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Brussels, 9 September 2011
GB/DH/kd D(2011)1536 C 2011-0340

Subject: Prior-checking notification, case 2011-0340

Dear Mr Briscoe,

We reviewed the documents you have provided the EDPS with concerning the notifications for prior-checking under Article 27(2) of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to the selection and recruitment of SNEs at Fusion for Energy (F4E). The processing operations under examination are subject to prior-checking in conformity with Article 27(2)(b) of the Regulation, since they involve an evaluation of the applicants' ability to perform the functions of the post for which the selection and recruitment procedure has been organised. Article 27(2)(d) ("processing operations for the purpose of excluding individuals from a right, benefit or contract") is not relevant in this case. This provision refers to processing operations the aim of which is to exclude individuals from a right, benefit or contract (this typically refers to black lists). The purpose of the processing at stake is to ensure that an individual, if recruited, is granted the payment of allowances in accordance with the applicable rules (professional experience, etc.) but not to exclude him/her by the controller from any right, benefit, or contract. Certainly the rules may cause -if the individual's situation does not meet the criteria required- the eventual possibility of the exclusion from receiving the said allowance.

The procedure related to the selection and recruitment of SNEs, as well as the data protection practices as presented in the notification, reveal some similarities to other processing operations regarding selection and recruitment by EU institutions/bodies/agencies. In this regard, the EDPS issued Guidelines on staff recruitment¹ as well as a Joint Opinion on "*Staff recruitment procedures carried out by some Community agencies*"². On 29 October 2009 the EDPS requested

¹ The EDPS Guidelines can be found on the EDPS website under the title "Thematic Guidelines".

² EDPS Opinion issued on 7 May 2009 (case 2009-0287).

the Union institutions and bodies that had not yet notified their recruitment processing operations to do so in the light of the Guidelines indicating any differences with the Guidelines. In the present case, the notification has been submitted after 29 October 2009 and therefore, the EDPS will first underline, in the light of the F4E cover letter, the F4E practices which do not seem to be in conformity with the principles of the Regulation and with the EDPS Guidelines and will then restrict his legal analysis to those practices. It is clear that all the relevant recommendations made in the Guidelines apply to the processing operations put in place in the frame of the selection and recruitment of SNEs at the F4E.

The letter from the F4E states that its procedure is in conformity with the Guidelines and that the F4E fully applies the recommendations included in the Guidelines.

Proceedings:

On 6 April 2011, the EDPS received the notification for prior checking from the F4E DPO. On 15 April 2011, the EDPS requested to be provided with the cover letter indicating any particular specificities of the processing operation in the light of the position taken by the EDPS in the Guidelines described above. The letter was received on 21 June 2011. The EDPS should therefore deliver an Opinion by 13 September (67 days + the month of August).

1. Data Quality

Facts: Among other personal data, F4E collects information about the professional activity of the wife/husband of the SNE.

Recommendation: The EDPS would like the F4E to justify the necessity to collect information about the professional activity of the wife/husband of the SNE.

2. Transfer of data

Facts: The notification states that the Permanent representation receives the potential SNE's CV.

Recommendation: The EDPS would like the F4E to justify the necessity to transfer the SNE's CV to the Permanent representations.

3. Time-limits for blocking and erasure

Facts: In his previous Opinion on recruitment of officials, temporary and contract agent at F4E (2010-454), the EDPS made recommendations as to how the F4E should implement the right of blocking and erasure of the data subject. The same principles apply to SNE's.

Reminders:

With respect to the data subject's right of blocking data, the EDPS reminds the F4E that, in accordance with Article 15 of the Regulation, several situations must be distinguished:

(1) when the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data".

Thus, when receiving a request for blocking on this ground, the F4E should immediately block the data for the period necessary for verifying the accuracy and completeness of the data;

(2) when the data subject requires the blocking of his/her data because the processing is unlawful, or when data must be blocked for purpose of proof, the F4E will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should nevertheless be dealt with promptly in order to preserve the data subject's rights. Having considered this, the EDPS notes that the decision as to whether to

block the data is taken by the F4E as soon as possible and at the latest within the delay of 15 working days.

3. Conclusion

The EDPS would like to receive the relevant information regarding the justification of the collection of information about the professional activity of the wife/husband of the SNE and about the transfer of the SNE's CV to the Permanent representations. As concerns the reminder mentioned in this note, the EDPS would like to be informed about the situation regarding the compliance with the Guidelines. All relevant documents which prove that all recommendations and reminders have been implemented should be provided to the EDPS within 3 months of the date of this letter.

Kind regards,

(signed)

Giovanni BUTTARELLI

Cc: Mr Hanak, Data Protection Officer, F4E