



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Joachim James CALLEJA
Director
European Centre for the
Development of Vocational
Training (CEDEFOP)
Thessaloniki
Greece

Brussels, 19 March 2014
GB/MV/sn/D(2014)0699 C 2012-0679
Please use edps@edps.europa.eu for all
correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Centre for the Development of Vocational Training concerning recording of working hours and flexitime administration

Dear Mr Calleja,

On 7 August 2012, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Centre for the Development of Vocational Training ("Cedefop") a notification for prior checking concerning the recording of working hours and flexitime administration. The notification was accompanied by the following documents:

1. Information to Data Subject (Privacy statement in relation to recording of working hours and flexitime administration);
2. Decision 09/2009 on the Working Hours of the Cedefop (amending Decision of 19-05-2008);
3. Decision 04/2012 on the retention period of access control data;
4. Administrative Circular note on access to Cedefop's premises and parking DIR/CFL/2008/006.

The DPO sent this notification while the Guidelines on Leave and Flexitime (the "Guidelines") were being drafted. Therefore, the EDPS suspended the procedure between 13 August 2012 and 31 March 2013, deadline for the adoption and implementation of the Leave and Flexitime Guidelines by all EU institutions and bodies¹. As an ex-post notification, the analysis has been conducted on a best effort basis.

Scope

This Opinion deals with existing recording of working hours and flexitime administration processing operations. The Guidelines adopted on 20 December 2012 allow the EDPS to focus on the practices that do not seem to be compliant with Regulation EC n°45/2001 ("The Regulation").

The EDPS takes note that he received a notification from the Cedefop on the processing operations relating to leave management, whose conformity was also analysed along the same Guidelines in case 2012-0265².

The EDPS also takes note that a separate consultation on "access control and security policy" was sent to him (case 2012-0757). The Opinion concluded that the processing of personal data in the context of the access control at Cedefop is connected to the Flexitime processing operation. Staff members use one badge and one reader to both access the premises and record their clock-in/clock-out time.

In the context of this current notification, it is explained that in addition to the badging system at the entrance of the building, the Cedefop security guards record at the security booth surrounding the perimeter of the Cedefop, the arrival and departure times of staff members/visitors entering or leaving the Cedefop by means of an electronic form (previously the recording was done using a paper sheet). The controller states that the information in the form is subsequently processed by the respective HR staff only.

The EDPS considers that it is legitimate that the security guards are aware of the presence of any person on site as well as the time of their presence (in case of conducting inquiry after a theft is discovered for instance, in the case of an emergency or to know the number of visitors present).

However, the EDPS does not find proportionate that the security guards send the data to the HR department on a daily basis. Based on the information received so far, the EDPS fails to see a justification for the transfer of the information contained in the electronic form on arrival and departure times to the HR department, as it does not need this data, which is linked to the security aspects of the Cedefop. Therefore, the EDPS asks the Cedefop to stop such transfer or to find a justification that would render the transfer acceptable.

Flexitime

The procedure described in the current notification foresees the collection of the following data:

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

² See EDPS Opinion of 3 July 2013 on a notification for prior checking from the Data Protection Officer of the European Centre for the Development of Vocational Training concerning leave management.

- access card with an ID number link to a login (meaning link to the name of the person in a second stage);
- daily arrival and departure (date/hour/minute), including any temporary absences during the day;
- while on mission the staff member is credited with 90 minutes of additional compensation time per mission day.

Based on these data, the Fibus system (HR management system of the Cedefop) calculates, for each person, a balance (positive or negative) compared to the required amount of hours per month.

The EDPS considers the processing in question lawful based on Article 5(a) of the Regulation³.

As to the list of **recipients**, the notification states that the following persons are provided with data related to working time recording and flexitime:

- staff members in the Human Resources service;
- hierarchical superiors⁴, Heads of Area and the Directorate;
- security guards (for the arrival and departure times);
- auditing bodies;
- IT administrators have access to the system in order to perform their duties.

In the comments on the draft Opinion, the controller has clarified the following points. It stated that:

- the security guards do not see the actual number of hours that staff members have worked;
- in addition, they have access only to the data clock-in and clock-out data for the current day;
- neither the security guards nor Cedefop security officer(s) have access to flexitime related data.

As to the **retention** period, the notification states that "For security purposes, data are kept in the system for 3 years (access control data longer than the n-3 years will be anonymised/ deleted after the staff members have the chance to print/record the data currently in the system). Guards logbook (Excel file) to record staff working outside regular working hours is kept Calendar year + 1 year".

The EDPS considers that the retention period stated in the notification does not comply with the Guidelines. The Cedefop justifies the retention of the data for 3 years for security purposes. To the EDPS, the justification to retain the data for 3 years for security purposes should not apply in the case of a flexitime system.

As stated in the EDPS Guidelines, for the purpose of flexitime administration, data may be retained only during the calendar year and at the latest they should be deleted once the transfer of unused days of annual leave to the following year has been closed. Therefore, the EDPS invites the Cedefop to amend its current retention period.

³ Based on Articles from the Staff Regulations, the Conditions of Employment of other servants of the European Communities, CEDEFOP Decisions DIR/2007/09 and DIR 04/2012.

⁴ Hierarchical superiors are given access to the clocking data of their staff members.

The **information** is provided to the data subjects through a specific privacy statement complying mostly with Articles 11 and 12. However, the EDPS considers that the privacy statement should be amended in the section *Rights of the data subjects*, so that it includes the information regarding the functional e-mail address that staff members should use to ask for a correction (which is already mentioned in the notification under rights of data subjects).

Furthermore, there is no reference on the time limits for blocking and erasure of personal data. The EDPS would like to remind that the right of blocking data should be granted without delay to the data subject and therefore invites the Cedefop to amend its privacy statement on that point.

Besides, it appears that the right of access is granted to the data subjects in accordance with Articles 13 and 14 and the security measures are in line with Article 22.

3. Conclusion

In view of the above, the EDPS recommends that the CEDEFOP reconsiders the rules of processing personal data in connection with Flexitime arrangements along the following lines. It should, among others:

- amend its system that foresees the transfer of arrival and departure time from the security guards to the HR department;
- revise the retention period of the flexitime data;
- revise the privacy statement as regards the right to block and erase data.

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

Done at Brussels, 19 March 2014

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor