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GB/UK/sn/D(2013)0160 C **2013-0742**
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correspondence

**Subject: Prior-checking notification regarding EDA's probationary period reports
(case 2013-0742)**

Dear Mr Brouwer,

On 28 June 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Defence Agency (EDA) a notification for prior checking under Article 27(3) of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to the EDA's probationary period reports.

As the EDPS issued Guidelines on the evaluation of statutory staff in the context of annual appraisal, probation, promotion or regarding certification and attestation¹ (henceforth: "Guidelines"), the EDPS will highlight only those EDA practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines issued by the EDPS in July 2011 and will restrict his legal analysis to those practices. Also in the light of the accountability principle guiding his work, the EDPS would nonetheless want to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place in the frame of the probation procedure at the EDA.

As stated in the introduction of the Guidelines, probation procedures are processing operations subject to prior checking on a basis of Article 27(2)(b) of the Regulation since

¹ <https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/Guidelines>.

they are intended to evaluate personal aspects relating to the data subject; namely, the ability, efficiency and conduct of the respective staff members during their probation period².

1. Information given to data subjects

Under Articles 11 and 12 of the Regulation, the data subjects must be provided with information inter alia on the existence of their right of access to, and the right to rectify, their personal data (Articles 11(1)(e)/12(1)(e)) as well as the legal basis of the processing operation for which the data are intended (Articles 11 (1) (f)(i)/12(1)(f)(i)).

- According to the notification, data subjects can exercise their rights of access to and rectification of their personal data in the context of the probationary period report at EDA by contacting the Head of the HR Unit and at the completion of the appraisal cycle, the probationer can request a copy of the final version of the form.
- The processing operation at hand is based on Articles 38 and 40 as well as 106 of the EDA Staff Regulations for temporary agents and contract agents respectively.

Neither the note on the EDA Staff Assessment Procedure (Annex 2 to the notification) nor the "Notice on personal data processing in the context of the probationary period" (Annex 3 to the notification, which are both available on the EDA intranet), contain these pieces of information.

The EDPS therefore invites the EDA to inform the data subjects of their rights of access to and rectification of their personal data as well as the legal basis of the processing operation, e.g. by respective clarifications to the text of the note on the EDA Staff Assessment Procedure and/or the "Notice on personal data processing in the context of the probationary period".

The EDPS also invites the EDA to consider including in the "Notice on personal data processing in the context of the probationary period" a reference to the possibility of having recourse to the EDA DPO.

2. Obligation of recipients to only use transferred personal data for the purposes for which they were transferred

In line with Article 7 of the Regulation, personal data can be transferred within or to other institutions or bodies *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient shall process the data *"only for the purposes for which they were transmitted"* (paragraph 3).

The EDPS invites the EDA to additionally and explicitly remind all recipients that they can only process the data for the purposes for which they were transmitted (Article 7(3) of the Regulation), e.g. by including a reference to this obligation in the note on the EDA Staff Assessment Procedure (Annex 2 to the notification).

Conclusions

The EDPS recommends that the EDA adopts specific and concrete measures to implement the above recommendations regarding the EDA probationary period reports procedure. To

² For the EDA probationary period reports, see Articles 38 and 40 of the EDA Staff Regulations available under <http://www.eda.europa.eu/docs/default-source/documents/consolidated-eda-staff-regulations-en.pdf>.

facilitate our follow-up, please provide the EDPS with all relevant documents within three months of the date of this letter which prove that all recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

cc.: Mr Gabriele BORLA, DPO EDA