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Subject: Prior check Opinion on Complimentary Sickness Insurance for Local Agents in EU Delegations - Declaration of accidents at work

Dear [...],

On 1 September 2016, the European Data Protection Supervisor ("EDPS") received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ (the "Regulation") on the declaration of accidents at work for local agents working in EU Delegations covered by the Complimentary Sickness Insurance for Local Agents ("CISLA") scheme from the Data Protection Officer ("DPO") of the European External Action Service ("EEAS")².

The EDPS has issued Guidelines concerning the processing of health data in the workplace by Union institutions and bodies³ ("the Guidelines"). Therefore, this Opinion analyses and highlights only those practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for the processing of health data of local agents by EU Delegations and EEAS.

¹ OJ L 8, 12.1.2001, p. 1.

² As this is an ex-post case, the deadline of two months does not apply. The case was suspended for further information from the EEAS from 7 September 2016 to 23 December 2016 [unsuspended on the first following EDPS working day, i.e. 3 January 2017], from 3 to 19 May 2017 and for comments on the draft Opinion from 27 October to 14 November 2017. This case has been dealt with on a best-effort basis.

³ Available on the EDPS website:

https://edps.europa.eu/sites/edp/files/publication/09-09-28_guidelines_healthdata_atwork_en.pdf

1. Facts and legal analysis

1.1. General consideration as regards processing of personal data of local agents by the EU Delegations and EEAS following accidents at work

According to the notification and the privacy statement, the purpose of the notified data processing operation is to manage the reports of accidents at work concerning local agents working in EU delegations⁴ covered by the CISLA scheme in order to proceed with the reimbursement of the medical expenses.

It may however also happen that local agents, who are not covered by the CISLA scheme, have an accident at work and be injured due to this accident. While the EU Delegations and EEAS would not be responsible for the reimbursement of medical expenses in such cases, the EU Delegations and EEAS would still be processing personal data, including data related to health, of those local agents in e.g. sick leave absences management and supporting medical certificates. The EDPS **reminds** the EU Delegations and EEAS that compliance with the Regulation must be ensured also in such cases.

1.2. Processing and transfers of medical data and data related to health

The Regulation provides for specific rules for categories of data considered by their nature of infringing fundamental rights and freedoms. According to Article 10(1) of the Regulation, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and 10(3). According to Article 10(3) of the Regulation, paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

According to the notification, in the event of an accident, the local staff member must report the exact circumstances in which the accident occurred on an accident report form, which the local staff member must send to the Head of Delegation. To this form must be attached a copy of the medical certificate if the accident lead to incapacity for work. The medical report and any other supporting documents concerning the accident must be sent to the Administration section of the Delegation. In order to safeguard the confidentiality of the medical data, the member of local staff may exceptionally forward in person the medical report to the CISLA functional mailbox in EEAS Headquarters. In such a case, the local agent will have to inform the Administration of the Delegation.

While the accident report form contains fields to note if the accident lead to incapacity to work, the foreseen period and number of days of absence, it is not clearly indicated what the contents of the medical certificate should be. The EDPS considers that in view of its purpose the medical certificate should contain only the data relevant to inform whether the accident lead to incapacity for work and the foreseen period of absence for the purpose of justification of the medical absence. On the other hand, the medical report will contain medical data (also more detailed and/or more sensitive) relating to the injuries sustained in the accident and the medical consequences of the accident.

The local staff members should be given clear information on the contents of the medical certificate on incapacity for work. The medical certificate must be clearly distinguished from the medical report. The medical report should always be sent directly to the CISLA functional

⁴ The processing of personal data following accidents occurring outside the country of employment forms part of the notification for prior checking concerning incapacity for work exceeding 30 days (EDPS case 2016-0776).

mailbox in EEAS Headquarters, without any access of staff members of the Delegation. Whereas the medical certificate should be sent to the Administration section of the Delegation or, if the local agent so chooses, sent directly to the CISLA functional mailbox in EEAS Headquarters and the Administration of the Delegation informed of it.

In light of the above, the EDPS **recommends** modifying the privacy statement and the other information relevant for local agents accordingly.

1.3. Confidentiality and security of health related data

To ensure compliance with Article 10(3) of the Regulation, the EDPS recommends in the Guidelines the use of codes of conduct or confidentiality declarations for all persons involved in the processing, who are not already bound to secrecy obligations. 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.

According to the notification, confidential medical information will be limited to the Head of Delegation, Head of Administration and the administrative assistant responsible for medical expenses. In order to safeguard the confidentiality of the medical data, a declaration concerning the confidential handling of medical data must be signed by the staff members of the Delegations involved in the process. The EDPS **recommends** that this confidentiality declaration not only refers to the confidentiality obligation under the Staff Regulations (for officials/contractual agents) or Framework Rules and Specific Conditions of Employment (for local staff), but should also specifically mention that they are subject to an obligation of professional secrecy equivalent to that of a health professional.

EEAS's HR officers responsible for local agents also 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 also EEAS's HR officers responsible for local agents sign confidentiality declarations mentioning that they are subject to an obligation of professional secrecy equivalent to that of a health professional.

1.4. Retention period

The notification states that "*medical records are to be kept for 30 years after the termination of duties of the person concerned*". In the Guidelines, the EDPS **recommended** that medical files should be kept for a maximum period of 30 years after the last document inserted in the file. The retention period and the privacy statement should be modified accordingly.

2. Conclusion

In this Opinion, the EDPS has made several recommendations to ensure compliance with the Regulation. Provided that all recommendations are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

In light of the accountability principle, the EDPS expects the EEAS to implement the above recommendations accordingly and has therefore decided to **close the case 2016-0775**.

Additionally, the EDPS **strongly recommends** that EEAS notifies the processing of personal data for reimbursement of the medical expenses of local agents and for the recognition of serious illness of local agents to the EDPS for prior checking under Article 27(2)(a) of the Regulation. Both cases entail the processing by EEAS and the EU Delegations of personal data related to health of local agents and are likely to present specific risks to the rights and freedoms of data subjects in accordance with Article 27(2)(a) of the Regulation. The EDPS has already previously stated that the data collected in connection with the management of a sickness

insurance scheme constitutes health data⁵. While it might be true that purpose of the processing operation is not to process medical data, the processing of health related data is not merely incidental. In handling reimbursement requests for medical expenses, the processing of health related data is regular and structural. In order for a reimbursement request for a medical expense to be considered justified, the local agent must provide in the reimbursement form information on the type and nature of the exam, medicine etc. with the supporting documents (original invoices and medical prescriptions, medical report).

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], Data Protection Officer EEAS

⁵ See EDPS Opinion of 10 July 2007 in case 2004-0238, available on the EDPS website: https://edps.europa.eu/sites/edp/files/publication/07-07-10_commission_sickness_insurance_en.pdf.