



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Mr Paul Cozzi  
Head of Human Resources and Planning  
Department  
European Union Agency for Fundamental  
Rights (FRA)  
Schwarzenbergerplatz 11  
1040 Vienna  
Austria

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correspondence

Dear Mr Cozzi,

We have analysed the documents you have provided to the EDPS concerning the notification for prior-checking under Article 27 of Regulation 45/2001 ("the Regulation") on the processing of personal data in the context of internships at the European Union Agency for Fundamental Rights ("FRA") logged under case reference 2013-0654. The processing operation under examination is subject to prior-checking in conformity with Article 27(2)(b) of Regulation 45/2001, since it involves an evaluation of the applicants' ability to perform the functions of an intern for which the selection and recruitment procedure has been organised. The processing operation in the present case might also involve data related to health (collection of medical certificate or disability data) and to criminal offences (collection of criminal record extract), which would constitute an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation.

The EDPS points out that this case will be analysed in light of the EDPS Guidelines on staff recruitment ("the EDPS Guidelines"). The principles laid down in the EDPS Joint Opinion on "*Staff recruitment procedures*" by certain Community agencies<sup>1</sup> ("the EDPS Joint Opinion") are also applicable in the present case.

On this basis, in this letter the EDPS will only identify and examine FRA's practices which do not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines, providing FRA with relevant recommendations. It is noted that FRA has already notified processing operations relating to the recruitment of temporary and contract agents, and seconded national experts under case reference numbers 2008-0589 and 2008-0747 respectively.

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<sup>1</sup> It was issued on 7 May 2009 (case 2009-0287).

## **1) Information to be given to data subjects**

Following the original notification to the EDPS, FRA confirmed that a decision had been made to implement a specific privacy statement directly relevant to this processing operation. FRA also provided a copy of the web application privacy note and disclaimer, although these only contain limited information on data protection.

**Recommendations:** The full privacy statement should be made available to all potential data subjects before any applications are submitted, along with any other related documents such as the overall privacy statement and the health data privacy notice. For example, FRA could include relevant links in the “Internship” section of its website. In addition, the overall privacy statement should be amended to allow for varying retention periods (such as for unsuccessful internship applicants).

Moreover, as recommended in the EDPS Joint Opinion, it would also be preferable to complete the web application privacy note and/or disclaimer with all elements provided in Articles 11 and 12 of the Regulation. These statements should clearly indicate which questions in the application form are mandatory or optional.

## **2) Rights of access, rectification, blocking and erasure**

The notification states that the rights of access, rectification, blocking and erasure are granted to the data subject. It also makes clear that the right of rectification is limited to factual data after the deadline for submitting applications.

**Reminders:** In accordance with the EDPS Joint Opinion and Guidelines, the EDPS reminds FRA that data subjects may be given access to their evaluation results, if they request so, regarding all stages of the selection procedure (i.e. eligibility checks and selection), unless the exception of Article 20(1)(c) of the Regulation is applied. This exception may imply that access should be granted neither to any comparative data concerning other applicants, nor to the individual opinions of the members of FRA staff making the selection, if such access would undermine the rights of other applicants or the freedom of members of involved staff. Nevertheless, if data subjects do request this type of information, they should at least be provided with some sort of aggregated data.

With respect to the data subject's right of blocking data, the EDPS reminds FRA that, in accordance with Article 15 of the Regulation, several situations must be distinguished:

(1) when the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data". Thus, when receiving a request for blocking on this ground, the agency should immediately block the data for the necessary period;

(2) when the data subject requires the blocking of his/her data because the processing is considered as unlawful, or when data must be blocked for the purpose of proof, the agency will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should be dealt with promptly in order to preserve the data subject's rights. In this respect, the EDPS recommends that the

agency makes a decision on whether or not to block the data as soon as possible, and within a maximum of 15 working days.

### **3) Data retention**

FRA indicated in the notification that the personal data of unsuccessful applicants are kept for one year.

**Reminder:** The personal data of unsuccessful applicants may be kept for up to two years *following the recruitment procedure*, as two years is the time during which a complaint may be brought to the European Ombudsman.

Please inform the EDPS of the implementation of these recommendations within a period of 3 months following receipt of this letter.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc : Mr Nikolaos FIKATAS - Head of Sector ICT & Facilities, DPO