



Opinion on the notification for prior checking from the Data Protection Officer of the European Research Council Executive Agency concerning the annual appraisal and Probation, reclassification and assessment of the ability to work in a third language

Brussels, 15 December 2011 (case 2011-0955, -0956, -0963)

1. Proceedings

On 21 October 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Research Council Executive Agency (**ERCEA**) notifications for prior checking concerning the probationary reports, staff appraisals, reclassification and assessment of the ability to work in a third language accompanied by the following documents:

- Decision StC19109/3b on general implementing provisions on the procedures governing the engagement and use of contract staff at the ERCEA,
- Décision StC19009/3c relative aux procédures régissant l'engagement et l'emploi des agents temporaires dans l'agence exécutive du conseil européen de la Recherche,
- Note on probationary period for ERCEA contract and temporary staff,
- Note on management trial period,
- Décision StC210610/5a relative à l'évaluation des agents temporaires et contractuels de l'agence exécutive du conseil européen de la Recherche,
- ERCEA Staff Appraisal Guide,
- Decision StC191009/3d on general implementing provisions on middle management staff at the ERCEA,
- Decision of the ERCEA Director on the setting up of Joint Evaluation and Reclassification Committee for contractual and temporary agents,
- Rules of Procedure for the ERCEA Joint Evaluation and Reclassification Committee for contractual and temporary agents,
- Vademecum relatif à la gestion du personnel au sein des agences exécutives,
- Specific Privacy Statement for ERCEA Staff Evaluation,
- Décision StC220211/2a relative à la carrière des agents contractuels engagés en vertu de l'article 3bis du régime applicable aux autres agents de l'Union européenne et à leur reclassement à un grade supérieur à celui auquel ils ont été engagés au sein de l'Agence exécutive du Conseil Européen de la Recherche,
- Décision StC210610/5b relative à la carrière des agents temporaires et à leur affectation à un emploi à un grade supérieur à celui auquel ils ont été engagés au sein du Conseil Européen de la Recherche,
- Specific Privacy Statement for ERCEA Reclassification,
- ERCEA Procedure for the Ability to Work in a Third Language (TR_ART.45(2)),
- Specific Privacy Statement for ERCEA Assessment of the Ability to Work in a Third Language.

2. Legal aspects

This Opinion deals with the staff appraisal, probation, reclassification and assessment of the ability to work in a third language procedures at the ERCEA¹ and is based on the Staff Evaluation Guidelines² which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation (EC) 45/2001 (hereinafter 'Regulation 45/2001').

The EDPS notes that a specific legal base has been adopted for each procedure; that the administrative and evaluation data are processed in compliance with data quality principles set out in Article 4(1)(a), (c) and (d). The right of access and rectification can be granted to the data subject in accordance with its Articles 13 and 14, and the applicable security measures can be considered as adequate in terms of its Article 22.

However, the EDPS observes that the data retention, data transfers, as well as information policy appear not to be in full compliance with the Regulation. Therefore, he addresses these issues in more detail below.

2.1. Data retention. Staff appraisal and probation reports, as well as reclassification documents are kept in personal files for eight years after the extinction of all rights of the person concerned and of any dependants, and for at least 120 years after the date of birth of the person 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 necessity of the above mentioned storage period extending the whole career is questionable and therefore invites the ERCEA to establish shorter ones in relation to the actual purposes of the processing. In similar cases, storage of appraisal and probation reports for maximum five years period after the end of a particular exercise, as well as storage of reclassification documents until the termination of employment was considered in conformity with the Regulation 45/2001³.

Having said this, reclassification decisions need to be, in principle, kept during the career of the member of staff.

2.2. Data transfers. Whereas all data transfers within ERCEA, as well as to other EU institutions can be considered as in full compliance with Article 7(1) of Regulation 45/2001, all the recipients must be made aware of their obligation to process the data received only for purposes for which they were transmitted.

Therefore, the EDPS recommends that all recipients are made aware of the purpose limitation set out in Article 7(3) of Regulation 45/2001.

¹ Certification and attestation procedures are not applicable.

² Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

³ 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).

2.3. Information to data subjects. The EDPS notes that specific privacy statements are made available on the ERCEA intranet. A data protection clause (or the link to the privacy statement) could be added in the respective report form (probationary report, annual appraisal) or in the messages sent to the data subject (reclassification, assessment of a third language) to ensure that information is effectively provided to the data subject.

Moreover, the EDPS notes that the Privacy statements for the probation, appraisal and reclassification procedures do not inform data subjects about the impossibility to correct the (by nature subjective) evaluation data when exercising their right to rectification or the categories of data collected.

The EDPS suggests that for all Privacy statements, the information on the right to rectification is revised in order to reflect the data categories and the impossibility to correct the (by nature subjective) evaluation data (which can be rectified within the respective appeal procedures).

In addition, the Privacy statements should be revised in the light of the recommendations made in this Opinion, in particular concerning the time limits for storage.

3. Conclusion

In view of the above, the EDPS recommends that the following measures are taken in order to ensure full compliance with Regulation 45/2001:

- shorter storage periods are established in relation to the actual purposes of the data processing unless precise justification for the conservation of the data for the period established is provided;
- all data recipients are reminded of the purpose limitation principle;
- information to data subjects is made available as announced;
- the existing Privacy statements are revised as outlined above.

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

Brussels, 15 December 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor