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correspondence

Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Training Foundation concerning leave and absence management

Dear Ms Serban,

On 31 January 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Training Foundation (ETF) a letter concerning leave and absence management (except Flexitime).

In the letter, ETF stated that in the framework of the process on leave and absence management "*no data related to the health of the staff member is processed*". It was added that "*the medical certificate provided by the data subject to the HR Unit, as justification of absence, does not include any reference to the medical diagnosis*".

The EDPS replied on 25 March that he agreed that the medical certificate may not include reference to the medical diagnosis but that he did not share the conclusion that it would exempt it from being data related to health. Indeed, even if medical information is kept separate from administrative information, in the case of recording of leave, the EDPS' position has been to consider that processing of personal data relating to health occurs nonetheless. Thus the EDPS asked to be notified for prior checking of the processing operations, to receive clarifications on the retention periods and to receive the privacy statement used at the ETF and covering the processing operations.

On 17 April 2013, the EDPS received from the DPO of the ETF the prior checking notification, together with the following documents:

1. Cover letter giving further information on the processing operations at the ETF
2. Notification Article 25 to the DPO of ETF;
3. Data protection declaration–Statement on the honour.

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The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines in the area of Leave and Flexitime (the "Guidelines")¹ and before the deadline given to EU institutions and bodies to submit their notification (end of March 2013). The EDPS sent the draft Opinion for comments to the DPO on 19 June 2013 and these were received on 28 June 2013.

1. Legal aspects

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

In the cover letter, the DPO of ETF underlined that ETF is in the process of implementing a new HR management system, and is committed to ensuring that the system will allow removal of records after 3 years. The letter also states that ETF will provide a follow-up notice (end of 2013) informing the EDPS about the successful deployment of the system.

As regards the **retention periods**, the EDPS takes note of the notification and of the explanations contained in the DPO cover letter. He notes that ETF foresees a retention period of 3 years in the case of special leave intended as the special leave as listed in the Staff Regulations, Annex V, article 6 (i.e. marriage, serious illness of spouse etc.). As stated in the Guidelines, some special leave foreseen by the Staff Regulations may require a retention for a longer period than three years (parental leave for instance) or even for the length of the career of the staff member (for instance in the case of CCP). Parental leave, unpaid leave etc. are considered as a working condition as mentioned in Chapter 4 of the Conditions of Employment of Other Servants. As such they are handled in the context of the management of staff rights and are therefore part of the personal file and therefore kept at least for the length of the career of the staff member.

Regarding **information**, the notification states that "Data subjects are informed about the purpose of the processing". However, this information to the staff members can not be limited to the purpose only. Articles 11 and 12 of the Regulation foresee a list of information that must be provided to the data subjects. The EDPS did not receive a privacy statement in line with Articles 11 and 12 and therefore invites ETF to adopt one and send it to the EDPS.

2. Conclusions

In view of the above, the EDPS invites the ETF to:

- 1) - adopt a privacy statement covering the processing operations at stake and send it to the EDPS;
- 2) - consult the EDPS of the new HR management system in the case a prior-checking notification shall be considered necessary.

(signed)

Giovanni BUTTARELLI

Cc: Laurens Rijken, Data Protection Officer, ETF

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