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ASSISTANT SUPERVISOR

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Electronic Communications
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GB/MV/sn/D(2013)0658 C 2013-0405
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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the BEREC Office concerning the application and granting of all kind of leave (including special leave)

Dear Ms Bagge,

On 14 April 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Body of European Regulators for Electronic Communications (BEREC Office) a notification for prior checking concerning the processing operations on the application and granting of all kind of leave (including special leave). The notification was accompanied by the following documents:

1. Internal administrative instructions N° 1 of 2012 of the administrative manager of the BEREC Office on the management of documents of BEREC and its Office (IAI/2012/1);
2. BEREC Office filing plan and common retention list;
3. Common Commission-Level Retention list for European Commission Files-SEC(2007) 970;

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines"). Requests for further information were sent on 3 and 4 July 2013. A partial reply was received on 4 July 2013. The EDPS sent the draft for comments on 31 October 2013 and these were received on 3 and 11 December 2013.

Legal aspects

This Opinion deals with the already existing leave procedures at the BEREC Office. It is based on the Guidelines, which allows the EDPS to focus on the BEREC Office practices which do not seem to be in conformity with the leave and flexitime Guidelines and the principles of the Regulation (EC) No 45/2001 (the Regulation).

The EDPS takes note that BEREC Office implemented the Commission Decision on leave of 5/11/2010 by analogy.

The purpose of the processing operations is to keep all leaves of temporary, contract agents, national experts and third parties (partners, children of staff members) up to date—special leave is only granted in exceptional circumstances and on the basis of a duly substantiated application.

The notification foresees that the rights of data subjects will be set out in a Data Protection Policy for Employees of the BEREC Office which is being finalized with support of external contractors. At the time of analysis, the EDPS did not receive the document. Such document should be drafted taking into account the relevant articles of the Regulation and the recommendations already made by the EDPS in the Guidelines on leave and flexitime.

In addition, both the privacy statement covering the processing operations and the declaration of confidentiality to be signed by staff members dealing with health related data are missing. These should be provided in the follow-up phase for analysis.

In this regard, the EDPS would like to draw the attention of the BEREC Office to the case where a leave request is linked to the health situation of a family member. In such case, the EDPS considers that the privacy statement should foresee the communication of information to this family member whose personal data are processed by the BEREC Office. If the EDPS admits that direct provision of such information would involve disproportionate efforts by the BEREC Office, he considers that the Agency, amongst other appropriate steps, could ask staff members submitting such data to inform the family members concerned about the processing of their personal data and their rights in that respect

Based on the notification, the processing of data is via e-mail only. All requests are saved in a mailbox and kept electronically. For sick-leave requests, it is stated that the medical certificates are faxed or e-mailed to the functional mailbox of the Medical Service in Brussels and that nobody has hard-copies of them in the BEREC Office. Besides, the certificates of special leave are kept by the HR Officer.

In this regard, the EDPS received receive copy of the Service Level Agreement with the European Commission and considers that it contains the clause relating to the respect of data protection in the processing operations.

Conclusion

In view of the above, the EDPS recommends that the BEREC Office:

1- adopts a data protection notice on the leave processing operations that also includes information to staff members' family, as stated above;

- 2- adopts the declaration of confidentiality to be signed by the staff managing health related data;
- 3- sends its data protection policy for consultation to the EDPS.

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

(signed)

Giovanni BUTTARELLI

Cc: Mr Michele MARCO CHIODI, Data Protection Officer, the BEREC Office