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Subject: Opinion on the notification for prior checking from the Data Protection Officer of the Agency for the Cooperation of Energy Regulators concerning records of absence (sick leave and special leave), the establishment of annual leave entitlements, the recording of staff annual leave and part time work.

Dear Ms Borissova,

On 31 March 2013, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the Agency for the Cooperation of Energy Regulators (**ACER**) a notification covering records of absence (sick leave and special leave), the establishment of annual leave entitlements and the recording of staff annual leave.

The notification was received together with 12 annexes (including a merged privacy statement on all leave and leave entitlements-HR).

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines in the area of Leave and Flexitime (the "Guidelines")¹. A request for information was formulated on 18 June 2013 and was replied on 23 July 2013. The EDPS sent the draft Opinion for comments on 1 October 2013. On 11 October 2013, further to a telephone conversation, the DPO provided a notification on part-time work at ACER, which has been added to the current analysis as being a processing operation covered by the Guidelines. As this is an ex-post case, which is also based on guidelines, 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.

1. Legal aspects

This Opinion deals with the already existing leave, absence management and part time processing operations at ACER. It is based on the Guidelines, which allows the EDPS to focus on ACER practices that do not seem to be compliant with the leave and flexitime Guidelines and the principles of the Data Protection Regulation n° 45/2001.

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

The EDPS takes note that, as explained in the notification, the general implementing rules of the Staff Regulations, as adopted by the European Commission, apply by analogy to the staff of the Agency following ACER Administrative Board Decision n° 09/2011.

As to the leave and absences processing, data is processed for the purposes of management of leave of staff members and seconded national experts. Regarding part-time, the purpose of the processing is to evaluate the requests for authorisation to work part-time, and to establish the rights of the staff member following approval of the part-time work request.

Following a request for information, ACER clarified that the Agency uses two medical services:

- the EC Medical Service in Brussels, which under a SLA deals with all pre-recruitment medical checks,
- a private clinic, established in Ljubljana, which under a specific contract deals with ACER annual medical checks. The data is handled by them and then sent to the EC Medical Service in sealed envelopes. ACER clarified that the content of the data is not available to the Agency's HR staff.

The EDPS received a copy of the declaration of professional secrecy equivalent to that of a health professional to be signed by the member of staff dealing with health related data.

Moreover, the EDPS analysed the merged privacy statement on all leave and leave entitlements-HR as well as the privacy statement on part time work and he found their content in line with the Regulation.

Especially, he notes that besides the obligations under Articles 11 and 12 of the Regulation, they also foresee the implementation of a specific recommendation made by the EDPS. This recommendation was that in the case where a part-time request is linked to the health situation of a family member, there is communication of information to this family member whose personal data are processed. In such cases, 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.

As to the security measures, following the request for further information, the EDPS received a draft declarations of confidentiality to be signed by the HR staff that they are subject to an obligation of professional secrecy equivalent to that of a health professional, in compliance with Article 10(3) of the Regulation. The EDPS finds this draft compliant with his analysis under the Guidelines.

2. Conclusion

In view of the above, the EDPS considers that ACER complies with the guidelines. Therefore the EDPS has decided to **close** the case.

(signed)

Giovanni BUTTARELLI

Cc: Mr Paul Martinet, Data Protection Officer, ACER