



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Costas DASKALAKIS
Head of Human Resources, Administration
and Communication Unit
Education, Audiovisual and Culture
Executive Agency
Avenue du Bourget 1, BOUR
BE-1140 Brussels

Brussels, 21 June 2013
GB/MV/et D(2013)1246 C 2013-0336
Please use edps@edps.europa.eu for all
correspondence

Subject: Opinion on a notification for prior checking received from the Data Protection Officer of the Education, Audiovisual and Culture Executive Agency regarding processing of personal data in the area of leave and flexitime.

Dear Mr Daskalakis,

On 27 March 2013, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer ("DPO") of the Education, Audiovisual and Culture Executive Agency ("EACEA") a notification for prior checking concerning "processing of personal data in the area of leave and flexitime". The notification was accompanied by the following documents:

1. Decision of the Steering Committee of the Education, Audiovisual and Culture Executive Agency on the adoption of implementing rules to the staff regulations of December 19th, 2005;
2. Decision of the Steering Committee on the adoption of implementing rules to the staff regulations - provisional decision pending for Commission approval;
3. Declaration of confidentiality for processing of personal data related to health;
4. Privacy statement for data related to health.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines")¹. However, since the EACEA uses Sysper2 for the management of its flexitime system and the procedures established by the

¹ Guidelines concerning the processing of personal data in the area of leave and flexitime adopted on 20 December 2012 (EDPS 2012-0158).

European Commission (EC), the notification does not cover this aspect. Processing operations in this field (flexitime management) are covered by EC's notification (case 2007-0063). The notification is also complementary to EACEA's notification on the processing of personal data related to health (case 2012-0537).

This Opinion deals with already existing leave procedures at EACEA. It is based on the Guidelines, which allows the EDPS to focus only on the EACEA's practices that do not seem to be in conformity with the Guidelines and the principles of the Regulation 45/2001. The draft Opinion was sent to the DPO for comments on 27 May 2013. The EDPS received a reply on 7 June 2013.

1. Legal aspects

The notification indicates that information is provided to the data subjects through specific privacy statements. The EACEA referred to the privacy statement of the European Commission relating to the processing operations in the context of Sysper2 (available on Sysper2), and it also provided the EACEA privacy statement on the processing of data related to health, which is available on the EACEA Intranet. Nonetheless, **the EDPS invites EACEA to adopt a specific privacy statement on the processing of personal data in the area of leave entitlements**, in order to provide the data subjects (temporary and contract agents) with complete information on both the automatic and manual processing operations in this field. Indeed, a specific privacy statement is necessary to ensure the fairness of the processing operation.

The EDPS notes that for the processing of data related to leave, the EACEA follows the rules of the EC (The Common Retention List) which, inter alia, establish the retention periods for staff personal files. It should be emphasised that in the light of art. 4(1)(e) of the Regulation, personal data may be kept in a form enabling the identification of data subjects for no longer than necessary for the purposes for which they were collected or further processed.

In his Guidelines, the EDPS stated that for the purposes of part time, parental and family leave or leave on personal grounds it is appropriate to retain relevant staff data until termination of employment and beyond this period only in cases in which any right of the data subject still persist or there is an ongoing appeal. Retention periods foreseen in the notification for this type of data are not in line with these Guidelines as they allow to keep them in the personal file of the staff member 8 years after the extinction of all rights of the person concerned and of any dependents, and for at least 120 years after the date of birth of the person concerned. Therefore, **the EDPS invites the EACEA to adapt its current retention policies to the retention periods stipulated in the Guidelines**. Given the fact that as an executive agency established by a decision of the European Commission, EACEA has to comply with the Common retention list for European Commission files (CRL) and has no possibility to modify the retention period of its files unless the Commission makes any change required, the EDPS will pursue this matter further with the Commission services at a general level.

2. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided that the EACEA, in its quality of controller:

1. adopts a specific privacy statement on the processing of personal data in the area leave entitlements;
2. endeavours to adjust its retention policies on data related to leave on personal grounds, part-time, parental or family leave to the retention periods stipulated in the Guidelines.

(signed)

Giovanni BUTTARELLI

Cc: Mr Hubert Monet, Data Protection Officer, EACEA