



Opinion on the notification for prior checking from the Data Protection Officer of the European Network and Information Society Agency concerning Annual Appraisal and Reclassification of Temporary Agents

Brussels, 27 March 2012 (cases 2010-936 and 2010-937)

1. Proceedings

On 18 November 2010, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Network and Information Society Agency (ENISA) two notifications for prior checking concerning annual appraisal and reclassification of temporary agents, accompanied by the following documents:

- Executive Director Decision of 10 September 2008 on General Provisions for Implementing Article 43 of the Staff Regulations and Article 15 of the Conditions of Employment of Other Servants,
- Guidelines for Staff Performance Appraisal Exercise,
- Staff Appraisal: Common Performance Standards,
- Performance Appraisal Report template,
- Executive Director Decision of 27 June 2007 on the Appointment of the Members of the Joint Evaluation Committee,
- Note on the Work of the Joint Reclassification Committee - Compliance with the legal provisions on personal data protection of 1 July 2009,
- Internal document on Procedure - Staff Reclassification Exercise for Reporting Period 1 January to 31 December 2008,
- List of staff members eligible for reclassification template for 2009,
- Executive Director Decision of 19 September 2008 on the career of temporary agents and its reclassification to a higher grade,
- Timetable for the reclassification exercise 2009.

The procedure was suspended between 1 December 2010 and 15 July 2011 for adoption of the Staff Evaluation Guidelines¹, during August 2011, between 19 September and 25 November 2011 for additional information provided in the form of a **revised notification** on both procedures. The DPO comments on the draft Opinion requested on 2 December 2011 were provided on 23 March 2012, together with the Intranet Policy Statement on Appraisals and Reclassification, as well as a note on the Policy of the Storage, Security, Access and Processing of Electronic Data.

2. Legal aspects

¹ Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

This Opinion deals with the existing annual appraisal and reclassification of temporary agents at the ENISA and is based on the EDPS Staff Evaluation Guidelines which allows the EDPS to focus on the practices that do not seem to be fully compliant with Regulation 45/2001².

The EDPS notes that the processing in question is considered as 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 Article 4(1)(a), (c) and (d); the rights of access and retention can be granted to the data subject in accordance with Articles 13 and 14, as well as the security policy is in line with Article 22.

However, the EDPS observes that the data retention, data transfers and information policy appear not to be in full compliance with the Regulation. Therefore, he addresses these issues in more detail below.

2.1. Data retention. Article 4(1)(e) of 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.

According to the information provided in the revised notification, performance appraisal reports, reclassification decisions and emails on the award of reclassification points are being kept in personal files for up to 10 years after the termination of employment or the last pension payment pursuant to Article 26 of the Staff Regulations.

Although the EDPS welcomes the shortening of the maximum retention period from 35 to 10 years, he still considers this period extending to the whole career not necessary for the annual appraisal and/or reclassification of the temporary agents.

Consequently, he invites ENISA to reconsider the maximum retention period in terms of the actual purposes of the processing. In similar cases, storage of appraisal reports for up to five years after the end of a particular exercise, as well as storage of reclassification decisions until the termination of employment was considered in conformity with the Regulation 45/2001³.

Furthermore, the EDPS is of the opinion that the storage of emails on the award of reclassification points is not necessary for such a long period of time and these should be deleted after adoption of the respective reclassification decision.

2.2. Data transfers. According to Article 7 of Regulation 45/2001, transfer of personal data within an EU body can only occur if necessary for the legitimate performance of the competence of the recipients who can process the data only for the purpose for which they were transmitted.

Whereas all data transfers within ENISA can be considered as in full compliance with Article 7(1) of Regulation 45/2001, none of the recipients seem to be aware of the purpose limitation set out in Article 7(3). Therefore, the EDPS recommends that all recipients are made aware of their obligation to process the data received only for purposes for which they were transmitted. Such a reminder may be added to the existing Note on the Work of the Joint

² 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.

³ 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).

Reclassification Committee, as well as provided to the responsible HR staff members, Reporting Officers, Head of the Administration Department, Executive Director and members of the Joint Evaluation Committee.

2.3. Information to data subjects. The EDPS notes that the additionally submitted Intranet Policy Statement provides for most of the information listed in Articles 11 and 12 of Regulation 45/2001. He would just invite the ENISA to add information about the legal basis of the evaluation of temporary agents (Article 15(2) CEOS read together with Article 43 of the Staff Regulations).

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:

- the existing data retention period is reconsidered in terms of the actual purpose of the processing;
- emails on the award of reclassification points are deleted after the adoption of the respective reclassification decision;
- all data recipients are reminded of the purpose limitation principle;
- information about legal basis of the evaluation procedure is added to the existing Intranet Policy Statement.

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

Done at Brussels, 27 March 2012

(signed)

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Assistant European Data Protection Supervisor