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GB/TS/sn/D(2014)1193 C 2013-0915
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notifications concerning staff evaluation and probation

Dear Mr Dautriat,

I refer to the notification for prior checking concerning staff evaluation and probation submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Clean Sky Joint Undertaking on 31 July 2013.

We note that these procedures are in most aspects in compliance with Regulation (EC) N° 45/2001¹ (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines², we will only address the existing practices which do not seem fully compliant in this respect.

1. Data conservation. According to the information provided in the notification, the evaluation and probation reports are kept for five years after the termination of employment, all in accordance with Article 26 of the Staff Regulations.

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 establishes that no sufficient evidence was provided to demonstrate the necessity of the lengthy storage extending to the whole career. Therefore, we invite the Clean Sky JU to reconsider the existing time limit or to provide precise justifications in this respect.

¹ 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.

² EDPS Guidelines on the processing of personal data in the area of staff evaluation of 15 July 2011 (EDPS 2011-042).

2. Information to data subjects. The EDPS notes that most of the information listed in Articles 11 and 12 of the Regulation is provided in the privacy statement which was sent to all members of staff as well as made available on the shared drive.

Nevertheless, the information about the rights of data subjects seems to be missing and the information about the controller and the recourse to the EDPS seems to be rather misleading as it refers to the "HR officer" on the first page and "Executive Director" on the second one, as well as to "queries and complaints" instead of to the recourse. Therefore, we recommend that information about the rights of data subjects is being added, information to identify the controller and about the recourse to the EDPS is being clarified.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the Clean Sky JU should:

- reconsider the existing time limits for conservation of the evaluation and probation reports or provide for precise justification of the necessity to keep the respective reports for five years after the end of employment;
- revise the existing privacy statement in a manner outlined above.

We would like to invite the Clean Sky to inform us about the implementation of these recommendations within three months after receipt of this Opinion.

(signed)

Giovanni BUTTARELLI
(signed)

Cc: Bruno MASTANTUONO, Data Protection Officer