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ASSISTANT SUPERVISOR

Mr Mikkel EMBORG
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Brussels, 2 March 2011
GB/DH/kd D(2011) 433 C 2010-0313

Subject: Prior-checking notification, case 2010-0313

Dear Mr Emborg,

We have examined the documents the European Railway Agency (ERA) sent to the EDPS concerning the notification for prior checking on the processing of data in connection with the selection and recruitment of trainees at the ERA. This data processing is subject to prior checking by the EDPS, since it involves the assessment of personal aspects of trainees - their ability to perform the duties required of a particular post, for example - as set out in Article 27(2)(b) of Regulation (EC) No 45/2001.

The data protection aspect of the recruitment of trainees is dealt with in the Guidelines¹ which the EDPS has issued concerning staff recruitment procedures within European Union institutions and agencies. On 29 October 2009, the EDPS asked those institutions and agencies which had not yet sent notice about those procedures to compare their respective procedures with that document and to inform the EDPS of any points where they differed in terms of data protection.

In the present case, the letter from the ERA states that its procedure conforms to the Guidelines and that the ERA applies fully the recommendations included in the Guidelines.

Following an examination of the various documents supplied by ERA, we do however recommend that you ensure properly the right for the data subject to obtain from the controller the blocking of data in accordance with Article 15 of the Regulation.

Several situations must be distinguished:

¹ The Guidelines are available on the EDPS website in the Supervision section, under the heading 'Guidelines'. The EDPS has also published a Joint Opinion, dated 7 May 2009 (case 2009-0287), which can also be found on his website.

(1) When the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data". Thus, when receiving a request for blocking on this ground, the ERA should immediately block the data for the period necessary for verifying the accuracy and completeness of the data.

(2) When the data subject requires the blocking of his/her data because the processing is considered unlawful, or when data must be blocked for purpose of proof, the ERA will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. The decision as to whether to block the data should be taken by the ERA as soon as possible and at the latest within the delay of 15 working days.

The box 13 (time limit for blocking and erasure of the different categories of data) of the notification should be updated accordingly.

On the basis of the above, we have decided to close this case, provided that the ERA ensures properly the right for the data subject to obtain from the controller the blocking of data and updates the notification accordingly.

Sincerely yours,

Giovanni BUTTARELLI

Cc: Ms Zografia PYLORIDOU, Data Protection Officer