

Joint Opinion on the notifications for prior checking from the Data Protection Officer of the European Agency for Safety and Health at Work (EU-OSHA) regarding staff evaluation procedures

Brussels, 9 January 2012 (cases 2011-957, 2011-958, 2011-959)

1. Proceedings

On 21 October 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Agency for Safety and Health at Work (**EU-OSHA**) three notifications for prior checking concerning staff evaluation procedures:

- "General provisions of implementing Article 43 of the Staff Regulations" (**appraisal**) (2011-957);
 - "Staff probation-initial staff evaluation based on Article 34 of Staff Regulations and Articles 14 and 84 CEOS" (**probation**) (2011-958);
 - "Assignment of temporary and contract staff to a higher grade than the one at which they are employed at EU-OSHA" (**reclassification**) (2011-959);
- each together with respective background documents¹.

The procedure was suspended between 12 December 2011 and 4 January 2012 for DPO comments on the draft Opinion.

2. Legal aspects

This Opinion deals with three already existing staff evaluation procedures at the EU-OSHA. It is based on the Staff Evaluation Guidelines², which allows the EDPS to mainly focus on the EU-OSHA practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001 (the Regulation)³.

The EDPS notes that the three processing operations at hand (appraisal, probation and reclassification) are lawful in terms of Article 5(a) of the Regulation, the administrative and evaluation data are processed in compliance with data quality principles set out in its Article 4(1)(a), (c) and (d), as well as transferred in compliance with its Article 7 (and subject to an obligation of professional secrecy equivalent to that of a health professional in compliance with Article 10(3) insofar as the appraisal and the probation procedure can potentially lead to exposure to sensitive data, including health data); the rights of access and rectification can be granted to the data subject in accordance with its Articles 13 and 14; the data subjects are informed in line with the requirements of Articles 11 and 12; [...]

¹ As further listed in the EDPS acknowledgement of receipt of 31 October 2011 regarding cases 2011-957 to 959.

² http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-07-15_Evaluation_Guidelines_EN.pdf.

³ 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.

The EDPS, however, notes that the existing data retention policy, as well as the data transfer policy applicable to the reclassification procedure do not seem to be in full compliance with the Regulation and therefore addresses these issues in more detail below.

2.1. Data retention

The data processed within the appraisal, probation and reclassification procedures are kept in the EU-OSHA personnel files for eight years after the extinction of all rights, in line with the EU-OSHA Document Management Policy for all documents included in the data subjects' personnel files.

Article 4(1)(e) of the Regulation 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 retention period which extends to the whole career of the data subject at the EU-OSHA is not necessary for the initial assessment of staff as carried out in the context of the appraisal, probation and reclassification procedures. In similar cases, the EDPS considered that a maximum retention period of five years after the end of a particular evaluation exercise was in line with the requirements of Article 4(1)(e) of the Regulation⁴.

Consequently, the EU-OSHA is invited to reconsider the existing retention periods and establish shorter ones in relation to the actual purpose of the processing operations.

2.2. Data transfers

Regarding the reclassification procedure, in order to ensure full compliance with Regulation 45/2001, the EDPS recommends that all internal recipients are reminded of the purpose limitation obligation in terms of Article 7(3) of the Regulation.

3. Conclusion

In view of the above, the EDPS recommends that the existing data retention periods are reconsidered and the data transfer policy applicable to the reclassification procedure are revised as outlined above.

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

Done at Brussels, 9 January 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

⁴ See EDPS Opinions on annual appraisal and probationary period of CPVO President and Vice-President of 28 July 2009 (2009-355 and 2009-356).