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Subject: Prior-checking Opinion regarding the EEAS' processing of personal data for repatriation of EU expatriate staff on medical grounds (EDPS case 2016-0778)

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 EEAS' processing of personal data for repatriation of EU expatriate staff on medical grounds from the Data Protection Officer (DPO) of the EEAS.²

The EDPS has issued Guidelines concerning the processing of health data³ (the Guidelines). Therefore, this Opinion analyses and highlights only those practices that 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 point out that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for the processing of health data at the EEAS.

¹ OJ L 8, 12.1.2001, p. 1.

² The case was sent for comments by the DPO on 19 March 2018 and on 28 March 2018 the EEAS provided their comments together with an updated notification and privacy statement (these documents were not assessed in this opinion). While this notification was pending, the advisory authority for medical evacuation was transferred to the EEAS Medical Cell. The EEAS has explained that the workflow remains the same with the exception that the EEAS Medical Cell replaces the actor EC Medical Service. The EDPS has therefore amended the opinion in this regard.

³ Available on the EDPS website:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/09-09-28_Guidelines_Healthdata_atwork_EN.pdf

1. Facts

This processing activity relates to the medical evacuation of EEAS staff and/or their families that are deployed in the EU Delegations. The authorisation of the repatriation is decided by the EEAS authorising officer by Sub-delegation (AOSD) in BA.HR.3 (Rights, Obligations and Medical Cell Division) upon advice from the EEAS Medical Cell, which provides an opinion to the authorising officer. The latter issues a note authorising the repatriation. The staff member (or entitled dependents) concerned provides supporting documents and reimbursement claims to the local administration. The Rights, Obligations and Medical Cell Division validates the requests for reimbursement to the staff member.

Regarding extreme emergency situations, where the circumstances do not allow for these exchanges to happen in a timely manner, the decision is taken by the EU Delegation in the Third Country and can be authorised ex-post.

The data processed for this processing activity are personal data in the authorisation decision (sent via ARES) which include names, start and end date of the evacuation, personnel number and place and date of repatriation of expatriate staff in EU delegations or their entitled dependants. Medical information needed for the assessment remains in the EEAS Medical cell/file (not shared with the specific EU Delegation and/or EEAS HQ) which include names, address, date of birth, medical report, diagnosis, treatment, X-Rays, results of any other complementary exam, doctor's prescription and sickness leave of expatriate staff in EU Delegations or their entitled dependants.

The recipients of the personal data within the EU Delegations are the Head of Delegation, Head of Administration and other dedicated staff dealing with the repatriation and the reimbursement of the transport costs. Within the EEAS Headquarters, the recipients are the case handlers in BA.HR.3, Head of Division, the EEAS Medical Cell and EC HR. D6 (Control Service). Medical information may also be shared between the EEAS Medical Cell and the provider for air ambulances. Personal data might also be transferred to other service providers in case of urgency and in order to ensure a safe repatriation.

2. Legal analysis

2.1. Purpose of the processing operation

The purpose of the processing operation at hand is to manage and follow up the process of authorisation of repatriation on medical grounds. The data processed for this purpose are referred to as the personal data included in the authorising decision and personal medical data that is needed for the assessment (which remains in the EEAS medical file). The EEAS has described that the Authorising Officer by Sub-delegation receives an opinion from the EEAS Medical Cell (formerly from the EC Medical Service) before issuing a note authorising the repatriation. Neither the initially received notification nor the privacy statement describes, however, the assessment following the opinion from the EEAS Medical Cell (formerly from the EC Medical Service) or at what point the EEAS Medical Service is consulted in this process.⁴

Furthermore, the procedure for when/if a repatriation is declined is also not described in the initial documentation provided. These are important steps in light of the purpose of the processing and should be clearly described in the notification and privacy statement.

⁴ The activities of the EEAS' medical service has been covered by a previous Opinion by the EDPS, adopted 14 December 2017 in case 2016-0780. This is however an additional activity not covered by that Opinion.

The EDPS **recommends** clarifying the privacy statement so that it covers the whole procedure of repatriation on medical grounds, including the assessment following the opinion of the EEAS Medical Cell (formerly from the EC Medical Service) and the role of the EEAS Medical Service in this regard. People affected should be able to easily understand what personal data are processed during the different steps of the procedure and who has access to which parts of the data.

2.2. Transfer of personal data

Most of the transfers of personal data for the purpose of repatriation are considered as transfers under Article 7 and 8 of the Regulation. However, according to the information received, personal data may also be transferred to service providers, such as air ambulances, in case of urgency and in order to ensure a safe repatriation. This could include service providers not subject to Directive 95/46/EC and therefore considered as third country transfers under Article 9 of the Regulation. According to this Article, the transfer is possible only if the third country provides an adequate level of protection or if any derogations are applicable. Regarding the fact that service providers are used in case of urgency/in order to ensure a safe repatriation, the EDPS considers that such third country transfers may be covered by the derogation under Article 9(6) (e) of the Regulation, since they are necessary in order to protect the vital interests of the data subjects. The EEAS should restrict the amount of the data transferred to what is necessary for ensuring appropriate care during transit.

The EDPS **reminds** the EEAS to only transfer personal data if the data are necessary for the legitimate performance of a task covered by the competence of the recipients. Concerning transfers to recipients located in third countries, such as providers for air ambulances, the EDPS considers that these transfers are necessary in order to protect the vital interests of the data subjects in line with Article 9(6) (e) of the Regulation.

3. Conclusion

In this Opinion, the EDPS has made certain recommendations to ensure compliance with the Regulation. Provided that the 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**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, EEAS