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GB/XK/sn/D(2014)1199 C 2013-0721
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correspondence

Subject: Notification on the processing of health data in the workplace, case 2013-0721

Dear Ms Langbakk,

We have analysed the notification and further information you have provided to the EDPS for prior-checking under Article 27(2)(a) of Regulation 45/2001 ("the Regulation") on the processing of health data at the European Institute for Gender Equality ("EIGE"). This will be analysed in light of the EDPS Guidelines on health data in the workplace ("the Guidelines").

The EDPS points out that the analysis and principles laid down in the EDPS Joint Opinion on the same topic ("the Joint Opinion")¹ are also applicable in the present case.

The EDPS will only identify EIGE's practices which do not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines, and then provide EIGE with relevant recommendations.

¹ EDPS case 2010-0071, issued on 11 February 2011. This Opinion analysed the processing of health data in 18 agencies.

1) Retention periods

The privacy statement makes a distinction between the retention period of **medical files** (maximum 30 years after the last medical document has been inserted) and **annual check-up files** (maximum 20 years after the end of the period during which a staff member is in active employment or the last pension payment). The agency's external contractor, the Medical Centre, keeps both files.

The EDPS does not see the necessity of keeping two separate medical files for different retention periods. In light of the Guidelines and Joint Opinion, the EDPS recommends that all medical reports/results/documents/certificates are kept in one medical file concerning the staff member for a maximum period of thirty years after the last document has been inserted.

EIGE should also adopt the retention period of pre-recruitment aptitude certificates kept in the personal files which is, ten years after the end of the period during which a staff member is in active employment or the last pension payment.

2) Information to be given to the data subject

Rights of access and rectification

On the basis of Articles 11(1)(e) and 12(1)(e) of the Regulation, EIGE should supplement the privacy statement with the explanations contained in the Guidelines and the Joint Opinion, so that data subjects fully understand their rights.

EIGE should mention that data subjects can have indirect access -instead of direct access- to their psychiatric and psychological reports via a doctor appointed by them².

As to the right of rectification, EIGE should mention that data subjects are entitled not only to correct administrative errors in their medical file but also to supplement it by adding opinions of other doctors to ensure completeness of the file.

The time-limits for storing the data

Furthermore, in light of Articles 11(1)(ii) and 12(1)(ii) of the Regulation, EIGE should clearly indicate all different retention periods of pre-recruitment aptitude certificates, medical files, sick-leave certificates and medical data of non-recruited candidates.

EIGE should revise accordingly both the notification and the privacy statement.

3) Security

The Human Resources Officers process personal data related to health, namely aptitude certificates and administrative information on sick leave.

Due to the sensitive nature of such data, the EDPS recommends that Human Resources Officers sign confidentiality declarations mentioning that they are subject to an obligation of professional secrecy equivalent to that of a health professional. This organisational measure aims at maintaining the confidentiality of personal data and at preventing any unauthorised access to them within the meaning of Article 22 of the Regulation.

² In that regard, EIGE should refer to the Conclusion 221/04 of the Board of Heads of Administration of 19 February 2004.

In the context of the follow-up procedure, please send to the EDPS a revised version of the notification and privacy statement as well as a copy of the confidentiality declaration within a period of 3 months, to demonstrate that **EIGE** has implemented the above EDPS recommendations.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Ramunas LUNSKUS, Data Protection Officer
Mr Luigi SANDRIN, Head of Administration
Mr Marc JACCARINI, HR Officer