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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the Innovative Medicines Initiative in the field of leave and flexitime management

Dear Mr Goldman,

On 25 April 2013, the European Data Protection Supervisor ("EDPS") received from the Innovative Medicines Initiative ("IMI") a notification for prior checking covering leave and flexitime management.

Your cover letter was accompanied by 4 annexes (the notification, the IMI Flexitime Policy, the Decision of the Governing Board on the implementing rules of the Staff Regulations (under approval of IMI Governing Board), and the privacy statement covering leave and flexitime).

This notification was sent 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 21 October 2013 and these were received on 13 November 2013. As the processing operations are already in place, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best-effort basis.

Legal aspects

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

The IMI states that it applies by analogy the respective general implementing provisions of the Commission adopted through a Decision of the Agency's Governing Board. The draft Decision was sent as an annex.

The purpose of the processing operations is to assess the entitlement to sick leave, annual leave and special leave and working conditions for temporary agents and contracts agents; and to a voluntary flexitime scheme.

The EDPS analysed the privacy statement which, according to the notification, was sent to all IMI staff and is available on the IMI shared drive. The EDPS notes that information relating to the existence of the right of access to, and the right to rectify the data concerning him or her (Article 11.1.e) is missing from the privacy statement and should be completed. The EDPS notes that reference is made in the notification that the procedure is laid down in Article 8 of the Implementing Rules concerning IMI Data Protection Officer, but reference to these rights should be made in the privacy statement nonetheless.

Moreover, the EDPS would like to draw the attention of the IMI 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 IMI. If the EDPS admits that direct provision of such information would involve disproportionate efforts by the IMI, he considers that the Agency, amongst other appropriate steps, could at least 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.

The EDPS therefore recommends that the IMI modifies the privacy statement on data protection by adding that family members may have access to data concerning them, and ask that officials/staff members providing such data inform the persons concerned of those rights.

The EDPS welcomes that each IMI staff signs a declaration of confidentiality for which he received the template.

Finally, the EDPS notes that the notification foresees that the renewal of the Service level agreement (SLA) with DG HR and Security is being finalised. The EDPS would like to receive copy of the data protection clause of the SLA at to ensure its compliance with data protection Regulation.

Conclusion

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

- 1- completes the privacy statement as regards the rights of access and rectification;
- 2- amends the information provided in the privacy statement as explained above, especially as regards the information to the family members of staff;
- 3- provides the EDPS with a copy of the data protection clause from the SLA with DG HR and Security.

The EDPS invites IMI to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI

Cc: Mr Jerome CHAMBON, HR Team, IMI
Ms Estefânia RIBEIRO, Data Protection Officer, IMI