

**REGISTER NUMBER: 569**

**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 15/02/2010

Case number: 2009-763

Institution: ERCEA

Legal basis: article 27-5 of the regulation CE 45/2001<sup>(1)</sup>

*(1) OJ L 8, 12.01.2001*

**INFORMATION TO BE GIVEN<sup>(2)</sup>**

*(2) Please attach all necessary backup documents*

**1/ Name and adress of the controller**

European Research Council Executive Agency (ERCEA), Carina Lenarduzzi, Head of Unit, Unit D.2 - Human Resources, Budget and Infrastructure. Covent Garden 2  
Place Rogier, 16  
1210 - Saint-Josse, Belgium

Please note that the name (and scope) of the D.2 unit will change by the end of November 2009 in "Human Resources, Infrastructure and Document Management"

**2/ Organisational parts of the institution or body entrusted with the processing of personal data**

ERCEA, Unit D.2 - Human Resources, Budget and Infrastructure. The ERCEA has signed a Service Level Agreement (SLA) with the Medical Service of the European Commission which processes all medical data "strictu sensu" (copy of the SLA in annexe).

**3/ Name of the processing**

Processing of Health Data.

**4/ Purpose or purposes of the processing**

Conformity with the recruitment, occupational health and personnel management requirements of the Staff Regulations of Officials and CEOS.

**5/ Description of the category or categories of data subjects**

Candidates who have been offered an employment in the ERCEA, temporary and contractual agents, SNEs, and trainees (in the future).

**6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)**

The data concern health data and more precisely administrative data related to health in the sense of art. 10 of Regulation 45/2001 and processes for the purposes referred to in art. 10, 2 b) of this Regulation. Below the list of data concerned and information on the occasion on which these are collected and dealt with:

a) Pre-recruitment medical visits: All candidates for employment in ERCEA have to undergo a pre-recruitment medical visit with the Medical Service of the European Commission. The results are communicated to the candidate and kept on the medical file of the candidate at the Medical Service. The certification of aptitude sent by the medical service to the Human Resource unit (HR unit) only mentions "apt/inapt/apt with reserve".

b) Annual medical visit, occupational medicine visits and other medical visits: the staff shall undergo a medical check-up every year either by the Medical Service or by a medical practitioner chosen by them. The results are only communicated to the staff member. No medical data in the strict sense contained in the medical examination report may be sent to the HR unit. The HR unit usually coordinates the appointments of the staff for the visit as requested by DG Admin.

c) Medical check to verify absence because of sickness/accident: no medical data in the strict sense contained in the medical examination report may be sent to HR unit. The HR manager receives a memo from the medical officer's decision following data:

- name, personnel number and post of the staff member concerned;
- the purpose of the memo (check in relation to absence from work on medical grounds, with dates of absence);
- the medical officer's decision (absence justified/not justified). The data is updated into SICCONGE.

d) Medical certificates: the staff member sends his certificate only to the Medical Service. Regularly, the Medical Service sends a list of the certificates received to the leave manager of ERCEA (with name, surname, personnel number, start and end date of the certificate). On this basis, the leave manager modifies the data introduced in SICCONGE by the secretary of the pertinent unit from MSC (illness without certificate) to MAL (illness with certificate).

e) Management of family leave, part-time for medical reasons: A medical certificate with a diagnosis of the illness or handicap and confirming its seriousness must be directly addressed to the Medical Service. As soon as the application request has been authorised by the appointing authority and, for the medical aspects, by the Medical Service, the data is transferred to the PMO for the payment of the salaries.

f) Management of special leaves of a medical nature (ill child, parent, etc): the certificate has to be sent to the leave manager directly and not to the Medical Service. The data is encoded in SICCONGE. Depending on the specific nature of the document, the staff member may block out irrelevant or superfluous personal data (e.g. medical data not needed by the leave manager) as long as enough details remain for the appointing authority to establish the right.

g) Invalidity procedure: depending on the decision of the invalidity committee, the Medical Service will inform the HR unit that the staff member should immediately suspend his activities for medical reasons (without giving any medical information) or the Medical Service will communicate to the HR unit the modalities of the return to work as decided by the invalidity committee (without any medical data).

## **7/ Information to be given to data subjects**

As specified in the paragraph 10. of the SLA with the Medical Service, the latest applies the provisions of the regulation CE 45/2001 and is responsible for informing and collecting the consent of the data subjects (see the relevant documents in annexe regarding the processing of medical data by the Medical Service).

The candidates who are offered a contract have to fill in and to sign forms containing personal data for the PMO. A privacy statement will be handed out to all newly recruited agents regarding the processing of their personal data (document in draft version). Regarding the management of leaves, the leave manager follows the instructions of DG Admin "INSTRUCTIONS FOR THE MANUAL PROCESSING OF SUPPORTING DOCUMENTS". This document will be communicated to all newly recruited staff and available on the ERCEA Intranet.

## **8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)**

Access to medical files: In accordance with Article 6a of the Staff regulations, staff members shall, on request, have the right to acquaint themselves with all the documents in their medical files and to take copies of them and to request that incomplete or incorrect data be rectified if duly justified. Those procedures are managed directly by the Medical Service of the European Commission. Access to personal file: In conformity with Article 26 of the Staff Regulations, an official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them. The personal file shall be confidential and may be consulted only in the offices of the administration or on a secure electronic medium. The data linked to leaves can be consulted in SICCONGE and the staff member has the right to request that incomplete or incorrect data are rectified if duly justified. In the future, the personal file will be accessible on Sysper2 (DIGIT is finalising a version for Executive Agencies).

#### **9/ Automated / Manual processing operation**

Data are processed manually. Pre-recruitment aptitude certificate: the certificate is inserted in the paper personal file only accessible to authorised agents. Annual medical visit, occupational medicine visits and other medical visits: The HR unit keeps a list of the staff members who have requested appointments with the medical service. This list is used to coordinate the appointments with the Medical Service and to double check the invoices from the Medical Service with the ERCEA budget department. Sick leaves and family leaves of a medical nature: the justified leaves are entered manually into SICCONGES and/or SIC PER.

#### **10/ Storage media of data**

Pre-recruitment aptitude certificate: the certificate is inserted in the paper personal file only accessible to authorised agents. Annual medical visit, occupational medicine visits and other medical visits: Lists of staff concerned are kept by the authorised agents dealing with appointments in a locked archive file. Sick leaves: the list of medical certificates sent by the medical service is stored by the leave manager in a locked archive. Family leaves of a medical nature: A copy of the appointing authority's decision to authorise the request is inserted in the personal file. Special leaves of a medical nature: The justifying documents are conserved by the leave manager in a locked archive. Invalidity procedure: the note from the Medical Service would be added to the personal file.

#### **11/ Legal basis and lawfulness of the processing operation**

The legal basis for the processing of administrative data related to health are the Staff Regulations.

Pre-recruitment medical visits: Articles 28 and 33 of the Staff Regulations and Articles 12(d), 13 (2) and 83 (2) of the CEOS : "An official may be appointed only on condition that: ... (e) he is physically fit to perform his duties" (Article 28)." Before appointment, a successful candidate shall be medically examined by one of the institution's medical officers in order that the institution may be satisfied that he fulfils the requirements of Article 28(e)" (Article 33).

Annual medical visit, occupational medicine visits and other medical visits: Article 59 (6) of the Staff Regulations, Articles 16 (1), 59 and 91 of the CEOS: "officials shall undergo a medical check-up every year either by the institution's medical officer or by a medical practitioner chosen by them". The obligation of supervising the health of the Commission employees is provided for by the Framework Directive 89/391/CEE.

Medical check during an absence because of sickness or accident: Article 59 (1) of the Staff Regulations: "An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave. The official may at any time be required to undergo a medical examination arranged by the institution".

Processing of medical certificates: Article 59 (1) of the Staff Regulations, provides that: "An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave... He shall produce a medical certificate if he is absent for more than three days. This certificate must be sent on the fifth day of absence at the latest, as evidenced by the date as postmarked. Failing this, and unless failure to send the certificate is due to reasons beyond his control, the official's absence shall be considered as unauthorised."

Management of family leave, part-time for medical reasons: Article 42b of the Staff Regulations provides that " In the case of medicallycertified serious illness or disability of an official's spouse, relative in the ascending line, relative in the descending line, brother or sister, the official shall be entitled to a period of family leave without basic salary. The total period of such leave shall not exceed ninemonths over the official's entire career. The second paragraph of Article 42a shall apply."

Management of special leaves of a medical nature: Annexe V section 2 of the Staff Regulations on special leave.

Invalidity procedure: article 53 of the Staff Regulations provides that "An official to whom the Invalidity Committee finds that the provisions of Article 78 apply shall automatically be retired on the last day of the month in which the appointing authority recognizes his permanent incapacity to perform his duties." Article 78.

## **12/ The recipients or categories of recipient to whom the data might be disclosed**

The authorised agents in the HR, budget services and PMO. Medical certificates can be required by the authorised agents from OIB for the ordering of special medical equipment.

In addition, certain administrative details of the case may be disclosed on a temporary basis to:

- a) the Legal Service, to allow it to prepare the defence in the event of an appeal before the Civil Service Tribunal;
- b) judges of the Civil Service Tribunal, at their request;
- c) the Ombudsman, at his request;
- d) the European Data Protection Supervisor

## **13/ Retention policy of (categories of) personal data**

The ERCEA appliesby analogy the policy of the European Commission as per SEC(2007)970 "Common Commission-level retention list for the European Commission files". The Specific Rentention List (SRL) is currently being created by the ERCEA Document Management Officer and will be available in early 2010.

13 a/ time limits for blocking and erasure of the different categories of data  
(on justified legitimate request from the data subject)  
(Please, specify the time limits for every category, if applicable)

na

14/ Historical, statistical or scientific purposes

*If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,*

na

15/ Proposed transfers of data to third countries or international organisations

The personal files are always kept by the ERCEA. If a staff member gives his/her resignation and takes up duty with another EU institution or body, a new personal file will have to be opened by the new employer. It may happen that some clarifications are asked by the new employer (another EU institution or body) to ERCEA which may provide them according to art 7 of R. 45/2001. Where needed prior consent will be asked to the data subject.

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

AS FORESEEN IN:

X Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

☐ Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

☐ Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

☐ Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

☐ Other (general concept in Article 27.1)

17/ Comments

In order to give more detailed and organised information a breakdown of specific processing operations has been prepared and gathered in the table named "Health Data - Breakdown of ERCEA Data Processing Operations and Annexes" accompanying the notification form.

All the Annexes are organised as follows:

List of Annexes enclosed in the table "Health Data - Breakdown of ERCEA Data Processing Operations and Annexes":

- Access to medical files
- Declaration of confidentiality concerning the computer tools used by the medical services
- Declaration of confidentiality medical file
- Confidentiality statement related to the handling of personal data within the framework of the process 'control of sickness leave'
- Instructions for the manual processing of supporting documents
- Déclaration de confidentialité relative au processus de mise en invalidité

List of Annexes provided separately:

- SLA with the Medical Service
- SLA with the PMO
- ERCEA privacy statement for newly recruited staff (draft version)

PLACE AND DATE: Brussels, 13 November 2009

DATA PROTECTION OFFICER: Donatella Piatto

INSTITUTION OR BODY: European Research Council Executive Agency (ERCEA)