



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Mrs Beáta GYŐRI-HARTWIG  
Executive Agency for Health and  
Consumers (EAHC)  
DRB A3/045  
L-2920 LUXEMBOURG

Brussels, 25 January 2011  
GB/IC/kd D(2011)137 C 2010-0957

Dear Mrs GYŐRI-HARTWIG,

I am writing to you in respect of the notification for prior checking on "management of leave, missions and flexitime" at the Executive Agency for Health and Consumers (EAHC) sent on 2 December 2010 (case 2010-0957) pursuant to Article 27(1) of Regulation (EC) No 45/2001 (hereafter "the Regulation").

After having examined the data processing operations described in the prior checking notification and after having received the requested additional information from the EAHC, the European Data Protection Supervisor (EDPS) has reached the conclusion that, for the reasons described below, the processing of missions is not subject to his prior checking. As to the management of leave and flexitime at the EAHC, while these processing operations are in principle subject to prior checking under Article 27(2)(a) of the Regulation, the EDPS will however not, for the reasons set out below, carry out a specific detailed assessment of these processing operations under Article 27(3) of the Regulation.

As concerns the processing of missions at the EAHC, this is mainly an automated operation carried out in the MIPS application, which is established and maintained by the European Commission. After careful analysis of the notification, the EDPS has not identified any specific risks to the rights and freedoms of data subjects by virtue of the nature, the scope or the purpose of the processing of missions. The EDPS further considers that this processing operation does not fall under Articles 27(2)(a), 27(2)(b), 27(2)(c) or 27(2)(d) of the Regulation. In particular as regards Article 27(2)(b) of the Regulation, under which the notification was submitted, the EDPS does not consider that the processing operation would involve the evaluation of personal aspects relating to the data subjects. The EDPS therefore concludes that the processing of missions is not subject to prior checking. The EDPS however takes good note of the guarantees entered into by the EAHC with the travel agency, in accordance with Article 23 of the Regulation, as well as the adoption by the EAHC of a specific privacy policy in respect of the administration of missions, which satisfies the requirements of Articles 11 and 12 of the Regulation.

---

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu) - Website: [www.edps.europa.eu](http://www.edps.europa.eu)

Tel.: 02-283 19 00 - Fax : 02-283 19 50

With respect to the processing of leave requests and flexitime at the EAHC, these processing operations are carried out by automated means in Sysper 2, an application established and maintained by the European Commission. The EAHC uses a version of Sysper 2 developed for executive agencies, which is in essence the same system but with access to less functions. The EDPS notes that as concerns flexitime, data are entered in Sysper 2 via manual input by the data subjects; the EDPS notes that there is no automatic input of data through the use of a technology presenting specific risks (Article 27(1)) for the individuals (such as RFID). These processing operations raise specific risks under Article 27(2)(a) of the Regulation since they involve the processing of data relating to health (e.g. family and special leave); they are therefore in principle subject to prior checking by the EDPS in accordance with Article 27(3) of the Regulation.

However, taking note of the above, the EDPS is of the view that it should not carry out a specific assessment of the EAHC processing operations in respect of leave and flexitime since they must be considered in relation to the prior checking of the overall system Sysper 2: Time Management module (TIM), which was already subject to prior checking by the EDPS (case 2007-063)<sup>1</sup>. As was underlined in the EDPS prior checking opinion in case 2007-063, in view of reducing the burden of notification, all DGs that implement the time management system in accordance with DG ADMIN's directions are covered by its notification, whilst retaining local responsibility for the processing. *In extenso*, this applies also to executive agencies of the European Commission that use the Sysper 2 system management module in accordance with DG ADMIN's directions. In this respect, the EDPS notes that the EAHC uses the Sysper 2 system as implemented by the Commission and that it applies the same rules than the Commission in respect of management of leave<sup>2</sup>. Based on these considerations, the EDPS will therefore not carry out a specific assessment under Article 27(3) of the Regulation of the processing of leave management and flexitime at the EAHC in as far that such processing is in accordance and within the remit of the prior checking case 2007-063<sup>3</sup>. However, should the processing carried out in Sysper 2 in respect of leave management and flexitime at the EAHC substantially depart from the original processing in Sysper 2 (such as new functions and/or purposes), the EDPS should be notified thereof.

Nevertheless, the EDPS wishes to make a number of recommendations to help ensure that the processing of leave data and flexitime by the EAHC is carried out in an appropriate manner, as follows:

- **Compliance with EDPS prior checking opinion 2007-063:** the EAHC should ensure that the processing operations performed by EAHC in respect of leave management and flexitime (use of Sysper 2 and maintenance of manual files) fully comply with the recommendations made by the EDPS in his prior checking opinion in the case 2007-063. In particular, the EDPS underlines the importance of complying with the recommendation that HR personnel who processes administrative documents containing data relating to health (e.g. medical certificates, leave applications

---

<sup>1</sup> Opinion on the notification for prior checking received from the Data Protection Officer of the Commission regarding "SYSPER 2: Time Management module", 29 March 2007 (Case 2007-063).

