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GB/MV/sn/D(2013)0497 **C 2013-0741**
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Subject: **Opinion on the notification for prior checking from the Data Protection Officer of the European Defence Agency in the area of leave management**

Dear Mr Brouwer,

On 24 June 2013, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Defence Agency ("EDA") a notification for prior checking of personal data in the area of leave management.

The notification was accompanied by 3 annexes (an internal note to staff on EDA computerised leave management system, the rules concerning internships in the EDA and a notice on personal data processing in the context of leave management for EDA staff). The EDPS also received a draft declaration of confidentiality in an additional request for information.

This notification was sent to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines"). The EDPS sent the draft for comments on 4 November 2013 and these were received on 13 November 2013. As this is an ex-post case, the deadline of two months for the EDPS to issue his Opinion does not apply; this case has been dealt with on a best-effort basis.

Legal aspects

This Opinion deals with the already existing leave and flexitime procedures at the EDA. It is based on the Guidelines, which allows the EDPS to focus on the EDA practices that do not seem to be compliant with the Guidelines and the principles of Regulation EC No 45/2001 ("the Regulation").

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The EDPS takes note that the notification contains the following statement: "the processing of medical personal data has been notified to the EDPS in an EDA prior notification on "Processing of Health data at EDA". Although the EDPS analyses these specific processing operations under C 2013-0740, it must be kept in mind that administrative data handled by the HR officer concerning health related data are processed in the context of the leave management and are analysed in the current case.

As to the legal basis, the EDA is bound by Council Decision of 24 September 2004 concerning the Staff Regulations of the European Defence Agency and Council Decision of 29 January 2007 amending Decision 2004/676/EC concerning the Staff Regulations of the European Defence Agency. These Decisions contain the rules on the management of leave operations at the EDA.

The purpose of the processing operations is to manage all entitlements for annual leave, special leave, sick leave and in general all the related working conditions of Temporary Agents (TA), Contract Agents (CA), Seconded National Experts (SNE) and Interns at EDA.

Information is provided to the data subjects through a specific note on processing of personal data in the context of leave management, which is available on the EDA HR intranet. The EDPS considers that it is in line with the Regulation.

Although containing most of the information required under the Regulation, the EDPS invites the EDA to add the EDPS as possible recipient of the data in the respect of his competences.

Moreover, the EDPS would like to draw the attention of the EDA to the case where a leave request is linked to the health situation of a family member, as it is also referred to in the notification and data protection notice. In such case, the EDPS considers that the privacy statement should foresee the communication of information to this family member whose personal data are processed by the EDA. If the EDPS admits that direct provision of such information would involve disproportionate efforts by the EDA, he considers that the Agency, amongst other appropriate steps, could at least ask staff members submitting such data to inform the family members concerned about the processing of their personal data and their rights in that respect.

The EDPS therefore recommends that the EDA modifies the data protection notice by adding a sentence that family members may have access to data concerning them, and ask that officials/staff members providing such data inform the persons concerned of those rights.

Regarding the retention of the data, the notification states that annual/special and sick leave requests are stored electronically in the leave management workflow on the EDA Server. Medical certificates with no indication of the medical diagnosis are stored in a locked cupboard with restricted access to the HR Unit. Such data is kept for a period of 5 years.

As regards the retention of the leave (annual/special/sick) the 5 years presented would not be in line with the Guidelines. Although long retention periods may be justified for some categories of leave, the EDPS considered in the Guidelines that for annual and sick leave, a retention period of 3 years maximum would be justifiable (point 5.1 and 5.2 of the Guidelines). Therefore, the EDPS invites the EDA to revise its retention policy to conform it to the Guidelines.

However, the EDPS notes that the retention period exceeding the three years would be considered as proportionate where it is strictly required in order to cover periods when a dispute or an appeal is underway.

Finally, as stated in the Guidelines, it is also possible that EDA has rules regarding financial compensation related to leave. In such case, with regards to payments in respect of leave not taken on termination of service or in the case where overtime can be compensated as paid time-off (compensatory payments in lieu of leave), the EDPS deems it appropriate to retain the data for up to 7 years at most. This conservation period is in line with the EU Rules applicable to the disposal of records with financial links. However, according to the Article 49 of the Implementing Rules to the Financial Regulation, personal data in supporting documents should be deleted as soon as they are not necessary for budgetary discharge, control and audit purposes.

Conclusion

In view of the above, the EDPS recommends that the EDA:
1- completes the privacy statement as regards the health related data which are processed;
2- amends the information provided in the data protection notice as explained above, especially as regards the recipients and the information to the family members of staff;
3- revises the retention period it applies to the administrative data on sick/annual/special leave;

The EDPS would like to invite the EDA to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI

Cc: Mr Gabriele BORLA, Data Protection Officer, European Defence Agency