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Subject: Prior checking notification concerning promotion

Dear Ms Pedersen,

I refer to the prior checking notification on the processing of personal data in the framework of the annual promotion of officials and temporary agents at the European Environment Agency (EEA) submitted to the European Data Protection Supervisor (EDPS) by the EEA's Data Protection Officer (DPO) on 16 July 2013.

We note that the promotion procedure at the EEA is in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

1. Data conservation: According to the information provided in the notification, promotion decisions, amendments to the employment contract as well as appeals lodged with the Joint Review Committee are kept for ten years after the termination of the employment or the last pension payment in accordance with Article 26 of the Staff Regulations. The lists of the promoted staff are kept for five years following the completion of the exercise for audit purposes.

¹ 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 EU institutions and bodies and on the free movement of such data.

² Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

The Article 4(1)(e) of the Regulation states that personal data can be kept for no longer than necessary for the purposes for which the data were collected or further processed.

The EDPS observes that the promotion decisions and the amendments to the employment contract may need to be kept during the career of the official or temporary agent concerned. Also, further storage of the lists of staff eligible for promotion as well as of the actually promoted staff for five years can be considered as appropriate for audit purposes.

At the same time, there seems to be no sufficient evidence as to the necessity of the storage of these documents as well as the appeals lodged with the Joint Review Committee beyond the end of career at the EEA. Therefore, the EEA is invited to reconsider the existing conservation periods and provide for precise justifications that will be taken into account in the on-going discussions with the relevant stakeholders.

2. Information to data subjects: Pursuant to Article 12 of the Regulation, the controller has to provide the data subject at least with information about the identity of the controller, purpose of the processing, data categories, data recipients, rights of access, rectification and recourse to the EDPS, legal basis of the processing as well as time limits for storing of the data concerned.

According to the information provided in the notification, data subjects are informed about their right of rectification in the announcement about the list of staff members eligible for promotion posted on the intranet at the beginning of each annual exercise. The information about other aspects of the data processing seems to be missing. Therefore, the EDPS recommends that a specific privacy statement containing all information listed above is established and posted on the Intranet, together with the announcement about the launch of the annual promotion exercise.

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

- reconsider the existing conservation periods and provide for precise justifications of the further storage extending the career of the concerned staff member at the EEA;
- establish a specific privacy statement for promotion and post it on the Intranet together with the announcement about the launch of the annual exercise.

We would like to invite the EEA to inform him of the implementation of these recommendations within three months after reception of this letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Olivier CORNU, Data Protection Officer