

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Hans JAHREISS
Head of Administration
European Joint Undertaking for ITER
and the Development of Fusion for Energy
C. /Josep Pla, n°2
Torres Diagonal Litoral
Edificio B3
08019 Barcelona

Brussels, 28 November 2014
GB/TS/ktl D(2014)2379 C **2013-0707**
Please use edps@edps.europa.eu for all correspondence

Subject: Prior checking notification concerning selection of interim agents

Dear Mr Jahreiss,

I refer to the notification for prior checking concerning the selection of interim agents submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the EU Joint Undertaking for Fusion for Energy (F4E) on 25 June 2013.

We note that the already existing procedure is in most aspects in compliance with Regulation (EC) No 45/2001 (the Regulation)¹ as outlined in the related EDPS Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

1. Rights of the data subject. According to the information provided in the notification, the data subject's requests to access or rectify their data will be answered within ten working days, whereby a contestation of the controllers negative reply should be submitted within the next ten working days and the controller should have further ten working days to provide the replica.

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 concerning the processing operations in the field of staff recruitment of 10 October 2008.

Pursuant to Article 14 of the Regulation the data subject shall have the right to obtain the rectification of inaccurate or incomplete data without any delay.

As the existing time limit cannot be considered as being in line with the Regulation, we invite the F4E to modify it.

2. Information to data subject. We observe that most information required in terms of Articles 11 and 12 of the Regulation is provided in the specific privacy notice posted on the Intranet. However, the information about data recipients seems to be missing as the notice simply refers to the provision of Article 7 of the Regulation with respect to the internal and inter-institutional transfers without actually mentioning the respective recipients.

Furthermore, the information about the applicable legal basis seems to be misleading as it refers to certain provisions of the Financial Regulation³ (FR) and its Rules of Application⁴ (RAP).

Therefore, we recommend to the F4E to add the information about the actual recipients to the existing privacy notice as well as to replace the references to the FR and RAP by a reference to the relevant provisions of the actual legal instrument on which the processing is based.

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 F4E should:

- modify the existing time set out for the exercise of the right of rectification;
- revise the existing data protection notice in a manner outlined above.

The EDPS would like to invite the F4E to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI

Cc: Ms Angela Bardenhewer, Data Protection Officer

³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

⁴ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.