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**Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Institute of Innovation and Technology on leave and flexitime**

Dear Mr Leceta,

On 2 July 2013, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Institute of Innovation and Technology (**EIT**) a notification for prior checking concerning the processing operations on leave and flexitime. The notification was accompanied by the following documents:

1. Decision of 17 February 2010 of the Governing Board of the EIT on the adoption of implementing rules to the Staff Regulations;
2. Decision of 7 March 2013 of the Governing Board of the EIT on working hours at the EIT;
3. Frequently Asked Questions on Flexitime;
4. Memorandum of Understanding with DG HR of the European Commission on the application of the Commission information system security policy at the EIT;
5. Service Level Agreement between DG HR & Security of the European Commission and the EIT
6. Privacy statement for procedures relating to leave and flexitime.

The EDPS takes note that the EIT also notified the processing operations on health data at work, which is analysed under another Opinion (2013-0814) and which covers, among others, sick leave absences.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines"). The EDPS sent the draft for comments on 21 January 2014 and these were received on 29 January 2014. As this is an ex-post case, the deadline of two months for the EDPS to issue his Opinion does not apply; this case has been dealt with on a best-effort basis.

### **Legal aspects**

This Opinion deals with the already existing leave and flexitime procedures at the EIT. It is based on the Guidelines, which allows the EDPS to focus on the EIT practices which do not seem to be in conformity with the leave and flexitime Guidelines and the principles of the Regulation (EC) No 45/2001 (the Regulation).

The EDPS takes note that EIT applies the general implementing rules of the Staff Regulations, as adopted by the Commission, by analogy to its staff.

The **purpose** of the processing operations is the management of all entitlements to annual leave, special leave, certain entitlements for sick leave, and flexitime processing operations of staff members (temporary agents, contract agents and seconded national experts). More specifically, the purpose for collecting flexitime data is time-keeping of hours worked so as to grant access to a voluntary flexitime scheme.

As to the **retention** period of the data, the notification only states that "data about leave is retained for the duration of employment". The notification does not contain references to the retention of data in the context of the flexitime system. The EDPS notes however that the privacy statement is more complete about the retention of the data as it refers to different retention for the different categories of leave. It is however not fully in line with the Guidelines of the EDPS as it also generally states that "data about leave is retained for the duration of employment". In the Guidelines, the EDPS made specific recommendations as to the acceptable retention periods in the context of the various leave procedures. EIT should adapt the text of the privacy statement and complete its notification on this point. Therefore, the EDPS suggests clarifying for the different leave procedures the retention that the EIT implements.

Regarding the **recipients** of the data, the privacy statement lists the Services and Finance's Head of Unit of the EIT as the controller of the processing operation. For the EDPS, the agency as such is the controller, represented in the specific processing by one department.

Also, the notification lists all the recipients together without underlining that these recipients would only have access to the data within the limit of their competences and for the purpose described. The description of the recipients, which is given in the privacy statement seems more accurate and could be used to complete the notification on this point.

**Information** about the processing operations is provided to the staff through a privacy statement, which is available in EIT's intranet and which was provided to the EDPS. As stated above, the privacy statement is more precise than the notification on different points, but should be completed in the light of the comments above.

Furthermore, the EDPS would like to draw the attention of the EIT to the case where a leave request is linked to the health situation of a family member. In such case, the EDPS considers that the privacy statement should foresee the communication of information to this family member whose personal data are processed by the EIT. If the EDPS notes that direct provision of such information would involve disproportionate efforts by the EIT, he considers that the Agency, amongst other appropriate steps, could at least ask staff members submitting such data to inform the family members concerned about the processing of their personal data and their rights in that respect.

As to **security** measures, the EDPS notes that the declaration of confidentiality to be signed by the HR staff that they are subject to an obligation of professional secrecy equivalent to that of a health professional, in compliance with Article 10(3) of the Regulation is missing. As stated in the guidelines (under point 10): "given the particular sensitivity of the processing of health related data and considering that data indicating the health status of a person are processed by HR services during a leave request procedure (e.g. reason for the absence, forms concerning sick leave, medical certificates, etc), the EDPS recommends that all persons within HR services who are responsible for processing information related to the staff members' health status are reminded to process them in accordance with the principles of medical confidentiality." Therefore, the EDPS invites the EIT to adopt such declaration of confidentiality.

### **Conclusion**

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

- 1- completes the privacy statement and notification in the light of the comments above, i.e; recipients, information of family members, retention;
- 2- adopts the declaration of confidentiality to be signed by the staff managing health related data.

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

**(signed)**

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Cc: Mr Jari AHOLA, Data Protection Officer, EIT  
Ms Agnes DERI, HR Officer, EIT