



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Achillefs SYMEONIDIS
Head of Human Resources
General Affairs and Administration
Unit/Human Resources
European Asylum Support Office
MTC Block A Winemaker's Wharf,
Valletta Harbour
MALTA MRS 1017

Brussels, 29 April 2013
GB/MV/kd D(2013) 862 C 2013-0248
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 Asylum Support Office concerning leave procedures

Dear Mr Symeonidis,

On 25 February 2013, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Asylum Support Office ("EASO") a notification for prior checking concerning leave procedures. The notification was accompanied by the following documents:

1. cover letter describing the differences in leave management vis-à-vis the Guidelines;
2. Privacy statement for leave procedures;
3. Leave request template;
4. Rules on leave;
5. Decision N°10 of the Management Board of EASO of 4 July 2012 on the adoption of Implementing Rules to the Staff Regulations.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines") and before the deadline given to EU institutions and bodies to submit their notification (end of March 2013). The EDPS sent the draft for comments on 11 April 2013 and these were received on 24 April 2013. The Opinion shall be adopted before 8 May 2013.

Legal aspects

This Opinion deals with the already existing leave procedures at EASO. It is based on the Guidelines, which allows the EDPS to focus on EASO practices that do not seem to be compliant with the Data Protection Regulation 45/2001.

EASO underlines that concerning leave management, the procedures at EASO differ from the EDPS' recommendation in the "Leave and Flexitime Guidelines" on the following aspects:

- the retention period for documents related to leave has not yet been formally approved; however it is expected that EASO will follow the EDPS's recommended retention periods outlined in section 5 of the "Guidelines";
- currently, Human Resources staff does not sign a specific declaration of confidentiality, as per the recommendation in section 10 of the "Guidelines".

The purpose of the processing operations covers the management of leave including annual leave, sick leave, special leave and other leave for EASO Temporary Staff (TA), Contract Agents, Seconded National Experts (SNE) and Trainees.

The EDPS notes that the processing in question is considered as lawful in terms of Article 5(a) of the Regulation¹.

The EDPS notes that the notification foresees not only the applicability of Article 27.2.a) (health related data) but also of Article 27.2.d) (excluding individuals from a right, benefit or contract) of the Regulation. He considers that it is not the purpose of leave management to exclude individuals from a right, benefit or contract. Therefore only Article 27.2.a) should apply here. Furthermore, the EDPS notes that the procedure in place at EASO as regards the processing of health related data is in line with Article 10 of the Regulation, on the basis of Article 10.2.b).

Based on the available information, the data quality principles appear to be respected. As regards the purpose limitation principle, it is specified that the data will only be processed for the purpose of leave management.

As regards the list of categories of data processed, the EDPS notes that EASO makes a difference between different types of leave. It is stated in the privacy statement that:

- in the case of applications for special leave and other leave, documents received by HR to support these applications are processed;
- in the case of certified sick leave, attestations received from the Medical Service of the Commission (no medical data) are processed.

The EDPS would like to draw the attention of EASO to the fact that some special leave may require the processing of medical data (data of a family member of the individual concerned if a child is sick for instance). Therefore, he invites the EASO to reformulate its privacy statement on this point as to ensure that any processing of medical data would only be processed via the Commission's Medical Service, whether through sick leave or to special leave. Such clarification could also be made regarding the notification.

¹ Based on Articles from the Staff Regulations, the Conditions of Employment of other servants of the European Communities, Decision N° 10 of the Management Board of the European Asylum support Office of 4 July 2012 on the adoption of Implementing Rules to the Staff Regulations.

As to the list of recipients, the EDPS considers that data subjects should not be considered as recipients of their own data, as it currently appears in the notification. In this regard, the EDPS notes that the privacy statement correctly refers to the relevant recipients, not including the data subjects. On the contrary, he considers that the IT department of the EASO should be considered as a recipient in its tasks of providing technical support to users of the system.

As stated in the cover letter, the EDPS takes note that EASO has not yet adopted a retention period relating to leave and therefore invites him to adopt it and send it to the EDPS in the framework of the follow-up of this Opinion.

As to the information, it is provided to the data subjects through a specific privacy statement complying with Articles 11 and 12.

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.

As to the security measures, the procedures seems to be in line with the Guidelines, except for the specific declaration of confidentiality that should be adopted and signed, as to be in line with section 10 of the Guidelines.

Conclusion

In view of the above, the EDPS recommends that the EASO:

- 1 - adopts a retention period for documents related to leave that are in line with the Guidelines as stated in the cover letter;
- 2 - amends the list of recipients in the notification that should not include the data subjects themselves. Besides, it should cover the IT department of the EASO;
- 3 - amends the privacy statement as regards the list of categories of data processed as to clarify the processing of medical data as analysed above;
- 4 - ensures that HR staff sign a specific declaration of confidentiality equivalent to that of a health professional.

The EDPS would like to invite EASO to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

Cc: Ms Paola Mello McCLURE, Data Protection Officer, EASO