

Opinion on the notification for prior checking from the Data Protection Officer of the European Parliament concerning the accreditation of journalists to the European Parliament

Brussels, 3 April 2012 (case 2011-0991)

1. Proceedings

On 28 October 2011, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Parliament (EP) a notification for prior checking concerning the accreditation of journalists to the EP. The EP already notified the procedures concerning the accreditation of journalists and lobbyists (case 2008-0478, 2010-0644). For different reasons, in particular to establish the relevant facts of the procedure, these notifications were withdrawn. The accreditation of interest representatives being currently under review the new notification relates only to the accreditation of journalists¹. The notification was accompanied by the following documents:

1. Note to the European Data Protection Supervisor;
2. Notification 151 of the Security Unit of the EP to the DPO concerning the accreditation of journalists and lobbyists of 26 April 2010;
3. Notification 20 of the Security Unit of the EP to the DPO concerning the access control in the premises of the EP and the management of badges of 20 October 2011;
4. Notification 237 of the Press Unit of the EP to the DPO concerning the accreditation of journalists to EP of 29 July 2008;
5. Rules for press accreditation to the European Parliament;
6. Rules governing security consolidated by the Bureau on 3 May 2004;
7. Template Press Accreditation 2011;
8. Template Press Accreditation Renewal 2011;
9. Rules governing photographers and television crews inside the buildings of the European Parliament in Brussels and Strasbourg of 7 September 2005.

The draft Opinion was sent to the DPO for comments on 29 February 2012. These were received on 27 March 2012.

¹ In the notification template the accreditation of cameramen, sound recorders and other specialist is not mentioned. Therefore, this procedure is not subject of the Opinion.

2. Facts

The **purpose** of the processing in question is to facilitate and regulate access to the institution's premises for journalists. Journalists applying for permanent accreditation fill in an application form and send the paper document with supporting documents to the Press Unit (DG Communication). Supporting documents include a copy of the ID, a copy of national press card, letter from the editor-in chief and the proof of residence in one of the three places of work of the European Parliament. In case of freelancers, recently published articles and in exceptional cases, bank statements to prove main income from that work will be requested from the applicant.

The accreditation card is valid for one year and is renewable. The same procedure applies and the above mentioned data will be collected once again.

The Press Unit determines whether the journalists are professionals. In cases of doubt the Press Unit either demands more information from the applicant or consults the employer, the International Press Association or the European Parliamentary Journalists' Association. If the Press Unit cannot confirm that the applicant is journalist, access is not granted.

If the applicant is qualified as professional, the application paper form is sent to the Security Unit via an internal document transfer system GEDA; only people directly involved in the accreditation procedure have access to the request to provide the applicant with a badge. The Security Unit stamps the application form if validated and sends the documents back to the Press Unit by internal mail. The Press Unit informs the journalists as soon as possible. The Security Unit hands out the badge to journalists on presentation of the stamped documents and marks it on the application form. The journalists bring the documents back to the Press Unit.

If the Security Unit has doubts concerning the qualification of the applicant as journalist, the information provided by the applicant is cross-checked against a list of persons not entitled to access the EP² and against data publicly available (notably on the internet). When necessary, more information is requested from the Press Unit. There is no cross-checking against data from closed (confidential) sources³.

The actual distribution is currently carried out by external security staff.

The decision on accreditation is taken by the Press Unit with input from the Security Unit as appropriate. In exceptional cases the advisory panel that includes representatives of the EP Press Service and of the International Press Association (IPA) and the European Parliamentary Journalists' Association (EPJA) can be consulted. The ultimate responsible person for the accreditation is the Director of Media.

The accreditation card may be withdrawn if the holder's behaviour has "led to incidents which interfered with the smooth running of press and information meetings organised by the European Parliament or any other of its activities". The Procedure for withdrawing accreditation cards was adopted by the European Parliament's Bureau.

² List is established and kept by the Security Unit. Retention period for data is 10 years. This blacklisting procedure is to be notified to the EDPS for prior checking.

