

REGISTER NUMBER: 865

NOTIFICATION FOR PRIOR CHECKING

Date of submission: **22/06/2012**

Case number: **2012-0537**

Institution: **EACEA**

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

Education, Audiovisual and Culture Executive Agency, Avenue du Bourget 1, BOUR, BE-1140 Brussels

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Unit R1 – Human Resources, Administration and Communication

Head of Unit

BOUR 01/25

3/ Name of the processing

Processing of personal data related to health

4/ Purpose or purposes of the processing

The purpose of the processing of data related to health at the Agency is to determine the physical fitness for employment, the entitlement to guaranteed benefits in relation to sickness, invalidity or death, or protecting the health of staff members.

More specifically:

Pre-recruitment medical examination: Verify if candidates for recruitment are physically fit to perform their duties.

Annual medical check-up: Preventive medicine at the work place.

Data related to sick leave: Management and justification of medical leaves during a staff member's career.

Staff well-being at work: Ensure good health conditions at the work place.

Request for declaration of invalidity: To decide whether the person concerned has a condition rendering him unfit to carry out his duties (or duties corresponding to employment in his function group); or whether he is fit to return to work, perhaps subject to certain recommendations, such as a return to work part-time for a limited period.

5/ Description of the category or categories of data subjects

All temporary and contract agents working at the Agency.

Pre-employment medical visit: candidates for recruitment short-listed for potential recruitment in the Agency.

Visitors, trainees or other persons who might be subject to a medical treatment in the course

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

1) Identification data, such as name, date of birth, private and office address, personnel number, postal address etc.

2) Data relating to health: Health data in the strict sense of staff members and candidates for recruitment are exclusively processed by the Medical Service of the European Commission, which keeps the medical files of staff members.

No medical data *stricto sensu* are processed by the Agency. The Agency may process only administrative and financial data relating to the health status of a person. These documents do not contain a diagnosis, details of examinations undergone, vaccination details etc. A18 Aptitude certificates of pre-recruitment examinations as well as the Medical Service Note on the declaration of invalidity are kept in the Agency's personal file of the staff member.

7/ Information to be given to data subjects

Some parts of the HR section on the Agency's Intranet are specifically dedicated to explain rules and procedures (and contain links to the related Commission intranet sections). *Inter alia*, staff members are informed that they should send their medical certificate to the Medical Service and not to the HR of the Agency. Furthermore, staff members are informed that they may undergo the optional annual medical visit either by the Commission Medical Service or by a medical practitioner of their choice.

A specific privacy statement is available on the intranet under the Human Resources section.

<http://intranet.eacea.cec.eu.int/services/hr/SitePages/Congés%20-%20absences.aspx>

The Privacy statement is equally published under the recruitment section of EACEA Website and a link is sent to candidates for recruitment before they undergo the pre-employment medical examination.

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

Staff members are informed about the procedures through the Privacy statement, available on EACEA's Intranet.

Each staff member can access his personal file, which includes the medical aptitude and/or the note received in the context of an invalidity procedure.

This access can be granted at any moment, even after leaving the service, by addressing the request to the HR. The right to access the certificate that justifies a special leave can as well be accessed by simple request to the HR. In order to rectify the factual data of the administrative documents kept by the HR, the staff member in question can address the HR sector.

Data subjects are informed that the request of accessing medical data contained in the medical dossier shall be addressed directly to the Commission Medical Service. Staff members have the right to supplement their medical file kept by the Medical Service by adding a second opinion of another doctor. Finally, the Privacy statement mentions that data subjects may have an indirect access to psychological or psychiatric data contained in their medical dossier, addressing the Medical Service.

9/ Automated / Manual processing operation

• **Activity in the frame of which the processing is carried out**

One of the main tasks of Unit R1 is to manage the Human Resources policy of the Agency. This includes, among others, to implement Staff Regulations prescriptions related to staff health in the working environment.

• **Working procedure followed within the framework of this activity**

The Agency has concluded in May 2008 a Service Level Agreement ("SLA") with the European Commission Medical Service (hereinafter "Medical Service"), for the processing of Medical Services and psychosocial interventions. The SLA covers a very wide range of services: pre-recruitment medical visit; annual medical visit and additional examinations; medical control of absences in Belgium and outside Belgium; processing of medical certificates; occupational medical consultation; reimbursement of spectacles for work; psychosocial consultation; examination and expertise in invalidity procedure.

No medical data in the strict sense are dealt with or kept by the Agency. The Agency only process administrative and financial documents that include personal data relating to the health of the staff. Since Ager

Pre-employment medical visits

According to Articles 28 (e) and 33 of the Staff Regulations (hereinafter "SR) and Article 1 of Annex VIII of the SR, as well as Articles 12(d), 13(2) and 83(2) of the Conditions of Employment of Other Servants (hereinafter "CEOS"), before recruitment, a successful candidate (contract and temporary staff) shall be medically examined by one of the Institution's medical officers in order that EACEA may be satisfied that he is physically fit to perform his duties.

Once the Agency management has decided to recruit a new staff member, the HR contacts the Medical Service and fixes an appointment for the candidate. In general, about 3 weeks after the medical visit, the Medical Service sends to the HR a document attesting whether the candidate is "apt/inapt or apt with reserve" to perform his duties. This aptitude certificate does not contain any potential diagnosis or other medical details. Upon receipt of this document, the HR sends the employment offer to the candidate (in case the candidate is not considered fit by the Medical Service, he cannot be recruited).

In case the candidate to be recruited is already working (or has stopped working for less than 6 months) for a European institution, a pre-employment medical visit is not necessary.

In exceptional cases, the Medical Service might indicate in the document that the candidate might be recruited upon reserve of the application of Article 1 of Annex VIII of the Staff Regulations (medical aptitude with reserve). It is worth mentioning that the medical reason of the reserve is not indicated in this document; no indication is given to the Agency of the nature of the medical problems. The Agency Director might decide to proceed with the recruitment, excluding the candidate from certain benefits in respect to invalidity or death for the period of five years. The aptitude certificate received from the Medical Service is filed by the HR in the staff personal file (recruitment section). Medical questionnaires and results of any medical examinations are kept by the Medical Service; nothing is communicated to the Agency. The HR keeps an overview of the pre-employment visit via an excel table (containing the name of the person, the date of the meeting and the date of reception of the aptitude) for budgetary/financial reasons. The information contained in the excel table is as well necessary to plan the following year budget.

Medical annual visits

According to Article 59(6) of the SR, Articles 16(1), 59 and 91 of the CEOS, staff shall undergo an annual medical examination. Staff members are informed on the HR Intranet section that they may undergo this annual medical visit either by the Commission Medical Service or by a medical practitioner of their choice (the choice of one or the other option is up to the staff member). This section includes a reference to the Privacy statement.

1. If the staff member requests the meeting with the Medical Service, the HR sends the request to the Medical Service, which will carry out the general check-ups and the additional examinations (the standard protocol for the annual visit covers blood and urine tests, the ophthalmologic examination, chest X-ray and the electrocardiogram. The Medical Service might request further analysis directly to the person concerned). The medical data and results are kept by the Medical Service; the staff member receives the results privately by mail and shall contact directly the Medical Service in case he wants additional information/clarifications. In case a medical follow-up

(or treatment) is necessary, the concerned person shall organise it directly with a medical practitioner of his choice.

The check-up is free of charges for the agents;

2. If the agent opts for the medical check-up by the medical practitioner of his choice, he has to contact directly the Medical Service and obtain the necessary authorisation and forms (he has nevertheless to inform the Agency HR, by sending an e-mail). He shall then consult a doctor of his choice who will prescribe the necessary examinations according to the Medical Service's standard protocol for the annual medical visit. The doctor's report, attesting the medical check up and the receipts of payment of the relevant authorised tests are sent directly to the Medical Service by the agent. The Medical Service reimburses the agent at 100%, as if the annual visit had been carried out within the Medical Service of the Commission. After reimbursing the agent, it will invoice the Agency (real costs of the services). In both cases, the declaration on the medical visit is kept in the medical file of the Medical service. The HR keeps track of the yearly check-up with an excel table containing the name, personal number of the staff and the date of the last visit. This overview is necessary for budgetary/financial reasons.

Management of medical leaves during a staff member's career

a) Medical leave of the staff member

Staff members unable to carry out their duties by reason of illness or accident are entitled to sick leave. The procedure to follow is detailed on the Agency intranet, where it is accessible by all staff members. The agent concerned shall inform his hierarchical superior of his incapacity, the potential duration, his current address as well as the contact number as soon as possible. The secretariat of the Unit introduces in Sysper2 the absence (this is encoded as MSC, absence without medical certificate).

If the agent is absent for more than three days, he has to produce a medical certificate (indicating the name of the Agency and the personal number) directly to the Medical Service, within 5 working days from the beginning of the absence. Upon reception of the certificate, the Medical Service processes it and confirms to the HR of the Agency whether or not the absence is justified (e-mail containing the following information: number of the certificate, name of the staff member concerned, personal number, start and end date of the sick leave and is not informed of the medical reasons of the sickness).

Following the e-mail, the HR changes the code in Sysper2 (absence with medical certificate).

b) Special leave (sickness of a family member)

In case of serious illness of a member of the family (children, partner, ascendants etc) the agent can ask for a special leave (2 or 4 days maximum for sickness, depending on the case). In this case, the agent has to send a doctor's certificate directly to the Agency's HR. This document contains no medical data, but only the name of the agent, the personal number, the name of the concerned relative and certify that the agent is absent from work because has to assist the family member; there is neither indication of the nature nor description of the illness. The HR validates the absence in Sysper2 upon receipt of the certificate. In the hypothesis of very serious illness, when a longer absence from work is necessary, the staff member has to address a request directly to the Medical Service. Upon control of the medical dossier submitted by the agent, the Medical Service will authorise a longer leave. In this case, the agent, after encoding the request in Sysper2, will send the doctor's certificate and the Medical Service authorisation to the HR, who will then validate the leave in Sysper2. All doctor certificates are kept in a confidential file (Justification to special leave) which is accessible only to HR.

c) Request of declaration of the state of "Invalidity"

If the staff member is absent for more than 365 days of sick leave over 3 consecutive years, the Director of the HR sends to the PMO (Pension/Invalidity department) the request of stopping the payment of the salary and the follow up is managed by PMO (on the basis of an SLA). The Medical Service note is filed in the concerned staff personal file. No medical dossier/data is sent to or kept by the Agency.

Other aspects of staff well-being at work

Ergonomic equipment

In addition to the annual medical check up, Agency personnel may address the Medical Service concerning questions about their immediate work environment (good working posture, eyes' problems linked to working on screen etc) or special office equipment (ergonomic chairs, foot rests etc.).

In these cases, the agent asks the HR to fix an appointment with the occupational doctor of the Medical Service, who checks the situation and takes a decision on the follow up to be given to the request. The Medical Service recommendations (without any reference to the diagnosis) are sent to the HR, who coordinates the implementation requesting the necessary ergonomic material(s) to the responsible Agency services (for example the IT, in case of special computer screen, the GBI-"Gestionnaire des biens inventories" in case of special office equipment etc). No reference to the medical problems is contained in any related requests or document processed. The HR keeps the Medical Service recommendations in electronic form to justify the expenditure.

Vaccination campaigns

Each year the HR receives the information from the Medical Service on the availability of the seasonal flu vaccination.

Processing of financial data relating to health

On the basis of the SLA, the Medical Service sends regularly invoices for the above mentioned services to the Agency, according to the pre-established list of services and related costs. The invoices don't contain any reference to medical data of staff member concerned; they only refer to the name of the person and personal number, type of services (such as pre-employment medical visit, or annual medical visit etc) and the date of delivery. The Agency's HR consult the specific excel table in order to verify the accuracy of the invoices and justify the payment (it is worth mentioning that in the internal financial circuit no medical data are included in the payment file). When the Medical Service sends the invoice for its services, the Financial Initiating Agent in charge of administrative expenditures registers it and prepares the payment dossier, which is then verified by the Operational Initiating Agents (a member of the Human Resources, who can check the amounts invoiced against the excel tables used for the different services). The Financial Verifying Agent verifies afterwards the dossier sent to the Authorising Officer Sub-delegated, and finally to the accountant for the payment. The financial agents involved in processing the invoice do not use the personnel data for any purpose other than verifying the correctness of the amount due.

10/ Storage media of data

• **Medium/media used for the processing operation**

Manual processing

- Staff recruitment

The Medical Service certificate attesting the person is physically fit for duty is checked by the HR before the employment offer is signed by the Director and sent out to the candidate; then it is filed in the staff members' personal file which is kept under lock and key and is only accessible to designated HR staff or the concerned staff upon request to the HR.

- Management of medical leave during a staff member's career

Absence due to personal medical reasons: the only document received by the HR is the e-mail from the Medical Service, containing the information detailed above, which is filed in a specific folder and kept under lock in the HR offices accessible only to the HR staff.

Absence due to medical reasons related to the staff member's relatives: the original medical certificates are kept in a confidential file which is kept under lock in the HR offices accessible only to the HR staff.

The Medical Service note received within the framework of the procedure for a declaration of invalidity is filed in the concerned agent's personal file.

Automated processing

- Management of medical leave during a staff member's career

Absences are encoded in Sysper2 by the Unit secretariat or directly by the agent, according to the cases. The Medical Service communicates the justification for absences by e-mail to the HR of the Agency. The leave is then validated in Sysper2 by the HR responsible for leave manager (on the basis of the appropriate justification).

- Other aspects of staff well-being at work

Separate excel tables and e-mails received by the Medical Service (annual medical visits, ergonomic equipment, vaccination campaigns) used to justify the payment of the Medical Service invoices, are kept on the HR drive with restricted access for HR staff only.

11/ Legal basis and lawfulness of the processing operation

Legal basis

Article 11, paragraph 6, and Article 18 of Regulation 58/2003 laying down the statute for executive agencies; Staff Regulations and the conditions of employment of other servants of the European Communities ("CEOS"), as fixed by Regulation (CEE, Euratom, CECA) n° 259/68 of the Council, OJ L 56 of 4.3.1968. Regulation as last amended by Regulation (CE, CECA, Euratom) n° 23/2005:

The legal basis of the processing operation relating to the pre-employment medical visits is Articles 28 (e) and 33 of the Staff Regulations and Article 1 of Annex VIII of the, as well as Articles 12(d), 13(2) and 83(2) of the CEOS.

The legal basis of the processing operation relating to the annual medical visits is Articles 59 (6) of the Staff Regulations and Articles 16(1), 59 and 91 of the CEOS.

The legal basis of the processing operation relating to the management of medical leaves is Article 59 (1, 2 and 3) of the Staff Regulations and Articles 16 and 91 of the CEOS.

The legal basis of the data processing relating to the state of invalidity is Article 59(4) and Article 78 of the Staff Regulations, and Articles 7, 8 and 9 of Annex II to the Staff Regulations.

For contract staff and temporary staff,

Grounds for lawfulness

Regulation (EC) No 45/2001, Article 5, point a), in conjunction with Recital 27: The processing is necessary for the management and functioning of the Agency: the pre-recruitment medical examinations and specific medical check-ups are necessary for the purpose of managing and monitoring the aptness and sick leave of the agency's staff members. Furthermore, the annual medical check-ups can be considered as necessary and thereby lawful for other purposes, notably for the purpose of setting up a joint sickness insurance scheme (Articles 72 and 73 of the Staff Regulations). Such processing operations fall therefore within the context of the performance of the Agency's mission in the public interest in conformity with Article 5 (a) of the Regulation.

Regulation (EC) No 45/2001, Article 5, point b): Processing is necessary for compliance with the above mentioned legal obligations of the staff regulations concerning pre-employment medical visit and annual check-up, to which the Agency is subject.

Concerning visitors, trainees, etc and treatment administered to them in medical incidents during visits to institutions, the processing of their health data by the medical service of an institution or body can usually be based on the consent of the data subject (Article 5, point d). Should the person not be in a position

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

Data relating to health:

Medical Service of the European Commission for the medical data in the strict sense (see above); EACEA HR, the Director (for administrative data related to health); EACEA accountant; PMO Pension/Invalidity department (in case of declaration of invalidity); Invalidity Committee; Joint Sickness Insurance Scheme (JSIS): in case of exclusion from certain benefits for a period of 5 years from recruitment.

Upon request of the staff member, data related to health may be transferred to external doctors appointed by the staff member.

It may occur that a national authority, in the context of an investigation, asks for data related to health. In such a case, the necessity of the transfer should be demonstrated by this body under Article 8 of Regulation (EC) No 45/2001.

In case of control or dispute, the supervisory instances of EACEA (i.e. Internal Audit Capacity, European Commission, European Court of Auditors, OLAF etc.) and the judicial authorities (i.e. EU Courts, Ombudsman etc.).

13/ retention policy of (categories of) personal data

Pre-employment certificate (recruited staff):

Kept in personal file for 10 years after the end of the period during which a staff member is in active employment or the last pension payment

Pre-employment certificate (non recruited staff): the certificate is kept for 2 years after the decision of non-recruitment

Medical Service Note on the declaration of invalidity - will be kept in the personal file of the staff member 10 years after the end of the period during which a staff member is in active employment or the last pension payment.

Certificate to justify special leaves:

3 years (or longer, in case of dispute).

Recommendation for ergonomic material and Excel tables:

2 years.

13 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)

Blocking: Article 13, paragraph 3, of EACEA's Implementing rules of Regulation 45/2001: (1) When the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data." Thus, when receiving a request for blocking on this ground, the EACEA should immediately block the data for the period necessary for verifying the accuracy and completeness of the data.

(2) When the data subject requires the blocking of his/her data because the processing is unlawful, or when data must be blocked for purpose of proof, the EACEA will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. The decision as to whether to block the data is taken by the EACEA as soon as possible and at the latest within the delay of 15 working days

- Blocking period: depending on the case

ERASURE

- 15 working days (beginning from the reception of the request)

14/ 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.

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

N.A.

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

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

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)

17/ Comments

Please see our cover letter.

Enclosures.

PLACE AND DATE: Brussels, 22 June 2012

DATA PROTECTION OFFICER: Hubert MONET

INSTITUTION OR BODY: Education, Audiovisual and Culture Executive Agency - EACEA