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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the Executive Agency for Competitiveness and Innovation on Leave management

Dear Mr L'Heritier,

On 27 March 2013, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the **Executive Agency for Competitiveness and Innovation** ("EACI") a notification for prior checking concerning leave which covers annual leave, sick leave and all kinds of special leave. The notification was accompanied by the following documents:

1. Privacy statements for the three kinds of processing operations;
2. Commission Decision of 5/11/2010 on implementing provisions on absences as a result of sickness or accident;
3. Commission Decision introducing implementing provisions on absences as a result of sickness or accident;
4. Service Level Agreement between DG HR and EACI of 28 February 2012;
5. Declaration on confidentiality.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines") and before the deadline given to EU institutions and bodies to submit their notification (end of March 2013). The EDPS sent the draft for comments on 27 May 2013 and these were received on 10 June 2013.

As regards the processing in the area of flexitime, the EACI strictly applies the European Commission system. In such cases, the EDPS took the view that EU bodies that follow DG HR directions on Flexitime are covered by its general notification to the EDPS, whilst still retaining local responsibility. However, if a notification under Article 27 is thus not required, EACI must still ensure that its register includes an Article 25 notification on the processing operation.

Legal aspects

This Opinion deals with the already existing leave procedures at EACI. It is based on the Guidelines, which allows the EDPS to focus on EACI practices that do not seem to be compliant with the Guidelines and the principles of Regulation 45/2001.

As regards the information and the procedures to grant rights of the data subjects, the notification makes reference to the privacy statements that were annexed. As such notification is meant to be published in the register of notification of the EDPS, the relevant information should be foreseen directly in the notification itself.

The EDPS welcomes the procedure described by the EACI, specifically the fact that EACI insists on avoiding the processing of data that are not necessary for the processing operations concerned. He also welcomes the Service Level Agreement signed with the DG HR and the declaration of confidentiality with regard to the processing of personal data.

Conclusion

In view of the above, the EDPS recommends that the EACI amends the notification as to reflect the information provided in the privacy statement as explained above.

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

(signed)

Giovanni BUTTARELLI

Cc: Ms Elena FIERRO, Data Protection Officer, EACI