

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Hans JAHREISS
Head of the Administration Department
European Joint Undertaking for ITER and
the Development of Fusion Energy (F4E)
Josep Pla 2
Torres Diagonal Litoral
Building B3
ES-08019 Barcelona
SPAIN

Brussels, 10 September 2013
GB/UK/mch/ D(2013) C 2013-0709

**Subject: Ex-post prior-checking notification regarding F4E's "Complaints and Requests"
(case 2013-0709)**

Dear Mr Jahreiss,

On 25 June 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Joint Undertaking for ITER and the Development of Fusion Energy (F4E) a notification for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to F4E's "Complaints and Requests". The cover-letter to the notification as well as section 5 of the notification template clarify that the scope of the notification is meant to cover the following: requests under Article 90(1) of the Staff Regulations; requests for assistance under Article 24 of the Staff Regulations; complaints under Article 90(2) of the Staff Regulations and complaints addressed to the European Ombudsman and transmitted to F4E.

In section 16 of the notification template, the F4E argues that a respective need for prior checking under Article 27 of the Regulation arises under

- Article 27(2)(a), which according to the F4E *"...could be the case in respect of requests for assistance, in cases of alleged harassment for instance"*;
- Article 27(2)(b), according to the F4E *"notably in complainants related to selection process of staff performance appraisal process"*;
- Article 27(2)(d), according to the F4E *"notably in complaints where F4E is acting as Appointing Authority / Authority Responsible for Concluding Contracts of Employment"*.

Upon request by the EDPS of 1 July 2013 to clarify the need for prior checking these processing operations in the light of previously notified ones, the F4E DPO clarified on 9 August 2013 that the requests and complaints which are covered by the submitted notification cannot be identified in advance, as "*any possible request complaint is possible under the conditions of those Articles. Thus, the corresponding data processing in the context of the handling of those requests and complaints cannot be pre-determined in advance*".

After examining the need to separately prior check the processing of personal data identified by the F4E, the EDPS notes the following:

- Article 90(1) of the Staff Regulations refers to a *decision*. In such cases, F4E therefore will have taken a decision vis-à-vis the data subject which results from a separate underlying processing operation. The same is true for Article 90(2) of the Staff Regulations of the Staff Regulations, which refers to an *act adversely affecting* the data subject. This refers to notably to complaints and/or requests where F4E has acted as Appointing Authority / Authority Responsible for Concluding Contracts of Employment and "*complainants related to selection process of staff performance appraisal process*" as referred to in section 16 of the notification template.
- The following processing operations previously notified by F4E would seem to cover the underlying processing operations as referred to in section 5 of the notification template: 2010-0454, 2012-0404 to 0406, 2011-0340, 2013-0707 and 2013-0726 to 0729. As regards Article 24 of the Staff Regulations, anti-harassment procedures were notified by F4E in case 2013-0326.

Against this background and based on the information provided by the F4E, the EDPS concludes that there is no need to separately prior check the processing operations listed in section 16 of the notification template as transmitted on 25 June 2013. The EDPS has consequently decided to close case 2013-0709.

Kind regards,

(signed)

Giovanni BUTTARELLI

cc.: Ms Angela BARDENHEWER, DPO F4E