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C 2011-0978, 0979 & 0980
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for all correspondence

Subject: Prior checking notifications concerning staff evaluation, probation and reclassification

Dear Ms Zentrichová,

I refer to the notifications for prior checking concerning staff evaluation, probation and reclassifications submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European GNSS¹ Agency (GSA) on 26 October 2011.

We note that the already existing evaluation procedures at the GSA are in most aspects in compliance with Regulation (EC) N° 45/2001² (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines³ and will therefore only address the existing practices which do not seem fully compliant in this respect.

1. Data conservation. According to the information provided in the notifications, no data conservation policy has been put in place yet due to the rather recent establishment of the agency.

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.

¹ Global Navigation Satellite Systems.

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.

³ EDPS Guidelines on the processing of personal data in the area of staff evaluation of 15 July 2011 (EDPS 2011-042).

The EDPS recommends that maximum time limits for conservation of personal data processed in the context of the staff evaluation procedures are established. In similar cases, he considered that the storage of evaluation and probation reports for up to five years after the end of a particular exercise was in line with the Regulation. Also the storage of reclassification decisions until the end of employment was considered necessary in this respect.

2. Data transfers. Whereas all data transfers within the GSA can be considered necessary for the legitimate performance of tasks of the particular recipient in terms of Article 7(1) of Regulation 45/2001, none of the recipients seems to be aware of the purpose limitation set out in Article 7(3) of the Regulation.

Therefore, the EDPS recommends that all recipients are reminded of their obligation not to process data for any other purposes than the ones for which they were transmitted.

3. Information to data subjects. Pursuant to Articles 11 and 12 of Regulation 45/2001, information about controller's identity, purposes of the processing, data categories, data recipients, rights of access, rectification and recourse to the EDPS, legal basis of the processing, data storage time limits, as well as the data origin should be provided to the data subject at the time of the data recording.

Although the GSA Guidelines on Appraisal Exercises and Reclassification as well as the templates of the annual performance appraisal and probation reports may provide some information requested in Articles 11 and 12 of Regulation 45/2001 (such as information on data categories, data recipients and data origin), most information seems to be missing.

Consequently, the EDPS recommends that the existing information policy is being adjusted so that the data subjects are provided all information listed above. Specific privacy statements may be established to this respect and added to the existing reports and guidelines.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of any provisions of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the GSA should:

- establish maximum time limits for conservation of personal data processed in this context are established in relation to the actual purposes of the processing;
- remind all data recipients of the purpose limitation principle;
- provide all necessary information to data subjects as outlined above.

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

Done at Brussels, 19 February 2014

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

Cc: Triinu Volmer, DPO