



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Mark RONAYNE
Director for Human Resources and
Personnel Administration

Mr Costas POPOTAS
Head of Unit for Rights under the
Staff Regulations, Social and
Medical Matters and Working
Conditions

Court of Justice of the European
Union
Luxembourg
Bur GEOS/3045 and GEOS/3066

Brussels, 29 October 2013
GB/MV/sn/D(2013)0267 C **2013-0189,**
2013-0223, 2013-0267 and 2013-0337
Please use edps@edps.europa.eu for all
correspondence

Subject: Opinion on notifications for prior checking from the Data Protection Officer (DPO) of the Court of Justice of the European Union concerning records relating to the management of special leave and maternity leave, the management of working time organisation (part time), the management of parental leave and family leave and the management of leave on personal grounds of the staff of the Court of Justice.

Dear Mr Ronayne, Mr Popotas,

Between 14 February 2013 and 26 March 2013, the European Data Protection Supervisor (**EDPS**) received four notifications concerning the processing of personal data from the Data Protection Officer (**DPO**) of the Court of Justice of the European Union (**the Court**):

- The notification concerning the processing of personal data for the management of special leave and maternity leave was received on 14 February 2013 (2013-0189).

- The notification concerning the processing of personal data for the management of the organisation of the working time (part time) of the staff of the Court was received on 21 February 2013 (2013-0223).
- The notification concerning the processing of personal data for the management of parental leave and family leave was received on 8 March 2013 (2013-0267).
- Finally, the notification concerning the processing of personal data for the management of leave on personal grounds was received on 26 March 2013 (2013-0337).

Each notification was accompanied by a letter emphasising the specific points of the procedure, a description of the security measures introduced as well as the information pursuant to Articles 11 and 12 of the Regulation. However, the EDPS asked for and, on 22 March, received a copy of the various decisions which were cited as legal bases for the different processing operations.

The EDPS has decided to deal with these four notifications in the same opinion as these procedures all come under the Guidelines concerning leave and flexitime¹ (**the Guidelines**) adopted on 20 December 2012. The period of two months does not apply to ex-post prior checking.

The draft opinion was sent to the DPO on 1 October 2013 to allow him to submit his comments on the draft opinion.

2. Legal aspects

This opinion relates to the different procedures for absences and the management of working time which are already found within the Court. It is based on the Guidelines, and this allows the EDPS to concentrate more specifically on the Court practices which do not appear to comply fully with Regulation (EC) No 45/2001 on data protection (**the Regulation**)².

Those processing operations may involve the processing of data relating to health in the cases provided for by the Staff Regulations. For that reason, those notifications were sent for prior checking pursuant to Article 27(2)(a) of the Regulation.

As regards the notification concerning the management of leave on personal grounds, this does not mention data relating to health among the categories of data subject to processing, but if the granting of leave is requested in the case provided for by Article 40(2)(i) of the Staff Regulations, this nevertheless entails the processing of data relating to health. As far as the management of the organisation of working time (part time) is concerned, the application of Article 55a(2)(c) of the Staff Regulations involves the processing of data concerning health.

2.1 Specific categories of data

Article 10(1) of the Regulation prohibits the processing of data concerning health. In the processing operations notified, this prohibition does not apply where the processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law, as provided for by Article 10(2)(b) of the

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

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Regulation. With respect to parental leave and leave on personal grounds, the consent provided for in Article 10(2)(a) also applies.

2.2 Storage of the data

The EDPS has analysed the periods for storage of the data relating to the different processing operations. These appear to comply with the periods referred to in the Guidelines regarding Regulation No 45/2001. However, the EDPS would like to make the following comments.

- With regard to leave on personal grounds (2013-0337), the notification states that the period for retention of the files is five years. In order to be able to calculate when the total leave granted reaches the authorised maximum of 15 years (Article 40(2) of the Staff Regulations), it would appear to be necessary for the decision granting the leave on personal grounds to be kept for the duration of the data subject's career. On the other hand, the data on which the decision is based may undoubtedly be deleted after five years.

- With regard to the management of special leave and maternity leave (2013-0189), the notification provides for a period of five years for retention of the files following the decision to grant leave. After that date, the files are destroyed. The Court justifies that retention period by the need to be able to respond to requests sent by the Internal Auditor or by the Court of Auditors in the course of their auditing tasks. The EDPS does not share this conclusion. As explained in the Guidelines, the retention periods depend on the type of leave and vary in accordance with the purposes for which the data were collected and processed. For example, some special leave requires the data to be retained until termination of employment within the respective institution, and even beyond this period in cases in which any right of the data subject still remains. In the case of justification based on the Internal Auditors, a maximum period of three years would be justified. On the other hand, if the justification is based on the performance of the tasks of the Court of Auditors, a period of seven years (based on the Financial Regulation) should apply.

Even in this hypothetical case, account should be taken of Article 49 of the Implementing Rules to the Financial Regulation, which states: '*Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes*'. Therefore, a distinction should be made between the data necessary for budgetary discharge, control and audit purposes and those data which are not.

Therefore, the EDPS requests that the Court clarifies the retention period for data relating to special and maternity leave. For example, the retention of certain decisions on special leave might be justified for the duration of the data subject's career, whereas the data on which those decisions were based might be limited to a maximum period of five years.

2.3 Information

The EDPS confirms that the information was supplied in an information note concerning the protection of personal data put on the intranet site staff guide. The EDPS has analysed the information notes concerning the various processing operations. These appear to comply with the obligations to provide information pursuant to Articles 11 and 12 of the Regulation.

3. Conclusion

In the light of the foregoing, the EDPS recommends that the following measures be taken in order to ensure full compliance with Regulation No 45/2001:

1- Amend the retention of data with regard to the processing of personal data with respect to leave on personal grounds as well as special and maternity leave.

The EPDS would like to invite the Court to inform him about the implementation of these recommendations within three months after receipt of this Opinion.

(signed)

Giovanni BUTTARELLI

Cc: Mr Valerio PLACCO, Data Protection Officer, European Court of Justice