³ In 99 % of the application cases there are no doubts and the badge is issued by the Accreditation Unit and given to the applicant.

The **controller** of the data processing is identified in the notification form as the Head of Press Unit and the Director of Security. Even though the notification template mentions two controllers (DG Pres, Directorate for Security, Security Unit and Accreditation Unit and DG Comm, Directorate of Media, Press Unit), the Press Unit primarily determines the accreditation procedure. The Directorate for Security provides support in these tasks, i.e. by handing out the badges.

The following **categories of data** of the journalists may be processed.

Personal and contact information: name, date of birth, gender, nationality, address, further contact details, photograph, copy of ID/passport and press card, on request in exceptional cases bank statements to proof main income from journalist work.

Professional experience: employer, recently published articles in some cases and job type (employed or freelance journalists).

Personal data are processed both manually and automatically. Electronic versions of the accreditations are stored for one year by the Press Unit.; paper versions and supporting documents are also kept for a period of one year. The Security Unit and the Accreditation Unit do not retain data on applications for journalists' access to the European Parliament.

Data processed within the processing operation may be disclosed to the following **recipients** by the Press Unit:

- Security Unit;
- Accreditation Unit;
- Employer of the applicant;
- EP Press Service;
- International Press Association;
- European Parliamentary Journalists' Association.
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The staff of the Accreditation Unit who issue the access cards (a mixture of statutory staff, contract staff, and external service providers) confine themselves to inputting to the CA/TA programme the data necessary to issue the appropriate badge.

Procedures to grant **rights of access and to rectify** to data subjects have been established.

Rules for Press Accreditation to the European Parliament are published on the Website by the Media Directorate of DG Comm. They contain a general description of the accreditation procedure. **Information** concerning the processing of personal data is included in the press accreditation application template which is signed by the applicant. Information on the purpose, the recipients, the rights of access and to rectify as well as the right to have recourse to the EDPS is provided.

[...]

3. Legal aspects

3.1. Prior checking

The processing of personal data within the accreditation procedure falls within the scope of Regulation (EC) 45/2001 (hereinafter: the Regulation). The processing is non-automated intended to form part of a filing system.

The controller is the European Parliament, here represented by the above mentioned DGs.

Article 27(1) of the Regulation makes 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" subject to prior checking by the EDPS. Article 27(2) of the Regulation lists the processing operations likely to present such risks.

Under Article 27(2)(a) of the Regulation, processing of data relating to "suspected offences, offences, criminal convictions or security measures" are subject to prior checking by the EDPS. In the case under consideration, no evidence is contained in the notification that this type of data may be processed, but the collection of such data cannot be excluded.

Article 27(2)(b) of the Regulation stipulates that processing operations intended to "evaluate personal aspects relating to the data subject, including his or her (...) conduct" are subject to prior checking by the EDPS. Even though the DPO of the EP has stated that the processing operation does not involve an assessment of the competence of the data subject but merely constitutes an objective check of his or her professional status, the EDPS is of the opinion that in some -albeit few- cases a form of screening may be performed to evaluate personal aspects of the applicants, including his ability.

Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. Since the relevant data processing operations have already been established, the check has to be carried out *ex post*. In any case all recommendations made by the EDPS should be fully taken into account and the processing operations should be adjusted accordingly.

The notification of the DPO was received on 28 October 2011. According to Article 27(4) of Regulation (EC) 45/2001, the EDPS Opinion must be delivered within a period of two months. Taking into account that the procedure was suspended for a total of 139 days to request complementary information and to allow for comments on the draft Opinion, the present Opinion must be delivered not later than 15 May .2012.

3.2. Lawfulness of the processing

The legal basis of the processing of personal data within the accreditation procedure for journalists can be found in the following legal acts:

- Rules Governing Security consolidated by the Bureau on 3 May 2004;
- Rules governing Passes and Authorisations granting Access to Parliament's Premises adopted by the Secretary-General on 28 January 2005;
- Implementing Provision in Respect of the Rules Governing passes and Authorisations granting Access to Parliament's Premises laid down by the European Parliament's Security Unit.
- Rules for Press Accreditation to the European Parliament.

The Rules provide that arrangements for access to Parliament's building and installations for media representatives shall be laid down. Media representatives who wish to enter Parliament's premises shall be accredited on the basis of a prior request. Processing of personal data of the applicants can clearly be considered as necessary for the performance of tasks carried out in the public interest on the basis of the above mentioned regulations. Thus, processing of personal data in the case at hand is lawful within the meaning of Article 5(a) of Regulation (EC) 45/2001, read together with its recital 27.

3.3. Processing of special categories of data

Personal data being processed include a photograph of the applicant. The photograph may reveal the racial or ethnic origin. In addition, the data processing may indicate the political opinion of the journalist (information about the press organisation, name of the editor-in-chief).

Under Article 10 (1) of the Regulation, the processing of special categories of data (i.e. "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and (...)") is prohibited. Article 10 (2) of the Regulation provides for certain exceptions. The exception, which would probably apply would be that under Article 10 (2) (a) (consent of the data subject). Although the EDPS challenges the value of the consent given in the context of an employment relationship⁴, the EDPS considers that the processing is lawful under Article 10 (2) as the documents and photos are provided by the journalists themselves requesting access to Parliament buildings.

Moreover, the EDPS considers that the processing of the abovementioned data for identification purpose and to qualify the applicant as professional may be necessary for reasons of substantial public interest, and can therefore be considered as authorised under Article 10 (4) of the Regulation⁵. To ensure full compliance with the regulation, the EDPS recommends that appropriate safeguards should be taken to prevent the use for any purpose other than the above mentioned.

3.4. Data quality

Under Article 4(1)(c), 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)(d) of the Regulation requires that personal data be "*accurate and, where necessary, kept up to date*", and specifies that "*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 collection of personal data listed above seems to be necessary to check whether the journalists are professionals. However, the collection of bank data can only be deemed necessary in exceptional cases when no other evidence can be provided.

Data are provided by the respective data subjects; hence the procedure itself helps to guarantee accuracy of data being processed. The rights of access and rectification contribute further to ensure that the data processed are accurate and up to date (cf. point 3.6. below).

Data must also be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). The question of lawfulness has already been considered. That of fairness has to be assessed in the context of information provided to data subjects (see point 3.8).

3.5. Data retention

⁴ CF. Opinion 8/2001 on the processing of personal data in the employment context adopted by the Article 29 Working Party (http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2001_en.htm).

⁵ CF. EDPS Opinion 2004-259 on the processing of data on the accreditation of journalists to the European Council published on 16 September 2008.

According to Article 4(1)(e) of the Regulation, personal data may be kept in a form enabling 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.

As indicated above, paper application forms and electronic version of the applications are kept for one year by the Press Unit. The EDPS considers that keeping data within the specified period may be considered as justified in light with Article 4 (1)(e)⁶.

3.6. Transfer of data

Articles 7, 8 and 9 of the Regulation set forth certain obligations that apply when data controllers transfer personal data to third parties. The rules differ depending on whether the transfer is made (i) to or within Community institutions or bodies (based on Article 7), (ii) to recipients subject to Directive 95/46 (based on Article 8), or (iii) to other types of recipients (based on Article 9).

3.6.1. Transfer of personal data within or between Community institutions or bodies

Article 7(1) of the Regulation stipulates: "*Personal data shall only be transferred 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*".

The EDPS considers that the transfers of data to the recipients within the EP for the purposes described in the facts comply with Article 7(1). These recipients (staff of the accreditation unit, EP Press Service) have the competences to perform the task for which the data are transferred, namely to cross-check the information and to provide the applicant with a badge. The transfer of the personal data is therefore considered as falling within the tasks covered by the competence of each of the recipients.

However, the EDPS recommends that in accordance with Article 7 (3) of the Regulation, each of the recipients is explicitly reminded that they should process the personal data they receive only for the purpose for which they were transmitted.

3.6.2. Transfer of personal data to recipients, other than community institutions and bodies, subject to Directive 95/46/EC and to recipients, which are not subject to Directive 95/46/EC

In cases of doubt the Press Unit may consult the employer, the International Press Association or the European Parliamentary Journalists' Association. As a consequence, this may lead to a data transfer to recipients in the Member States as well as to recipients in third countries, e.g. due to the employer's seat.

As far as the transfer of personal data to Member States is concerned, Article 8 of the Regulation provides that: "*Without prejudice to Articles 4, 5, 6 and 10, personal data shall only be transferred to recipients subject to the national law adopted for the implementation of Directive 95/46/EC, (a) 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, or (...)*".

⁶ So far, no information has been provided as to whether and how long applicants' data are kept by the Security Unit.

Although, under Article 8(a) of the Regulation, it is for the recipient to establish the interest and need to receive the data, the EDPS considers that, in view of the Press Unit's specific activities, this provision should be construed as meaning that if the information is not being sent at the recipient's request, it is the sender's task to verify that the transfer is necessary. Thus, where the Press Unit sends personal data to the applicant's employer in a Member State or the European Parliamentary Journalists' Association on its own initiative, it should establish that those data are necessary for the performance of a task carried out in the public interest.

For recipients which are not subject to Directive 95/46/EC Article 9(1) of the Regulation provides that "*personal data shall only be transferred to recipients, other than Community institutions and bodies, which are not subject to national law adopted pursuant to Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller to be carried out*". Thus in principle, data cannot be transferred to recipients in States which do not provide an adequate level of protection. However, the exception, which would probably apply would be that under Article 9(6) (b) "*the data subject has given his or her consent unambiguously to the proposed transfer*". Therefore, the EDPS recommends asking explicitly for the applicant's consent that his personal data may be transferred within the context of an enquiry by the Press Unit.

3.7. Right of access, rectification, blocking and erasure

The EDPS welcomes the fact that the data subject's rights of access and rectification are guaranteed. Article 13 of the Regulation seems to be respected.

3.8. Information supplied to the data subject

The Regulation requires that the data subject be informed where his or her personal data are being collected and lists a number of points that must be included in the information, in order to ensure fair processing of the data. In the case at hand, the data could be collected directly from the data subject or could be collected indirectly, for instance through their employer or a press association.

Article 11 of the Regulation (*Information to be supplied where the data have been obtained from the data subject*) and Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) are therefore both applicable to the present case. This means that the relevant information must be given either at the time of collection (Article 11) or when the data are first recorded or disclosed to a third party (Article 12) unless the data subject already has that information.

The EDPS notes that information concerning the processing of personal data is included in the press accreditation application template. However, no information is provided about the fact that in cases of doubt third parties may be consulted and about the time-limits for storing the data in the template. Furthermore, no information is provided about the procedure for withdrawing accreditation cards. Therefore, the EDPS recommends that information to data subjects is revised accordingly. Moreover, the EDPS recommends including a description of the data processing operation and the revoking procedure in the Rules for Press Accreditation to the European Parliament. It should also be noted in the Rules for Press Accreditation that only in exceptional cases the advisory panel is consulted.

[...]

Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation (EC) No 45/2001 provided that the considerations in this Opinion are fully taken into account. In particular, the European Parliament should:

- take appropriate safeguards to prevent the use for any purpose other than mentioned in section 3.3 if special categories of personal data are processed;
- introduce, in accordance with Article 7(3) of the Regulation, a notice to the recipients informing him/her that personal data may be processed only for the purposes for which they were transmitted;
- ask for the data subject's consent if disclosure of personal data to a recipient in States which do not provide an adequate level of protection is envisaged;
- revise information to data subjects as outlined in section 3.8.
- notify to the EDPS for prior checking the processing operations "Enquête de sécurité" including the blacklisting procedure (list of persons not entitled to access the European Parliament)⁷.

Done at Brussels, on 3 April 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

⁷ The relevant Article 25 notification to the DPO of the European Parliament is number 237 of 26 April 2010, made by the Director for Security.