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Brussels, 02 December 2013
GB/OL/sn/D(2013)0544 C 2013-0699 & 0700
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Dear Mr Chêne,

On 27 June 2013, the SESAR Joint Undertaking's Data Protection Officer has submitted two notifications relating respectively to (1) the Joint Undertaking's staff appraisal procedures and (2) its procedure for probationary reports for prior checking pursuant to Article 27 of Regulation (EC) No 45/2001 (the Regulation).

Given that the EDPS has already issued guidelines on this subject, the present Opinion will only focus on those aspects that diverge from the guidelines, both in the description of the facts and in the legal analysis. On 22 July 2013, the EDPS asked questions for clarification; answers were provided on 22 October 2013. As these two notifications refer to ex-post cases, i.e. processing operations that are already happening, the two-month deadline for the EDPS to issue his Opinion does not apply.

The Facts

For the probationary report, data subjects are informed about the processing in an e-mail from the HR department explaining the process. There is no separate privacy statement.

For staff appraisal, data subjects are informed about the processing via the Appraisal Guide, which is published on the intranet before launching the yearly appraisal exercise. The guide contains a section entitled "personal data protection", which deals with the procedure for circulating documents in the context of the appraisal exercise and where the final report will be stored. There is no separate privacy statement.

Appraisal and probationary reports are stored for up to 10 years after the termination of employment or the last financial transaction, the latest date prevailing.

Legal Analysis

Grounds for prior checking

Both notifications mention Article 27(2)(b) (processing operations intended to evaluate personal aspects relating to the data subject) and Article 27(2)(d) (processing operations for the purpose of excluding individuals from a right, benefit, or contract). The latter provision relates to matters such as blacklisting or exclusion databases.¹ Even though negative results of the probationary report or the appraisal can have negative consequences for the data subject, the purpose of the processing is not to exclude individuals from rights and benefits. Nonetheless, both processing operations are still subject to prior checking under Article 27(2)(b).

Information to data subjects

Articles 11 and 12 set out controllers' information obligations towards data subjects.

While most of the information which has to be provided is contained in different places in the appraisal guide, several items are missing:

- 1) The possibility to contact the HR department for rectifying factual errors is mentioned in the notification, but not clearly in the guide;
- 2) There is no information on the conservation periods;
- 3) The legal bases for the exercise are not mentioned in the guide;
- 4) The right to have recourse at any time to the EDPS is not mentioned.

These **missing elements should also be provided to data subjects**. Additionally, while the other elements are contained in the Appraisal Guide, they are spread over the whole document. It would be more transparent and fair for data subjects to have **the information centralised in a privacy statement or in an expanded dedicated section on data protection at the end of the Guide**.

For the probationary report, the template e-mail sent to staff explains the steps of the procedure, but does not provide all of the mandatory elements under Article 11 of the Regulation. **The template e-mail should be amended accordingly to provide the necessary information under Article 11.**

Conservation periods

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.

Appraisal reports are stored for up to ten years following the end of employment or the last pension payment.

This period seems excessive in relation to the purposes. It seems that a shorter period, e.g. five years after the end of the appraisal procedure, would suffice as well. The SESAR JU is **invited to reconsider the existing conservation periods and to provide precise justifications** for them. These justifications will be taken into account in the upcoming discussions of the EDPS with the relevant stakeholders.

¹ See cases 2010-0426 and 2009-0681

Conclusion

There is no reason to believe that there is a breach of the Regulation, provided that the recommendations contained in this Opinion are taken into account.

Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of 3 months.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Daniella Pavkovic, Data Protection Officer, SESAR JU