



Opinion on the notification for prior checking from the Data Protection Officer of the Community Plant Variety Office concerning "Assessment and reporting on probationary periods"

Brussels, 19 October 2011 (case 2011-0298)

1. Proceedings

On 25 March 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the Community Plant Variety Office (**CPVO**) a notification for prior checking concerning the assessment and reporting on probationary periods. It was accompanied by the following documents:

- Decision of the CPVO President of 8 December 2008 on Temporary Agents in the CPVO;
- *rapport de stage* (template);
- employment contract (template);
- Decision of the CPVO President on the conservation of personal files¹;
- Privacy statement according to Article 11 of the Regulation (EC) N° 45/2001.

The procedure was suspended until the adoption of the EDPS Staff Evaluation Guidelines on 15 July 2011², as well as between 29 September and 12 October 2011 when the draft Opinion was sent to the DPO for comments.

2. Legal aspects

This Opinion deals with the already existing probation procedures at the CPVO³. It is based on the Staff Evaluation Guidelines which allows the EDPS to mainly focus on the CPVO practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001⁴.

The EDPS notes that the processing in question is lawful in terms of Article 5(a) of the Regulation, the administrative and evaluation data are processed in compliance with data quality principles set out in its Article 4(1)(a),(c) and (d), the right of access and rectification can be granted to the data subject in accordance with its Article 13 and 14, as well as that the applicable security measure can be considered as adequate in terms of its Article 22.

¹ Adopted on 1 September 2008 and subsequently replaced by a Decision of 8 June 2011 concerning the same matter.

² Guidelines concerning the processing of personal data in the area of staff evaluation (EDPS 2011-042).

³ It complements, in this respect, the EDPS Opinions on annual appraisal (EDPS 2007-403), attestation (EDPS 2009-092) and certification (EDPS 2011-055), as well as managerial evaluation and probation (EDPS 2009-355 and 2009-356).

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.

He, however, notes that the existing data retention policy, data transfers, as well as the information provided to data subject do not seem to be in full compliance with the Regulation and therefore addresses these issues in more detail below.

2.1. Data retention. In accordance with the CPVO President's Decision on conservation of personal files, the data processed within the probationary procedure are kept in personal files for ten years after the end of contract of the staff member concerned.

Article 4(1)(e) of the Regulation 45/2001 states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS is of the opinion that the existing storage period which extends to the whole career of the data subject at the CPVO is not necessary for the initial assessment of staff at the CPVO. In similar cases, he considered that a maximum storage period of five years after the end of a particular evaluation exercise was in line with the requirements of Article 4(1)(e) of the Regulation⁵.

Consequently, the CPVO is invited to reconsider the existing retention period and establish a shorter one in relation to the actual purpose of the processing.

2.2. Data transfers. According to the information provided in the notification, the data processed in this context may be transferred to the CPVO President, the reporting officer, the Human Resource service, as well as -in case of a dismissal- to the Office for administration and payment of individual entitlements (PMO).

The EDPS considers these transfers could be considered as necessary for the accomplishment of the probation procedure at the CPVO. In addition, he would like to underline that data processed in this context may also be transferred to the Court of Auditors, OLAF, the Civil Service Tribunal, the European Ombudsman and the EDPS if necessary for the execution of a particular supervisory or judicial task, whereas transfers to HR services in other EU institutions and bodies including agencies may also be necessary in case of an actual transfer of a specific staff member.

Pursuant to Article 7 of the Regulation, personal data can be transferred within or to other EU institutions or bodies if they are necessary for the legitimate performance of tasks covered by the competence of the recipient who, in turn, can process the received data only for the purposes for which they were transmitted.

In order to ensure full compliance with the Regulation in this respect, the EDPS recommends that all recipients are reminded of the purpose limitation set out in its Article 7(3).

2.3. Information to data subjects. The privacy statement available on the CPVO intranet provides all information as requested by the Regulation 45/2001.

Nevertheless, information about possible recipients and legal basis should be revised so that HR services in other institutions are should be mentioned among the possible data recipients (as outlined above) and the reference to Article 5(a) of Regulation 45/2001 is being replaced by Article 7 of the CPVO President's Decision on Temporary Agents.

⁵ Cf. EDPS Opinions on annual appraisal and probationary period of CPVO President and Vice-President of 28 July 2009 (EDPS 2009-355 and 2009-356) already quoted above.

3. Conclusion

In view of the above, the EDPS recommends that the existing data retention period is reconsidered, all data recipients are reminded of the purpose limitation principle and the existing privacy statement is revised as outlined above.

He would like to invite the CPVO to inform him about the implementation of these recommendations within three months after receipt of this Opinion.

Done at Brussels, 19 October 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor