EUROPEAN DATA
PROTECTION SUPERVISOR

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European Commission
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Subject: **Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission regarding the management of recuperation time for staff interpreters in DG Interpretation via the application "INDISPONIBILITE".**

Dear [*],

On 24 May 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Commission (EC) a notification for prior checking concerning processing of personal data related to permanent and temporary staff interpreters via the application "INDISPONIBILITE". The notification was accompanied by the following documents:

1. Memorandum to the Commission on the use of flexitime in the Commission services;
2. Request for derogations from the Flexitime System for certain DG SCIC staff and approval of this request by the Director General for Personnel and Administration;
3. Rules on working conditions applicable to permanent and temporary staff interpreters;
4. Privacy statement on the management of recuperation time for staff interpreters in DG SCIC;
5. List of codes assigned to various reasons of interpreter's absence processed in the INDISPONIBILITE.

Questions were raised on 6 July 2011 to which the EC, in its quality of controller, replied on 2 August 2011. On 28 September 2011 the procedure was suspended due to ongoing work on the adoption of leave and flexitime Guidelines. Analysis of the case was reactivated on 1 December 2011 at the request of the EC. It was suspended on the same day on the basis of Article 27 (4) of Regulation 45/2001 following a request for further information. On 10 April 2013, the EC informed the EDPS that there were no changes in the INDISPONIBILITE

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procedure since its suspension. Therefore, the draft Opinion was sent to the DPO for comments on 7 May 2013. The EDPS received a reply on 11 June 2013.

1. **Legal aspects**

The processing of data relating to staff by the European Commission constitutes a processing of personal data ("*any information relating to an identified or identifiable natural person*"- Article 2(a) of Regulation (EC) No 45/2001 (the "Regulation")). The data processing is performed by an EU institution in the exercise of activities which fall within the scope of EU law (Article 3(1) of the Regulation, in the light of the Lisbon Treaty). The processing of the data is both automatic and manual; in the latter case, such processing forms part of a filing system (Article 3(2) of the Regulation). Therefore, Regulation (EC) No 45/2001 is applicable.

According to Article 27(1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks, which includes health-related data (Article 27(2)(a)).

INDISPONIBILITE processes data allowing calculating the number of days of sick leave. The medical absences data available is just the date that the interpreter was on sick leave and the code identifying that this is a sick leave. The processing operations under review involve the processing of data for interpreters which relate to their health and is therefore subject to prior checking by the EDPS. Data pertaining to the interpreters' relatives are not processed.

It is also stated that the sick leave absence is only visible to people who need to know (GECOs, Planning, IT, Head of unit). To anyone else the interpreter will just appear as "unavailable".

The Opinion is based on the Guidelines in the area of Leave and Flexitime adopted on 20 December 2012, which allows the EDPS to focus only on the Commission's practices that do not seem to be compliant with the Regulation.

The notified processing operations relate to "*the management of recuperation time for staff interpreters in DG Interpretation via the application "INDISPONIBILITE*"", the purpose of which is the ability to determine the availability of staff interpreters and time management for permanent and temporary staff interpreters.

According to the EC, INDISPONIBILITE is not a planning tool. It is an application that allows the controller to manage interpreters' leave and determine their availability. The data is stored in a single database used for all SCIC applications and from which INDISPONIBILITE is fetching the data it needs.

INDISPONIBILITE includes the interpreter's name, personnel number, unit information, languages, statutory link, date of entry and end of career, grade, date of birth, information regarding the non-availability of interpreters for assignment to meetings and the recuperation time they may have accrued.

According to the notification, non-availability may result from various reasons such as annual leave, recuperation days or other absences -for example medical appointments or sick leave, on-site assistance to universities with conference interpretation courses-. These reasons are

each assigned a special code. In case of non-availability of interpreter, the appropriate code is entered into INDISPONIBILITE. The list of codes was attached to the notification.

The EDPS notes that the processing in question is considered as lawful in terms of Article 5(a) of the Regulation[1].

Furthermore, the EDPS notes that the procedure in place at the EC regarding the processing of health related data is in line with Article 10 of the Regulation, on the basis of Article 10(2)(b). INDISPONIBILITE does not show any data of relatives of staff member. If an interpreter is on sick leave due to an absence of a child the corresponding code will be visible to the GECOs, Planning, IT, Head of unit, however, there are no associated names of the child or any other such data.

Based on the available information, the data quality principles appear to be respected. Following a clarification from the controller, it was stated that the processing of interpreter's date of birth in the system is used to determine if for instance an interpreter is eligible to take part-time for the reason of "preparation for retirement". It is also used to determine certain rights –extra annual leave days– for age. Such processing can therefore be considered as to comply with Article 4(1)(c).

As to the retention, the EC proposed to amend the reference in its notification which mentioned a retention period of two years from the departure of the data subject concerned and is now proposing a retention period that would foresee that the data are kept for five years after the data subject leaves the European Institutions. The EC argues that this would be in line with the Sysper2 privacy notification (relating to the Time management module). Furthermore, it is also stated that after this retention period, the data will be made inaccessible. Even staff members such as the GECOs, Planning and the Head of unit will not be able to access the data (for instance by performing a search by name).

First of all, the EDPS wants to remind the EC that according to Article 4(1)(e) of the Regulation), personal data must be "kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed". In this regard, and referring to the notification on Time management of Sysper2 (Case 2007-0063), the conclusion of the EDPS is that such retention period would not be considered as a justified retention period in regard to the purpose of the INDISPONIBILITE. He considers that a retention period of 3 years maximum from the start of the request of the leave (except in case of dispute) should be implemented.

Furthermore, the EDPS expresses doubts as to the use of the notion of "inaccessible" data after the retention period has been reached and he considers that this notion should not be used in order to avoid confusion. Indeed, "inaccessible" means that the data are kept and that only the access is limited. To be compliant with the Regulation (Article 4(1)(e)), the EC should either delete or render anonymous the data after the retention period has been reached.

Furthermore, the EDPS notes that, according to the notification "*Statistics are available for management to review the number of interpreters in the various activities or absences for given periods*". In respect of Article 4(1)(b), further processing of personal data for statistical purposes are not considered incompatible provided that the controller provides appropriate

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[1] Based on Articles from the Staff Regulations, the Conditions of Employment of other servants of the European Communities and the "Agreement, Rules on working conditions applicable to permanent and temporary staff interpreters".

safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual.

The EDPS takes note of the information on the procedures adopted by the EC to facilitate the exercise of the rights of interpreters as data subjects. In particular, they can check the status of their own leave and recuperation hours they have accumulated at any time via INDISPONIBILITE. The interpreters cannot ask for their data to be removed from INDISPONIBILITE as it is necessary for the running of the service. However, should the information be incorrect, the interpreter must contact Unit C2, Programming of Interpretation and once the problem has been recognised and agreed by the Head of Unit of C2, the information must be corrected immediately. These rights are also foreseen in the privacy statement which was sent to the EDPS.

Furthermore, the EDPS notes that the privacy statement on the processing of personal data within the INDISPONIBILITE application contains all the required information of Articles 11 and 12.

Finally, the EDPS has no reasons to believe that adopted security measures are not adequate in the light of Article 22 of the Regulation.

2. **Conclusion** :

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided that the EC, in its quality of controller ensures:
1. the deletion or anonymisation of the data after the retention period has been reached;
2. that the statistical data foreseen are not processed for any other purposes or used in support of measures or decisions regarding any particular individual in accordance with Article 4(1)(b).

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(signed)

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