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Dear Ms Lenarduzzi

On 29 April 2013, the Data Protection Officer (DPO) of the European Research Council Executive Agency (ERCEA) submitted to the European Data Protection Supervisor (EDPS) a notification for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation), concerning the “Business Objects reporting platform” for the purpose of Human Resources reporting. On 27 November 2014, the draft Opinion was sent to ERCEA's DPO for comments, which were received on 8 December 2014.

As the notification relates to a set of processing operations that is already in place, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best effort basis.

Description of the processing operations

The purpose of data processing is to automate HR reporting in an efficient way, to enable keeping the history of ERCEA staff composition for reporting to external institutions, to foster the control mechanisms of the HR function in order to ensure compliance with the Staff Regulations (SR) and Conditions of Employment of Other Servants of the European Communities (CEOS), and to monitor the budgetary expenditure.

In a more general context, the purpose of data processing is to facilitate ERCEA's capacity planning, to enable benchmark with the Commission services and to help meeting the needs of the Agency through adequate human resources planning.

Some of the reports generated include data related to health, i.e. information on absences due to sickness.¹ The notification mentioned points (a) and (b) of Article 27 of the Regulation as grounds for prior checking.

The notification refers to you *ad personam* as controller.

According to the notification, reports extracted from the “Business Objects reporting platform” are kept for 5 years in order to monitor the procedures applied pursuant to the Staff Regulations. Reports stored in the HR Intranet collaborative platform and e-mails and reports stored in the shared drive are kept until no later than the end of March of the year following the one to which the reports refer to.

Legal aspects

The notification states that even if the evaluation is not the purpose of the processing in the case, the processing operation could be used by the line management to evaluate personal aspects relating to a data subject. Following an analysis of the available information, the EDPS considers that the extraction of HR Reports from the “Business Objects reporting platform” is not intended to evaluate the aspects of ability, efficiency or conduct of staff members, but to facilitate and increase the efficiency of HR reporting and, ultimately, the capacity planning of the Agency. Therefore, the evaluation of the data subject does not constitute the purpose of the data processing under examination; it is thus not subject to prior checking under Article 27(2)(b).

However, under Article 27(2)(a) of the Regulation "the processing of data relating to health and to suspected offences, offences, criminal convictions or security measures" is subject to prior checking by the EDPS. The processing operations notified involve the processing of such data and are thus subject to prior checking under this point.²

The EDPS notes that ERCEA as an organisation is to be considered as the controller. While in practice, your unit is "in charge" of the notified processing operations, ERCEA retains final accountability.

ERCEA keeps reports extracted from the “Business Objects reporting platform” for 5 years in order to monitor the procedures applied pursuant to the SR. It should be noted that for some of the data included in the line manager reports, the EDPS has recommended shorter conservation periods for the underlying data sources.³ **The ERCEA should therefore justify the 5 year conservation period of reports extracted from the “Business Objects reporting platform” or adapt the period.**

¹ Absence with medical certificates in the line manager reports.

² Article 27(2)(a) refers to "data related to health", which is a wider term than "medical data" in a strict sense. Medical certificates simply confirming that a staff member is not fit to work for a certain period, without giving any information on the diagnosis still fall under the category of "data related to health".

³ See EDPS Guidelines concerning the processing of personal data in the area of leave and flexitime, available under: https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/12-12-20_Guidelines_Leave_Flexitime_EN.pdf

Conclusion

The EDPS expects ERCEA to implement the recommendation indicated above in bold and has decided to close case 2013-0467.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Vanesa HERNANDEZ GUERRERO, Data Protection Officer, ERCEA