

REGISTER NUMBER: 572

## NOTIFICATION FOR PRIOR CHECKING

Date of submission: 15/02/2010

Case number: 2009-766

Institution: EAHC

Legal basis: Article 27-5 of the Regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

## INFORMATION TO BE GIVEN<sup>(2)</sup>

(2) Please attach all necessary backup documents

Adonis number: BH/rs D (2009)/102542

### 1/ Name and address of the controller

Isidoro Rodriguez, Head of Administrative Sector, Executive Agency for Health and Consumers

### 3/ Name of the processing

**Processing of health data by the Executive Agency for Health and Consumers (EAHC)**

### 4/ Purpose or purposes of the processing

In the '*Guidelines concerning the processing of health data in the workplace by Community institutions and bodies*', the EDPS has defined 'health data' as a twofold concept: (1) medical data (e. g. doctor referrals and prescriptions, medical examination reports, laboratory tests); (2) administrative and financial data relating to health (e. g. sick leave management). Since EAHC has not set up a medical service and only relies on the service provided by the European Commission in Luxembourg, **EAHC does not process any health data of the first category.**

**The processing of data of the second category (administrative documents containing personal data relating to the health status of a person) is - in line with Article 5 (a) of Regulation 45/2001 - necessary for the performance of the tasks of EAHC based on the legal instruments adopted ((1) Commission Decision 2004/858/EC of 15 December 2004 setting up an executive agency, the 'Executive Agency for the Public Health Programme' and (2) Commission Decision 2008/544/EC of 20 June 2008 amending Decision 2004/858/EC in order to transform the 'Executive Agency for the Public Health Programme' into the 'Executive Agency for Health and Consumers').**

### 5/ Description of the category or categories of data subjects

The data subjects of the personal data processing operation are:

- (1) Persons intended to be recruited by EAHC who accepted in writing the employment offer of EAHC and
- (2) the staff members of EAHC.

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

**As mentioned above, the present prior check concerns only the processing of administrative documents that include personal data relating to the health status of the staff members of EAHC. The following operations carried out by EAHC fall under this category:**

**(1) Management of data relating to sick leave:** At EAHC, when opening SIC-Congé, every staff member is informed that in case of being absent for health reasons for more than 3 working days a medical certificate is needed. Upon return of the staff member to work, this certificate must be sent to the Medical Service of the Commission in Luxembourg and not to EAHC. Although in the past sometimes the copies of these certificates were sent by mistake to the Human Resources Cell of EAHC, it was instructed never to accept such kinds of documents but to ask the staff to take it directly to the Medical Service. This means that at this stage no such documents are received by EAHC.

After the Medical Service has checked the certificates, the Human Resources Cell receives a notification ('Liste des certificats médicaux d'une personne') from the Medical Service stating only the name of the person, the staff number, the date of birth and the date of the sickness. Therefore no personal data concerning any detail of the sickness or of the doctor's diagnosis is given. This notification is used only for changing the status of the SIC-Congé application from 'maladie sans certificat' to 'maladie avec certificat';

**(2) Pre-recruitment medical examination:** After a candidate for recruitment has accepted in writing the employment offer from EAHC, an obligatory pre-medical check is carried out by the Medical Service of the Commission in Luxembourg. Following this, the Human Resources Cell is only informed that the person possesses/does not possess the required physical capacities for the function, no other information is given to EAHC by the Medical Service.

**The following data are not processed by EAHC for the following reasons:**

**(1) Health data related to the reimbursement of medical expenses:** EAHC does in no way participate in the process of reimbursement of medical expenses, it is exclusively carried out between the staff member and PMO, therefore **EAHC does not process any kind of health data in this regard.**

**(2) Health data included in the 'Confidential declaration of the staff to the Joint Sickness Insurance Scheme':** The confidential declaration is given by the staff member exclusively to the PMO, **EAHC in no way receives information concerning this.**

**(3) Health data of the annual medical visits:** Requesting an annual medical check is the right and the possibility of the staff of EAHC. In case of such a request, the Human Resources Cell of EAHC is only informed after the medical check took place, by way of receiving the invoice from the Commission. The invoice only contains the name of the given staff member and the date of the medical check, no other information is provided. Therefore **EAHC does not process any kind of health data relating to the annual medical checks.**

7/ Information to be given to data subjects

In case of the management of data relating to sick leave, information concerning to the procedures and the data protection measures is provided to the data subjects on the first page of SIC-Congé and on the data protection pages of the intranet.

