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Subject: Prior-checking Opinion concerning appraisal, promotions and awards procedure at EU SatCen (case 2014-0603)

On 5 June 2014 the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on appraisal, promotions and award procedure from the European Union Satellite Centre (EU SatCen).²

The EDPS has issued Guidelines concerning the processing of personal data in the area of staff evaluation³ ('the Guidelines'). Therefore, this Opinion analyses and highlights only those practices which diverge from the earlier notifications and/or do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for staff evaluation at EU SatCen.

EDPS recommendations and reminders are highlighted in bold below.

¹ OJ L 8, 12.1.2001, p. 1.

² Updated versions of the notification were submitted to the EDPS on 18 November 2014, 2 August 2017 and 6 July 2018. As this is an ex-post case, the deadline of two months does not apply. The EDPS has dealt with this case on a best-effort basis.

³ Guidelines of July 2011, available on the EDPS website at:
https://edps.europa.eu/sites/edp/files/publication/11-07-15_evaluation_guidelines_en.pdf.

Description and assessment

1. Promotions and awards

The processing activity is laid down in Articles 24-26 of the EU SatCen Staff Regulations⁴ and furthermore specified in the Rules of Procedure for Promotions and Financial Bonuses. All staff members of EU SatCen are evaluated annually with the purpose to congratulate staff members or warn them of shortcomings with a view to an improvement in their service. When the reports are drafted, a specific Board is summoned by the Director with the purpose to reward staff members whose performance was recognised as particularly good. The reward could either consist of (a) a financial bonus, (b) an exceptional advancement in step, or (c) a promotion to the next higher grade provided that the budgeted post allows such promotion. Only staff members are eligible for promotion while all employees including SNEs, local staff and trainees, are eligible for bonus payments and recognition letters.

EU SatCen has explained that the Promotion Board gives advice to the Director who decides on the promotions and notifies the Head of Administration of the decisions. The concerned staff members will be informed and the particular promotion recorded in their personal file. In addition, the Head of Administration sends by email a memorandum to all staff which indicates the name and surname of the recipient, the award (without any financial details, grade or other award details) and the effective date. However, the template of the memorandum provided by EU SatCen does include information about the financial details and other information about the award linked to specific staff members. **EU SatCen should therefore ensure that only information relevant to the purpose of the processing is shared with all the staff members. The data protection notice should also be updated to reflect the fact that information about staff who receive awards will be shared with all staff members.**

2. Underperformance

If an appraisal report indicates underperformance, the Director may request an additional intermediate report after six months (Article 24(3) of the EU SatCen Staff Regulations). If the additional intermediate report does not show any improvement in the performance of the staff members, the Director may keep the staff member at the present step for an additional period of 12 months or terminate the contract of the staff member (Article 26(4) of the EU SatCen Staff Regulations).

In the notification, EU SatCen explains the procedure when a staff member has received a report that indicates underperformance. However, the privacy notice does not mention unsatisfactory appraisal reports and the impact it may have. **Therefore, the EDPS recommends that EU SatCen updates the data protection notice with information about underperformance and the possible consequences for the staff members when receiving an unsatisfactory report.**

3. Data subjects' rights

The EDPS welcomes the facts that EU SatCen specifies in the privacy notice that the data subjects may have the right to rectify any factual data related to them together with the possibility to add comments directly on their report in case of disagreement and submit to the Director a request to review it. For the sake of clarity, **the EDPS recommends to add to the data protection notice that the evaluation data, due to its subjective nature, can only be rectified by the way of appeal within the respective procedure.**

⁴ Council Decision of 25 August 2009 concerning the Staff Regulations of the European Satellite Centre, available on the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017D0824&from=EN>

EU SatCen has explained that the data protection notice is published on the intranet under 'Administration'. In addition to this publication, the EDPS considers it a good practice to include a link to the privacy notice when launching the appraisal procedure each year, for example if the staff members are informed by email.

Both the notification and the privacy notice refer to the Ombudsman as a possible recipient of the personal data. For your information, under Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not *need* to be mentioned in the privacy statement.⁵

With regard to the procedures for data subjects to exercise their rights of access, rectification and others, it is good practice to include information regarding within which time limit a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.). **Consequently, the EDPS recommends adding such time limits to the data protection notice.**

Conclusion

In this Opinion, the EDPS has made some recommendations to ensure compliance with the Regulation, as well as some suggestions for improvement. Provided that the recommendations and suggestions are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

In light of the accountability principle, the EDPS expects EU SatCen to implement the above recommendations accordingly and has therefore decided to **close case 2014-0603**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...] - Data Protection Officer, EU SatCen

⁵ This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.