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Brussels, 05 September 2013
GB/OL/sn/ D(2013)1986 C 2013-0706
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Dear Ms Bardenhewer-Rating,

On 25 June 2013, you submitted a notification for prior checking under Article 27 of Regulation (EC) 45/2001 (the Regulation) relating to "requests for transfer of pension rights (Article 11 of Annex VIII to the Staff Regulations)" to the EDPS.

The EDPS does not consider the submitted processing operation to be subject to prior checking. Please find a more detailed analysis below.

The Facts

Pursuant to Article 11 of Annex VIII to the Staff Regulations, staff members of Fusion for Energy (F4E) have the right to have their pension entitlements transferred from the Union pension scheme to other pension schemes, and to have entitlements from other systems¹, transferred to the Union pension scheme.

F4E has delegated this procedure to the European Commission's Pay Master Office (PMO) and is not in a position to change any of the forms used. Processing operations by F4E consist basically in collecting the forms and transferring them to the PMO, which then assesses the request and decides on it.

Legal Analysis

The notification mentions Article 27(2)(d) (exclusion from right, benefit or contract) as the reason for submitting this processing operation to prior checking. This provision refers to processing operations whose purpose is to exclude individuals from a right, benefit or

¹ See the list of other pension schemes in Article 11(2) of Annex VIII to the Staff Regulations; in practice, this would seem to mostly concern national pension schemes of Member States.

contract. Examples would be blacklists or exclusion databases.² However, the purpose of the notified processing operation is to enable staff members to exercise and benefit from their rights under the Staff Regulations.³ Therefore, Article 27(2)(d) does not apply in the present case.

None of the other grounds for prior checking seems to apply either.

While the PMO carries out an evaluation of the request, it is not specifically an evaluation of "personal aspects relating to the data subject", but rather an evaluation of objective external factors (time spent in and amounts contributed to different pension systems).⁴ Therefore, Article 27(2)(b) does not apply. Article 27(2)(a) and (c) do not apply either, nor does the general concept of "specific risk" in Article 27(1).

For these reasons, the EDPS does not consider the submitted processing operation to be subject to prior checking.

Nevertheless, the EDPS has some remarks on the information provided in the notification form and its annexes.

Besides Article 5(a), the notification form also refers to Article 5(b) (legal obligation) as a ground for lawfulness.

The EDPS considers that, Article 5(b) is only applicable when the controller has no discretion as to whether and in which way a processing operation is carried out.⁵ It does not apply to cases in which simply the existence of a procedure is mandatory, as in the present case.

Finally, for transparency reasons, F4E could add in the privacy statement a link to the Commission's information on the processing carried out by PMO.⁶

Yours sincerely,

(signed)

Giovanni BUTTARELLI

² See for example cases 2009-0681 and 2010-0426.

³ Cf. case 2007-0579 on early retirement.

⁴ On this matter see also cases on the authorisation of outside activities, e.g. 2007-0417, 2008-0685, 2012-0005.

⁵ See cases 2006-0520, 2008-0726, and 2010-0426.

⁶ The privacy statement is available via the Commission's DPO Register: DPO-574.3 "Transferts des droits à pension", <http://ec.europa.eu/dpo-register/details.htm?id=32241>.