

REGISTER NUMBER: 756

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 21/10/2011

Case number: 2011-0955

Institution: ERCEA

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

The Controller is the Director, assisted by the Co-controller Head of Unit D2

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Unit D2 – Human resources, Infrastructure and Document Management

3/ Name of the processing

ERCEA Staff Evaluation

This notification covers two kinds of evaluation exercise carried out on ERCEA staff:

- (a) probationary period;
- (b) annual appraisal.

4/ Purpose or purposes of the processing

The Staff Evaluation processing operation aims to the following purposes:

Probationary Period

Within this exercise the purpose is to make a first appraisal of the Efficiency, Competencies, Conduct and use of languages of the concerned jobholder. On the basis of the probationary report the Authority empowered to conclude contract (i.e. the ERCEA Director) will subsequently decide on the following options:

- (i) retention in the function
- (ii) extension of the probationary period
- (iii) change of unit/department
- (iv) dismissal
- (v) for middle managers, re-assignment to a non management position

Annual Appraisal

Within this exercise the purposes are:

- assessing the performance and achievements of the concerned jobholder (focusing on the following aspects: Efficiency, Competencies, Conduct and use of languages);
- providing guidance for the future career development and training needs of the jobholder;
- rating the jobholder for the reclassification exercise (the latest notified to the EDPS separately).

5/ Description of the category or categories of data subjects

Probationary Period

Contractual Agents; Temporary Agents (including officials seconded in the interest of the service).

Annual Appraisal

Contractual Agents and Temporary Agents who have completed their probationary period and are in active employment for at least 1 month after the probationary period in the performance year of reference.

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

Probationary Period

▷ Name, Last Name, Personnel number, Position of the reporting officer (probation supervisor).

▷ Personal details and employment record of the jobholder (including Name, Last Name, Personnel number, Position, Status, Assignment, Administrative address, phone and fax).

▷ Report Sections: Description of tasks, Achievement of objectives, Personal Development, Efficiency, Competencies, Aspects of Conduct, Breaks in service (length and reasons, which might contain health or family reasons), Overall Subjective Opinion of the reporting officer, Additional comments both of the jobholder and the reporting officer.

As regards the *Middle Management Staff*, there is a simplified assessment sheet (Annex II of StC191009/3d enclosed in the current notification) which focuses on the managerial competencies as Leadership, Management of People, Working with Others, Fixing Objectives, Delivery of Results and Communication.

As regards the *Senior Management/ERCEA Director*, if he/she is an official seconded in the interest of the service, he/she is exonerated from the probationary period ex article 14 of the CEOS. However, if he/she carries out management tasks for the first time he/she has to undergo a probationary period ex article 44 of the Staff Regulation, which focuses on the same items as for Middle Management.

In relation to the extension of the probationary period due to *sickness or maternity leave*, the HR unit at the start of the exercise checks with the Leave Managers (GECO) the absences longer than one month (due to sickness or maternity leave) and addresses a separate note to the jobholder signed by the ERCEA Director for informing him/her about the extension ((in copy are kept the Head of Unit D2 (Human Resources) and the concerned Head of Unit). No information on the actual diagnosis is processed. Only the administrative reference "sickness or maternity leave" is specified in the note.

Annual Appraisal

▷ Name, Last Name, Personnel number, Position both of the reporting and the countersigning officers.

▷ Personal details and employment record of the jobholder (including Name, Last Name, Personnel number, Position, Status, Assignment, Administrative address, phone and fax).

▷ Report Sections: Description of tasks, Achievement of objectives, Personal Development, Contribution to other activities, Efficiency, Competencies, Aspects of Conduct, Level of Responsibilities, Use of Languages, Additional duties (which might include the membership to trade unions), Overall Subjective Assessment of the reporting officer and the countersigning officer, Additional comments of the jobholder, the reporting officer and the countersigning officer; Rating with Explanation.

▷ In case of appeal, the Opinion of the Joint Evaluation Committee and the Decision of the Appeal Assessor

7/ Information to be given to data subjects

Both for the Probationary Period and the Annual Appraisal

A detailed intranet page provides the following information:

- Legal framework
- Practical Guide
- Compulsory time frame of the procedures for replying, requesting further dialogue or appeal.
- Contact persons
- Tailored Informative Notes from the ERCEA Director and HR team

<http://intranet.ercea.cec.eu.int/services/hr/career/Pages/home.aspx>

With regards to the Probationary period, jobholders are informed about the necessity of such step through article 5 of their employment contract which indicates 9 months for the Contractual Agent and 6 months for Temporary Agents.

A Specific Privacy Statement is drafted and published on the intranet.

8/ Procedures to grant rights of data subjects(*rights of access, to rectify, to block, to erase, to object*)

Jobholders have the possibility to access their personal file and career file by writing to the Controller or the Head of Unit Human Resources.

During the evaluation exercise a contradictory phase is foreseen allowing for rectification and/or argumentation of the objective and subjective statements of the reporting and countersigning officers (orally and in written).

If an appeal is lodged before the Joint Evaluation and Reclassification Committee (JERC), the file is analysed and an opinion formulated to the Appeal Assessor who is free to follow it or not. The jobholder is provided with the final decision of the Appeal Assessor and a standard form containing pre-fixed items to be ticked by the JERC (no access is given to the actual reasoning behind the pre-fixed items).

Where the Jobholder is unhappy with the decision of the Appeal Assessor, he may lodge a complaint article 90(2) and afterwards, bring the case before the Civil Service Tribunal

9/ Automated / Manual processing operation

Both for the Probationary Period and Annual Appraisal

Currently ERCEA cannot use the SYSPER module for appraisal, therefore the processing is manually done via e-mail (with "PRIVATE" marking) and sealed envelopes (with "CONFIDENTIAL" marking) for the major part of the exercise. The final communications to the jobholder are done via ARES with "PERSON CONCERNED" and "STAFF MATTER" markings.. The Human Resources unit record all the evaluation documents in ARES with restricted handling reserved to authorised HR staff.

In relation to the evaluation documents of seconded officials in the interest of the service (members of the ERCEA middle and senior management), as there is the double career appraisal, documents are exchanged with the parent DG R&I via e-mail (with "PRIVATE" marking) and sealed envelopes (with "CONFIDENTIAL" marking).

The main steps of the evaluation process within the **Annual Appraisal** are the following:

- The HR unit launch of exercise by means of a note to all staff
- 1st Management coordination meeting: setting of principles of appraisal
- The HR unit makes a presentation of exercise to staff concerned
- The HR unit organises Training Module for Jobholders (JHs)
- 2nd Management Coordination meeting: it discusses common appraisal standards and performance
- HR cell sends request to JH to compile self-assessment
- The JH makes a Self-assessment
- Performance dialogue between Reporting Officer and JH: assessment of JHs performance over the reference period; setting objectives for the following reporting period and agreeing on training map
- The Reporting Officer prepares draft reports
- The Countersigning Officer checks that common standards have been applied; compares merits; confirms or amends comments
- Harmonisation meeting between managers and Director: overview of performance levels and attribution of reclassification points
- Report with performance level is printed and signed by Reporting Officer, signed by Countersigning Officer, and sent to HR "Career Development Reports" (CDR) cell
- The HR CDR cell centralises reports, prepares letters of notification for points and distributes reports and letters to JH

▫ The JH has 5 working days for Acceptance/Rejection of reports:

- (a) Accepts the report without comments
- (b) Accepts the report with comments
- (c) Refuses the report and asks for revision to the countersigning officer

If reports are refused as per point (c) above, there will be the revision procedure phase, which involves the following steps:

- Dialogue between the jobholder and the countersigning officer
- The Countersigning Officer confirms or modifies the report and performance level
- The JH has 10 working days for Acceptance/Rejection of reports.
- (a) Accepts the report without comments
- (b) Accepts the report with comments
- (c) Refuses the report: appeal to the Joint Evaluation and Reclassification Committee (JERC)

If reports are refused as per point (c) above, the appeal procedure phase starts involving the following steps:

- The JERC formulates its opinion on the appeal
- Confirmation or modification of the report by the Appeal Assessor

As regards the **Probationary Period**, the exercise is launched by sending a request to the Jobholder for drafting his/her self-assessment and sending it to the Reporting Officer.

Once the Reporting Officer has received the self-assessment from the Jobholder, he/she drafts the probationary report and the communication is done via ARES with a handling restriction "staff matter" and limited stakeholders (Reporting Officer, Jobholder Countersigning Officer, Director, file manager). A parallel paper circulation of the final report drafted and signed by the Reporting Officer circulating in a sealed envelope marked "confidential" is also done. The text of the reports is not uploaded in ARES. Once the report is signed by both parties, the Jobholder is provided with a copy, the original version is scanned, saved on the electronic file of the Jobholder on the share drive with limited access and the paper version is filed in the paper personal file of the Jobholder.

<p>10/ Storage media of data</p> <p>Both for the Probationary Period and Annual Appraisal</p> <p>As mentioned in section 9 hereof, ERCEA cannot use SYSPER 2 module for evaluation. Therefore, appraisal reports and appeals are stored in the personal files of Jobholders in paper format (restricted Archives) and electronic (restricted folders in the ERCEA share drive). The access is granted only to authorised staff on the "need to know" basis. The record is made also in ARES, which allows for restricted handling of documents.</p>
<p>11/ Legal basis and lawfulness of the processing operation</p> <p>Probationary Period</p> <ul style="list-style-type: none"> - Articles 34, 44 and 46 of the Staff Regulations and Articles 14 and 84 of the CEOS - ERCEA Steering Committee Decisions StC191009/3b (namely Article 3), StC191009/3c (namely Article 7) and StC191009/3d (namely Article 6) – copies hereby enclosed. <p>Annual Appraisal</p> <ul style="list-style-type: none"> - Article 43 of the Staff Regulations and Articles 15(2) and 87 of the CEOS - ERCEA Steering Committee Decisions StC10610/5a– copy hereby enclosed. <p><u>As regards Officials Seconded in the interest of the service and the Senior Management/Agency Director</u>, Guidelines are given by the "Vademecum" issued by DG HR SEC(2006)664 sections 8.7, 8.8 and 8.9 – copy hereby enclosed.</p>
<p>12/ The recipients or categories of recipient to whom the data might be disclosed</p> <p>Both for the Probationary Period and Annual Appraisal</p> <p>The recipients of data are the authorised staff of HR unit, the ERCEA Director, the ERCEA Management, the relevant Reporting and Countersigning Officers of the jobholders, the members of the Joint Evaluation and Reclassification Committee where applicable.</p> <p>As regards the officials seconded in the interest of the service and senior management/Agency Director, the "Career Development Report" actors of the parent DG R&I are also recipients of data.</p> <p>In addition, data may be disclosed, in compliance with the relevant current legislation and established case law, and on a temporary basis to: (a) the Civil Service Tribunal, at its request; (b) the Ombudsman, at his request; (c) the European Data Protection Supervisor, at his request; (d) the audit and control bodies such as OLAF, Court of Auditors, ERCEA Internal Audit Office, the Commission Internal Audit Service.</p>
<p>13/ retention policy of (categories of) personal data</p> <p>Both for the Probationary Period and Annual Appraisal</p> <p>The evaluation documents are considered integral part of the jobholder personal file (section career), for which the Common Retention Policy of the Commission – COM(2007)970 applied by analogy in ERCEA foresees the following retention period: evaluation documents are retained for 8 years after the extinction of all rights of the person concerned and of any dependants, and for at least 120 years after the date of birth of the person concerned.</p>
<p>13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) (Please, specify the time limits for every category, if applicable)</p> <p>N.A.</p>
<p>14/ Historical, statistical or scientific purposes If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,</p> <p>The ERCEA may envisage anonymous statistical analyses with the purposes to detect weaknesses and improve the management of Human Resources. However, retention periods mentioned above in section 13 will not be increased.</p>

15/ Proposed transfers of data to third countries or international organisations

The ERCEA does not plan to transfer data to third country or international organisations. However, it may happens that the new employer of an ex ERCEA staff member requests some information for instance for fixing entry rights, excluding the need for a probationary period, confirming the references provided by the data subject. In such a case, the ERCEA will seek the consent of the ex staff member for any transfer of data concerning him/her to his/her new employer.

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, as the two types of evaluation exercises aim at assessing the abilities, the conduct and the efficiency of the Jobholder.

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

Other (general concept in Article 27.1)

Moreover, even if it is not the purpose of the processing operations, the evaluation results may lead to the exclusion from a reclassification (promotion) opportunity, subsequently also from a financial benefit. With regards the Probationary Period in particular, the main risk is the termination of the employment contract (dismissal) or for managers the re-assignment to no management position (subsequently exclusion from certain "benefits").

17/ Comments

List of Annexes:

(a)_Decision Stc191009 3b

(b)_Decision StC191009 3c

(c)_i-14435-probationary-period

(d)_i-15745-management-trial-period

(e)_Decision StC210610 5a

(f)_ERCEA Appraisal guide_final

(g)_Decision StC191009 3d_Provisions on middle management staff

(h)_PA decision on the set up of the JERC and its composition 13072011

(i)_ERCEA Rules of procedure for the JERC 14072011

(l)_SEC2006_664_Vademecum-relatif-gestion-personnel

(m)_SPS_Staff Evaluation

Please note that the "Reclassification (promotion)" and the "Evaluation of the third language" are prior checked separately with other two specific notifications.

Last, a working group composed of the six Executive Agencies' HR representatives met on a regular basis between May and July 2011 to work on the adaptation of the recent Commission Implementing Rules C(2011)1264 on the recruitment, use and evaluation of Contract Agents. Two common templates on recruitment and on evaluation were drafted. However, given the current revision of the appraisal system for official which is likely to apply to Contractual Agents, it has been decided to wait until DG HR has clear information on the appraisal system to be used in 2012.

PLACE AND DATE: Brussels, XX October 2011

DATA PROTECTION OFFICER: Donatella Piatto

INSTITUTION OR BODY: ERCEA - European Research Council Executive Agency