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for all correspondence

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

Dear [...],

I refer to the notification for prior checking concerning appraisal, probation, management probation and reclassification submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Banking Authority (EBA) on 30 September 2013. I also take note of the additional information provided together with the related privacy notice on 1 October 2014.

We note that all these procedures are in most aspects in compliance with Regulation (EC) N° 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, all data processed in this context is kept in personal files for up to ten 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).

However, last October the EBA informed us that they are "in the process of amending" their data conservation policy. In particular, the conservation period for probation and appraisal reports should be shortened to five years after the end of the particular exercise, as well as the conservation period for the lists published on the Intranet in the context of the reclassification procedure. In addition, the need to keep other data processed within the reclassification is meant to be evaluated.

Pursuant to Article 4(1)(e) of the Regulation personal data can be kept for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS welcomes the announced shortening of the conservation period for the respective reports and lists. Furthermore, we consider that only the reclassification decisions can be kept until the termination of employment and thus recommend that the existing data conservation policy is modified accordingly.

All these modifications should also be reflected in the related privacy notice.

2. Information to data subjects. The EDPS notes that all information required in terms of Articles 11 and 12 of the Regulation is provided in the related privacy notice.

However, the information about the recipients of the data processed, legal basis of the processing, data conservation and rights of data subjects is misleading. In particular, the privacy notice mentions the data subject among the recipients of data processed in this context as well as refers to the EBA Implementing Rules on data protection as one of the legal instruments on which the evaluation procedures in question are based.

Furthermore, it provides for the following information about data conservation and rights of the data subjects:

"In line with Article 26 of the Staff Regulations documents containing personal data are kept in personal files for up to ten years after the termination of employment, but the retention period specifically for:

- evaluation reports is five years after the end of a particular evaluation procedure;*
- documents related to the promotion, certification, attestation decisions will be evaluated in order to identify those which do not need to be kept for longer than five years;*
- lists published on the Intranet within promotion and certification procedure is up to five years;*
- files of unsuccessful applicants for certification and attestation is until all appeal channels have been exhausted, including time limits for appeals before the Civil Service Tribunal.*

The EBA staff has the right to access and rectify their personal data as stipulated by Articles 13 and 14 of Regulation (EC) No 45/2001. Pursuant to Articles 34 and 43 of the Staff Regulations and Articles 14 and 84 of the CEOS the data subjects are provided with a copy of their reports and they are invited to make comments on them.

Pursuant to Article 26 of the Staff Regulations and Article 11(1) of the CEOS data subjects can also obtain access to all the documents in their personal file even after leaving the service.

The rectification of the factual data processed is possible upon request to the controller, whereas the (by nature subjective) evaluation data can be rectified within the respective appeal procedures.

Should the data subject have any queries, s/he may address them in writing to the DPO at the following address: dpo@eba.europa.eu."

Consequently, we recommend that the existing privacy notice is revised in the following manner:

- the mention of data subject among the recipients is deleted as nobody can be a recipient of their own personal data in terms of Article 2(g) of the Regulation;
- the reference to the Implementing Rules on data protection is replaced by the reference to the Implementing Rules on the staff evaluation procedures concerned;
- the information provided about the applicable conservation periods is modified in accordance with the announced and/or recommended changes;
- all references to promotion, attestation and certification procedures as there are no EU officials at the EBA who could be concerned by these procedures.

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 EBA should:

- modify the existing conservation period for the respective reports and lists published on the Intranet as announced;
- revise the existing privacy notice in a manner outlined above.

The EDPS expects that the EBA implements these recommendations accordingly and will therefore close the case.

(signed)

Wojciech Wiewiórowski

Cc: [...], DPO