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WRW/SS/cpl/D(2015) 2419 C 2014-0769
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Re: Opinion on prior checking in relation to an invalidity procedure and monitoring ongoing invalidity (Case 2014-0769)

[...],

The EDPS has examined the notification pursuant to Article 27(2)(a) of Regulation (EC) No 45/2001 ('the Regulation') of the European Parliament ('the EP') relating to the case of an **'invalidity procedure and monitoring ongoing invalidity'**.

1. Procedure

At the request of the EDPS, the DPO and the data controller have subsequently provided additional information.

As this is an **ex post notification**, the two-month period within which the EDPS must deliver its opinion does not apply.

The processing operation being examined relates to the processing of medical data in respect of which the EDPS has published guidelines: [Guidelines concerning the processing of health data in the workplace by Community institutions and bodies](#). The invalidity procedure itself has been described in previous EDPS opinions¹. **In its examination, the EDPS identifies practices therein which do not appear to comply with the Regulation and addresses relevant recommendations to the EP. This**

¹ See cases [2012-0863](#), [2011-0655](#), [2008-0626](#) and [2008-0555](#).

Opinion herein supplements opinions delivered by the EDPS in cases 2004-0203, 2004-0205 and 2007-0688 which also relate to the management of medical data by the EP.

2. Legal Analysis

2.1. Legal basis

Article 7 of Annex II to the Staff Regulations sets out the composition of an Invalidity Committee ('IC') and Article 15 of Annex VIII to the Staff Regulations provides for periodic examinations of former officials drawing invalidity allowance who have not reached retirement age. The legal basis on which the data processing operation is based also arises from these two articles.

The EDPS recommends that the data protection statement and notification should be updated to include Article 7 of Annex II to the Staff Regulations and Article 15 of Annex VIII to the Staff Regulations.

2.2. The personal data processed

The EDPS notes that the data subject's 'date of entering the Community'² and a very general outline of his/her medical history appear on the form attached to the note sent to the Appointing Authority ('AIPN') or the Authority Empowered to Conclude Contracts of Employment ('AHCC') – more precisely to the Processing Operations Manager – by the Medical Absences Management Department ('SGAM') if the threshold of 365 days of sick leave in three years is exceeded.

The EDPS also points out that if the disability of the data subject prevents him/her from communicating, the contact data of a trusted person may also be processed by the EP, as is the case for other checking of medical absences.

The EDPS recommends that the 'date of entering the Community' should be added to the other administrative data, the very general outline of the data subject's medical history should be added to the health data, and the contact data of a trusted person should be added to the list of personal data processed in the data protection statement and the notification for prior checking.

2.3. Recipients

Owing to the sensitivity of the personal data transmitted, the EDPS wishes to point out that the requirements set out in Articles 7, 8 or 9 of the Regulation must be observed for every transfer of data. The EDPS also wishes to stress the importance of reminding all recipients of their obligation to ensure that the data received is not processed for purposes other than those for which it was transmitted.

2.4. Retention policy

With regard to the retention of medical documents, the EDPS would like to recall the recommendations made in point 4 of its guidelines:

'.. as a general rule, the maximum conservation period for medical data is 30 years after addition of the last medical document to the file. The conservation period must be

² The 'date of entering the Community' is the date when the data subject started work at the institutions of the European Community/European Union.

evaluated and determined in the light of Article 4(1)(e) of the Regulation. As the EDPS recommended in its letter to the Committee of Heads of Administration of 26 February 2007³, the nature of the medical documents should be examined in the light of the rules applicable in order to determine what conservation periods would be suitable to each type of document. It is therefore necessary to examine to what extent and for what purpose it is necessary to keep various medical documents during and after an official's period of employment'.

However, the EDPS notes that the consultation procedure relating to specific retention periods for various medical documents which the Council of Heads of Administration submitted to the EDPS on 11 October 2010 pursuant to Article 28(1) of the Regulation is still ongoing. The EDPS will issue its decision on the consultation. Once a decision has been taken in this matter, the EP will be invited to review the retention periods.

2.5. Right to information

The EDPS recommends that information about monitoring ongoing invalidity and links to the Decision on medical checks and the data protection statement, duly updated, should be added to the general information about invalidity which appears on the EP intranet. A description of the steps in the procedure, duly updated, providing a reasonable and meaningful summary of the processing operation, should also be added to the general information. A link to the general information about invalidity should also be added to the general information about the management of medical absences which appears on the EP intranet.

In order to complete the information on the rights of access and rectification which appears in the notification and the data protection statement, the EDPS recommends adding supplementary information about access and rectification of files retained by the Medical Service or SGAM, as well as information about the timescales for carrying out such rectification. The notification should also state that each Unit will forward the request for access and rectification so that the data subject may access/rectify all the health data processed during the two parts of the procedure.

The data protection statement must contain the following clarification: the retention of medical data recorded in the medical file follows the procedures for the retention of medical files. The data subject must also be informed of the retention periods set out in Article 12 of the Decision on medical checks, and the data retention periods linked to monitoring ongoing invalidity.

It is clear that the invalidity procedure includes several other possible data transfer operations in addition to those mentioned in the notification and data protection statement. The EDPS recommends that the following should be added: - the AIPN/AHCC and the President of the Court of Justice to recipients of administrative data relating to the referral to an IC, - the Medical Service, another doctor appointed by the data subject and the Community judge to recipients of data subject to medical confidentiality, - and the Personnel and Career Management Unit and the Pensions and Social Insurance Unit to recipients of the AIPN decision.

³ See <https://secure.edps.europa.eu/EDPSWEB/edps/lang/fr/Supervision/Adminmeasures>.

The EDPS recommends that all the information specified above should be included in the notification and the data protection statement.

2.6. Blocking, erasure and destruction

To complete the information on the right of erasure, a statement should be added to the notification to the effect that erasure will take place as soon as possible if the request for erasure is considered to be justified.

2.7. Security of processing

[...]

3. Conclusion

In the light of the above and based on the principle of accountability, the EDPS expects the EP to implement the recommendations set out above.

In accordance with this Opinion, with regard to the general information and confidentiality of processing the EP must:

- add information about monitoring ongoing invalidity and links to the Decision on medical checks and the data protection statement, duly updated, to the general information about invalidity which appears on the EP intranet;

[...].

The data protection statement must be supplemented as follows by:

- updating the legal basis;
- adding supplementary information about access to and rectification of files retained by the Medical Service or SGAM, as well as information about the timescales for carrying out such rectification;
- specifying the retention periods for documents created during the invalidity procedure and monitoring of ongoing invalidity;
- adding the various personal data and the data on missing recipients.

The notification must be supplemented in the same way as the data protection statement.
[...]

Please inform the EDPS of the steps taken on the basis of the recommendations set out in this Opinion within a period of three months.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO - EP