

**Fraud and error**  
and the need for  
**cross-border information exchange**

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# 2016 report on fraud & error

- - Ongoing concern: lack of or untimely cross-border cooperation and information exchange
- + Increasing use of databases and e-tools, increase in data sharing, ...
- Sharing of information
  - intra-MS
    - per social security service
    - between social security services
    - multidisciplinary
      - most often: tax authorities
  - inter-MS
    - Coordination regulations
    - bilateral agreements
      - some MSs have bilateral agreements
      - some don't
      - some do not deem it necessary to conclude bilateral agreements
    - etc

# 2016 report on fraud & error

- Which data ? Mostly:
  - pensions (life/death)
  - applicable legislation
    - posting
    - simultaneous activities
    - art. 16 883/2004
  - healthcare
  - etc

# 2016 report on fraud & error

- A topical example of lack of information: EHIC
  - identity of card holder
  - validity of the card versus period of coverage
  - EHIC copycat websites (UK report)
- Most exchanges of information concern personal data (~ operational information)
  - exceptions:
    - information on legislative framework, administrative procedures, who is who etc (~ strategic information)
    - Beezy (H5NCP network)

# 2016 report on fraud & error

- List of bilateral agreements
  - legal value ?
  - legal value of data exchanged on the basis of these agreements ?
  - limits of bilateral agreements + benefits of pluri- or multilateral agreements (cf. Benelux projects)
- Examples of ongoing cross-border exchange of information
  - BE-FR: NEO and Pôle Emploi
  - DE-FR: partial access to each other's IT system on family benefits
  - etc

# Cooperation and information exchange

- Tackling fraud & error:
  - need for cooperation
  - need for information
  - even more so in a cross-border context
- Need for cooperation and the exchange of information
  - before
    - both for prevention and for the preparation of inspections
  - during
  - after inspections/case handling

# Cooperation and information exchange

- No cooperation without information (and vice versa)
- Information
  - strategic information
  - operational information
- Prevention, detection, enforcement
- Vast majority of MSs regrets not having more info from other MSs
- Udbetaling Danmark finds it problematic coordination rules do not include procedures for investigating cases of suspected fraud and error
  - info for such investigation often differs from info needed for soc.sec.
  - UDK good experience with NCPs of Germany, Poland and Switzerland

# Cooperation and information exchange

- Information exchange: legal framework(s) and sensitivities ?
  - legal
    - private law
    - administrative law
    - criminal and/or judicial law
    - fiscal law
    - etc
  - (legal) culture
    - different culture on privacy and data protection and the sharing of data in different countries/MSs

# Cooperation and information exchange

- Information:
  - data
  - personal data
    - privacy and data protection legislation
    - other
      - confidentiality clauses
      - professional/commercial secrets
      - etc
  - sensitive personal data
    - information on health (mental/physical)
    - information on the (alleged) commission of any offence
    - information on any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings
    - etc

# Best practice: Crossroads Bank for Social Security (BE)

- Founded by the Act of 15 January 1990 concerning the establishment and organisation of a Crossroads Bank for Social Security
- eGovernment
  - reduce administrative burden
  - make social security more effective
    - e.g. maximal automatic granting of benefits
  - increase legal certainty and reliability of data
  - reduce risk of fraud and error
    - data sharing
    - data matching
    - etc
  - and many more
  - more info: <https://www.ksz-bcss.fgov.be/en>

# Best practice: Crossroads Bank for Social Security (BE)

- 2016
  - 1.109.577.113 concrete electronic data exchanges
  - response time lower than 4 seconds in 99,27 % of the cases
- about 50 sorts of declaration forms eliminated
  - remaining 30 declaration forms: the number of headings has on average been reduced by two thirds
- Only once + automatic granting of benefits (ongoing)
- Effective protection of privacy and data
  - each data flux must be authorised by the independent Sectoral Committee of the Privacy Commission
  - data only accessible by authorised personnel
  - continues logging of data accessed

## Best practice: Crossroads Bank for Social Security (BE)

- Allows for datasharing and etools
  - Dimona
  - dmfa
  - Limosa
  - Dolsis
  - checkin@work
  - student@work
  - etc
- Effective tools for inspection services tackling fraud & error
  - before, during and after on-the-spot inspections

# Lessons learned from CBSS

- Information exchange & data sharing:
  - semantic interoperability
    - a white horse is not a horse (Gongsun Long)
    - need for qualified data
    - automated data exchange: need for syntactic interoperability
      - Specified data formats, communication protocols etc
  - data must be
    - accurate and correct
      - importance of ‘authentic sources’
    - up to date
      - speed is of the essence e.g. to avoid (cross-border) recovery procedures
      - ‘expiry date’ if no automated exchange with ‘authentic source’

# Lessons learned from CBSS

- Relevance of provisions on data protection
  - privacy
  - accuracy and reliability
    - of the data
    - of the system
  - legal value of the data exchanged
    - cave post-exchange “laundering” of data
- Weakest link: human factor
  - relevance of monitoring and enforcement of use
  - relevance of training of users

# Concluding remarks

- Remember Alfred Korzybski: the map is not the territory !
  - data is often just one side of the story
    - relation data and facts on the ground
  - UDW ~ ‘black holes’ in space : not directly perceptible
  - data = a tool for inspection services (a means to an end)
    - cannot replace inspections or lack of resources for inspection services
    - on-the-spot inspections still essential !
      - cf American intelligence debacle end of 20th, beginning of 21st century
  - phenomena associated with UDW show up in data neither timely nor sufficiently
    - e.g. health and safety issues

