



Decision of the European Data Protection Supervisor in complaint case 2019-0121 against the European Commission

The EDPS,

Having regard to Article 16 TFEU, Article 8 of the Charter of Fundamental Rights of the EU, and Regulation (EU) 2018/1725,

Has issued the following Decision:

PART I - Proceedings

On the basis of a complaint received on 31 January 2019 under Article 63(1) of Regulation (EU) 2018/1725 (“the Regulation”), the European Data Protection Supervisor (EDPS) decided to open an own initiative enquiry into the collection of scanned ID cards for identification purposes in the context of the ‘Advanced Gateway for Meetings’ system (“AGM”). On 1 August 2019, the EDPS sent a letter to the European Commission’s Data Protection Officer inviting comments on the matter. On 6 September 2019, the EDPS received a letter from the controller of the AGM (Director ff. PMO).

PART II - Facts

The IT system AGM is used by the Directorates-General of European Commission for the management of expert groups and committee meetings. The registration and reimbursement of expenses via AGM only concerns persons who are not staff members of the EU institutions, agencies or other bodies. The European Commission’s Paymaster Office (PMO) uses AGM for the reimbursement of expenses of the experts participating in expert groups and committee meetings. External persons participating in meetings have to be registered in AGM for this purpose. On the basis of the registration, they are given a login and password. In addition, AGM is also used by and for EU institutions, agencies and other bodies that have concluded a Service Level Agreement with the PMO.

For the purpose of reimbursement of travel expenses/allowances for experts meetings, the DPO Register DPO-3251-2 PMO¹ in its section 10 refers to “banking information (under the responsibility of DG BUDG” and “Notification DPO-372”. Register DPO-372² in its section 11 notes that

“In addition to the filled out "Identification Form", a clear and legible copy (recto/verso) of the identity card, residence permit, passport,... has to be transmitted electronically to the Central Validation Team - Legal Entity Validation Team (via saving in ABAC Workflow in the "Documents" tab in pdf format or via an Ares link) in support of the information to be registered and validated in the accounting system.”

1 DPO-3251-2 PMO - Meetings/ Workshops/ Information day/ Events/Seminars/ including Experts meetings, Lists and Mailing-Lists, see <https://ec.europa.eu/dpo-register/detail/DPO-3251>.

2 DPO-372-6 Validation of Legal Entity records in the LEF (Legal Entity File), see <https://ec.europa.eu/dpo-register/detail/DPO-372>.

The data protection notice (“privacy statement”) attached to section of Register DPO-372 states the following:

“To provide an audit trail and allow queries on past payments at all times, no recorded data are deleted from the accounts. The forms and documents you submit are archived electronically.”

The complaint underlying the own initiative enquiry was launched by an external expert who was invited to participate in a training organised by the European Commission. To request his reimbursement of expenses, he was asked to upload a scan of his national ID card from both sides into the AGM.

Allegations of the complainant

According to the complainant, he was not informed of the obligation to upload the ID card scan prior to the training, as it was not mentioned in the invitation. The complainant claims that he offered to show the document on-site, but that the European Commission did not accept this for fraud prevention purposes. In the complainant’s view, the collection of scanned ID cards is contrary to guidance given by the European Commission³ and raises security concerns.

Comments of the data controller

The PMO noted in their reply of 6 September 2019, that the reimbursement of expenses from the EU budget is governed by the rules of the Financial Regulation ("FR"). Payments from the EU budget can only be made towards a bank account that has been validated by DG BUDG of the European Commission. Thus the PMO needs to request documents *“confirming the payee’s identity, the legal entity (i.e. identification of the bank at which the account is kept) and the payment details (i.e. identification of the bank account)”*. According to the PMO, this justifies asking external experts (such as the complainant) to upload a scan of their national ID card into AGM: *“As indicated in Article 86(3) FR, these documents are needed to ensure transparency, accountability and proper payment implementation”*.

Once their bank account has been validated, external experts can submit requests for reimbursements through AGM.

According to the PMO, documents submitted in AGM are registered in the European Commission's document management system Ares, which benefits from a high level of security.

PART III - Legal analysis

Lawful purpose, suitable means

According to the PMO, the purpose of requesting external experts to upload a scan of their national ID card in the AGM is to confirm their identity in their role as payees as required by Article 86(3) of the FR.

Article 86(3) of the FR reads as follows: *“Before entering into a commitment towards a third party, the authorising officer shall confirm the payee’s identity, establish the legal entity and payment details of the payee and enter them in the common file by the Union institution for*

³ Parliamentary question E-001840/2018, Answer given by Ms Jourová on behalf of the Commission, see: http://www.europarl.europa.eu/doceo/document/E-8-2018-001840-ASW_EN.html.

which the accounting officer is responsible in order to ensure transparency, accountability and proper payment implementation.”

In some Member States, copying one’s ID card is in principle forbidden, unless justified by law⁴. Article 86(3) of the FR can be regarded as a law justifying the scanning of such documents. There is thus no reason to doubt the lawfulness of the purpose of confirming the payee’s identity.

It is the very purpose of national ID cards to be a reliable tool to establish a person’s identity. Requesting to be presented with external experts’ ID cards is thus a suitable means to confirm their identity as payees.

Necessity

Under Article 4(1)(c) of the Regulation, personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’). As has been noted by the European Commission⁵, this requires that making copies of proof of identity documents, including the scanning of such documents, must be restricted to situations where it would not be sufficient to compare given information with the identity document or taking specific information from the identity document.

a) Sufficient to take specific information from the identity document?

The PMO asks external experts to upload *a full scan* of their national ID card in the AGM. The EDPS considers (see Survey 2017, case 2016-0758) that for the purpose of confirming a participant’s identity in the context of access control, normally only a limited number of personal data (identity document number, country of issue, first and last name, address, date and place of birth and document expiration date) will be required.

However, in the case at hand, the purpose is not confirming a participant’s identity in the context of access control, but PMO needs to confirm the external experts’ identities *in their role as payees* and with a view to also *establish the legal entity and payment details of the payee* as required by Article 86(3) of the FR. In this context, the submission of an integral copy of a document certifying the identity of the external expert is required to exclude that the ID card submitted has been tampered with. Against this background, it does not seem appropriate to suggest that applicants can blacken out certain parts of the scanned copy of their ID card, as this would impact on the integrity of the certificate.

In the light of the purpose pursued, it is thus not sufficient to only take specific information from the identity document.

b) Compare given information with the identity document?

The PMO makes reimbursement of expenses dependent on uploading a scan of the external experts’ national ID card in the AGM and does not just ask to be presented with ID cards, e.g. in the context of on-site verification during the training.

The EDPS has previously considered that requesting a scanned copy of a passport or ID card carries the risk of usurpation of identity with serious consequences for the data subject. In the

⁴ See e.g. Article 5(2) of the Portuguese Lei n.º 7/2007: *‘É igualmente interdita a reprodução do cartão de cidadão em fotocópia ou qualquer outro meio sem consentimento do titular, salvo nos casos expressamente previstos na lei ou mediante decisão de autoridade judiciária*

⁵ See footnote 3.

light of these concerns, verification by third parties or other staff of the European Commission during the training could be considered an alternative means to requesting the uploading of a scanned ID card in the AGM.

However, Article 86(3) of the FR obliges *the authorising officer* to confirm the payee's identity. Whilst this responsibility can be (and will be) delegated, it seems appropriate that only staff familiar with verifying the identity of external experts *in their role as payees* in order to *establish the legal entity and payment details of the payees* as required by Article 86(3) of the FR should be delegated such tasks. Accuracy is of particular importance in this context, as the AGM is also used by and for EU institutions, agencies and other bodies that have concluded a Service Level Agreement with the PMO.

It seems doubtful that third parties or staff of the European Commission not specialised in such financial verification can provide the same degree of accuracy in doing so. Whilst they can establish the identity of a person by means of looking at the person's ID card, they will find it difficult to understand what to look out for (and what to communicate to the PMO) in order to ensure proper validation by DG BUDG. In addition, the communication of any information by intermediaries carries the risk of loss or distortion of this information along the way.

There does thus not seem to be any alternative, but equally effective and accurate means to confirm the payee's identity, than the collection of digital copies of external experts' national ID cards through uploading in the AGM. There is thus no reason to believe that such **collection** goes beyond what is necessary in the sense of Article 4(1)(c) of the Regulation to confirm the payee's identity under Article 86(3) of the FR.

c) Continued storage after identification

Once the PMO has confirmed the payee's identity and a respective bank account has been validated by DG BUDG, documents including the scans of external experts' national ID cards continue to be stored in the AGM *"To provide an audit trail and allow queries on past payments at all times..."*. This is confirmed by the PMO's reply to the complainant's request that the uploaded ID documents be permanently deleted without invalidating his AGM account. In that context, the PMO noted that *"In view of the clear instructions laid down in Article 86 FR and the justification for these instructions, the PMO considers it is not possible to respond positively to the request of the complainant"*.

Article 86(3) of the FR obliges the authorising officer to confirm the payee's identity. Once the identity has been confirmed, which is essentially a yes/no decision to be documented by the authorising officer, Article 86(3) of the FR does, however, not expressly refer to the need to hold on to documents initially collected for identification purposes after such identification has taken place.

After the payee's identity has been verified and this has been properly documented, it is also not clear what a scanned ID card could add in terms of *"transparency, accountability and proper payment implementation"*:

- Provided such yes/no decision is properly documented, it will be auditable and thus *"provide an audit trail"* of who verified what and when;
- A scanned ID card as such also does not contribute to *"queries on past payments at all times"*, as a copy of an ID card does not itself relate to any payment.

Once the payee's identity has been verified and this has been properly documented, there is thus no need to ***continuously store the uploaded scans*** of external experts' national ID cards in the AGM. Such continued storage thus goes beyond what is necessary in the sense of Article 4(1)(c) of the Regulation to confirm the payee's identity under Article 86(3) of the FR.

PART IV - Conclusion

Once the payee's identity has been verified by the authorising officer under Article 86(3) of the FR, there is no need to hold on to the uploaded scans of external experts' national ID cards in the AGM. Such continued storage thus goes beyond what is necessary in the sense of Article 4(1)(c) of the Regulation to confirm the payee's identity under Article 86(3) of the FR.

The EDPS acknowledges that it will not be possible to document *à posteriori* that the payee's identity has been verified by the authorising officer under Article 86(3) of the FR.

The PMO is therefore invited to delete uploaded scans of external experts' national ID cards from the AGM once the payee's identity has been verified by the authorising officer under Article 86(3) of the FR and this verification has been properly documented, and to amend the documentation of the processing operation at hand accordingly.

Done at Brussels,

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