



Opinion on the notification for prior checking from the Data Protection Officer of the Cedefop concerning Promotion, Career Advancement, as well as Assessment of the Senior and Middle Management

Brussels, 11 June 2012 (cases 2012-009 and 2012-010)

1. Proceedings

On 3 January 2012, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Centre for the Development of Vocational Training (**Cedefop**) two notifications for prior checking concerning (1) Promotion of officials and Career Advancement of temporary agents and (2) Evaluation, Probations of the Director, as well as Probation of the middle management. These notifications were accompanied by the following documents:

- General implementing provisions relative to the career and the promotion of officials (Cedefop/DGE/10/2011),
- General implementing provisions relative to the career of temporary staff and their assignment to employment of a higher grade than that to which they are employed (Cedefop/DGE/11/2011),
- 2011 Promotions Decision template (note to all staff),
- Note to staff RS/HR/GMA/tpe/2011/1476 on including contract agents in the promotion exercise,
- General implementing provision concerning middle management staff (Cedefop/DGE/8/2011),
- Draft General implementing provisions for the appraisal of the Cedefop Director,
- 2011 Promotion Proposal template,
- List of staff eligible for promotion / career advancement in 2010 template,
- Individual promotion decision template;
- Probationary Report template,
- Privacy Statement in relation to the processing of data related to the promotion procedure,
- Privacy Statement in relation to the processing of data related to the end of probation period reports.

On 29 May 2012, the DPO informed the EDPS that he has no comments on the draft opinion submitted on 22 February 2012.

2. Legal aspects

This Opinion deals with the existing promotion, career advancement and management assessment procedures at the Cedefop and is based on the Staff Evaluation Guidelines¹ which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001².

2.1. Data retention. According to the information provided in the notifications, promotion decisions, as well as probation, management probation and annual reports are kept in personal file for eight years after the extinction of all rights of the person concerned and any dependents, but at least for 120 years after the date of birth of the person concerned. The promotion related records are kept for ten years after the end of the particular exercise (five years in active status and five years in the archives).

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 EDPS notes that the ten years retention period for promotion files can be considered as necessary for the related appeals³. At the same time, there seems to be no sufficient evidence that the existing retention periods for promotion decision, probation and annual reports extending to the whole career at the Centre are necessary for the respective purposes.

Therefore, the Cedefop is invited to reconsider the existing time limits in this respect and to provide for their precise justifications that will be taken into account in the upcoming discussions with the relevant stakeholders.

2.2. Data transfers. The data transfers within the Centre, as well as to other EU institutions can be considered as necessary for the accomplishment of the respective task in the respective promotion, probation and/or evaluation procedures and thus in compliance with Article 7(1) of Regulation 45/2001.

In order to ensure full compliance with the Regulation, the EDPS recommends that all data recipients are made aware of the purpose limitation set out in Article 7(3).

2.3. Information to data subjects. Whereas all information listed in Articles 11 and 12 of Regulation 45/2001 is provided in the Privacy Statements for promotion and probation procedures mentioned above, no information seems to be provided in the context of the annual evaluation of the Director. Therefore, the EDPS recommends that a Privacy Statement is established in this respect.

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 storage periods for promotion decisions, probation and annual reports are reconsidered;

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

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 Opinion on promotion of officials and regrading of temporary agents of 7 November 2008 (EDPS 2008-095).

- all data recipients are reminded of the purpose limitation principle;
- a Privacy Statement is established for the annual evaluation of the Director.

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

Brussels, 11 June 2012

(signed)

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