In case of health related data of the pre-recruitment medical examinations: after a candidate for recruitment has accepted in writing the employment offer of EAHC, he/she receives by e-mail an invitation for the pre-medical check which contains the necessary information to be given to data subjects.

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)

By virtue of Regulation 45/2001, these rights are always ensured for the data subjects. For this, they have to request it from the Human Resources Cell.

9/ Automated / Manual processing operation

N/a

10/ Storage media of data

In case of the

**(1) management of data related to sick leave**, the administrative data concerning the date of the sickness (but nothing else) is stored in SIC-Congé to which only the data subject and the Human Resources Cell have access since it is protected by password. The notification of the Medical Service - providing information only about the date of the sickness - is received on paper which is then kept then in the archives of EAHC;

**(2) Pre-recruitment medical examination:** the document provided by the Medical Service whether the staff member possesses the required capacity for the function is stored in the personal file (Article 26 of the Staff Regulations) of the staff member to which only the Human Resources Cell, the Head of Administrative Sector and the Director is granted access. The personal files of these staff members are stored in a locked safe.

11/ Legal basis and lawfulness of the processing operation

**(1)** Article 5 (a) of Regulation 45/2001,

**(2)** Commission Decision 2004/858/EC of 15 December 2004 setting up an executive agency, the 'Executive Agency for the Public Health Programme' and Commission Decision 2008/544/EC of 20 June 2008 amending Decision 2004/858/EC in order to transform the 'Executive Agency for the Public Health Programme' into the 'Executive Agency for Health and Consumers') and

**(3)** the Staff Regulations and the Conditions of Employment of Other Servants of the European Community:

**(3a)** for the management of data concerning sick leave: Article 59 of the Staff Regulations; **(3b)** for the pre-medical checks: 28, 33 of the Staff Regulations and Article 12 (d), 13, 82(3)(d) and 83 of the Conditions of Employment of Other Servants of the European Community.

12/ The recipients or categories of recipient to whom the data might be disclosed

The data described in point 6 cannot be disclosed to

(1) anyone else from the EAHC staff except for the concerned staff member, the Human Resources Cell, the Head of Administrative Cell and the Director;

(2) to the Commission (e.g. the parent DG (DG SANCO)),

(3) to third parties.

13/ Retention policy of (categories of) personal data

(1) The data managed relating to sick leave is stored in the archives for 3 years;

(2) the data concerning the pre-recruitment medical examinations have been stored in the personal files since 2005 when EAHC has been created.

14 a/ time limits for blocking and erasure of the different categories of data

(on justified legitimate request from the data subject)

*(Please, specify the time limits for every category, if applicable)*

N/a

15/ Historical, statistical or scientific purposes

*If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,*

N/a

16/ Proposed transfers of data to third countries or international organisations

No external transfers to third countries or other international organisations take place.

17/ The processing operation presents specific risk which justifies prior checking ( please describe ):

The personal data processing operations described above contain only data concerning the length of a sickness of a staff member and general information of the physical status of the new staff. Therefore only indirect information is processed on the health status of the staff, EAHC never processes direct health data as foreseen in Article 27.2(a) and (b).

AS FORESEEN IN:

■ **Article 27.2.(a)**

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures: only by processing administrative data that may relate to the health status of a person (management of data related to sick leave and pre-recruitment medical examinations).

■ **Article 27.2.(b)**

Processing operations intended to evaluate personal aspects relating to the data subject: only by processing administrative data that may relate to the ability of a person (pre-recruitment medical examinations).

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

Other (general concept in Article 27.1)

18/ Comments

PLACE AND DATE: 16/11/2009

DATA PROTECTION OFFICER: Beáta Győri-Hartwig

INSTITUTION OR BODY: Executive Agency for Health and Consumers (EAHC)