



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

## AUDIT REPORT ON THE MEDICAL SERVICE OF THE GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN UNION (GSC MS)

Brussels, 30 and 31 January 2024  
EDPS case number 2023-1128

### *Executive Summary*

#### *Introduction*

The European Data Protection Supervisor (EDPS) is the independent supervisory authority established by Article 52 of Regulation (EU) 2018/1725 ('EUDPR')<sup>1</sup> responsible for:

- Monitoring and ensuring the application of the provisions of the EUDPR and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a EU institution or body;
- Advising EU institutions, bodies, offices and agencies (EUIs) as well as data subjects on all matters concerning the processing of personal data.

To these ends, the EDPS fulfils the duties provided for in Article 57 of the EUDPR and exercises the powers granted in Article 58 of the EUDPR. Among his powers to investigate, the EDPS can carry out investigations in the form of data protection audits. The power to audit is one of the tools established to monitor and ensure compliance with the EUDPR.

This audit is part of the EDPS annual audit plan for 2023 and should be viewed as the final stage before formal action under Article 58 of the EUDPR. The formal Decision was communicated to the Secretary General of the Council of the European Union by means of an Announcement Letter dated 25 October 2023.

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98,

The fieldwork was carried out on 30 and 31 January 2024 at the premises of the medical service of the General Secretariat of the Council of the European Union (GSC MS) in Brussels<sup>2</sup>.

Further contact with GSC MS took place concerning the minutes and the last item of evidence was received by the EDPS on 13 February 2024. The final minutes of the audit were sent to the Secretary General of the Council of the European Union on 4 March 2024. The minutes summarised the meetings with the Council of the European Union and the GSC MS staff during the exercise. A list of evidence requested during the audit was provided by the EDPS as an annex to the minutes.

This audit fits into the EDPS Strategy 2020-2024<sup>3</sup>. The Strategy underlines that a distinction should be made between measures which were introduced by EUs during the COVID-19 crisis that developed naturally and those which accelerated only due to extraordinary circumstances (i.e., the contact-tracing public health measures and COVID-19 self-declarations); the latter should be recognised as temporary and discarded once the crisis is over<sup>4</sup>. In the Strategy, the EDPS also highlighted that the new reality requires that the data protection community continuously strive to reach a fair balance between the need to ensure public health and the right to privacy and the protection of personal data<sup>5</sup>.

Overall, the EDPS notes that the GSC MS cooperated with the EDPS audit team in an exemplary way.

### *Scope of the audit*

This audit focuses on the implementation in practice of the **retention periods applicable to different medical documents**, which are kept in the GSC MS's medical files.

Data concerning health is one of the special categories of personal data included under Article 10 of the EUDPR. The GSC MS processes the health data of thousands of data subjects. Therefore, it is the responsibility of the GSC MS as controller to adopt necessary and proportionate retention periods for each category of personal data they process and store, in line with Article 4(1)(e) of the EUDPR. In this spirit, the scope of the audit was determined by the EDPS as covering, in particular, the implementation of the recommendations contained in a previous EDPS Opinion on the retention periods of different medical documents.

The EDPS intends to accompany the EUDPR compliance process and to point out infringements, as the case may be. This audit additionally provides the opportunity to raise awareness on data protection issues more generally. Whenever relevant and necessary, the EDPS auditors could examine related activities and other related processing operations.

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<sup>2</sup> Justus Lipsius Building, Rue de la Loi 175, 1000 Bruxelles.

<sup>3</sup> [https://www.edps.europa.eu/sites/default/files/publication/20-06-30\\_edps\\_shaping\\_safer\\_digital\\_future\\_en.pdf](https://www.edps.europa.eu/sites/default/files/publication/20-06-30_edps_shaping_safer_digital_future_en.pdf)

<sup>4</sup> EDPS Strategy, p. 12.

<sup>5</sup> EDPS Strategy, p. 10.

### *Key findings of the audit*

The audit report summarises the findings identified during the data protection audit.

Based on an analysis of the documents received during the audit, the EDPS established that the GSC MS has, in some cases, not duly implemented in practice the retention periods applicable to certain medical documents kept in the GSC MS's medical files.

The **main findings** include the following:

- While the GSC MS in most cases applies established retention periods and informs data subjects accordingly, in certain cases it is necessary to improve the application of the **retention periods** and the **information to data subjects**, in particular for certain electronic means of processing medical data;
- The currently applied retention period of five years for medical files of candidates which are not recruited due to medical unfitness is **not sufficiently justified** under Article 4(1)(e) of the EUDPR (storage limitation);
- The GSC MS has satisfactorily applied, with a few exceptions, the applicable retention periods for personal data used to **manage the Covid-19 crisis**;
- The GSC MS has established **processes** for the application of established retention periods for some of the electronic means of processing medical data. However, such processes only partially cover the categories of personal data processed in the main information system which processes medical data.

### *Recommendations and follow up to the audit*

The findings of the audit point to potential non-compliance with the EUDPR. Therefore, the EDPS decided to **refer these matters to the GSC MS, as controller, in the form of recommendations**, in line with the powers granted to the EDPS under Article 58(2)(c) of the EUDPR. The EDPS notes that these recommendations must be implemented by the GSC MS<sup>6</sup> within the deadlines indicated in the audit report.

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<sup>6</sup> During the onsite audit, Council MS already showed willingness to proceed with the appropriate implementation in practice of the recommendations issued by the EDPS in relation to retention periods applicable to different medical documents.

The EDPS considers that, in view of the above circumstances, referring a matter to the controller is an appropriate and necessary corrective measure. A primary purpose of the EDPS' power to refer a matter to the controller under Article 58(2)(c) of the EUDPR is to ensure that data subjects are afforded an adequate level of protection and to allow the controller to remedy any finding of inadequacy within the deadline set for each of the recommendations.

Brussels, 05 December 2024

*(e-signed)*  
Wojciech Rafał WIEWIÓROWSKI