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for all correspondence

Subject: Update of your notification on "SYSPER2 - staff evaluation - CDR"

Dear Mr Renaudière,

I refer to your letter of 14 November 2013 on the update of your notification on "SYSPER2 - staff evaluation - CDR"¹ due to the recent review of the Staff Regulations². As it was clarified during the bilateral meeting with the DG HR on 19 December 2013 and the related message of the DG HR DPC, the update concerns the application of the revised Article 44(1) of the Staff Regulations which foresees **the further use of an unsatisfactory performance evaluation report (CDR) for the purpose of blocking the advancement in step** of the person concerned. The related general implementing rules adopted on 16 December 2013³ outlining the applicability of this procedure to CDRs established as of the 2014 evaluation exercise were also provided on 19 December 2013.

As indicated on 10 January 2014, the further processing of the unsatisfactory CDRs for the purpose of downgrading and dismissal in terms of Article 51 Staff Regulations will be addressed at a later stage since the drafting of the related general implementing rules is still in progress.

¹ Submitted on 30 August 2005 and analysed in the EDPS Opinion of 15 December 2005 in case 2005-0218.

² Regulation (EU, EURATOM) No 1023/2013 of the European Parliament and of the Council of 22 October 2013.

³ Commission Decision C(2013)8995 final of 16 December 2013 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations.

The EDPS notes that the application of the new provision of Staff Regulations involves processing of personal data for other purpose than the one for which they were originally collected.

Pursuant to Article 6(1) of Regulation 45/2001⁴, personal data may only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the respective institution or body, without prejudice to Articles 4, 5 and 10 of the Regulation. So, in addition to the internal rules permitting the further processing, the data have to be processed fairly, in a way compatible with the original purposes, proportionate and accurate, as well as the processing should be necessary for the performance of a task carried out in the public interest.

As already mentioned, Article 44(1) of the Staff Regulations explicitly foresees the further processing of personal data collected for the purpose of annual evaluation for the blocking of the advancement in step. This provision, together with the Annex II to the Commission Decision laying down general provisions for implementing the first paragraph of Article 44 of the Staff Regulations, can also be considered as the appropriate legal basis for the further processing. It can also be deemed necessary for the performance of a task carried out in the public interest in terms of Article 5(a) of Regulation 45/2001 (read together with recital 27) as ensuring the satisfactory performance of staff is needed for proper functioning and management of the institution.

The personal data collected for the purpose of annual evaluation concern efficiency, ability and conduct of the respective staff member which are also a priori adequate, relevant and not excessive for the purpose of the blocking of the advancement in step. In any case, the use of these data for further career development in terms of promotion, reclassification and re-grading was already considered compatible with the original purpose of processing.

The main issue seems to be the **fairness** of the further processing. It is important that the data subjects are **informed** about the further purpose of the processing of data collected in the context of the CDR, as well as about their right of rectification of the CDR report. In particular, the data subject should be made aware about the existing appeal procedures to be used to rectify the (by nature subjective) evaluation data contained in the CDR.

Therefore, the EDPS recommends that the existing privacy statement is updated in this respect.

(signed)

Giovanni BUTTARELLI
Assistant Data Protection Supervisor

⁴ 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.

Cc: Mr Roques, DH HR DPC