



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Mr Hans JAHREISS  
Head of Administration  
Fusion for Energy (F4E)  
C/ Josep Pla, no 2  
Torres Diagonal Litoral  
Edificio B3  
ES - 08019 Barcelona

Brussels, 16 July 2013  
GB/DG/mk D(2013)1579 C 2012-0864

Dear Mr Jahreiss,

On 8 October 2012, the EDPS received a notification for prior checking under Article 27(3) of Regulation 45/2001 ("the Regulation") on the processing operations relating to medical control examinations during an absence due to sickness or accident (the medical control procedure) at Fusion for Energy (F4E).

It would appear that F4E submitted this notification in light of the EDPS Guidelines on the processing of health data in the workplace<sup>1</sup>, following four previous F4E notifications in this area under references 2011-1088 to 2011-1091. Although some aspects of the health data guidance are applicable to the current case, the EDPS has since adopted Guidelines on leave and flexitime ("the Guidelines")<sup>2</sup>, which are also relevant to this particular processing operation.

The EDPS also notes that on 21 March 2013, F4E submitted a notification covering the processing operations of leave requests (2013-0323).

Therefore, in this letter the EDPS will only identify and examine F4E's practices as regards medical control examinations during an absence, which do not seem to be in conformity with the abovementioned Guidelines and the principles of the Regulation, providing F4E with relevant recommendations.

---

<sup>1</sup> Guidelines adopted on 28 September 2009 (EDPS 2009-0141)

<sup>2</sup> Guidelines adopted on 20 December 2012 (EDPS 2012-0158)

## **1. Reasons for prior-checking**

F4E's notification indicates that the processing operations under analysis justify prior-checking since they present specific risks on the basis of Articles 27(2)(a) of the Regulation.

The processing operations are indeed subject to prior-checking on this legal ground: they may concern data relating to health within the meaning of Article 27(2)(a) of the Regulation. As to the relevance of Article 27(2)(d), the EDPS considers that it is not the purpose of the medical control procedure to exclude individuals from a right, benefit or contract. Therefore only Article 27(2)(a) should apply here.

## **2. Retention**

According to Article 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. As noted in the Guidelines, the purpose of checks on absences due to illness is to ensure that the absence is justified. In general, the EDPS considers that a period of at least three years can be justified by HR for administrative data relating to sick leave, in line with Article 59(4) of the Staff Regulations. However, the EDPS acknowledges that a longer retention period could apply in cases when a dispute or appeal is underway.

The EDPS notes that following further exchanges between the EDPS and F4E, the agency now plans to consider reducing the current retention period for data related to sick leave from five to three years. This is in accordance with the recommendation made in section 5.1 of the EDPS Guidelines concerning processing of health data in the workplace (unless a dispute is launched during this period in which case this retention period would be extended as long as the dispute is not settled).

## **3. Data subjects' rights**

Point 10 of F4E's specific privacy notice states that access to doctors' personal notes may be refused on a case by case basis, if this is considered necessary to safeguard the protection of the individual concerned, or the rights and freedoms of others. The EDPS would suggest that it may be useful to specifically draw data subjects' attention to the exception listed in Article 20(1)(c) of the Regulation. Whenever such a restriction is applied, the data subjects should be informed of the principal reasons of the restriction as well as of their right to have recourse to the EDPS under Article 20(3) of the Regulation.

#### **4. Conclusion**

In view of the above, the EDPS recommends that F4E:

- formalises and implements the review of its retention periods regarding sick leave;
- makes reference within the specific privacy notice to the potential restriction on data subjects' rights listed in Article 20(1)(c) of the Regulation.

The EDPS invites F4E to inform him about the implementation of these recommendations within three months of receiving this letter.

Yours sincerely

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor

*Cc:* Angela BARDENHEWER, Data Protection Officer