# Concluding remarks

- Accuracy of data shared
- Legal value of data shared
  - legal value of bilateral agreements ?
    - CJEU 1 October 2015 C-201/14 Smaranda Bara and Others
      - <http://curia.europa.eu/juris/liste.jsf?num=C-201/14>

# Concluding remarks

- Data protection: mostly reported as a nuisance (!)
- Lack of knowledge ? Lack of sense of importance?
  - on privacy and data protection
  - on the importance and relevance of privacy and data protection
  - on the impediments and possibilities resulting from privacy and data protection provisions

# Concluding remarks

- Interoperability !
  - legal, syntactic, semantic, operational
  - COM(2017) 134 final 23/3/2017
    - European Interoperability Framework - Implementation Strategy
- Data mining
  - profiling ?
  - finality principle ?
  - proportionality principle ?
  - right to information ?
- Automated decisions prohibited

# Concluding remarks on DP in 2016 F&E report

- Two fundamental steps need to be taken
  - In the first place, the cross-border cooperation between Member States' National Institutions of Social Security is to be facilitated, with due regard to enforcement.
    - Member States report issues with regard to cross-border cooperation and information exchange and in most cases seem unable to resolve these issues themselves.
    - The question whether initiatives at Union level are needed has to be addressed.
  - Secondly, the exchange of data between national competent authorities as well as the competent authorities in other Member States has to be regulated, with due regard for data protection concerns.
    - The lack of cooperation in this respect singlehandedly functions as a gateway to a number of issues amongst Member States in the field of social security coordination.
    - Consequently, these steps appear to be the requested first steps in any further action concerning fraud and error in the context of social security coordination.
- In some cases cross-border cooperation and information exchange does work and does work swiftly; however, Member States still report issues in both fields.
  - Bilateral agreements cannot always resolve these issues and in many cases the legal value of the agreements is questionable, e.g. in court.
  - Multilateral agreements on an international level, cf. the Benelux and Nordic and Baltic initiatives, are welcomed and - as past experiences in other domains have proven - could prove to be a more steady legal ground for cross-border cooperation and the exchange of information and an inspiration for supranational initiatives.
  - It seems clear that initiatives at the European Union level are called for.
  - Furthermore, it seems necessary to reflect about cross-border competences for inspection services.

# What might the future bring ?

- Quid COM(2016) 815 final: amendments to Coordination regulations
  - data can be exchanged directly between the competent institutions and the labour inspectorates, immigration or tax authorities of the States concerned
    - this may include the processing of personal data for purposes other than the exercise or enforcement of rights and obligations under the Coordination regulations
    - in particular to ensure compliance with relevant legal obligations in the fields of labour, health and safety, immigration and taxation law.
    - Further details shall be laid down by decision of the Administrative Commission.
  - competent authorities shall be obliged to provide specific and adequate information to concerned persons concerning the processing of their personal data (e.g. purpose) pursuant to the GDPR
    - relevant EU data protection acquis shall apply
    - see Italian NISS

# What might the future bring ?

- In order to protect the rights of the persons concerned
  - MSs shall ensure data requests and responses are
    - necessary and proportionate for the proper implementation of Regulation (EC) No 883/2004 and this Regulation
    - in accordance with European Data Protection legislation.
  - no automatic removal of benefit entitlement resulting from the data exchange
  - any decision taken on the basis of the data exchange should respect the fundamental rights and freedoms of the individual concerned
    - sufficient evidence
    - subject to a fair appeal procedure
- EESSI the elephant in the room ?

# Last but not least

- Where did the data shared or mined come from ?
- Risk of “computer says no” for EU citizens ?
- Bulk data sharing, data matching and data mining
  - administrative >< criminal procedures
    - ECtHR’s autonomous interpretations
    - quid prohibition of fishing expeditions ?
- First things first? Unique identifier for EU citizens?

# Thank you for your attention ! Questions ?

- “We live in a culture that's been hijacked by the management consultant ethos. We want everything boiled down to a Power Point slide. We want metrics and 'show me the numbers.' That runs counter to the immensely complex nature of so many social, economic and political problems. You cannot devise an algorithm to fix them.”
  - Carl Honore
- “One of the big problems of fb is that they employ too many engineers who do not think about how much influence they have on society. They are amusing themselves to death developing but do not think about the consequences of their work.”
  - Pattie Maes
- “Here’s a rather benign but illustrative example. On June 9, 2011, Google released a “doodle” honoring Les Paul which users found addictive to play with. This is a type of project that’s typically done by an individual engineer on their “20% time” in a day or two. A third party, RescueTime, estimated that 5.3 million hours were spent playing this game. Let us pause to consider that 5.3 million hours equates to about eight lifetimes. Did the doodle make a positive contribution to the world? Do engineers at Google have an obligation to consider this question before releasing the feature? What principle(s) should they use to determine the answer? These are all valid questions, but what is perhaps even more interesting here is the disproportionality between the amount of time engineers spent creating the feature (at most a few person-days, in all likelihood), and the amount of time users spent on it (several lifetimes). Often, in today’s world, engineers must grapple with these questions instead of relying on management or anyone else. Finally, the lack of geographic constraints means that engineers are generally culturally unfamiliar with some or most of their users. The cost-cutting imperative often leaves little room for user studies or consultations with experts that would allow software development firms to acquire this familiarity. This leads to the potential for privacy violations, cultural offenses, and other such types of harm. For example, people in many countries are notoriously sensitive to the representation of disputed border territories on maps. In one recent example, an error in Google maps led to Nicaragua dispatching forces to its border with Costa Rica. Google then worked with US State Department officials to correct the error.”
  - Shannon Vallor

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