



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Giuseppe BAMBARA
European Research Council
Executive Agency
Acting Data Protection Officer -
COV2 20/108
B-1049 Brussels

Brussels, 19 December 2012
GB/MV/kd/D(2012) 2514 C 2012-0915
Please use edps@edps.europa.eu for all
correspondence

Dear Mr Bambara,

On 19 October 2012, the European Data Protection Supervisor (EDPS) has received a notification for prior-checking on the “Management of training requests and training activities for ERCEA staff” under Article 27(2)(b) and Article 27(2)(d) of the Regulation 45/2001 (the Regulation).

According to the notification, the purpose of the processing operation in question is to:

- plan, develop, organise, communicate, manage, evaluate, report on, purchase and pay training and team building actions;
- collect participants' feedback, check the quality and relevance of the training activity and adapt the ERCEA training offer accordingly (course content, duration or recommend most appreciated trainers for future training actions purchased by D2/Training).

HR reports are targeted only at the management to:

- give management an overview of the training participation of their team and check if there is an issue of absenteeism.
- enable D2/Training and management to complete their reporting and monitor budget spending.

Based on the information provided, it appears that the training evaluation in ERCEA is not intended to verify the level of acquired knowledge of the training participants. There is only one specific case where the acquired level of knowledge is collected by D2/Third Language, i.e. for language training connected to Article 45.2 of the Staff Regulation (proficiency in a third language before promotion) but this aspect is covered in a separate prior checking Opinion¹.

¹ This special case has been covered by a separate prior check notification, EDPS case no 2011-0955, -0956, -0963: Opinion on the notification for prior checking from the Data Protection Officer of the European Research Council Executive Agency concerning the annual appraisal and probation, reclassification and assessment of the ability to work in a third language.

Any other evaluation relates to the anonymous evaluation of the trainer by the participants with the mere intention of maintaining and guaranteeing the quality of the training.

Consequently, the processing operation does not seem to present specific risks to the rights and freedoms of data subjects by virtue of its purposes under the specific category of Article 27(2)(b) of the Regulation.

Moreover, Article 27(2)(d) subjects to prior checking any processing operation for the purpose of excluding individuals from right, benefit or contract. The notification refers to the above provision as the legal basis of prior checking. This provision is aimed at processing operations whose specific and sole purpose is to exclude persons from a right, benefit or contact, such as black lists. Based on the purposes of the processing, we are of the opinion that this is not the case here even if the processing operation could possibly result in excluding an individual from a right.

The EDPS therefore considers that the management of trainings by the ERCEA should **not be subject to prior checking by the EDPS**.

Having analysed the notification and documents enclosed, the EDPS would nevertheless make the following recommendation in order to ensure that there is no breach of the provisions of the Regulation regarding the processing operations in question:

Contracts with external contractors

The ERCEA has provided the EDPS with a framework service contract signed with an external contractor as well as the Service Level Agreement between the EAS and ERCEA.

The EDPS notes that they seem to be in conformity with the requirements laid down in Article 23 (2) of the Regulation. However, the EDPS would like to draw attention to Article I.9 of the framework service contract² entitled "*data protection*". Mere reference to the contractor's personal data and their rights of access and rectification is not sufficient. Reference to the data subjects whose data are processed should also be included since part or all of their data are processed by the external contractor-processor in view of the execution of the contract. Consequently, where there is reference to "the Contractor", the ERCEA should add the phrase "*and the data subjects whose data are processed by the Contractor*".

The EDPS invites the ERCEA to adopt and implement the above recommendation in the context of its management of trainings. To facilitate our follow-up, it would be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter to evidence that the recommendations have been implemented.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : - Ms Carina Lenarduzzi, Head of Unit ERCEA D.2 "Human Resources, Infrastructure and Document management".

² Reference: ARES_D2_2012_310224_FINAL CONTRACT ERCEA_D2_2012_01_EPSO-EAS-PO-2010-116

- Ms Nadine Kolloczek, Data Protection Officer, ERCEA