



Opinion on the notification for prior checking from the Data Protection Officer of the Education, Audiovisual and Culture Executive Agency on Career Development Review, Probation and Reclassification

Brussels, 6 February 2012 (cases 2010-589, 2011-1071 and 2011-1072)

1. Proceedings

The notification for prior checking on Career Development Review (CDR) was submitted by the Data Protection Officer (DPO) of the Education, Audiovisual and Culture Executive Agency (EACEA) on 30 July 2010. The notifications for prior checking on Probation and Reclassification were received by the European Data Protection Supervisor (EDPS) on 21 November 2011. They were accompanied by the following documents:

- *Décision du Comité de Direction AE/2008/CD04/D-3a relative à l'évaluation des agents temporaires;*
- *Décision du Comité de Direction AE/2008/CD04/D-3b relative à l'évaluation des agents contractuels;*
- *Décision du Comité de Direction AE/2008/CD03/D-3b relative aux procédures régissant l'engagement et l'emploi des agents temporaires;*
- Steering Committee Decision AE/2008/CD03/D3c on the General implementing provisions governing the engagement and use of contract staff,
- *Décision du Comité de Direction AE/2010/CD04/D2b relative à la carrière des agents temporaires et à leur affectation à un emploi à un grade supérieur à celui auquel ils ont été engagés;*
- *Décision du Comité de Direction AE/2011/CD03/D01 relative aux dispositions générales d'exécution de l'article 87, paragraphe 3, du régime applicable aux autres agents des Communautés Européennes;*
- Career Development Report Form;
- Probationary Report Form for contract staff;
- EACEA Appraisal Guide;
- Privacy Statement for the Probationary Period;
- Privacy Statement for the Reclassification Procedure.

The procedure was suspended between 13 and 26 January 2012 to allow for the DPO comments on the draft opinion.

2. Legal aspects

This Opinion deals with the already existing annual evaluation, probation and reclassification procedures at the EACEA. It is based on the Staff Evaluation Guidelines¹ which allows the

¹ Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

EDPS to focus on the EACEA practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001².

2.1. Data retention. According to the information provided in the notification, CDRs, probation reports, reclassification decisions, as well as individual letters confirming the final award of the respective points are kept in personal files for up to eight years after the extinction of all rights of the person concerned and of their dependants, but at most for 120 years after the date of birth of the person concerned, all in accordance with Article 26 of the Staff Regulations and the Common Conservation List of the European Commission³.

Article 4(1)(e) of the Regulation 45/2001 states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS is of the opinion that the existing storage periods which extend to the whole career of the data subject at the EACEA are not necessary for the accomplishment of the respective evaluation procedures. In similar cases, storage of appraisal and probation reports for maximum five years period after the end of a particular exercise, as well as storage of promotion and reclassification decisions until the termination of employment was considered in conformity with the Regulation 45/2001⁴.

Consequently, the EACEA is invited to reconsider the existing retention periods and establish shorter ones in relation to the actual purposes of the processing.

2.2. Information to data subjects. The EDPS notes that the information is provided in three specific documents made available on the EACEA Intranet, namely the Appraisal Guide, as well as the Privacy Statements for Probationary Period and Reclassification. Whereas both privacy statements provide for all information listed in Articles 11 and 12 of Regulation 45/2001, the Appraisal Guide only provides for information on data recipients.

Therefore, the EDPS recommends that a specific privacy statement for the CDR is established and placed on the Intranet.

3. Conclusion

In view of the above, the EDPS recommends that the following measures are taken in order to ensure full compliance with Regulation 45/2001:

- maximum time limits for storage of personal data processed in this context are established in relation to the actual purposes of the processing;
- information to data subjects in the context of the CDR is provided as outlined above.

He would like to invite the EACEA to inform him about the implementation of these recommendations within three months after receipt of this Opinion.

Done at Brussels, 6 February 2012

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

³ SEC(2007)970

⁴ cf. EDPS Opinion on probationary reports, staff appraisals and promotion at the Eurofound of 19 December 2011 (EDPS 2011-0628) and EDPS Opinions on annual appraisal and probationary period of CPVO President and Vice-President of 28 July 2009 (EDPS 2009-355 and 2009-356).

(signed)

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