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C 2016-0538
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Subject: Prior-check Opinion on assessment of statutory staff's skills and competencies at the European Union Agency for Railways

On 14 June 2016, the European Data Protection Supervisor ("**EDPS**") received a notification for prior checking under Article 27.2 of Regulation (EC) No 45/2001¹ (the "**Regulation**") from the European Union Agency for Railways ("**the Agency**"), relating to the assessment of statutory staff's skills and competencies identified for the new tasks and roles of the Agency under the 4th Railway Package.

According to Article 27.4 of the Regulation, this Opinion must be issued within a period of two months, i.e. by 19 August 2016. The draft Opinion was sent to the DPO for comments on 15 July 2016 and her comments were received on 20 July 2016.

While the processing notified does not fall directly under the scope of the related EDPS Guidelines², it is sufficiently similar for these Guidelines to be applied by analogy. This Opinion will therefore not contain a full analysis of the procedure, but will focus on those aspects where the processing operation diverges from the Guidelines or otherwise needs improvement.

Background

¹ Regulation (EC) 45/2001 of the European Parliament and 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 [Guidelines concerning the processing operations in the field of staff recruitment](#) available on the EDPS website

The new Agency Regulation³ is part of the technical pillar of the 4th Railway Package and empowers the Agency with new responsibilities and tasks which the agency should assume as of June 2019. In preparation for the deployment of these new tasks (mainly certification and authorisation), the Agency needs to identify the possible gaps between the skills and competencies available in-house and the requirements of the 4th Railway Package in this regard. As the current Agency staff members have not been assessed against these new requirements, it is necessary to do so now. Therefore, the Agency staff members will be invited to respond to a call for interest⁴ and to conduct a self-assessment of their competences, by completing a standard application form using the "my e-HR" platform. The applications (including CV upon request, motivation letter and supporting documents) will be examined by an assessment panel, which will draw up a shortlist of candidates for the new roles⁵, as well as provide suggestions on training and professional development. Participation in the assessment is done on a voluntary basis and there will be no adverse consequences for staff members choosing not to take part in this exercise. It is furthermore underlined that the personal data collected in this context will not be used for evaluation purposes in the framework of appraisal or promotion.

Legal analysis

Data quality

In accordance with Article 4.1(c) of the Regulation, personal data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*".

On the basis of the information provided, the personal data processed seem adequate and not excessive for the assessment of staff's skills and competencies identified for the new tasks and roles of the Agency under the 4th Railway Package⁶. However, there is a possibility that staff members voluntarily submit information which is not necessary for the processing operation at hand. Personal data and in particular special categories of data that are not relevant for the purposes of the assessment should not be further processed for the evaluation of the staff members in this context.

Reminder

1. The Agency should ensure that staff members are aware of the data quality requirements.

Data retention

Article 4.1(e) of the Regulation provides that data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.*"

According to the information provided in the notification and the privacy statement, data of staff members relating to this process, which they have uploaded themselves, will be available in "my e-HR" for as long as they work at the Agency. Once the staff member leaves the Agency,

³ Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

⁴ Similar calls for interest will be launched regularly in order to complete the team.

⁵ The procedure is similar to the internal mobility procedure, but it does not necessarily result in a re-deployment or re-assignment of the staff member since most of the new roles are part-time.

⁶ It should be noted though, that the standard application form has not been provided as supporting document and has thus not been examined by the EDPS.

all data will be systematically deleted by the system administrator. It is also explained that all Agency staff members have access to their own personal "my e-HR" platform in order to "check, consult, modify and delete the data they provided at any moment". Moreover, according to the notification and the privacy statement, the data linked to the call for interest provided by the applicants will also be "accessible temporarily" by the members of the assessment panel during the assessment phase.

The EDPS takes note that the applicants can themselves delete the data related to the assessment procedure uploaded in "my e-HR" at any time and that they are informed of this possibility in the privacy statement. However, the EDPS considers that the notification and the privacy statement are too vague as to the retention of data by the assessment panel. The Agency should specify for how long the assessment panel will keep the data and ensure that the retention period does not exceed what is necessary for the purposes of the assessment procedure.

Recommendation

2. The Agency should specify for how long the assessment panel will keep the data and ensure that the retention period does not exceed what is necessary for the purposes of the assessment procedure. This information should be included in the privacy statement.

Recipients of data

The notification and privacy statement both mention a number of possible recipients of personal data, such as OLAF and the European Ombudsman.

Reminder

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.

Conclusion

The EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation. In light of the accountability principle, the EDPS trusts that the Agency will fully implement all recommendations included in this Opinion.

We have therefore decided to **close the case**.

Kind regards,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Data Protection Officer