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for all correspondence

Subject: Prior checking notification concerning the annual appraisal, probation and reclassification of contract agents

Dear Mr Chambon,

I refer to the notification for prior checking concerning annual appraisal, probation and reclassification of contract agents submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Innovative Medicines Initiative Joint Undertaking (IMI) on 10 April 2013.

We note that these procedures are in most aspects in compliance with Regulation (EC) N° 45/2001¹ (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines², we will only address the existing practices which do not seem fully compliant in this respect.

1. Data conservation. According to the information provided in the notification, the evaluation and probation reports as well as the reclassification decisions are kept for five years after the termination of employment, all in accordance with Article 26 of the Staff Regulations.

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 Community institutions and bodies and on the free movement of such data.

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

Article 4(1)(e) of the Regulation 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.

The EDPS establishes that no sufficient evidence was provided to demonstrate the necessity of the lengthy storage extending to the whole career. Therefore, we invite the IMI to reconsider the existing time limit or to provide precise justifications in this respect.

2. Information to data subjects. The EDPS notes that most of the information listed in Articles 11 and 12 of the Regulation is provided in the privacy statement which was sent to all members of staff as well as made available on the shared drive.

Nevertheless, the information about the rights of data subjects seems to be missing and information about the purpose, legal basis and right of recourse to the EDPS seems to be misleading as it refers to the promotion of officials, the Staff Regulations as well as to the "queries and complaints" instead of to the recourse to the EDPS. Therefore, we recommend that the existing privacy statement is revised in the following manner:

- information about the rights of data subjects is added,
- the reference to the promotion of officials is deleted;
- the reference to the Staff Regulations is replaced by the reference to the Conditions of Employment of Other Servants;
- the reference to the recourse to the EDPS is clarified.

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

- reconsider the existing time limits for conservation of the evaluation and probation reports as well as the reclassification decisions or provide for precise justification of the necessity to keep the respective reports for five years after the end of employment;
- revise the existing privacy statement in a manner outlined above.

We would like to invite the IMI to inform us about the implementation of these recommendations within three months after receipt of this Opinion.

(signed)

Giovanni BUTTARELLI

Cc: Ms Estefania Ribeiro, Data Protection Officer