



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Ms Caroline MAION  
Acting Data Protection Officer  
Innovation and Networks  
Executive Agency (INEA)  
European Commission  
W910  
B - 1049 Brussels  
Belgium

Brussels, 03 June 2014  
GB/ALS/sn/D(2014)1259 C 2013-1309  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Prior-checking notification on the processing operations related to employment termination of the statutory staff working in the Innovation and Networks Executive Agency (case 2013-1309)**

I am contacting you with regard to your notification sent to the European Data Protection Supervisor ("**EDPS**") for prior-checking under Article 27 of Regulation (EC) No 45/2001 ("**the Regulation**") relating to the processing of personal data in the context of employment termination of the statutory staff in the Innovation and Networks Executive Agency ("**INEA**").

The processing operation has been notified under Article 27(2)(b) and Article 27(2)(d) of the Regulation. Article 27(2)(b) refers to "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" and Article 27(2)(d) to "*processing operations for the purpose of excluding individuals from a right, benefit or contract*".

After examining the data processing operations described in the prior checking notification we have reached the conclusion that, for the reasons described below, the processing covering the employment termination of the statutory staff at INEA is **not subject to prior checking**.

The main aim of the processing is to manage the end of the period of service of a staff member at INEA and not to evaluate personal aspects of the data subjects in terms of conduct, ability or efficiency, as stated in Article 27.2(b). Furthermore, Article 27(2)(d) does not apply here either, since the provision relates to processing operations such as blacklisting or exclusion databases.<sup>1</sup> None of the other grounds for prior checking seems to apply either. However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.

Nonetheless, the EDPS would like to make comments on the notifications and the information provided therein:

*Conservation periods:* The EDPS would like to comment on the retention period of personal files. INEA foresees a retention period for the personal files of 120 years. In light of Article 4(1)(e) of the Regulation, the EDPS has always considered this retention period as excessive and unnecessary to the purpose for which personal data are collected and further processed. As the EDPS recommended in his Guidelines on Staff recruitment<sup>2</sup>, personal data should be stored in personal files (Article 26 of the Staff Regulations), for a period of ten years as of the termination of employment or as of the last pension payment. The EDPS highlights that the issue of the retention period of personal files is a pending issue subject to on-going discussions between the EDPS and the EU institutions. The EDPS invites INEA to re-consider this issue in light of the agency's practical needs and experiences.

*Information provided to the data subjects:* With regard to the procedures for data subjects to exercise their rights of access, rectification and others, it is a good practice to include information on in which time limit a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.).

The notification and the privacy statement both mention a number of possible recipients of personal data, such as OLAF and the European Ombudsman. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not *need* to be mentioned in the privacy statement.<sup>3</sup>

---

<sup>1</sup> Exclusion databases offer an example of Article 27(2)(d): if a person is placed on the exclusion list, she is worse off (in that he/she is no longer eligible for participation in calls for tender) than if the exclusion database did not exist. Article 27(2)(d) therefore applies to such databases. See cases 2010-0426 and 2009-0681.

<sup>2</sup> EDPS Guidelines concerning the processing operations in the field of staff recruitment, [https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10\\_Guidelines\\_staff\\_recruitment\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf).

<sup>3</sup> This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the OLAF, the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.

The EDPS expects INEA to implement the recommendations accordingly and will therefore **close** the case.

Thank you for your cooperation.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI