



Opinion on the notification for prior checking from the Data Protection Officer of the Executive Agency for Health and Consumers concerning Probation, Career Development Review and Reclassification

Brussels, 11 June 2012 (cases 2010-828 and 2012-149)

1. Proceedings

The notification on the "Assessment of probationary staff and Career Development Review" was submitted by the Data Protection Officer (DPO) of the Executive Agency for Health and Consumers (EAHC) on 20 October 2010, together with the following documents:

- *Décision du Comité de direction de l'Agence Exécutive pour la Santé Publique relatif aux procédures régissant l'engagement et l'emploi des agents temporaires,*
- Decision of the Steering Committee of the Executive Agency for the Public Health Programme on general implementing provisions on the procedures governing the engagement and use of contract staff (including a Probationary Report Form),
- *Projet de décision du Comité de direction de l'Agence exécutive pour la gestion du programme de santé publique relatif à l'évaluation des agents temporaires,*
- *Décision du Comité de direction de l'Agence exécutive pour la Santé et les Consommateurs relatif à l'évaluation des agents contractuels,*
- 2010 Career Development Review Guide (including a Career Development Report Form),
- Privacy statement in the area of Assessment of probationary staff and Career Development Review.

The notification on "Reclassification of Contract and Temporary Agents" was received by the European Data Protection Supervisor (EDPS) on 15 February 2012, together with the following documents:

- *Décision du 14 octobre 2011 relative aux dispositions générales d'exécution de l'article 87, paragraphe 3, du régime applicable aux autres agents des Communautés européennes,*
- *Décision du 14 octobre 2011 relative à la carrière des agents temporaires et à leur emploi à un grade supérieur à celui auquel ils ont été engagés (su la base de l'article 10 du RAA),*
- Privacy statement in the area of Assessment of probationary staff, Career Development Review and Reclassification.

The procedure was suspended until the adoption of the Staff Evaluation Guidelines¹ on 15 July 2011, between 16 September 2011 and 25 January 2012, as well as between 28 March 2012 and 23 May 2012 to allow for additional information and the DPO comments on the draft Opinion.

2. Legal aspects

¹ Guidelines concerning the processing of personal data in the area of staff evaluation (EDPS 2011-042)

This Opinion deals with the already existing probation, annual evaluation and reclassification procedures at the EAHC. It is based on the Staff Evaluation Guidelines which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001².

2.1. Data retention. According to the information provided in the notification on reclassification, as well as additional information on annual evaluation and probation, probationary reports, career development reports and the reclassification decisions are kept in personal files for up to five years after the termination of employment or the last pension payment, all in accordance with Article 26 of the Staff Regulations and the Common Conservation List of the European Commission³.

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 notes that there is no sufficient evidence that the existing storage periods which extend to the whole career of the data subject at the Agency are necessary for the accomplishment of the respective procedures. Therefore, he invites the EAHC to reconsider the existing time limits. In principle, precise justifications should be provided that will be taken into account in the upcoming discussions with the relevant stakeholders.

2.2. 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.

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:

- the existing data retention periods are reconsidered in terms of the actual purposes of the processing;
- all data recipients are reminded of the purpose limitation principle.

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

Brussels, 11 June 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

² 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.

³ SEC(2007)970