

(To be filled out in the EDPS' office)

REGISTER NUMBER: 974

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 26/03/2013

CASE NUMBER: 2013-0336

INSTITUTION: EACEA

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

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

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Education Audiovisual and Culture Executive Agency,
The Head of Unit R1 – Human Resources, Administration and Communication (Mr Costas Daskalakis)
BOUR 01/25

3/ NAME OF THE PROCESSING

Processing of personal data in the area of leave and flexi time

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The processing is necessary in order to comply with the legal obligations as laid down in Article 59, 60 and Annex V the Staff Regulations and Articles 16, 58 and 91 of the CEOS.

In order to ensure that staff members are provided with the leaves' rights and working patterns they are entitled, it is necessary to have in place an effective and efficient system to keep records on leave.

In some cases health related data are processed (maternity leave, family leave etc.). The processing of these data is necessary in order to comply with legal obligations as laid down by the Staff Regulations and the CEOS.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All temporary and contract agents working at the Agency.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

Data processed in Sysper2:

surname, forename, service number, sex, seniority, personnel number, unique payroll number (NUP), address, telephone, position in the Commission's hierarchy, category, grade, status, date of birth, civil status, cohabitation recognised by the Administration, identity and dates of birth of dependent children and date of their adoption if applicable, place of origin, hours worked, timetable, data on contributions to the pension scheme (part-time work in preparation for retirement) and information on absences: for health reasons (absences with or without medical certificate - NB: medical certificates are not data processed by Sysper2, only by the Medical Service), special leave, annual leave, parental and family leave and the result of calculations: in particular on balances of entitlements (absences, leave, entitlements to parental and family leave, "purchased" credit), daily attendance (working hours: time of arrival, lunch break, departure).

In some cases:

- data revealing political opinions,
- data revealing trade union membership,
- data relating to health,
- data relating to the exclusion of individuals from a right, benefit or contract.

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 on leaves (and contain links to the related Commission intranet sections). Inter alia, staff members are always reminded that they should send medical certificates to the Medical Service and not to the HR of the Agency.

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

This site contains also a Privacy statement on the processing of data related to health.

Furthermore, specific privacy statements are available in Sysper2.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

Each staff member can access at any moment his/her Sysper2 personal data (login and password via ECA), which are mainly supplied by the agent. Staff member can therefore check them and either correct them directly (if possible) or ask the leave manager to correct them.

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 leaves, absences and working patterns. Before January 2010, time-related aspects of jobs management were dealt with using different systems: leave and absences were handled via SIC Congé, applications for parental/family leaves, part-times or CCP entirely in paper form and flexitime via an ad hoc system (excel tables).

On the 1st January 2010 the Agency switched to an integrated system, the Time Management Module ("TIM") of Sysper2 developed and implemented by the European Commission: staff rights are derived from the work pattern they choose (full-time, part-time, including family/parental leave and the application of flexitime), presences and absences are managed in relation to the individual work pattern, each actor records the data that concern him/her at his/her own level and can access/monitor the process up to the final decision, the parameters for the correct application of the relevant statutory rules are incorporated in the system.

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

Preliminary remark: the working procedures in the management of sick leave and special leaves for sickness of family members have already been described in the notification "Processing of personal data related to health", therefore they are not mentioned in this context (see EDPS case 2012-0537).

All relevant information and the procedures to follow in case of leave and absences are detailed on the Agency intranet, where they are accessible by all staff members.

Staff members of the HR Unit and EACEA's accountant who may process data relating to the health status of a staff member (or its family members) sign a declaration of confidentiality that they are subject to an obligation of professional secrecy equivalent to that of a health professional in compliance with Article 10 (3) of Regulation (EC) n° 45/2001.

For the processing of data related to leave, the Agency follows the rules of the European Commission: the Commission decisions (implementing provisions) on leave, part-time work, parental leave and family leave, which are applicable by analogy to the Agency (cf. under point 5.1, legal basis, below).

- 1) Management of entitlements to annual leave.

At the beginning of each year TIM credits automatically all staff members (CA and TA) with their quota of days of leave. Staff entitlement is calculated by the system taking into consideration relevant information recorded into Sysper2: age, grade, place of origin. In fact agents are entitled to a number of days' leave in addition to their basic entitlement, depending on their age, grade, length in the service, distance of the working place to the place of origin (travelling time).

This quota can be changed manually by the leave manager to correct and add other leave entitlements granted in specific cases by the Agency (e.g. 2 extra days for a member of the first aid team).

During the year, each staff member requests annual leave in Sysper2 and the system automatically calculates the quota consumption. The requests can be followed via a "workflow" up to approval/refusal by the hierarchical superior.

In case the quota of annual leave is not consumed during the year, the system allows an automatic report of not taken leave up to 12 days (which are added to the agent's entitlement in January of the following year).

If the agent has more than 12 days, he/she has to introduce a special request to the AIPN not later than the 31st of January, providing the reason why he/she was unable to take all his/her annual leave. The Director may allow the carry-over of leave when the agent could not take it for reasons linked to the interest of service, and exceptionally in case of illness, accident and maternity/adoption. The request of carry-over in excess of more than 30 days must be accompanied by a plan to use the leave in the following year (the plan has to be agreed by the Director).

Any negative balance (authorised by the hierarchical superior) of annual leave days taken in excess of entitlement during the current calendar year is automatically carried over and deducted from the entitlements for the following calendar year.

Flexibility of public holidays: any agent may choose to work on Maundy Thursday, Good Friday and the day after Ascension Day, which are Commission/Agency holidays on which its offices nevertheless remain open. In this case the leave manager prepares a register which is left at the entrance of the building; the agent is required to

sign in when arriving to work, and sign out when leaving. The leave manager checks the register and manually adds the number of days worked to the annual leave balance for the current year.

End of the year "permanence": the days between Christmas and New Year are non-working days. Nevertheless, in the interests of the service, the Director can decide which units must be staffed and which person must be at work. In this case the leave manager prepares a register which is left at the entrance of the building; the agent is required to sign in when arriving to work, and sign out when leaving. The leave manager checks the register and manually adds the number of days worked to the annual leave balance for the current year (these days are compensated on the basis of 1.5 days' leave for each whole day worked).

Overtime work: staff member may be required to work overtime only in cases of urgency or exceptional pressure of work (night work and all work on Sundays or public holidays may not exceed 10% of normal working hours per month and must be authorised by the Director upon justified request of the Head of Unit). Overtime worked by a temporary agent in function group AST 1 to AST 4 and contract agents in function group I to III, entitles him/her to compensatory leave (or remuneration in very exceptional cases). For each hour of overtime worked on a Saturday or between 20.00 and 22.00 from Monday to Friday, the staff member is entitled to one hour and a half off as compensatory leave; if the hour of overtime is worked between 22.00 and 7.00 or on a Sunday or on a public holiday, the entitlement to compensatory leave is two hours. The staff member is required to register his/her arrival and departure by signing the register prepared by the leave manager and kept at the reception. Furthermore the staff member completes and signs a timesheet prepared by the leave manager, has it signed by the Head of Unit and sends it to the leave manager within 3 working days of the overtime taking place. The leave manager consults the register kept at the reception in order to verify the information contained in the timesheet, and calculate the hours of compensation to be credited to the staff member.

In these cases the register containing the name, the personal number and the signature of the agent as well as the timesheet, are kept in a special file by the leave manager.

Termination of service: on termination of service contract and temporary agents are entitled to payment for days of annual leave not taken (the number of days' annual leave to which the agent is entitled is recalculated as a pro rata of the number of months or days actually worked). The leave manager draws up a balance of annual leave entitlements (basic entitlement, additional entitlements for age and grade and previous year carry over) and informs the Agency staff responsible for the pay (the calculation is then sent to the PMO department responsible for the pay). If the balance is negative, the leave manager initiates the administrative formalities for recovery (the amount to be paid or reimbursed by him/her is calculated as a proportion of the final remuneration received: 1 day = 1/30th of a month).

The balance is kept in a special file by the leave manager.

- 2) Management of entitlements to special leaves.

In exceptional circumstances agents may be granted special leaves, for example for family reasons (marriage, birth of a child, adoption, maternity and death of a member of the family) or various other reasons (leave to work for a trade union, elections, removal, exams/competitions, health cure, military obligations, outside activities, training, jury service, job-seeking at the end of the contract).

Whenever an event giving rise to the special leave occurs, the staff member enters the request in TIM and must provide a supporting document to the Agency's leave manager at the latest 15 days following the return to work (the system reminds the agent of this obligation at the moment of the submission of the request).

These supporting documents cannot be uploaded into Sysper2; they have to be sent to the leave manager by e-mail, internal mail or personally handed out. Their nature varies considerably, as they may justify the participation to a test, the change of address etc.

Documents supporting requests for special leave of a non-medical nature are submitted to the leave manager, who checks and files them in a special file.

In the case of a maternity leave, the supporting documents may contain personal data related to health: in fact before the start of her maternity leave the agent must provide the leave manager with a certificate from her doctor giving the expected date of confinement. The leave manager informs the Medical Service of the expected date of confinement and files the certificate in the agent personal file. After the birth, the agent must submit a copy of the birth certificate as soon as possible to the leave manager, who will inform the Medical Service. The copy of the certificate is filed in the staff personal file.

In case of multiple births or premature birth, the leave manager adapts manually the duration of the maternity leave in Sysper2.

If the supporting document contains medical information that is both confidential and essential to justify the entitlement (adoption of a handicapped child), the agent must send a detailed medical certificate to the Medical Service, which then notifies the Agency leave managers, who manually modifies the leave entitlements in the system (no medical certificate is kept by the Agency).

Health cure: for a SPA cure the agent must obtain prior authorisation under the Joint Sickness Insurance Scheme. Once obtained it, he/she applies via TIM for annual leave; on his/her return from the cure, the agent must send the leave manager a copy of the certificate from the SPA establishment giving the exact dates of the cure, together with a copy of the prior authorisation from the Joint Sickness Insurance Scheme (half the period will be counted as special leave and deducted from the annual leave application submitted before the start of the cure). The copy of the certificate is filed in a special file kept by the leave manager.

- 3) Management of applications relating to special working arrangements (part-time, parental leave, family leave).

Each agent may apply for these special working arrangements directly in the Time Management Module of Sysper2. Supporting documents containing personal data cannot be uploaded directly into Sysper2 but are processed by the Agency's leave manager. The application is validated by the agent's line manager and approved (or refused) by the Director. Sysper2 automatically adapts the working formula of the agent and updates his/her rights: annual leave entitlement is reduced proportionally and automatically (only in the case of medical part-time the leave manager has to manually introduce the working formula in the System).

Only the conclusion whether the leave is justified or whether a staff member is apt to work (and the percentage of work authorised by the Medical Service) is given to the line managers/hierarchy of the concerned agent (so they can organise the work of the Unit).

Once the application has been authorised by the Appointing Authority, the leave manager transfers the information to the Human resources agent dealing with the pay who informs the PMO (in order to adapt the salary).

The following procedures apply:

Part-time

Authorisation for part-time employment is automatically granted by the Director if the purpose is to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister. The agent sends the relevant supporting documents, such as a medical certificate (this does not contain any medical data, only the specification of the period of time during which the presence of the agent is necessary to assist the family member) to the Agency leave manager. The copy of the certificate is filed in a special file kept by the leave manager.

Medical part-time

The medical part time is authorised by the Medical service at its own initiative or following the agent's request (in this case, the agent has to provide a request from his/her own doctor to the Medical service which invites him/her for a medical control).

The Medical Service sends to the leave manager a note, specifying only the working time percentage allowed to the concerned agent and the modalities for the part-time, if any (the same note is sent to the agent): no medical details are specified in it. The leave manager manually adapt the working pattern in Sysper2 and files the note into the agent's personal file.

Family leave

In the case of medically certified serious illness or disability of spouse, relative in the ascending or descending line, brother or sister, the agent is entitled to family leave.

When submitting such a request, the agent must send the medical certificate directly to the Medical Service, which issues an opinion (refusal or acceptance) and informs the leave manager of the Agency about its conclusion. No medical certificates are kept by the Agency. The note sent by the Medical Service is filed in a special file kept by the leave manager.

- 4) Management of applications relating to leave on personal ground (CCP)

The Director may grant leave on personal grounds for various reasons, such as bringing up a child, caring for a family member who is ill, accompanying a spouse who works in a delegation or if the agent is elected to public or trade union office.

In EACEA the Syster2 module for the management of the CCP is not available; therefore the applications are managed manually.

Interested staff applies using a form available on the intranet, and before approval of the Director the dossier is checked by the human resources. Once approved, the leave manager registers in Sysper2 the CCP. The copy of the request and the decision are filed in the staff personal file.

- 5) Management of unjustified absences

The Agency follows the procedures contained in the Commission decision on sick leave and accident, and the instructions the Commission sent (by explanatory note) in 2011 to all leave managers, in order to assure that the same procedures is implemented in all DGs and Executive Agencies.

All staff members who are unable to work because of sickness or an accident, must notify the Agency as soon as possible and must provide a medical certificate to the Commission's medical service as from the fourth day of their absence. This medical certificate must be sent in, at the latest, on the fifth day of their absence. Failing this, and unless failure to send the certificate is due to reasons beyond their control, the absence is considered to be unjustified.

An absence is considered as unjustified as well in the case when the agent has accumulated more than 12 days of sick leave without medical certificate over the last 12 months.

These absences are deducted from the annual leave entitlement. In the case where all annual leave has been taken, the staff member's remuneration is stopped for the corresponding period. All unjustified absences can give rise to disciplinary procedures as well.

Absences are entered in TIM by the Secretariat of each Unit (task delegated by the Head of Unit). First of all the leave manager checks whether the agent has requested a leave (annual/special) or a flexitime recuperation which has not yet been approved by the line manager. If there is not such request, and the absence is not included in the listing the Medical Service sends periodically, the leave manager asks by e-mail the Medical Service to further check if it is not covered by a medical certificate.

If no justification is found, the leave manager contacts the concerned agent by mail, with a warning on the fact there is no justification. If the agent does not provide any justification, the absence is considered as unjustified.

The leave manager prepares a note to the agent, informing him/her on the situation and the consequences (attached, the two templates used: deduction of days from annual leave; salary deduction). The note is signed by the Director.

- 6) Management of daily working hours in the context of flexitime.

The Agency uses Sysper2 for the management of its Flexitime system and the procedures established by the European Commission (DG HR). Therefore, the management of flexitime is covered by the Commission's notification in this field.

- 7) Production of statistics.

At the beginning of each year the HR produce some anonymous statistics on leave (at Agency level and Unit level, broken down for contract and temporary agents) on the basis of the Sysper2 data of the previous calendar year. These statistics are considered as an HR management tool, indicating the Agency absenteeism.

Via Business Objects (BO) reports possible in the Sysper2 environment, the leave manager calculate the absenteeism using as references the absences covered and not covered by medical certificate, the long term absences, special leaves, maternity leave and leave for serious illness of a child.

10/ STORAGE MEDIA OF DATA

Medium/media used for the processing operation

Manual processing

Supporting documents containing personal data cannot be forwarded electronically via Sysper2. In the case of parental leave, applications for part-time etc. they are therefore sent by mail to the Agency leave manager, or the Commission Medical Service.

The same apply for the CCP applications.

Automated processing

Most of the data on staff members are registered already in Sysper 2 at the moment of recruitment (identification aspects: name, birth date, place of birth, place of origin, family composition etc.).

All time-related aspects are entered in Sysper2 by the different parties involved at the moment of the application.

Any agent can view at any time his/her leave quota consumption and credit/debit hours balance on the basis of the latest information entered in Sysper2.

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 (SR) 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:

- **Annual leave** - Article 57 of SR,
- **Special leave** - Annex V to SR,
- **Maternity leave** - Article 58 of SR,
- **Sick leave and family leave** is Article 59 of SR,
- **Leave on personal grounds and unpaid leave** is Articles 15, 37 and 40 of SR.
- **Flexitime** - Article 55 of the SR (working arrangements allowing staff to balance their professional and private life).
- **Part-time work** - Article 55a and Annex IV a to the SR
- **Parental leave** - Article 42a of the SR
- **Family leave** - Article 42b of the SR
- **Overtime** - Article 56 of the SR

These articles are applied by analogy to contract and temporary agents (Articles 11, 16, 17, 18, 58, 81 and 91 of the CEOS).

- 1) Commission Decision of 28 April 2004 introducing implementing provisions on leave C(2004) 1597/12;
- 2) Commission decision of 28 April 2004 introducing implementing provisions on absences as a result of sickness or accident C(2004) 1597/11;
- 3) Commission Decision on general implementing provisions for Article 42a of the SR concerning parental leave C(2004) 1364 of 15/04/2004;
- 4) Commission Decision on general implementing provisions for Article 42b of the SR concerning family leave C (2004) 1314 of 14/04/2004. These implementing provisions are implemented directly in the Agency by Decision of the EACEA Steering Committee AE/2005/CD07/D-1 of the 19/12/2005.
- 5) Commission Decision on general implementing provisions on leave C (2010) 7495 of the 5 November 2010.

These decisions are applicable to the Agency under the AE/2005/CD07/D-1 decision of the Steering Committee of the Agency of 19 December 2005 on the adoption of the implementing provisions of the statute; decision last modified by Steering Committee decision AE /2011/CD03/D02 of 15 July 2010 which made applicable the Commission's decision C (2010) 7495 of the 05/11/2010.

Grounds for lawfulness

Regulation (EC) No 45/2001, Article 5, point a), in conjunction with Recital 27: the processing of personal data is necessary for the management and functioning of the Agency.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Where necessary and on a need to know basis the personal data may be transferred to the following recipients:

Line managers, Director, HR Unit; EACEA accountant; PMO Pay sector.

Data relating to health:

Medical Service of the European Commission for the medical data in the strict sense. EACEA HR, the Director (for administrative data related to health); EACEA accountant; PMO Pay sector; Joint Sickness Insurance Scheme (JSIS)

Data relating to the exclusion of individuals from a right, benefit or contract

EACEA HR, the Director; EACEA accountant; PMO Pay sector.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Data relating to health: 3 years

Annual leave: 3 years

CCP, Part-time, parental or family leave: Documents will be kept in the personal file of the staff member 8 years after the extinction of all rights of the person concerned and of any dependents, and for at least 120 years after the date of birth of the person concerned CCL point 12.3.7.

Certificate to justify special leaves: 3 years (or longer, in case of dispute).

Flexitime: Sysper2 retention period as managed by the Commission (DIGIT).

Data relating to the exclusion of individuals from a right, benefit or contract: 3 years

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

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 be 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)

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

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.

X STATISTICAL

ANONYMOUS

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

NA

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*):

AS FORESEEN IN:

ġ Article 27.2.(a)

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

In the context of sick leave and sick leave control and management of absences. Leave in connection with the adoption of a disabled child, health cures, serious illness if spouse and other types of special leave.

ġ Article 27.2.(b)

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

ġ Article 27.2.(c)

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

ġ Article 27.2.(d)

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

ġ Other (general concept in Article 27.1)

The request for CCP for public office may reveal the political opinion of a staff member. Likewise, the working arrangements/CCP of a trade-union member may lead to the processing of his membership in a trade union. However, the underlying processing operations are not intended to reveal these special categories of data and they may be justified by Article 10 (2) o Regulation 45/2001.

17/ COMMENTS

See also EACEA's notification and the EDPS opinion on data related to health – EDPS case 2012-0537 (case closed).

PLACE AND DATE: BRUSSELS, 26 MARCH 2013

DATA PROTECTION OFFICER: HUBERT MONET

INSTITUTION OR BODY: EDUCATION, AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY