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Brussels, 09 September 2013
GB/MV/sn D(2013)1997 C **2011-1102 and
2013-0236**
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correspondence

Subject: Follow-up regarding Allegro at the European Agency for Safety and Health at Work, including Flexitime.

Dear Ms Murillo,

On 26 January 2011, the EDPS replied to a consultation from the European Agency for Safety and Health at Work ("EU-OSHA") on a new HR management system "EU HR Allegro" (Case 2011-1102). Among others, this system allows an electronic time management, including flexitime.

The EDPS concluded that the envisaged processing operations in the context of Allegro personnel files were normally not subject to prior-checking under Article 27 of the Regulation and that processing operations in the context of flexitime did not "*present sufficient risks to bring it within the scope of Article 27 of Regulation 45/2001.*" However, the EDPS made a number of recommendations in the context of the implementation of Allegro and Flexitime in view of ensuring the correct implementation of Regulation 45/2001.

1) One of these recommendations related to the **flexitime system** in place at EU-OSHA. The Flexitime working hours policy in force at EU-OSHA at that time stated in its Article 5 that "the guards shall continue to provide weekly time summaries and shall forward these to each member of staff and their respective Head of Unit at the end of each week". The EDPS concluded that, in the light of the "need to know principle", guards should not have access to data relating to HR matters. Therefore, the EDPS recommended that EU-OSHA should therefore ensure that only relevant HR staff members process these data. This required a change of the current procedure.

On 20 December 2012, the EDPS issued the Guidelines on leave and flexitime (2012-0158) in which he clarified the use of data in the context of flexitime systems.

On 14 March 2013, the EDPS received from the Data Protection Officer ("DPO") of EU-OSHA a letter on the Flexitime policy at EU-OSHA in the light of the EDPS Guidelines on leave and Flexitime (Case 2013-0236). This letter is considered as a follow-up to the consultation answered on 26 January 2011 and as an update following the adoption of the above mentioned Guidelines. In order to facilitate the analysis, the documents are regrouped under one case file: 2011-1102.

In this letter, EU-OSHA informed the EDPS that in June 2012 it rolled out Allegro and that the application had some practical implications (changes) on the policy which was analysed in 2011. This letter contained updated information on EU-OSHA's policy in the light of the different elements explained above and provided further information on the specific EDPS recommendation regarding the guards' access to HR data.

More specifically, EU-OSHA clarified that security guards collect clock in/clock out of staff in their capacity and for security/access control purposes only. Besides, paragraph 4.3 of EU-OSHA flexitime policy foresees that "*when there are grounds to suspect that a staff member is infringing flexitime rules, the Head of Unit may check the data entered in the flexitime sheet against the Dorlet clock-in and out report*"¹. The Agency stated in the cover letter that they do not have another way to carry out controls for compliance/verification purposes at the moment.

In the Guidelines on leave and flexitime, the EDPS developed the position that he already expressed to EU-OSHA in his letter of 26 January 2011. Indeed, the EDPS drew the attention of the EU institutions and bodies to the fact that he was not in favour of systems that would allow the processing of personal data for both purposes of flexitime and access control. Indeed, these processing operations are set by EU institutions and bodies for two distinct purposes (flexitime and access control), the access to the data is limited to the relevant persons of the institution/body (most of the time HR staff for the Flexitime and the local security officer for the access control data) and the retention periods applicable to each processing operations are different.

As already stated by the EDPS², the need for and proportionality of the verification of Flexitime clocking operations with respect to data on physical access checks are debatable. Data relating to physical access may be accessed by the departments of the Administration only within the framework of a formal administrative investigation. The current policy of EU-OSHA extends beyond such procedure as it foresees only the existence of "grounds to suspect".

In the absence of sufficient suspicions, the processing of personal data with a view to comparing Flexitime clocking operations with data obtained in the context of physical access control on members of staff for the purpose of dissuading those members of EU-OSHA staff who fail to comply with the Flexitime rules would be considered to be excessive. Such "*fishing expeditions*" (where data are randomly compared in order to identify those individuals who fail to comply with the Flexitime rules) must be avoided. It is the view of the EDPS that there are other methods which could be used to ensure compliance with those rules, in accordance with the purpose limitation principle.

The EDPS concluded similarly in another case on the use of clocking data³ that the verification of flexitime clocking operations with respect to data on physical access checks might be justified as necessary only in those specific cases in which there are grounds to suspect that a member of

¹ Dorlet is the name of the guard's report on clocks-in and clocks-out.

² See Opinion of 12 November 2009 on the notification for prior checking on the "Verification of Flexitime clocking operations with respect to data on physical access" (Case 2009-477).

³ See non prior-check letter of 9 April 2013 on the notification of the processing operations concerning badge use as an informative tool to staff on office presence in the context of time tracking (2013-0171).

staff is infringing the flexitime rules but that such verification should then be carried out within the framework of an administrative investigation.

In line with previous cases, the EDPS concludes that the current system proposed by EU-OSHA is not compliant with his recommendation. In this respect, the EDPS invites EU-OSHA to link the possibility of verification by the Head of Unit to the procedure on administrative investigation and to limit the access to such data only within the framework of a formal administrative investigation. Random access to the clock-in / clock-out data is not considered as proportionate.

The EDPS was also informed by EU-OSHA that a prospection notice aimed at identifying new premises in Bilbao has been published and that the objective was to have a new office space ready for use as of 1 January 2014. The EDPS takes note that the DPO of EU-OSHA has already duly informed the Management regarding the need to anticipate future requirements in terms of compliance of the access control and flexitime system and suggested alternative systems for the new building.

The EDPS wants to stress that he remains of course available to provide further information in order to ensure the development of a compliant system in the new premises.

2) As to the **recommendation** touching upon the **conservation period of data**, the EDPS takes note of the clarifications given by EU-OSHA that Flexitime schedules are retained for the period indicated in the privacy statement (current calendar year) and that regarding data stored in Allegro, the Agency is working with other Agencies who have implemented the application and the service provider to find a technically possible solution to meet this requirement. The EDPS takes note that EU-OSHA will keep him updated on this issue.

Conclusion

In view of the above, the EDPS recommends that the EU-OSHA:

- 1 - limits the use of the clock-in/clock out data only for verification in the framework of administrative investigations;
- 2 - keeps the EDPS updated on the issue of the conservation of data.

The EDPS invites EU-OSHA to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

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Cc: Ms Emmanuelle BRUN, Data Protection Officer, EU-OSHA