

Joint Opinion on the notifications for prior checking from the Data Protection Officer of the Trans-European Transport Network Executive Agency (TEN-T EA) regarding staff evaluation procedures

Brussels, 14 December 2011 (case 2011-0990)

1. Proceedings

On 31 October 2011, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the Trans-European Transport Network Executive Agency (**TEN-T EA**) three notifications for prior checking of staff evaluation procedures covering:

- the evaluation at the end of staff's probationary period (**probation**);
 - the annual **appraisal** (Career Development Review) and
 - the **reclassification** of temporary and contract agents, including the evaluation of their ability to work in a third EU language,
- each together with respective background documents¹.

2. Legal aspects

This Opinion deals with three already existing staff evaluation procedures at the TEN-T EA. It is based on the Staff Evaluation Guidelines², which allows the EDPS to mainly focus on the TEN-T EA practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001 (the Regulation)³.

The EDPS notes that the three processing operations at hand (probation, appraisal and reclassification) are lawful in terms of Article 5(a) of the Regulation, the administrative and evaluation data are processed in compliance with data quality principles set out in its Article 4(1)(a), (c) and (d), as well as transferred in compliance with its Article 7. The rights of access and retention can be granted to the data subject in accordance with its Articles 13 and 14 and [...].

However, the EDPS notes that for the three processing operations under examination, the existing data retention policy, the information provided to data subjects, as well as the data transfer policy do not seem to be in full compliance with the Regulation and therefore addresses these issues in more detail below.

¹ As further listed in the EDPS acknowledgement of receipt of 7 November 2011 regarding cases 2011-990.

² http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-07-15_Evaluation_Guidelines_EN.pdf.

³ 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.

2.1. Data retention. The data processed within the probation and appraisal procedures are kept in the TEN-T EA personnel files for 10 years after leaving the service within the Institutions or for 8 years after the extinction of all rights of the person concerned. The same retention periods apply to data processed in the context of the reclassification procedure (copy of certificates and decision of EPSO regarding ability to work in a third EU language as well as decisions and individual notification forms on reclassification), but lists of reclassified staff members are available on the intranet for a period of 5 years following publication.

Article 4(1)(e) of the Regulation states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS is of the opinion that the existing retention period which extends to the whole career of the data subject at the TEN-T EA is not necessary for the initial assessment of staff as carried out in the context of the appraisal, probation and reclassification procedures. In similar cases, the EDPS considered that a maximum retention period of five years after the end of a particular evaluation exercise was in line with the requirements of Article 4(1)(e) of the Regulation⁴.

Consequently, the TEN-T EA is invited to reconsider the existing retention periods and establish shorter ones in relation to the actual purpose of the processing operations.

2.2. Information to data subjects. The EDPS notes that most information listed in Articles 11 and 12 of the Regulation are provided in particular in the existing Privacy policy statements for the probation, appraisal and reclassification procedures as well as the "Appraisal and Promotion Guide" available on the TEN-T EA intranet.

Nevertheless, the EDPS notes that the Privacy policy statements for the probation, appraisal and reclassification procedures do not inform data subjects about the impossibility to correct the (by nature subjective) evaluation data when exercising their right to rectification or the categories of data collected.

Regarding the probation and appraisal procedures, data subjects are not informed in the Privacy policy statements about the possibility to include comments - an information that can only be found in the FAQ section of the information for data subjects displayed on the TEN-T EA intranet.

The EDPS suggests that for all Privacy policy statements, the information on the right to rectification is revised in order to reflect the data categories and the impossibility to correct the (by nature subjective) evaluation data (which can be rectified within the respective appeal procedures). Regarding the Privacy policy statements used in the probation and appraisal procedures, the EDPS suggests that the information on the right to rectification is revised in order to reflect the right to provide comments on the actual report.

2.3. Data transfers. Regarding the probation, appraisal and reclassification procedures, in order to ensure full compliance with Regulation 45/2001, the EDPS recommends that all internal recipients are reminded of the purpose limitation obligation in terms of Article 7(3) of the Regulation.

⁴ See EDPS Opinions on annual appraisal and probationary period of CPVO President and Vice-President of 28 July 2009 (2009-355 and 2009-356).

3. Conclusion

In view of the above, the EDPS recommends that the existing data retention periods are reconsidered and that the existing Privacy policy statements are revised in line with the suggestions outlined above. Furthermore, the EDPS recommends that all internal recipients are reminded of the purpose limitation obligation in terms of Article 7(3) of the Regulation.

He would like to invite the TEN-T EA to inform him about the implementation of these recommendations within three months after receipt of this joint Opinion.

Done at Brussels, 14 December 2011

(signed)

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Assistant European Data Protection Supervisor