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Office: COV2 20/108
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GB/DG/et/D(2013)967 C 2013 -0166

Subject: Prior checking notification of the processing operations concerning the ERCEA Department B-List on Staff Expertise (Case 2013-0166)

Dear Mr Bambara,

I refer to the prior checking notification on the processing operation concerning the Department B-List on Staff Expertise ("the List") at ERCEA, which you sent to the EDPS on 8 February 2013. This followed a consultation with the EDPS in 2012 regarding the suitability of this operation for prior checking, pursuant to Article 27(3) of Regulation (EC) No 45/2001 ("the Regulation").¹

The List is a searchable Excel database on ERCEA's shared drive which resides on a local ERCEA server. Amongst other fields, it contains details on the background studies, occupation and professional experience of Research Officers, Project Advisors and Seconded National Experts (Scientific Officers) in Department B. The data subjects provide this information directly, by filling in a template of the spreadsheet on a voluntary basis. The information is mainly used for management purposes including facilitation of the assignment of certain members of staff to particular tasks or expert panels, communication activities or follow up projects, based on their individual skills. The List is accessible on a "read-only" basis to all members of Department B, with write access only permitted for designated members of staff.

The EDPS has conducted an in-depth examination of the data processing operation as described in the notification, and in the further correspondence recently received from the Acting DPO of ERCEA. The EDPS has also taken into account the previous consultation between the EDPS and ERCEA on this matter in 2012. In view of the further clarification that

¹ Case reference 2012-0821.

has since been provided by ERCEA, and for the reasons described below, the EDPS has now concluded that the data processing that occurs in the context of the List is **not subject to prior checking** under Article 27 of the Regulation.

In the notification, ERCEA indicated that the processing concerning the List presents certain risks to the rights and freedoms of data subjects within the meaning of Article 27(2)(b) of the Regulation, i.e. that it would entail "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 ERCEA and the EDPS, ERCEA has clarified that the data contained in the List are not used for formal staff evaluation, recruitment or internal mobility, but only for assessing an individual's suitability for an activity, or ability to complete a task. This additional information has provided the EDPS with a fuller picture of the processing operation, which was not entirely clear from the initial notification.

Moreover, ERCEA has clarified that if any choices made in connection with the List have an impact on a Scientific Officer's career, the impact would be solely indirect or theoretical (for example if any such choices provide a data subject with more opportunities than other colleagues to enhance their CV or Career Development Report, or conversely, if the Officer's planned objectives are delayed due to the acceptance of additional tasks). To date, no such impact has been detected or claimed.

The database is only used to collate staff abilities in order to allocate tasks within ERCEA and to find experts with a certain background or experience on a subject. In that sense, it is not an assessment of the abilities of staff, as these have already been evaluated at the time of their recruitment. The selection and recruitment procedures which precede the employment of ERCEA staff are therefore already subject to prior checking in their own right under Article 27(2)(b) of the Regulation.

The assignment of existing staff to specific tasks within ERCEA arguably constitutes only day-to-day management and planning of human resources for the tasks of the agency. As such, the original EDPS position on suitability for prior checking has been reassessed in light of the more comprehensive information provided by ERCEA since the original consultation and notification were submitted. Therefore, after further consideration and in line with its recent practice², the EDPS considers that on reflection, processing in the framework of the List is not 'intended' to evaluate personal aspects of the data subjects (such as their ability) pursuant to Article 27(2)(b) of the Regulation.

The EDPS also analysed whether the processing operations relating to use of the List could fall under other grounds listed in Article 27 (notably any grounds pursuant to Article 27(2)(c) of the Regulation such as linkages to other databases), and concludes that this is not the case. Therefore, there is no basis under Article 27 of the Regulation to subject the processing operations concerning the List, as notified by ERCEA, to prior checking. However, if you believe that there are other factors justifying prior checking, we will of course review our position. Similarly, in the event of any modifications to this data processing operation (notably a change of the purpose of the processing, or amendments to the format and circulation of the List) we would ask you to reassess the need for submitting this procedure to the EDPS for prior checking.

² See EDPS prior-check Opinion on ECDC case - 2012-0900.

Without prejudice to the above considerations, the EDPS would like to provide some recommendations to ERCEA regarding the particular processing operation in question.

The EDPS welcomes the fact that ERCEA issues a detailed data protection notice (Specific Privacy Statement) to the data subjects, providing information pursuant to Article 11 of the Regulation, which is made available on the collaborative platform used daily by Department B. The EDPS suggests that this notice is also attached to the emails sent to members of staff when requesting the information required to populate the List. Data subjects could also be asked to first tick that they have read this notice before filling in their data.

In the Specific Privacy Statement, ERCEA broadly sets out the recipients of the personal data contained in the List. Although, in general, ERCEA operates a "need to know" procedure in terms of access to certain areas of the shared drive, the EDPS would recommend that the Specific Privacy Statement makes clear precisely which departments/members of staff have read and/or write access to the data concerned. This will ensure that data subjects are fully informed before deciding whether to voluntarily submit this information.

Furthermore, in terms of access rights, currently all staff in Department B have read access to the List, in order that profiles can be rapidly checked in cases where urgent assistance or opinions are required. However, the EDPS would suggest that ERCEA reconsiders the necessity of these permissions, in favour of restricting access only to managers, who can presumably administer both urgent and non-urgent requests.

Finally, the notification sets out that personal data are only stored for as long as the data subject is a staff member of Department B, and are deleted either during periodic revisions or directly upon data subjects' request. It remains unclear whether the information is promptly deleted as soon as the member of staff leaves, or if delays are possible depending on when periodic revisions or departmental reorganisations are carried out. The EDPS recommends that -if not already in place- an automatic procedure should be established by ERCEA to ensure that the data set is deleted as soon as the data subject leaves the department.

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

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

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Jose Labastida (Controller)
Ms Nadine Kolloczek (Data Protection Officer)