

## **Opinion on the notification for prior checking from the Data Protection Officer of the Community Fisheries Control Agency (CFCA) concerning Staff Appraisal, Probationary Procedure for contract agents and Reclassification of temporary agents.**

Brussels, 6 February 2012 (case 2011-0952)

### **1. Proceedings**

On 21 October 2011, the European Data Protection Supervisor (**EDPS**) received from the Executive Director of the Community Fisheries Control Agency (CFCA) a notification for prior checking concerning staff appraisal, probationary procedure for contract agents and reclassification of temporary agents accompanied by the following documents:

- Global HR Privacy Statement Version October 2011;
- Decision No 11-W-03 of the CFCA Administrative Board of 23 June 2011 on the annual staff appraisal exercise;
- Decision No 09-II-06(01) of the CFCA Administrative Board of 15 October 2009 concerning the appraisal for the CFCA Director;
- Decision No 11-W-07 of the CFCA Administrative Board of 16 September 2011 on the annual reclassification exercise;
- Note P 07-01 on Appraisal;
- Note P 02-09 on Probationary Period;
- Note P 07-02 on Reclassification.

The procedure was suspended between 1 December 2011 and 31 January 2012 to request complementary information.

The Opinion is based on information from the notification form and the following additional documents provided by the CFCA:

- Appraisal report template;
- Circulation sheet for appraisal report;
- Probationary report template;
- Measures to ensure security of processing.

### **2. Legal aspects**

This Opinion deals with the staff appraisal, probationary procedure for contract agents and reclassification of temporary agents at the CFCA<sup>1</sup> and is based on the Staff Evaluation

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<sup>1</sup> Notification of prior checking of the reclassification of the Executive Director will be submitted at a later stage.

Guidelines<sup>2</sup> which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation (EC) 45/2001 (hereinafter "Regulation 45/2001").

The EDPS notes that the administrative and evaluation data are processed in compliance with data quality principles set out in Article 4(1) (a), (c) and (d); the right of access and rectification is granted to the data subject in accordance with its Articles 13 and 14.

However, the EDPS observes that a specific legal base for the probation procedure seems to be missing and that the data retention, data transfers, as well as information policy appear not to be in full compliance with the Regulation 45/2001. Therefore, he addresses these issues in more detail below.

**2.1. Lawfulness.** The staff appraisal and reclassification procedures are based on Articles 43 and 45 of the Staff Regulations, as well as Articles 10 and 15 of the CEOS as implemented in the two CFCA Decisions listed above. These procedures can thus be considered lawful in terms of Article 5(a) of the Regulation 45/2001<sup>3</sup> (read together with its recital 27).

However, the EDPS observes that at the same time, no specific instrument based on Article 34 of the Staff Regulations, as well as Articles 14 and 84 of the CEOS has been adopted by the agency for the probation procedure. The procedure laid down in the Note P 02-09 on Probationary Period is preliminary and only applies until the General Implementing Rules for contract agents are adopted. A specific legal basis should be adopted as announced.

**2.2. Data retention.** Staff appraisal reports are kept in personal files for 8 years after the end of the particular appraisal procedure. The period of retention is to justify the attributed merit points which are relevant for the reclassification, which in the slowest case could take around 7.5 years. Probationary reports, reclassification decisions, as well as letters confirming the final award of the merit points are kept in personal files for 10 years after the termination of employment or until last pension payment.

Article 4(1)(e) of the Regulation 45/2001 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 storage period of staff appraisal reports for 8 years can be considered appropriate for subsequent reclassification. However, the EDPS is of the opinion that the necessity of the above mentioned storage period for probationary reports, reclassification decisions, as well as letters confirming the final merit points extending the whole career is questionable. He therefore invites the CFCA to establish shorter ones in relation to the actual purposes of the processing. In similar cases, the storage of probation reports for maximum five years period after the end of the particular evaluation procedure, as well as storage of promotion and reclassification decisions until the termination of employment was considered in conformity with the Regulation 45/2001<sup>4</sup>.

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<sup>2</sup> Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

<sup>3</sup> 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.

<sup>4</sup> cf. EDPS Opinions on annual appraisal and probationary period of CPVO President and Vice-President of 28 July 2009 (EDPS 2009-355 and 2009-356).

**2.3. Data transfers.** Whereas all data transfers within CFCA, as well as to other EU institutions can be considered as in full compliance with Article 7(1) of Regulation 45/2001, it seems that not all recipients are aware of their obligation to process the data received only for purposes for which they were transmitted.

Therefore, the EDPS recommends that all recipients are made aware of the purpose limitation set out in Article 7(3) of Regulation 45/2001.

**2.4. Information to data subjects.** The EDPS notes that all information listed in Article 11 and 12 of the Regulation 45/2011 are provided in the existing **Global HR Privacy Statement Version October 2011** available on the CFCA Intranet.

Nevertheless, he suggests that the information on rectification of evaluation data is revised in order to also reflect the right to lodge an appeal and/or provide comments on the evaluation reports.

### **3. Conclusion**

In view of the above, the EDPS recommends that the following measures are taken in order to ensure full compliance with Regulation 45/2001:

- General Implementing Rules as a specific legal basis for the probation procedure are adopted as announced;
- reconsider shorter storage periods for probationary reports, reclassification decisions, as well as letters confirming the final merit points;
- all data recipients are reminded of the purpose limitation principle;
- information to data subjects is revised as outlined above.

He would like to invite the CFCA to inform him about the implementation of these recommendations within three months after receipt of this letter.

Done at Brussels, 6 February 2012

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor