

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Christian F. LETTMAYR
Acting Director
Cedefop
P.O.Box 22427
GR-55102 Thessaloniki
GREECE

Brussels, 3 July 2013
GB/MV/kd D(2013) 1376 C 2012-0265
Please use edps@edps.europa.eu for all
correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Centre for the Development of Vocational Training concerning leave management.

Dear Mr Lettmayr,

On 17 March 2012, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Centre for the Development of Vocational Training ("Cedefop") a notification for prior checking concerning leave management. The notification was accompanied by the following documents:

1. Decision of Cedefop/DGC/13/2011 on the adoption by analogy of implementing rules to the Staff Regulations¹;
2. Decision on Rules governing in-service training at Cedefop (revised version 2010-07-09);
3. Decision laying down rules on the secondment to Cedefop of national experts (2009-06-05);
4. Privacy statement in relation to the processing of data to related to leave management (Information to data subjects leave management).

The DPO sent this notification while the Guidelines on Leave and Flexitime (the "Guidelines") were being drafted. Therefore, the procedure was suspended between 17 March 2012 and 31

¹ Covering the following Decisions: Commission Decision on introducing implementing provisions on leave; Commission decision on general implementing provisions for Article 42a of the Staff Regulations concerning parental leave; Commission Decision on Article 42b of the Staff Regulations concerning family leave and Commission Decision on general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on transferring pension rights.

March 2013 for adoption and implementation of the Leave and Flexitime Guidelines². The EDPS sent the draft for comments on 2 April 2013 and these were received on 25 June 2013.

1. Legal aspects

This Opinion deals with the already existing leave management processing operations at the Cedefop. It is based on the Guidelines, which allows the EDPS to focus on the Cedefop practices that do not seem to be compliant with the Data Protection Regulation 45/2001. The EDPS also takes note that he received a notification from the Cedefop on the processing operations relating to the recording of working hours and flexitime administration, whose conformity is also analysed along the Guidelines in case 2012-0679.

The purpose of the processing operations covers the management of all entitlements for annual leave, special leave, maternity leave, parental and family leave for Officials, Temporary Agents (TA), Contract Agents (CA) and Seconded National Experts (SNE). It also covers the management of annual leave for trainees.

The EDPS notes that the processing in question is lawful in terms of Article 5(a) of the Regulation³ and that the leave management data are processed in compliance with data quality principles set out in its Article 4(1).

As regards the processing of special categories of data (health related data and data that could reveal the sexual orientation) the EDPS notes that the procedure in place at the Cedefop is in line with Article 10 of the Regulation.

Besides, in accordance with Articles 13 and 14, the rights of access, rectification and blocking/erasure are granted to the data subjects. The EDPS takes note that the right of blocking/erasure will be dealt with on a case-by-case basis in accordance with the Cedefop Code of Good Administrative Behaviour, in particular articles 14 (acknowledgement of receipt) and article 17 (reasonable time for taking decisions).

The security measures that are described in the notification are in line with the requirements of Article 22.

However, the EDPS would like to make the following comments on the leave management processing operations.

Information is provided to the data subjects through a specific privacy statement complying mostly with Articles 11 and 12. However, the EDPS considers that the privacy statement should be amended in the section *Rights of the data subjects*, so as to include the functional email address that staff members should use to ask for a correction to the HR service. So far, only contact details of the DPO for queries and contact of the EDPS for complaints are foreseen.

As regards **recipients**, the Guidelines clearly state that data should only be transferred to the relevant service of the controller (namely HR). The EDPS takes note of the clarifications made in the notification as to the reasons why each of the recipients needs the data and the

² Guidelines concerning the processing of personal data in the area of leave and flexitime adopted on 20 December 2012 (EDPS 2012-0158).

³ Based on Articles from the Staff Regulations, the Conditions of Employment of other servants of the European Communities and CEDEFOP Decisions, *v.supra*, note 1.

limits of this access. In this regards the EDPS notes that the procedure is in line with the Guidelines and that the indicated recipients will only use the data for the purposes needed.

As to the **retention** period, the notification states that "Paper and Fibus records related to administrating regular leave and flexitime including compensation, as well as special leave are kept for 5 years after the respective year in active status and for 5 more years in the archives. Paper records related to sickness leave are kept for 3 years. Requests and decisions on parental leave, family leave and unpaid leave are filed in the Personal file and have the respective retention period".

The EDPS considers that since he received a notification (case 2012-0679) covering the flexitime system, the retention of flexitime data should not be mentioned in this notification. Furthermore, in this above mentioned notification, it was stated that the data were kept for three years in the system for security purposes. As stated in the related Opinion, the EDPS considers that the retention periods stated in the notification does not comply with the Guidelines. Indeed, as stated in the EDPS Guidelines, for the purpose of flexitime administration, data may be retained only during the calendar year and at the latest they should be deleted once the transfer of unused days of annual leave to the following year has been closed. Therefore, the EDPS invites the Cedefop to amend its current retention periods.

As regards the retention of the leave (annual/special/sick) the 5 years + 5 years presented would not be in line with the Guidelines either. Although long retention periods may be justified for some categories of leave, the EDPS considered that for annual and sick leave, a retention period of 3 years maximum would be justifiable (point 5.1 and 5.2 of the Guidelines). Therefore, the EDPS invites the Cedefop to revise its retention policy to conform it to the Guidelines.

2. Conclusion

In view of the above, the EDPS recommends that the Cedefop:

1. revises the privacy statement as regard information on the right of access, recipients and retention of data;
2. amends its retention periods in the respect of the Guidelines on leave and flexitime;
3. removes references to flexitime from its Article 25 notification.

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

(signed)

Giovanni BUTTARELLI

Cc: Ms Ginette MANDERSCHIED, Head of Human Resources, Cedefop
Mr Spyros ANTONIOU, Data Protection Officer, Cedefop