



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Giuseppe BAMBARA
Acting Data Protection Officer
European Research Council Executive Agency
ERC.D.3 - Programming, Monitoring, Legal
Matters and Risk Management
COV2 20/108
1210 Brussels

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GB/DG/mk D(2012)2512 C 2012-0898

Subject: Prior-checking notification on the processing operations related to the termination of the service of ERCEA statutory staff (case 2012-0898)

Dear Mr Giuseppe Bambara,

I am contacting you with regard to your notification on the processing operations relating to the "termination of the service of ERCEA statutory staff" (Case 2012-0898) at the European Research Council Executive Agency (ERCEA).

You submitted the case for prior-checking considering that the processing falls within the remits of the general Article 27.1 based on the fact that some data may be sensitive. Specifically, the processing operation was submitted for prior checking under Article 27.2(a) - processing of data relating to health and to suspected offences, offences, criminal convictions or security measures; Article 27.2(b) - processing operations intended to evaluate personal aspects relating to the data subject; and Article 27.2(d) - processing operations for the purpose of excluding individuals from a right, benefit or contract.

After examining the data processing operations described in the prior checking notification and considering the requested additional information from the ERCEA, we have reached the conclusion that, for the reasons described below, **the processing covering the termination of the service of ERCEA statutory staff is not subject to prior checking.**

As explained within the correspondence submitted to the EDPS, no medical information will be processed or stored by the HR service when dealing with an invalidity case. Although such a case has not yet been encountered within the Agency, the Director will make a decision based on the opinion of the Invalidity Committee. This opinion will not contain any medical

information. As such, this particular processing operation would not be suitable for prior checking under Article 27.2(a).

Furthermore, the results of the overall procedure are not processed for the purpose of evaluating personal aspects of the data subjects in terms of conduct, ability or efficiency, as stated in Article 27.2(b).

The main aim is to establish the rights of the data subject in terms of payment and benefits, and to ensure that the ERCEA can function effectively with regard to staff and employment management. Based on the information provided, the EDPS does not consider that the purpose of the processing operation is to exclude individuals from a right, benefit or contract. Therefore, Article 27.2(d) is not engaged in this case.

Consequently, the processing operation in general 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) of the Regulation. On the basis of the further information provided, the EDPS therefore considers that in general terms, the termination of statutory staff by the ERCEA should **not therefore be subject to prior checking by the EDPS**.

However, having analysed the notification and documents enclosed, the EDPS does have some concerns about certain specific aspects of the processing operation in terms of compliance with the provisions of the Regulation:

1) Invalidity procedure

It is noted that the invalidity procedure may not necessarily result in a complete termination of contract, as there is the possibility in some cases that the agent may be reintegrated. It is also acknowledged that the ERCEA has introduced an Invalidity Procedure, with the whole process described in the Invalidity Committee Handbook approved in September 2008 and published as an administration notice.

However, the EDPS notes that this particular procedure involves the processing of personal data relating to health. This would normally require a separate prior checking opinion from the EDPS under Article 27.2(a). It is assumed that the process is similar to (or the same as) that of the Commission. In any case, the ERCEA should notify its procedure separately to the EDPS and explain any differences in terms of data protection.

2) End of contract

Again, end of contract should be included in the general prior check notification relating to evaluation, where renewal of contract is usually included. This would appear to fall under the ERCEA's previous notification on staff evaluation under case reference 2011-0955, related to the relevant EDPS guidelines. If any aspect of the end of contract arrangements in the current notification differ from the information considered in case 2011-0955, an additional notification for prior checking may need to be considered under Article 27.2(d).

3) Resignation

It is noted that the ERCEA has a formal resignation procedure that was introduced in October 2012. Although the ERCEA is yet to encounter a conflict of interests case, this will form part of the resignation process. Any processing relating to conflict of interests should be submitted to the EDPS as a separate notification for prior checking under Article 27.2(b). The EDPS is currently formulating guidance in this area which will be released in 2013. As such, the ERCEA should wait for the guidance to be circulated before submitting its notification.

4) Retirement

Although retirement in itself does not seem to be subject to prior checking, please be aware that the EDPS would expect to be notified of any processing operations involving early retirement without reduction to pension rights.

Conclusion

The EDPS considers that the processing operation in the context of the termination of the service of ERCEA statutory staff is not subject to prior checking on a general level, but recommends the ERCEA to:

- submit additional prior checking notifications to the EDPS as necessary, and as mentioned above.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Nadine Kolloczek, Data Protection Officer, European Council Research Executive Agency