

BEREC Office Ref: 18/07/2013 DPO 4

(To be filled out by the DPO of the BEREC Office)

REGISTER NUMBER: 1134

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NOTIFICATION TO THE DPO

DATE OF SUBMISSION: 18/07/2013

CASE NUMBER: 2013 - 0888

INSTITUTION: BEREC

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

SURNAME : BAGGE

FIRST NAME: VERONIQUE

E-MAIL: VERONIQUE.BAGGE@BEREC.EUROPA.EU

FUNCTION : HEAD OF ADMINISTRATION

ADMINISTRATIVE ADDRESS: MEIEROVICA BULV 14, LV-1050, RIGA, LATVIA

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

1) ADMINISTRATION AND FINANCE UNIT

PLACE OF WORK: MEIEROVICA BULV 14, LV-1050, RIGA, LATVIA

2) MEDICAL SERVICE OF THE EUROPEAN COMMISSION AND THE PAYMASTER'S OFFICE

¹ [OJ L 8, 12.01.2001.](#)

² DECISION MC/2012/9 of the Management Committee of the Office of the Body of European Regulators for Electronic Communications (BEREC Office) adopting implementing rules concerning the tasks, duties and powers of the Data Protection Officer pursuant to Article 24 (8) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the European Union and on the free movement of such data
http://berec.europa.eu/eng/document_register/subject_matter/berec_office/decisions_of_the_management_committee/1025-decision-of-the-berec-office-mc-adopting-implementing-rules-concerning-the-tasks-duties-and-powers-of-the-

BEREC Office has no medical service and therefore it relies on the medical service of the European Commission for the processing of all medical data. In principle no medical data in the strict sense should be processed by the Office. The Office only handles the administrative data (e.g. indication of number of days of sick leave, requests for special leave).

3/ NAME OF THE PROCESSING

Management of health data in the workplace.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

Personal data is collected and managed for the purpose of complying with certain mandatory obligations under the Staff Regulations, notably:

Recruitment (pre-recruitment medical examination);

Annual mandatory medical visit and specific medical check-ups;

Medical certificates (e.g. justifying sick leave, special leave; working conditions for temporary agents and contract agents);

The assessment is based on information and/or administrative documents provided by staff members or medical services to justify his/her or relatives health status.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Staff members of the BEREC Office (temporary agent and contract agents) + Seconded National Experts

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

Categories of data processed:

- Identification data: name (first, maiden and family name) of the staff member or his/her relatives, other identification data can be required depending on the situation (e.g. address, phone number, staff member number, family composition, etc.).

- Health data collected (e.g. report of mandatory medical visits, medical certificates with name/speciality of the doctor providing the certificate, etc.). No information is provided about the diagnosis neither the content is processed. The processing operation is executed by the Medical Service in Brussels. An SLA with the MS is in force.

- Special categories of data processed: none

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The BEREC Office ensures that staff members' personal data are processed as required by Article 11 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of Individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data (Official Journal of the European Communities, L 8 of 12 January 2001).

Information will be included in the privacy statement prepared for the processing operation related to of health data in the workplace. It explains to the staff the purpose, the procedure to be followed, the confidentiality, the timing, the possibilities of appeal and the interaction between the staff and the management.

This information will be communicated to all the BEREC Office`s staff and will be available on the BEREC Office`s shared drive.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS (rights of access, to rectify, to block, to erase, to object)

Rights of Access

BEREC Office redirects requests for access to the medical files to the Medical Service of the European Commission who is the owner of the medical files of the BEREC Office staff.

In case the staff member cannot go to Brussels and consult his/her file, the Medical Service sends a copy of the medical file via a letter. Persons concerned are entitled to receive copies of their medical file if they ask for it.

BEREC Office also applies the Conclusions 221/04 of 19 February 2004 of the “Collège des Chefs d'administration”, which aim at harmonizing certain aspects of access provisions across the EU institutions.

This document emphasises that access must be provided to health data to the maximum extent possible. The document provides, among others, that access should also be provided to data of psychological or psychiatric nature; although in such cases access may be granted indirectly, through the intermediary of a medical practitioner designated by the data subject.

Data subjects should also be granted access to their data in an intelligible form, which may imply, for example, that the medical practitioner must interpret the data (such as medical codes or results of blood analysis) and/or make the data decipherable.

The rule as laid down in the Regulation 45/2001 is that data subjects have an access to their personal data.

Any restrictions to this right must therefore be strictly limited. The restriction must be based on the protection of the data subject. As for a restriction based on the "rights and freedoms of others", this refers to the fact that the rights and freedoms of an identified third party override the access of the data subject to the information. This should be examined on a case by case basis in the light of the principle of proportionality and precludes a blanket denial of access to personal notes of medical officers contained in the medical files.

The general rule, in all cases, whether they concern mental or physical conditions, remains direct access. However, ex Article 20.1 (c) of the Regulation, the access to data of psychological or psychiatric nature can be provided indirectly, if an assessment made on a case by case basis reveals that indirect access is necessary for the protection of the data subject, given the circumstances at stake.

The procedure to grant rights to data subjects is laid down in Article 13 Implementing Rules concerning BEREC Office`s Data Protection Officer (Role and Tasks).

Right to address complaints related to un-authorized processing of their personal data to the BEREC`s DPO (by e-mail to: dpo@berec.europa.eu).

A Data Protection Statement is currently under development and will inform data subjects about the nature of the data and the processing, including: controller, recipients, purpose, lawfulness, and rights of the data subjects and will inform candidates of the possibility to address queries or complaints to the controller in practice or the Office's DPO, as well as the European Data Protection Supervisor.

A specific rule exists at BEREK Office with regard to granting rights to the DATA Subject due to situations of special leave. The only person in charge for granting special leave is the Administrative Manager due to the MC Decision 10(38). This power can not be sub-delegated.

Exemptions and restrictions as specified in Article 20 of the Regulation apply.
Non-recruited persons are granted access to data processed about their health status.

Rights to rectify

Article 14 of the Regulation provides the data subject with a right to rectify inaccurate or incomplete data. This right is limited as regards certain medical data to the extent that the accuracy or completeness of medical data is difficult to evaluate.

The right of rectification, however, may apply to other types of data contained in medical files (administrative data, for example). Furthermore, the data subject may request that his or her medical file be complete – i.e. he or she may request that information such as counter opinions by another doctor are added to the medical file.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Processing of data:

Collection: HR team, Medical Service of the European Commission.

Use: management, HR team and data subject.

Transfer: Managers, EC PMO, Medical Service, Court of Auditors, European Court of Justice, Lawyers (internal & external), Internal Audit Service of the EC.

Storage: HR team, EC PMO, Medical Service.

Granting special Leave: Only the Administrative Manager based on MC Decision 10(38);

Destruction of data: maximum conservation of medical data is 30 year; maximum conservation of administrative health data is 3 years except if a dispute and appeal is underway (e.g. sick leave, annual leave); maximum conservation of medical data of non-recruited candidates is the period for challenging the data.

The data collection, use and transfer are done either using the BEREK Office's IT infrastructure or manually. The data is stored electronically and manually and access is protected by the management of the access rights. Paper requests files are stored in a locked cabinet by the HR team until their destruction.

10/ STORAGE MEDIA OF DATA

Administrative data are stored on paper in a closed cupboard in the HR team; medical data at EC PMO and Medical Service, if applicable.
Data which is stored in electronic files are protected by a restricted access to the HR team.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Staff Regulations [Articles 28-33 (pre-recruitment medical examination); and 59(1)(6) (annual medical visits, specific medical check-ups and medical certificates)] CEOS [Articles 12(d), 13(2) and 83(2) (pre-recruitment medical examination); 16(1), 59, 91 (medical visits and certificates)];
MC Decision 10(38)

11.1 Pre-recruitment medical examination

Articles 28 and 33 of the Staff Regulations and Articles 12(d), 13 (2) and 83 (2) of the CEOS serve as legal basis for pre-recruitment medical exams: "An official may be appointed only on condition that: ... (e) *he is physically fit to perform his duties*" (Article 28)." *Before appointment, a successful candidate shall be medically examined by one of the institution's medical officers in order that the institution may be satisfied that he fulfils the requirements of Article 28(e)*" (Article 33).

In addition, Article 1 of Annex VIII of the Staff Regulations provides that if "*the medical examination made before an official takes up his duties shows that he is suffering from sickness or invalidity, the appointing authority may, in so far as risks arising from such sickness or invalidity are concerned, decide to admit that official to guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the Communities*" (i.e. decide that expenses arising from such sickness or invalidity are to be excluded from the reimbursement of expenditure provided for in Article 72 of the Staff Regulations).

The regime for temporary and contractual staff foresees the possibility to refuse reimbursement of expenses concerning such sickness and invalidity detected at the pre-recruitment medical exam (Articles 28d.2, 32, 95,100 of CEOS).

11.2 Annual medical visits

In this case Article 59 (6) of the Staff Regulations, Articles 16 (1), 59 and 91 of the CEOS serve as the legal basis for the processing of personal data: "*officials shall undergo a medical check-up every year either by the institution's medical officer or by a medical practitioner chosen by them*". The processing of personal data while the annual medical visit can still be considered as necessary and thereby lawful for the purpose of setting up a Joint Sickness Insurance Scheme (Articles 72 and 73 of the Staff Regulations).

The Medical Service of the EC informs the staff member concerned of the outcome of the exam from the examining doctor via a confidential letter sent to the staff member.

The annual medical visit to the Medical service of the EC is optional and the person concerned is also entitled to have an examination carried out with a medical practitioner of his/her choice. The JSIS of the European Commission provide a possibility to have costs resulting from this medical visit to a practitioner of his/her choice to be reimbursed in the same way as if the visit had been carried as usual medical appointment of a staff member via JSIS (ceilings apply).

11.3 Consent based processing

The processing is based on consent and Article 5 (d) of the Regulation.

The further processing of medical data collected on the basis of the Staff regulation provisions can only be considered as lawful provided that it is based on an informed and freely given consent of the data subject or if the processing is necessary to protect the vital interests of the data subject. The data subject will be given a possibility to refuse and/or withdraw his/her consent with respect to further processing of his/her medical data for medical follow up purposes.

11.4. Specific medical check-ups

Medical check to verify absence because of sickness/accident

Article 59 (1) of the Staff Regulations constitute the legal basis for the processing of health data in any medical check during an absence because of sickness or accident: *"An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave. ...*

The official may at any time be required to undergo a medical examination arranged by the institution".

This provision serves as legal basis to justify the performance of a specific medical check-up in the event of sickness or absence for sick leave and, if necessary, possibly to evaluate the need to provide for certain accommodations in the workplace in view of the state of health of the person concerned. However, no legal justifies the further use of the data collected in the medical report following the specific medical examination for other purposes.

In line with Article 5 of Regulation (EC) 45/2001, **no medical data may be sent to Human Resources Department.**

BEREC Office has signed a Service Level Agreement with the medical Service of the European Commission and upon a specific request may ask for specific medical check-ups. Only administrative data are sent to the BEREC Office.

11.5. Medical certificates

Article 59 (1) of the Staff Regulations, provides that: *"An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave... He shall produce a medical certificate if he is absent for more than three days. This certificate must be sent on the fifth day of absence at the latest, as evidenced by the date as postmarked. Failing this, and unless failure to send the certificate is due to reasons beyond his control, the official's absence shall be considered as unauthorised."*

The BEREC Office staff (temporary, contract agents and seconded national experts) are requested to send their medical certificates to the Medical Service of the European Commission within 5 days.

11.6. Administrative data

Claims for reimbursement of medical expenses are processed solely by PMO according to the Joint Insurance Sickness Scheme the purposes of which are defined in Articles 72 and 73 of Staff Regulations. It is also the same way how the medical expenses generated by the annual medical visit to a medical practitioner of the choice of the person concerned.

BEREC Office does not have access to this data nor makes any reimbursements of these costs. Closed envelopes with reimbursement data are sent to the BEREC staff member from PMO and reimbursements can be also consulted online via e-mail.

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

Court of Auditors, European Court of Justice, Lawyers (internal & external – with a Service Contract in place), Internal Audit Service of the EC, EC PMO, Medical Service.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

- 1) Maximum retention period of medical data is 30 year;
- 2) Maximum retention period for administrative health data is 3 years except if a dispute and appeal is underway (e.g. sick leave, annual leave); it must be taken into consideration that complaint for psychological and/or sexual harassment may be lodged within 5 years from the day of the fact. Therefore, the term of 3 years may be extended to at least 5.
- 3) Maximum retention period for medical data of non-recruited candidates is the period for challenging the data.

Data related to sick leave: Article 59 (4) of the Staff Regulations justify a conservation period of 3 years for data necessary to justify an absence due to sick leave. The only justification for keeping them any longer would be if a dispute or appeal were under way (i.e. harassment).

Specific medical check-ups: The storage of accurate data related to the occupational exposure to certain risks has significant relevance in the context of medical treatment of the individual and/or in view of possible claims for alleged occupational diseases, even several years after the end of work.

Non-recruited persons: The medical data of not recruited persons should be kept only for the period of time during which it is possible to challenge the data or the negative decision taken on the basis of the data. This should also apply to candidates who, due to health reasons, are not recognised by the Medical Service as being able to perform the tasks.

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

Requests to erase and rectify data should be treated within 5 working days upon request with legitimate grounds.

The data should be immediately blocked for verifying purposes.

The data subject will be informed within 5 working days of the approval/rejection of his/her 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.

Data are not kept for historical, statistical or scientific purposes.

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

Personal data may only be transferred to recipients who are subject to national law adopted pursuant to Directive 95/46/EC, if the transfer is necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority (Article 8(a)) or if the recipient established the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced (Article 8(b)) of the Regulation.

Personal data may only be transferred to recipients who are not subject to national law adopted pursuant to Directive 95/46/EC, if the third country or organisation provides an adequate level of protection. It is possible to derogate from this principle if the data subject has given his/her unambiguous consent or if the transfer is necessary in order to protect the vital interests of the data subject.

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

Staff recruitment data processing may involve the request of a certificate of morality and medical certificate as foreseen in Article 27.2.(a).

Article 27.2.(a) Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures. The data provide by the data subject may allow to identify the health status of the subject.

17/ COMMENTS
n/a

PLACE AND DATE: RIGA, 18 JULY 2013

DATA PROTECTION OFFICER: MICHELE CHIODI

INSTITUTION OR BODY: BEREK OFFICE

