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GB/UK/mc D(2011)1568 **C 2011-0644**

**Subject: Response to a notification for prior checking from Eurofound's DPO under Article 27 of Regulation (EC) No 45/2001 (case 2011-644)**

Dear Mr. Grimmeisen,

Thank you for your notification for prior checking of the processing of personal data by the services of the European Foundation for the Improvement of Living and Working Conditions (Eurofound) for the "establishment and payment of salaries and allowances" submitted to the European Data Protection Supervisor (EDPS) on 30 June 2011.

According to your notification, the notified processing operation aims at determining the remuneration and expenses in accordance with Title 5 of the Staff Regulations as regards officials and temporary agents (in particular Article 62 of the Staff Regulations stipulating that "*In accordance with Annex VII and save as otherwise expressly provided for, an official who is duly appointed shall be entitled to the remuneration carried by his grade and step. ...Remuneration shall comprise basic salary, family allowances and other allowances*") and Articles 19-27 of the Conditions of Employment of Other Servants as regards contract agents.

Having studied the information provided in the notification and having considered the further information received on 7 July 2011 following our request of the same day, the EDPS is of the opinion that the processing operations performed by Eurofound in establishing and paying salaries and allowances is not subject to prior checking under Article 27 of Regulation (EC) 45/2001 ("the Regulation").

Article 27(1) of the Regulation provides that "*Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their*

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*purposes shall be subject to prior checking by the European Data Protection Supervisor". Article 27(2) of the Regulation provides some examples of processing operations which are likely to present such risks.*

- The EDPS has already acknowledged<sup>1</sup> that the initial grading and determination of rights is not "*intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" in the sense of **Article 27(2)(b) of the Regulation**. Rather than evaluate personal aspects relating to the data subject, it involves a number of facts which are measured against objective criteria for the determination of rights and grading. At that point, the data subject's competence in fulfilling the role they are recruited for has already been established at the time of recruitment; the procedure notified happens after that and involves no further evaluation of that kind. This is illustrated by the fact that according to the notification, the documentation required from new staff "*to verify and vouch qualifications and professional work experience*" for fixing the basic salary (certificates for any qualifications obtained and references from previous employers setting out the dates worked for officials, temporary agents and contract agents alike) relate exclusively to objective circumstances of their qualifications (certificates obtained) and professional work experience (duration), rather than elements allowing for conclusions as to the ability, efficiency and conduct of the new staff member.
- Staff's remuneration and expenses are not automatically granted as requested, but the procedure under evaluation implies that some form of proof must be submitted to allow for the verification of each item before any remuneration or expense is actually paid. However, the data processing operations at hand are not performed with "*the purpose of excluding individuals from a right, benefit or contract*" in the sense of **Article 27(2)(d) of the Regulation** (emphasis added). Whilst staff not being able to provide sufficient proof might be excluded from certain rights and benefits as a result, this is at most a side effect, but by no means the primary purpose of the processing operation. As the notification explicitly notes: "*The intention of the data processing is to establish the rights of staff members in relation to their salaries and allowances*" (emphasis added).

In addition, none of the other examples listed in Article 27(2) of the Regulation appear to be relevant in this case.

Having said this, based upon the information provided by Eurofound, the EDPS would like to make the following recommendations:

### 1) **Data quality**

According to Article 4 (1) (c) of the Regulation, personal data must be "*adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed*". Article 4 (1) (d) of the Regulation provides that personal data must be "*accurate and when necessary, kept up to date*". In addition, "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*".

Expatriation allowance is, inter alia, paid to staff members (1) who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the territory of the State in whose territory the place where they are employed is situated and (2) to officials who are or have been nationals of the State in whose

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<sup>1</sup> See Letter of 9 October 2007 in case 2007-558 on the initial grading and determination of rights at the European Monitoring Centre for Drugs and Drugs Addiction

territory the place where they are employed is situated but who during the 10 years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a state or of an international organization.

The documents to be submitted by those staff members consist of their passport, identity card and birth certificate. The EDPS invites Eurofound to clarify how -in combination with the also required proof of *change* of residence, but seemingly without a proof of residence covering the respective time periods- these documents are adequate to verify the *time period* of residence of the staff member over the past five or ten years respectively.

## 2) Conservation of data/ Data retention

Under Article 4(1) (e) of the Regulation, personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

As regards the notified procedure, there seems to be some ambiguity regarding the applicable retention period(s):

- The notification refers generally to "*A maximum of 30 years or until the last pension payment*".
- Appendix V (p. 14) of the booklet entitled "Employee Data Protection Policy" contains information on "File retention periods"; for "finance information", the booklet notes that "Staff salary information including employee name, grade, allowances" is "*Retained for 5 years*".
- For "Employee Personnel Files", the booklet notes under "Personnel Sickness Insurance Scheme" that information such as "Confidential Declaration: personal contact details, marital status, spouse and child details" as well as "ID card/passport numbers" and information on dependants are "Kept in personnel file" and are "*Retained for duration of employment*".

In the light of the above, the EDPS recommends further clarifying the applicable retention period(s) and including a reference to their starting point for the different categories of data concerned by the processing operations at issue. The EDPS would also like to invite Eurofound to check whether it is necessary in the sense of Article 4(1) (e) of the Regulation to retain documents regarding dependants (which e.g. in the case of the education allowance are requested annually according to the notification) *for the duration of employment* of the person in charge of the dependant.

## 3) Transfer of data

Under Article 7(1) of the Regulation, "*Personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*". In the processing operations under evaluation, only transfers to other EU institutions and bodies are foreseen and there is nothing to suggest that the data transferred would not be necessary for the legitimate performance of their respective tasks.

However, in order to ensure the full compliance with Article 7 (3) of the Regulation, the EDPS recommends that all recipients are reminded of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

#### **4) Information to the data subject**

Pursuant to Article 11 of the Regulation, where data have been obtained from the data subject as in the case of the procedure under evaluation, individuals must be informed that their data are being collected and processed and of, inter alia, the purposes of the processing, the recipients of the data and the specific rights that individuals, as data subjects, are entitled to.

Whilst the booklet entitled "Employee Data Protection Policy" contains most of the information required under Article 11 of the Regulation, the EDPS would recommend that it should also contain a reference to the legal basis of the processing operations, i.e. for the procedure at hand Title 5 of the Staff Regulations as regards officials and temporary agents and Articles 19-27 of the Conditions of Employment of Other Servants as regards contract agents.

#### **Conclusion**

The EDPS recommends that Eurofound adopts specific and concrete measures to implement the above recommendations regarding the processing operations for the "establishment and payment of salaries and allowances". Please provide the EDPS with all relevant documents within 3 months of the date of this letter which prove that all recommendations have been implemented.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI