



Opinion on the notification for prior checking from the Data Protection Officer of the FRONTEX on Staff Appraisal, Probation and Reclassification

Brussels, 30 May 2012 (case 2011-969)

1. Proceedings

On 21 October 2011, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (**FRONTEX**) a notification for prior checking concerning staff appraisal, probation and reclassification. In a reply to a request of 31 October 2011, the following related documents were provided on 17 November 2011:

- Decision of the Executive Director 2009/031 establishing a staff appraisal procedure (with a template of the Appraisal Report Form in the annex);
- Decision of the Executive Director 2009/58 establishing the procedure governing the engagement and use of temporary staff;
- Decision of the Executive Director 2010/100 establishing the career of temporary staff and their assignment to employment of a higher grade that which they are employed;
- Administrative Notice No. 40 of 26 July 2010 on contract renewal procedure for temporary and contract agents.

The related information on the contract renewal procedures requested on 27 January was provided on 31 January 2012¹ and a copy of the Probation Assessment Report on 19 March 2012 together with further information requested on 2 February 2012.

The procedure was extended by one month on 6 January 2012 due the complexity of the case, as well as further suspended between 20 March and 23 May 2012 for DPO comments on the draft Opinion. A copy of the Decision of the Executive Director 2009/59 of 18 November 2009 establishing the procedure governing the engagement and use of contract staff was attached thereto.

2. Legal aspects

This Opinion deals with the already existing appraisal, probation and reclassification procedures at the FRONTEX. It is based on the Staff Evaluation Guidelines² which allows the EDPS to

¹ Due to the fact that the contract renewal procedures for temporary and contract agents are currently under review, they will be notified in due time and addressed in a separate Opinion.

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

focus on the agency practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001³.

2.1. Data transfers. Whereas all data transfers taking place in this context can be considered necessary for the legitimate performance of tasks of the particular recipient in terms of Article 7(1) of Regulation 45/2001, none of the recipients seem to be aware of the purpose limitation set out in Article 7(3) of the Regulation.

Therefore, the EDPS recommends that all recipients are reminded of their obligation not to process data for any other purposes than the ones for which they were transmitted.

2.2. Information to data subjects. According to the information provided in the notification, information listed in Article 12(1)(a), (b), (d) and (e) of Regulation 45/2001 should be provided in the Appraisal and Probation Assessment Reports.

However, none of these documents contain any of this information. Therefore, the EDPS recommends that specific privacy statements for each procedure are established and added to the existing report forms. These privacy statements should also provide information on data categories (administrative and evaluation data), as well as the legal basis of the respective processing operation, data retention period and the right of recourse to the EDPS as listed in Article 12(1)(c) and (f) of the Regulation. The information on right of rectification should reflect the impossibility to correct the (by nature subjective) evaluation data, as well as the right to lodge an appeal and/or provide comments on the actual report.

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:

- all data recipients are reminded of the purpose limitation principle;
- information to data subjects is provided as outlined above.

The EDPS invites the FRONTEX to inform us about the implementation of these recommendations within three months after receipt of this Opinion.

Done at Brussels, 30 May 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

³ 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.