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European Commission
BRU-MO34 06/076
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GB/DH/kd D(2011)1537 C 2011-0557

Subject: Prior checking, Case 2011-0557: ‘Seconded National Experts’

Dear Mr Carlini,

We have examined the documents which the Commission sent to the EDPS concerning the notification for prior-checking on the processing of data in connection with ‘Seconded National Experts’ (SNEs). The processing is in fact subject to prior-checking by the EDPS, since it involves the assessment of personal aspects of applicants for SNE posts - their ability to perform the duties required of the post, for example - as provided for in Article 27(2)(b) of Regulation (EC) No 45/2001.

The recruitment of SNEs is dealt with specifically in the Guidelines¹ which the EDPS has published on staff recruitment procedures within European Union institutions and agencies. As a reminder, on 29 October 2009 the EDPS asked those institutions and agencies which had not yet notified their recruitment procedures to compare their respective procedures with the Guidelines and to inform the EDPS of any points where they differ in terms of data protection by separate letter.

In his analysis, the EDPS will first of all highlight those practices which do not appear to be compliant in terms of data protection and subsequently will confine his legal analysis to those practices. It is understood that the recommendations made in the Guidelines, which are relevant to the processing in question, are applicable. In the present case, the letter from the Commission states that its procedure fully conforms to the Guidelines.

¹ The Guidelines are available on the EDPS website in the section marked ‘Supervision’, under the heading ‘Guidelines’. The EDPS has also posted a Joint Opinion, dated 7 May 2009 (Case 2009-0287), which can also be found on the EDPS website.

1. Procedure

The notification was forwarded to the EDPS by the Commission's DPO on 6 June 2011. The EDPS subsequently suspended the procedure on 15 June 2011 in order to wait for the separate letter about the processing which arrived on 29 June 2011. The EDPS must therefore deliver his opinion by 19 September 2011 at the latest (14 days of suspension plus suspension for the month of August).

2. Blocking and erasure of data

The facts: the notification states that, for each request for blocking or erasure of data received by Unit HR.B2, the response is to be sent within fifteen working days from the date of receipt of the letter by the responsible department, which may, however, send a duly justified holding reply. The time limit for the blocking or erasure of data is fifteen working days, with the period starting only from the date the competent authority takes the final decision (decision taken by DG HR.B2 or, in the event of a legal dispute, the decision taken by the European Data Protection Supervisor or the competent court).

Recommendation: (i) the EDPS would remind you that, when dealing with the blocking of data, two situations need to be distinguished:

(1) Where the data subject contests the accuracy of the data relating to him/her, the data must be blocked 'for a period enabling the controller to verify the accuracy, including the completeness, of the data'. Consequently, where DG HR.B2 receives a request for blocking on those grounds, it must immediately block the data for the period necessary to verify the accuracy and completeness of the data.

(2) Where the data subject requests the blocking of his/her data on the grounds of unlawful processing or where the data must be blocked for purposes of proof, DG HR.B2 will need a certain amount of time to conduct this assessment in order to decide whether the data should be blocked. In this case, even though the data cannot be blocked immediately, the request must be processed as quickly as possible in order to protect the data subject's rights. The EDPS therefore considers that such requests should be assessed as quickly as possible and, at the latest, within fifteen working days.

3. Conclusion

The EDPS recommends that the Commission should adopt specific and concrete measures to implement these recommendations regarding the selection and recruitment of SNEs. To facilitate our follow-up, it would therefore be appreciated if you could provide the EDPS with all relevant documents within three months of the date of this letter, so that we can check that all recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

Cc: Mr Philippe Renaudière, Data Protection Officer, European Commission