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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Police College on the management of sick leave, annual leave and special leave and on the management of working hours and flexitime

Dear Mr Bánfi,

On 19 April 2013, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Police College ("CEPOL") a notification for prior checking concerning the management of sick leave, annual leave and special leave. The notification and cover letter were accompanied by 18 annexes. Among those annexes information on working hours and flexitime was also provided (the CEPOL Decision on working hours as well as the privacy statement covering the recording of working hours and flexitime administration). Information on the processing operations covering the Flexitime procedure at CEPOL had also been provided earlier by the DPO. Therefore, this Opinion also contains an analysis of the Flexitime system at CEPOL.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines"). The EDPS sent the draft for comments on 1 October 2013 and these were received on 12 October 2013.

1. Legal aspects

This Opinion deals with the already existing leave (point A below) and flexitime (point B below) procedures at CEPOL. It is based on the Guidelines, which allows the EDPS to

focus on CEPOL practices which do not seem to be in conformity with the Data Protection Regulation n°45/2001.

A) Regarding leave, the purpose of the processing operations is limited to the **management of entitlements for sick leave, annual leave and in general all special leave** for Temporary Agents (TA), Contract Agents (CA) and Seconded National Experts (SNE). Data concerning relatives of staff members may also be processed in the context of the justification for a leave.

The EDPS takes note that, as explained in the cover letter, CEPOL applies the Commission rules on leave, family leave, parental leave, part-time work by analogy since 2007 (Governing Board Decision 7/2007//GB).

As regards the processing of special categories of data (health related data and data that may reveal political opinions, trade union membership or sex life) the EDPS notes that CEPOL has notified the procedure in place at CEPOL regarding the processing of health data in the workplace (Case 2013-0893) that is currently under analysis. It is therefore not analysed here.

As to the **rights of the data subjects**, the notification covering leave foresees that "*Staff members may exercise their right of access to, rectify, erase or block personal data. They can object the processing operation should they have eventual compelling legitimate grounds relating to their particular situation. Family members whose personal data are processed have the right to access and modify their data upon request to the data controller*".

However, contrary to the notification, the EDPS notes that both the privacy statement covering the management of entitlements for sick leave, annual leave and in general all special leave and the privacy statement covering the recording of working hours and flexitime administration¹ state that the data subjects have no right to block or erase the data. Neither do they have the right to object to the processing of the data. These rights are foreseen by Articles 14, 16 and 18 of the Regulation and although staff members may not be always allowed to exercise these rights directly on their personal data, they must be given the possibility to exercise these rights through the controller under the conditions foreseen in these articles. Therefore, the EDPS invites CEPOL to amend its privacy statements as to be in line with Articles 14, 16 and 18 of the Regulation.

The EDPS notes that CEPOL established retention periods in line with the Guidelines (**retention** period of 3 years for the retention of sick leave data and data in supporting documents are deleted where possible when not necessary for budgetary discharge, control and audit purposes). The EDPS notes that reference is made to the retention periods of personal files and its pension part. This clarification does not seem necessary in the framework of the leave analysis,

B) Regarding flexitime, the purpose of the processing is the recording of working hours and flexitime administration.

As to the procedure, CEPOL is using an application called 'Net2 Access Control' (developed by Paxton), which is a building access control application, together with an clock in/clock out application 'Net2 Timesheet' that runs on the 'Net2 Access Control'

¹ Both privacy statements are made available on the common network drive of CEPOL as the Agency does not use any intranet.

platform. When entering into the premises or accessing the majority of areas in the building, staff must enter using the access control system. When inside the premises another reader allows to record working time (clock in/out) for the day.

As described, CEPOL is hosting “Net2 Timesheet” application internally on CEPOL’s servers. In the system developed at CEPOL, it is established that Flexitime data is stored within a shared database used also for access control. However, these two applications (access control/clock in/out) create separate database line entries and do not share a user interface (the HR can only access clock in/out application).

In the case at stake, the EDPS notes that the separation of the database line entries ensures that the systems remain distinct, separating the recipients of the data and the purposes of the processing operations. Besides, CEPOL confirmed that although the CEPOL IT department may have access to the different data in the respect of their own competences, the respective services (HR and Security) only access the data which are necessary for their tasks. CEPOL should however ensure that the actions of the IT department on these data can be logged and reviewed and that these logs shall be saved in a way that they cannot be altered (back-up with reading function without the possibility to re-write the data for instance).

Finally, it was explained that the software which is used does not currently allow separating the retention periods of the data on access control from the one on flexitime data, therefore the same retention period applies to both data. Although the discovery of security incidents should normally take place as soon as possible, the EDPS may accept that, due to the current technological choice, the retention periods remain as described in the notification. However, in the case of change of system, the EDPS invites CEPOL to ensure a shorter retention period for the data on access control.

Under the above conditions of clear separation of access to the database line entries and use of the data stored, the EDPS accepts the joint processing described in the use of the Net2 system at CEPOL. However, should in the future connections be envisaged between the two line entries of the database, CEPOL would need to notify the change to the EDPS.

Conclusion

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

- 1- amends the privacy statements as regards the right to block, erase the data and to object to the processing;
- 2 - confirms that the actions on the databases are logged in the way explained above.

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

(signed)

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Cc: Ms Kate ARMITAGE, Head of Corporate Service Department, CEPOL

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