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Subject: Opinion on a notification for prior checking received from the Data Protection Officer of the European Union Agency for Fundamental Rights regarding the processing of personal data on management of leave

Dear Mr Cozzi,

On 4 April 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Union Agency for Fundamental Rights (FRA) a notification for prior checking concerning the management of leave. The notification was accompanied by the following documents:

1. Information notice on leave;
2. Executive Board Decision 2012/02 on the adoption of implementing rules to the staff regulations (on leave, parental leave and family leave);
3. Declaration of confidentiality for staff processing health data.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines")¹.

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

This Opinion deals with already existing leave procedures at FRA. It is based on the Guidelines, which allows the EDPS to focus only on the FRA's practices that do not seem to be in conformity with the Guidelines and the principles of the Regulation 45/2001.

1. Legal aspects

The EDPS notes that the notification foresees not only the applicability of Article 27.2.a) (health related data) but that it also lists Article 27.2.b) (processing for the evaluation of the conduct of the data subject) and Article 27.2.d) (processing excluding individuals from a right, benefit or contract) of the Regulation.

The EDPS notes however that regarding Article 27.2.b), FRA states that the processing of data concerning leave is not used for assessing the conduct/performance of the staff member. For example if a staff member is on leave on personal grounds no appraisal will be made for that period.

As the EDPS considers that leave management does not have as its primary purpose to evaluate the conduct of the data subjects nor to exclude individuals from a right, benefit or contract, only Article 27.2.a) should be considered here.

Furthermore, the EDPS welcomes the content of the information note and the declaration of confidentiality for staff processing health related data.

However, he would like to draw the attention of FRA to the retention period covering sick leave, which in its procedure is retained for two years. As stated in the Guidelines on leave and flexitime, in general, the EDPS has considered that a conservation period of at least three years for administrative data relating to sick leave can be justified for the HR by the implementation of Article 59 (4) of the Staff Regulations. This Article sets the rule that the Appointing Authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than 12 months in any period of three years.

2. Conclusion

On the basis of the notified procedure, the EDPS considers that FRA complies with the provisions of Regulation 45/2001 and he has therefore decided to close the case.

(signed)

Giovanni BUTTARELLI

Cc: Mr Nikolaos FIKATAS, Data Protection Officer, FRA