<sup>2</sup> Pursuant to Article 1 of the Decision of the Steering Committee of the Executive Agency for the Public Health Programme on the adoption of implementing rules to the staff regulations, adopted on 21.12.2005, "*the general implementing rules of the Staff Regulations, as adopted by the Commission, and listed in Annex I, shall apply to the staff of the Executive Agency for the Public Health Programme.*" This Annex refers to several decisions of the Commission governing leave of absences and special leaves.

<sup>3</sup> The prior checking opinion in the case 2007-063 covers the management of flexitime and all leave or absences at the Commission.

containing a reason for leave that is health-related) must be subject to an obligation of secrecy equivalent to that of a health professional.

- **Responsibility of the EAHC as data controller:** The EAHC indicated in the notification form that "for these data processing operations the responsibility lies with the European Commission". The EDPS understands that the Commission, who is maintaining the Sysper 2 application, is responsible for ensuring compliance of the Sysper 2 system with the Regulation. However, the EAHC remains responsible for compliance with the Regulation as concerns its own use of the system and its own manual processing of justification documents (e.g. legal basis, information to data subjects, ensuring exercise of rights by data subjects, retention of physical/paper-based data, etc.).
- **Legal basis:** As concerns the management of leave, the EDPS takes note of the Decision of the EAHC Steering Committee on the adoption of implementing rules to the staff regulations of 21 December 2005 applying by analogy Commission Decisions on leave, which reinforces the lawfulness of the processing in the light of Article 5(a) of the Regulation. Similarly, as concerns flexitime data, the EAHC guidelines for the implementation of flexitime in EAHC of 29 January 2010 reinforce the lawfulness of the processing in the light of Article 5(a) of the Regulation. However, concerning the mention by the EAHC of Article 5(d) as a legal basis for these processing operations, the EDPS underlines that consent should be used with caution to legitimise a processing in the employment context. As was outlined by the Article 29 Working Party, consent should only be relied upon in "cases where the worker has a genuine free choice and is subsequently able to withdraw the consent without detriment."<sup>4</sup> Furthermore, in those cases where consent could be sought, the EAHC must ensure that sufficient information is provided to data subjects and that consent is unambiguous for it to be valid.
- **Data retention:**
  - (i) The notification indicates that in respect of data processed prior to 1st January 2010 the following retention periods apply: "*documents concerning flexitime (e.g. requests for recuperation) stored in the safe in paper format by the HR cell are kept for the period of 5 years after the European Parliament's discharge*"; "*flexitime data submitted before the 1st January 2010 are stored in the U drive in the form of Excel sheets for 1 year after the staff member leaves the EAHC*". In view of Article 4(1)(e) of the Regulation, the EDPS considers that the periods for retaining flexitime data and related documents, both in paper and electronic format, are excessive in view of the purposes of the processing. The EDPS underlines that shorter retention periods should be adopted as concerns storage of flexitime data, as described in EDPS prior checking opinions on flexitime, and in particular in his opinion in case 2007-063.
  - (ii) No specific retention periods for paper based processing carried out by the EAHC after the 1st January 2010 are mentioned in the notification or in the EAHC privacy statement on leave management, missions and flexitime. The EDPS underlines that the EAHC should adopt appropriate time limits for the retention of paper based documents processed after 1st January 2010 in connection with leave and flexitime. The EDPS underlines that those retention periods must be differentiated according to the types of data retained and the purposes for storing them. Further, those retention periods must be in accordance with the recommendations made in his opinion 2007-

---

<sup>4</sup> See Opinion 8/2001 of the Article 29 Working Party on the processing of personal data in the employment context, adopted on 13 September 2001.

063, which are also applicable to the retention of paper based documents. Those retention periods should be clearly indicated in the relevant privacy statements.

- **Transfers of data:** In the light of Article 7 of the Regulation, the EDPS reminds the EAHC that administrative documents containing health-related data should only be disclosed to those recipients who have a need to know. Unnecessary information about the health status should be removed from these documents if this information is not necessary for the purpose for which the data are transmitted (e.g. no data about the type of medical examination should be communicated to the budget unit). Furthermore, all recipients of data should be reminded not to process the data received for any purpose other than the one for which they were transmitted to them, as required under Article 7(3) of the Regulation.
- **Information to data subjects:** There is currently one single notice informing about missions, flexitime and leave. For reasons of clarity, since these processing operations are carried out in two distinct fields -management of missions and time management- for very different purposes, the EDPS recommends that the EAHC adopts two separate privacy notices, one for missions and an another one for the management of leave and flexitime. These privacy notices should provide all the information required under Articles 11 and 12 of the Regulation.

The EDPS would appreciate if you could share these considerations with the data controller and inform him within three months of receipt of this letter of the measures implemented to comply with the above recommendations.

**(signed)**

Giovanni BUTTARELLI