



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Mr Nikolaos FIKATAS  
Head of Sector ICT & Facilities  
Administration Department  
European Union Agency for  
Fundamental Rights (FRA)  
Schwarzenbergplatz 11  
AT- 1040 Vienna  
AUSTRIA

Brussels, 12 September 2012  
GB/MV/mch/D(2012)1848 C 2012 - 0090

**Subject: Prior-checking notification of the processing operations within the MATRIX application at FRA (Case 2012 - 0090)**

Dear Mr Fikatas,

I am writing to you in reference to the prior-checking notification concerning the processing operations taking place within the MATRIX system for the management of projects and activities at FRA ("MATRIX"), which you notified to the EDPS on 25 January 2012.

When the notification regarding MATRIX was submitted to the EDPS by FRA, it was suggested by you to analyse the processing operations at the same time as the one planned on the same MATRIX application at ENISA. The EDPS agreed to analyse both notifications on MATRIX under the same prior-checking procedure.

After an in-depth examination of the data processing operations as described in the notification and further information received from the DPO of FRA, for the reasons described below, the EDPS considers that the data processing that occurs in the context of the MATRIX at FRA is **not subject to prior checking** under Article 27 of the Regulation (EC) No 45/20011 (hereinafter "the Regulation"). At the time of writing of this letter, the EDPS can not make a similar assessment as regards the notification on MATRIX in ENISA, which will therefore need to be analysed separately. Therefore, the decision to analyse both notifications of FRA and ENISA on the same application is no longer envisaged.

In the aforementioned notification FRA indicated that the MATRIX application presents certain risks to the rights and freedoms of data subjects within the meaning of

---

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : [edps@edps.europa.eu](mailto:edps@edps.europa.eu) - Website: [www.edps.europa.eu](http://www.edps.europa.eu)

Tel.: 02-283 19 00 - Fax : 02-283 19 50

Article 27 (2) of the Regulation, i.e. the MATRIX application entails *processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.*

However, in further exchanges between FRA and the EDPS, FRA informed the EDPS that the data collected through the MATRIX application is "used to evaluate the project statuses and how the Agency as a whole is progressing in meeting its Annual Work Programme objectives". FRA officially confirmed in an email on 14 June 2012 that "based on the current practices, there is no use of MATRIX data for staff evaluation" purposes.

The EDPS also analysed whether the processing operations relating to the use of MATRIX could fall under other grounds listed in Article 27 and concludes that this is not the case at FRA. Therefore, the EDPS concludes that **there is no basis under Article 27 of the Regulation to subject the processing operations taking place within the MATRIX application, as notified by FRA, to a prior-checking procedure.**

If the purposes of the processing would change and FRA would decide, for example, to use the information provided for in MARTRIX for the purposes of evaluating individuals then, the processing would need to be prior checked by the EDPS in the context of the evaluation procedure (please make reference to this prior check notification).

Without prejudice to the above considerations, the EDPS would like to give some recommendations regarding the processing of personal data of the application.

In the first place, the EDPS reminds FRA that it has to comply with the principle of purpose limitation enshrined in Article 4 (b) of the Regulation. Since the MATRIX stores information on how long a staff member worked on a particular project and this information is available to managers and HR members, it must be ascertained that the data will not be used for purposes of evaluating the efficiency of the staff.

FRA should therefore clearly state that data in the MATRIX system is only used to evaluate the project statuses and how the Agency as a whole is progressing in meeting its Annual Work Programme objectives and that it is not used for purposes of performance appraisal, promotion, or assessing contract renewal, and that the use of the database should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members. This does not mean that staff members who are unable to account for a productive use of their time may not be dismissed or excluded when tasks are distributed. However, these decisions must be made based solely on information in the MATRIX system. Your notification 25 should therefore be amended in the light of this recommendation.

In the second place, FRA is advised to provide staff members with a detailed privacy statement to supply them with the necessary information within Articles 11 and 12 of the Regulation and inform them of their rights enshrined in Articles 13, 14, 15, 16, and 18 of the Regulation. In this respect, the EDPS has not received any privacy

statement. The information referred to in the notification does not refer to the information to data subjects.

The EDPS invites FRA to adopt an information notice for the staff members and demonstrate it has been provided to the staff. This information should refer to the:

- identity of the controller;
- purpose of the processing (underlining that it is used to evaluate project statuses and not meant for evaluation purposes of staff members as stated above);
- data categories;
- whether replies to the questions are obligatory or voluntary, as well as possible consequences of failure to reply;
- possible data recipients;
- existence of rights of access, rectification and recourse to the EDPS;
- legal basis of the processing;
- applicable data retention periods.

The EDPS also recommends that FRA reconsiders the necessity of storing the data in the MATRIX system for 10 years. Indeed, FRA states in the notification that "the data is kept for a period of 10 years. This time is calculated based on the fact that the multiannual framework (MAF) of the Agency spans for 5 years and the performance of projects of the previous MAF can be used as lessons learned for the next MAF projects. The reason is due to the fact that time spent is linked to the project and administrative autonomy tasks based on the multi-annual plan of the Agency. The amount of time spent on activities and projects of previous years allows the Agency and its staff to better manage and plan future similar activities".

Although the EDPS understands the interest for the Agency to be able to compare results between two multiannual framework periods, he doubts that, given the specific purpose of the processing operation, personal data of staff members need to be kept for 10 years for this purpose. Therefore, unless FRA can provide specific reasons that may justify such conservation for a long time, FRA should anonymize the personal data as soon as they are no longer necessary for the purposes of project management in the context of them multiannual framework and provide the EDPS with the revised conservation period.

I would appreciate if you could share this position with the relevant persons in FRA and inform us of the follow up measures taken concerning the above recommendations within three months of reception of this letter.

We remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Graeme COOPER, Deputy Data Protection Officer - ENISA