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ASSISTANT SUPERVISOR

Ms Daiva VILKELYTE
Head of Human Resources and
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European Agency for the operational
management of large-scale IT
Systems in the area of freedom,
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EU House, Rävåla pst 4
10143 Tallinn, Estonia

Brussels, 02 June 2016
WW/ALS/sn/D(2016)1158 C 2015-0916
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correspondence

**Subject: Prior-check Opinion on the staff reclassification exercise at eu-LISA -
Case 2015-0916**

Dear Ms Vilkelyte,

On 28 September 2015, the European Data Protection Supervisor ("EDPS") received a notification for prior checking relating to a processing operation for staff reclassification from the Data Protection Officer ("DPO") of the European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice ("eu-LISA") under Article 27 of Regulation (EC) No. 45/2001 (the "Regulation").

The EDPS has already issued Guidelines on staff evaluation procedures.¹ For this reason, the description of the facts and the legal analysis will only mention those aspects which differ from the Guidelines. As this notification was submitted after the processing had already started, the deadline of two months for the EDPS to issue his Opinion does not apply. This case was dealt with on a best-effort basis.

Description and assessment

Data subjects' rights

According to the submitted notification under section 8, eu-LISA has stated that data subjects may exercise their right of access to his/her data that is processed by contacting the controller, who is the Head of Human Resources and Training Unit (HRTU). Data subjects have also the right to rectify any administrative data that are inaccurate or incomplete. As concerns

¹ Available on the EDPS website on the following link:
https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-07-15_Evaluation_Guidelines_EN.pdf

evaluation data, disagreements can be addressed in an appeal procedure.² This is, however, not in correspondence with the information under section 7 of the notification (Information to be given to the data subjects), where it is stated that data subjects can exercise their right of access and rectification "at any time before the completion of the process by contacting the Head of HRTU" (emphasis added). The data subjects' right of access is applicable to the overall process, both before and after completion of the reclassification exercise. Furthermore, the information to the data subjects should also include the conditions for rectifying data. **Eu-LISA should therefore amend the privacy statement so it reflects the above.**

Information to data subjects

The privacy statement does not appear to inform the data subjects of any time limits for requests and responses. It is good practice to include information on which time limit a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.). **Consequently, we recommend that such a time limit will be added to the privacy statement.**

The notification and the privacy statement both mention a number of possible recipients of personal data, such as OLAF and the European Ombudsman. For your information, with regard to 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.³

Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation (EC) No 45/2001 provided the above considerations are fully taken into account. In particular, the eu-LISA should amend the privacy statement so it is clear that the data subjects have the right to access their information both before and after the exercise is completed, add information about the conditions for rectifying data and add the time limits for requests and responses.

The EDPS expects that the eu-LISA implements the recommendations accordingly and will therefore close the case.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Mr Fernando POCAS DA SILVA, Data Protection Officer

² The right of rectification applies to objective and factual data; evaluation results always have a subjective element - the appeals procedure can serve to resolve disagreements here. See also EDPS guidelines on the rights of data subjects, p. 18, available at: https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/14-02-25_GL_DS_rights_EN.pdf

³ 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 OLAF, 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.