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Brussels, 12 January 2015
GB/TS/sn/D(2015)0026 C 2013–0310
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notification concerning staff appraisal, probation and management probation

Dear Mr Wild,

I refer to the notification for prior checking concerning appraisal and probation of temporary and contract staff as well as management probation submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the EU Joint Undertaking for Advanced Research & Technology in Embedded Intelligence and Systems (ARTEMIS) on 18 March 2013.

We note that the ARTEMIS was replaced by the Electronic Components and Systems for European Leadership (ECSEL) on 26 June 2014¹. As all these procedures are in most aspects in compliance with Regulation (EC) N° 45/2001² (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines³, we will only address the existing practices which do not seem to be fully compliant in this respect.

¹ cf. Council Regulation (EU) No 561/2014 of 6 May 2014 establishing the ECSEL as a successor and replacement for the ARTEMIS as well as the ENIAC Joint Undertakings.

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).

1. Lawfulness of the processing. The probation procedures are based on Articles 34 and 44 of the Staff Regulations and/or Articles 14 and 84 of the Conditions of Employment of the Other Servants (CEOS) as implemented in the respective Decisions of the ARTEMIS Governing Board No 46/08, 47/08 and 48/08⁴. All these procedures can thus be considered lawful in terms of Article 5(a) of the Regulation (read together with recital 27).

At the same time, no specific legal instrument based on Article 43 of the Staff Regulations and/or Articles 15(2) and 87(1) of the CEOS has been adopted for the appraisal of temporary and contract agents. Therefore, we recommend that a specific legal basis is adopted in this respect.

2. Information to data subjects. The EDPS notes that most information required in terms of Articles 11 and 12 of the Regulation is provided in point 1 of the Guidelines for Appraisal which are distributed to the staff at the beginning of each appraisal exercise as well as made available in the ARTEMIS shared folder.

Nevertheless, the information about recipients is incomplete and the information about the recourse to the EDPS misleading. We recommend that the information about possible data transfers to internal and external lawyers is added to the existing document, as well as the reference to the "complaint to the EDPS" is replaced by a reference to the recourse at any time.

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 ECSEL should:

- adopt a specific legal basis for the appraisal of temporary and contract agents;
- revise the existing privacy statement in a manner outlined above.

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

(signed)

Giovanni BUTTARELLI

Cc: Ms Anne SALAUN, DPO

⁴ Decisions ARTEMIS-GB-46/08 on General Implementing Provisions on the procedure governing the engagement and use of temporary agents, ARTEMIS-GB-47/08 on General Implementing Provisions governing the middle management staff and ARTEMIS-GB-48/08 on General Implementing Provisions governing the engagement and use of contract staff, all adopted on 18 September 2008.