



Opinion on the notifications for prior checking from the Data Protection Officer of the Fusion for Energy concerning Probation, Annual Appraisal, Promotion, Regrading and Reclassification

Brussels, 16 October 2012 (cases 2012-404, 405, 406, 407 and 408)

1. Proceedings

The notifications concerning probationary period reports, staff performance appraisals, promotion of EU officials, regrading of temporary agents and reclassification of contract agents were submitted by the Data Protection Officer (DPO) of the European Joint Undertaking for ITER¹ and the Development of Fusion Energy (Fusion for Energy, F4E) on 10 May 2012.

The related privacy statements, as well as the templates of probation and appraisal reports were provided on 5 June 2012 upon request of 23 May 2012.

The procedure was further suspended between 11 July and 4 October 2012 to allow for additional information and the DPO comments on the draft Opinion.

2. Legal aspects

This Opinion deals with the already existing following five evaluation procedures at the F4E:

- probation of EU officials, contract and temporary agents,
- annual appraisal of EU officials, contract and temporary agents,
- promotion of EU officials,
- regrading of temporary agents,
- reclassification of contract agents.

It 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 45/2001³, namely the existing data retention policy.

According to the information provided in the notification on staff performance appraisal, the respective reports are being kept for five years after termination of

¹ International Thermonuclear Experimental Reactor.

² Guidelines on the processing of personal data in the area of staff evaluation of 15 July 2012(EDPS 2011-042).

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.

employment or last pension payment. According to the additionally provided information on the other four procedures, the storage period for probation reports as well as promotion, regrading and reclassification decisions⁴ should also be reduced to five years after termination of employment or last pension payment.

The five years limit is considered as substantiated by the F4E employment contract renewal and termination policy, necessary in order to allow for complaints under Article 90(1) of the Staff Regulations⁵, as well as corresponds to the time limit for lodging an action for damages against an EU institution.

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 only the storage of appraisal reports of temporary and contract agents for five years after the termination of service could be considered as necessary for the related contract renewal and termination policy at the F4E and thus compliant with Regulation 45/2001.

At the same time, he establishes that no sufficient evidence was provided to demonstrate the necessity of the storage of probation reports, promotion, regrading and reclassification decisions, as well as appraisal reports of EU officials. Therefore, he invites the F4E to provide precise justifications in this respect, in particular as regards the necessity to keep the data for a certain time after the last pension payment. These justifications will be taken into account in the upcoming discussions of the EDPS with the relevant stakeholders.

3. Conclusion

In order to ensure full compliance with Regulation 45/2001, the EDPS recommends that the existing data retention periods are reconsidered as indicated above.

He would like to invite the F4E to inform him about the implementation of this recommendation within three months after receipt of this Opinion.

Done in Brussels, 16 October 2012

(signed)

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⁴ All referred to as "promotion decisions reports".

⁵ cf. T-45/01, Sanders & others v Commission, [2004] ECR II-1183, §72.