

Opinion on the notification for prior checking from the Data Protection Officer of the European Ombudsman on the assessment of probationary staff

Brussels, 1 October 2013 (case 2013-0533)

1. Proceedings

The notification for prior checking on the assessment of probationary staff was submitted by the Data Protection Officer (DPO) of the European Ombudsman (EO) on 22 May 2013. The notification was accompanied by the following documents:

- *Rapport de stage d'un agent fonctionnaire;*
- *Rapport de stage d'un agent temporaire;*
- *Rapport de stage d'un agent contractuel;*
- *Rapport de confirmation dans les fonctions de chef d'unité.*

The procedure was suspended on 30 September 2013 to allow for the DPO comments on the draft Opinion, which were received on the same day.

2. Legal aspects

This Opinion deals with the already existing processing operations for the assessment of all statutory staff for their probationary period at the EO. It is based on the Staff Evaluation Guidelines¹ which allows the EDPS to focus on the EO practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001² (the Regulation).

According to the information provided in the notification, data concerning the assessment of the staff members serving a probationary period is kept in the personal file for 10 years after the agent has left the institution or was granted a retirement pension.

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 establishes that no sufficient evidence was provided to demonstrate the necessity of the above mentioned conservation period extending to the whole career at the EO.

¹ Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

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.

Consequently, the EO is invited to reconsider the existing retention period and to provide precise justifications in this respect. These will be taken into account in the upcoming discussions of the EDPS with the relevant stakeholders.

3. Conclusion

In view of the above, the EDPS recommends that the EO reconsider the existing retention period and provide precise justifications in this respect in order to ensure full compliance with Regulation 45/2001.

The EDPS would like to invite the EO to inform him about the implementation of this recommendation within three months after receipt of this Opinion.

Done at Brussels, 1 October 2013

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor