

## **Opinion on notifications for prior checking from the Data Protection Officer of the European Joint Undertaking for ITER and the Development of Fusion for Energy on Attestation and Certification**

**Brussels, 14 October 2013 (case 2013-708)**

### **1. Proceedings**

The notification for prior checking concerning Attestation and Certification was submitted by the Data Protection Officer (DPO) of the European Joint Undertaking for ITER and the Development of Fusion for Energy (F4E) on 25 June 2013, together with the following documents:

- draft Decision of the Director of the European Joint Undertaking for ITER and the Development of Fusion for Energy laying down the general provisions for rules for implementing the attestation procedure (Article 10(3) of Annex XIII to the staff Regulations),
- Note to the attention of Fusion for Energy officials on transitory measures on attestation, 12 March 2013,
- Note to the attention of Fusion for Energy officials on transitory measures on certification, 15 February 2013,
- Privacy Notice on Attestation,
- Agreement between the European School of Administration and Fusion For Energy,
- draft Decision of the Director of the European Joint Undertaking for ITER and the Development of Fusion for Energy laying down the general provisions for rules for implementing the certification procedure (Article 45(a) of the Staff Regulations),
- Specific Privacy Notice on personal data protection in relation to the certification procedure.

Comments on the draft Opinion were received on 08 October 2013.

### **2. Legal aspects**

This Opinion deals with the already existing<sup>1</sup> certification and attestation procedures at the F4E. It is based on the Staff Evaluation Guidelines which allows the EDPS to focus on the

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<sup>1</sup> Both procedures have already been launched as the transitory measures allowed for application of the respective draft implementing rules pending their approval by the European Commission as foreseen in Article 110(1) of the Staff Regulations.

F4E practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001<sup>2</sup>.

**2.1. Data retention.** According to the information provided in the notifications, data of successful applicants will be kept until they are either attested or certified. The notifications do not mention the time-limit for storing the decisions confirming that applicants have been attested or certified. The certification and attestation files of unsuccessful applicants are kept for 2 years following the date of publication of the final list. The notifications describe unsuccessful applicants as "non-admissible applicants or admissible applicants who are not included in the final list of applicants authorised to follow certification/attestation". The notifications do not mention the applicants who are authorised to follow certification/attestation procedure but who have failed or given up the certification/attestation procedures.

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.

In general, the EDPS welcomes the time-limits established for storing the data. The EDPS reminds that certification and attestation decisions would in principle need to be kept during the career of the member of staff. Data of all unsuccessful applicants should be kept until all appeal channels have been exhausted, including the time limits for appeals before the Civil Service Tribunal.

**2.2. Information to data subjects.** The EDPS notes that all information listed in Articles 11 and 12 of the Regulation are provided in the existing Privacy statements available on the F4E Intranet.

Nevertheless, he suggests that the information on right of rectification in the Privacy Statements is revised in order to 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.

In addition, once adopted, a reference to the Decisions of the Director of the F4E laying down the general provisions for rules for implementing the attestation and certification procedures should be added to the already available information on legal basis.

Finally, the section on time-limit for storage should be adapted in light of the paragraph on data retention above.

### **3. Conclusion**

In view of the above, the EDPS recommends that the existing data retention policy is (re-) adjusted and the Privacy Statement on attestation and certification is revised as outlined above.

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<sup>2</sup> 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.

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

Done at Brussels, 14 October 2013

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor