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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Aviation Safety Agency concerning Leave Management.

Dear Mr Goudou,

On 1 December 2011, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Aviation Safety Agency (EASA) a notification for prior checking concerning leave management. The notification was accompanied by the following documents:

1. Data Protection Notice.
2. Decision No 2011/022/E of the Executive Director of the Agency of 11 February 2011 on the Adoption of the Implementing Rules on Leave, Parental Leave, Family Leave and Part-time Work.
3. Bulletin - Special leave for training requested on a staff member's own initiative.

The DPO also sent a missing document on 15 February 2013, following an EDPS request: Decision No 2006/02/A of the Executive Director of the Agency of 11 January 2006 on the Adoption of the Implementing Rules to the Staff Regulations.

The DPO sent this notification while the Guidelines in the area of Leave and Flexitime (The "Guidelines") were being drafted. Therefore, the procedure was suspended between 20 December 2011 and 31 March 2013 for adoption and implementation of the Leave and Flexitime Guidelines¹.

¹ Guidelines concerning the processing of personal data in the area of leave and flexitime adopted on 20 December 2012 (EDPS 2012-0158).

The EDPS sent the draft for comments on 2 April 2013 and received an answer on 31 May 2013.

1. Legal aspects

This Opinion deals with already existing leave management processing operations and is based on the Guidelines, which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001.

The EPDS notes that the DPO listed that the following special categories of data may be processed: personal data revealing political opinions (e.g. external activities), religions or philosophical beliefs (e.g. switch of holiday), trade-union membership, health (including disabilities) and sex life (e.g. name of partner). In those cases, the exemptions foreseen by Article 10(2)(b) of Regulation 45/2001 would normally apply but the EDPS would like to stress that not all cases of leave would require justifying the absence through the processing of special categories of data. Therefore, in the analysis of the justification of the processing of special categories of data regarding leave, it is a case by case analysis that must be carried out.

The information is provided to the data subjects through a specific data protection notice complying with Articles 11 and 12. The rights of access and rectification are granted to the data subjects in accordance with Articles 13 and 14. Transfers are limited to information necessary for the competent entities to carry out their tasks and recipients are reminded of the purpose limitation obligation in terms of the Article 7(3) of the Regulation. Finally the security policy seems to be in line with Article 22.

As to the **retention** period, the notification states that "the data are kept for a period of 5 years."

In his Guidelines, the EDPS insisted that clear retention periods must be set forth for different types of absences and that these apply to both on-line data and hard-copies or supporting documents. By implementing a unique retention period to all categories of leave data, the procedure is not in line with the Guidelines. Therefore, the EDPS advises against a general retention period of 5 years for all type of leave.

As stated in the EDPS Guidelines, for the purposes of different types of leave, data may be retained from 3 (data relating to annual and sick leave) to 7 years (data relating to financial compensation relating to leave) or even for a longer period (e.g. part-time, family and parental leave), depending on the situation and the type of leave at hand. Therefore, the EDPS invites the EASA to amend its current retention period in order to align its policies with the applicable retention periods for the different leave types (see for instance points 5.1 and 5.2 of the Guidelines).

The Notification and the Data Protection Notice do not contain information on blocking incorrect data and the time limits applicable to this process. The EDPS suggests adding a specific provision in order to keep the two documents complete. Also, only the notification contains information on processing anonymised personal data for historical statistics. Such information should be available in the Data Protection Notice in order to inform the data subjects and ensure consistency with the notification.

Conclusion

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

- 1 reconsiders the existing data retention period regarding personal data in accordance with the applicable provisions of the Guidelines as analyse above;
- 2 amends its notification and Data Protection Notice with the required information.

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

(signed)

Giovanni BUTTARELLI

Cc: Francesca PAVESI, Data Protection Officer, EASA