed the violation;
- staff in the departments designated as "responsible" for the use of official vehicles;
- the competent authorities for road traffic violations, i.e. the national authorities competent for road traffic violations in the country in which the violation was committed (i.e. the police, prosecutors, Ministry of Foreign Affairs).

In this case, Articles 7, 8 and 9 of the Regulation apply.

The processing operation must first be scrutinised in the light of Article 7(1) of Regulation (CE) No 45/2001 relating to the transfer of personal data within or between Community institutions or bodies. Personal data may not be transferred within unless they are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*. In this case, the transfer to the individuals who committed the violations, their heads of department, and staff of the departments designated as responsible for the use of official vehicles is necessary for the legitimate performance of the tasks of the department concerned.

Moreover, Article 7(3) of Regulation (CE) No 45/2001 provides that *"the recipient shall process the personal data only for the purposes for which they were transmitted"*. It must be remembered that no-one receiving and processing data in the context of the procedure for handling penalty notices may use that data for other purposes. The data controller must

therefore pay particular attention to ensuring that personal data are only processed strictly within the framework of the procedure for processing traffic violations. A reminder of this could be sent to those concerned.

As regards transfer to the competent authorities, processing must also be examined in the light of Articles 8 and 9 of Regulation (CE) No 45/2001. The notification refers to transfer to: "the competent authorities for road traffic violations, i.e. the national authorities competent for road traffic violations in the country in which the violation was committed (i.e. the police, prosecutors, Ministry of Foreign Affairs)".

If those authorities are in a country which has adopted legislation transposing Directive (CE) 95/46, Article 8 of the Regulation applies. Article 8(a) states that transfers are possible if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority. In this case, the recipient will have no difficulty in establishing the necessity of the transfer since he needs the data in order to reach a decision on the case.

If the authorities are in a country which has not adopted legislation transposing Directive (CE) 95/46, Article 9 of the Regulation applies. Under Article 9, transfer may only take place to a country offering an adequate level of protection. If that is not the case, another basis for a transfer will have to be found in accordance with Article 9.

3.7. Right of access and rectification

Article 13 of Regulation (CE) No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. Article 14 of Regulation (CE) No 45/2001 establishes the data subject's right of rectification. Just as the data subject has a right of access, he or she may also directly change personal data or have them changed, if necessary.

In this case, the file containing documentation on all the violations committed is available in the Mobility and Supplies Unit. Any driver may ask to consult the penalty notices concerning him on request. Rectification of the data is possible with the agreement of the data controller.

As regards blocking, this is not really relevant for penalty notices addressed to the institution. Moreover, those concerned receive a copy. The Excel file may be blocked for a disputed record, contested by a data subject. This blocking is almost immediate after the agreement of the data controller. A copy of the record in question may be given to the data subject.

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

3.8. Information to be given to data subjects

Under Articles 11 and 12 of the Regulation, whenever personal data are processed, data subjects must be provided with sufficient information about the operation. This information should usually be given at the latest when the data are collected from the data subject, if the information has not already been provided to the data subject (Article 11). If the data are not collected directly from the data subject (Article 12), the information must be provided as soon as the data are recorded or, if the data are to be communicated to a third party, when the data are first communicated, at the latest. The articles list a series of compulsory and optional items of information. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject.

As mentioned above, information is provided to data subjects by means of the "*Information à l'attention des conducteurs de véhicules de service de la Commission*" (Information for the attention of drivers of official Commission vehicles) published [in French only] on the Commission's intranet site (Intracomm). It will be drawn to the attention of all departments and individuals concerned (by e-mail). The EDPS considers that the statement must be sent to data subjects when they are contacted in connection with the forwarding of the penalty notice, to ensure that this information is provided to all data subjects.

The EDPS welcomes the contents of this privacy statement, which is particularly comprehensive. The only element which should be changed in relation to the first version received by the EDPS is that the designation of the data controller and data recipients should be updated.

3.9. Security

In the light of Article 22 of Regulation (CE) No 45/2001, the EDPS finds that technical and organisational measures have been taken to ensure a level of security appropriate to the risks represented by the processing and by the nature of the personal data to be protected.

Conclusion

The proposed processing operation would not appear to involve any breach of the provisions of Regulation (CE) No 45/2001, provided that account is taken of the observations made above. This implies, in particular, that the Commission should:

- remind anyone who receives or processes data in the context of the procedure for handling penalty notices that the data may not be used for other purposes;
- comply with Articles 8 and 9 as regards the transfer of data to the competent authorities; under Article 9, transfer may only take place to a country not covered by Directive (CE) 95/46 if that country offers an adequate level of protection;
- as well as publishing the privacy statement on the internet, send it to all data subjects concerned by this processing operation at the same time as the document on the procedure for forwarding the penalty notice;
- update the "Information for the attention of drivers of official Commission vehicles" to make the necessary changes (name of the controller and details of the data recipients).

Done at Brussels, 3 November 2008

(Signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor