



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Shay O'MALLEY
Head of Unit Human Resources
European Chemicals Agency (ECHA)
P.O. Box 400
00121 Helsinki
FINLAND

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GB/OL/mk/D(2013)1587 C 2013-0572
Please use edps@edps.europa.eu for all
correspondence

Dear Mr O'Malley,

On 31 May 2013, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27(2) of Regulation (EC) No. 45/2001 (the Regulation) relating to the "recruitment of confidential counsellors" from the Data Protection Officer of the European Chemicals Agency (ECHA).

Pursuant to Article 27(4) of the Regulation, the EDPS shall render his Opinion within two months after the notification. When the EDPS requests additional information, the case is suspended until this information is received. This was the case from 17 June 2013 to 3 July 2013.

As the EDPS has already provided guidance on anti-harassment procedures and the recruitment of confidential counsellors in his Guidelines¹, this Opinion will only highlight those aspects that differ from the Guidelines.

The Facts

The processing serves the purpose selecting confidential counsellors at ECHA. One of the eligibility requirements is that the personal files of candidates must not contain references to disciplinary proceeding. The selection is carried out by a panel, which also includes an external expert provided via a Commission framework contract relating to counselling and training services, to which ECHA adheres. The framework contract contains specific clauses on data protection.

Candidates are informed about the processing via a data protection statement published on ECHA's intranet together with the call for expressions of interest.

¹ http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-02-18_Harassment_Guidelines_EN.pdf.

Legal Analysis

This Opinion deals solely with the recruitment of the confidential counsellors. Their subsequent activities in the informal procedure have already been addressed in the joint Opinion on anti-harassment policies issued on 21 October 2011 (our cases 2011-0402, -0483), the follow-up of which is still ongoing.²

The requirement that the personal files of applicants for the position of confidential counsellor must not contain references to disciplinary proceedings is included in Article 3 of the Management Board Decision MB/42/2012/D(2) final, which substantiates Article 12a of the Staff Regulations.

The contract with the external member of the selection panel contains adequate provisions on data protection; the external member also signs a declaration of confidentiality.

Both the notification and the data protection statement mention Article 12a of the Staff Regulations as a legal basis for the processing; for the sake of completeness, **Article 11 of the Conditions of Employment for other Servants should be referred to as well.**

For exercising the rights to access and rectification, data subjects can contact the controller using contact information given in the data protection statement (penultimate paragraph). However, the statement refers to the contact point as the "processor". In data protection law, the term "processor" refers to entities that process personal data on behalf of a controller, for example in the context of outsourced processing operations. It is therefore not the right term to be used here; it **should be replaced with the correct term "controller"**.

Conclusion

Provided that the recommendations made above are taken into account, there is no reason to believe that there is a breach of Regulation (EC) No. 45/2001. Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of 3 months.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Bo BALDUYCK, Data Protection Officer, ECHA

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http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Priorchecks/Opinions/2011/11-10-21_Antiharrasement_Agencies_EN.pdf, see also our latest letter to you, dated 21 June 2013 (our reference 2011-0402, -0483 D-1240).