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Dear Mr Roman Parra,

On 12 July 2013, the Data Protection Officer of the TEN-T EA submitted four notifications for prior checking under Article 27 of Regulation 45/2001 to the EDPS. The notifications concerned the following processing operations:

- Internal mobility [our case number 2013-0870]
- Selection, recruitment and management of interim staff [2013-0871]
- Selection, recruitment and management of blue book trainees [2013-0872]
- Selection, recruitment and management of atypical trainees [2013-0873].

As the data protection issues raised by the four processing operations are largely similar, they will be treated in a joint Opinion. Since the EDPS has already issued Guidelines on staff selection and recruitment, the present Opinion will focus on those aspects where the processing operations diverge from the Guidelines or otherwise need improvement.

On 18 July 2013, the EDPS raised questions, which were replied to on 4 September. On 30 October 2013, the draft Opinion was sent to TEN-T EA for comments, which were received on 5 November 2013. As the processing operations are already in place, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best-effort basis.

The facts

For **internal mobility**, data of unsuccessful applicants are stored for 5 years on the restricted drive of the HR sector.

As regards **interim staff**, the privacy statement notes that paper copies of invoices are kept by the financial department for 10 years, making reference to the Common Commission-Level Retention List. The invoices registered in ARES are stored indefinitely. There is a specific privacy statement for interim staff, which in several instances refers to trainees.

For the selection, recruitment and management of **blue book trainees**, TEN-T EA cooperates with the European Commission's Traineeship Office. This cooperation is formalised in a service level agreement. TEN-T EA has restricted access to the virtual blue book of pre-selected trainees (civil status, date of birth, contact information and additional personal information are not visible). TEN-T EA selects trainees and informs the Traineeship Office of its preferences. The rest of the recruitment process is managed by the Traineeship Office. At the end of the traineeship, an evaluation report for the trainee is prepared by TEN-T EA and submitted to the traineeship office, as well as a questionnaire on their performance. Traineeship certificates are issued by the Traineeship Office; TEN-T EA does not store personal data after the end of the traineeship. In terms of possible recipients of the data, the competent Appointing Authority is mentioned "in case of a request or a complaint lodged under Articles 90 and 90c of the Staff Regulations".

TEN-T EA also has a programme for **atypical trainees**. For this programme, TEN-T EA handles the selection and recruitment process on its own. Data on unsuccessful candidates are stored at the most for one year from reception of the application; for recruited trainees, the trainee files is stored for 10 years in total; after the first five years, all documents except application forms, offers of traineeship, letters of acceptance and attestation certificates are eliminated from the file. According to the privacy statement, in order to verify the character references of atypical trainees, TEN-T EA collects an "official document issued by the competent authority certifying that the applicant is enjoying the full rights of citizen" (mentioned as "police record" in the notification).

The notifications for internal mobility, blue book trainees and atypical trainees mention Article 5(b) (legal obligation) as an additional ground for lawfulness.

The privacy statements for interim staff and blue book trainees refer to the controller *ad personam*. All four privacy statements refer to the right to have recourse to the EDPS "in case of conflict with the Controller or the Data Protection Officer".

Legal Analysis

Prior checking and lawfulness

The EDPS would like to note that since for atypical trainees a health certificate and an extract of the criminal record are collected, their selection procedure additionally falls under Article 27(2)(a) of the Regulation, and not only Article 27(2)(b), as was indicated in the notification form.

The EDPS considers that Article 5(a) is the main ground for lawfulness of personal data in the notified cases, since it is a processing which is necessary for the performance of a task carried out in the public interest on the basis of the Staff Regulations. Several notifications additionally mention Article 5(b) (legal obligation), which does not seem to be applicable. Some notifications also mention Article 5(d) (consent). The EDPS considers that consent in the context of employment is not the most appropriate legal basis and it has to be ensured that it is actually "freely given" (see Article 2(h) of the Regulation).

The processing operations carried out by the European Commission's Traineeship Office are outside the scope of this Opinion as they have already been analysed in case 2008-0485.

Conservation of data

Regarding interim staff, there seems to be no reason for indefinite storage of the electronic versions of the invoices in ARES. Storage periods should be harmonised across different media. Regarding the general conservation period for invoices, TEN-T EA referred to the Common Retention List of the Commission, to which it is bound. While the EDPS acknowledges that TEN-T EA cannot change this list, it is invited to **reconsider the existing time limits** in this respect, to consult the EDPS Guidelines on staff recruitment and to provide the EDPS with precise justifications that will be taken into account in the upcoming discussions with the relevant stakeholders.

For atypical trainees there seems to be no need for continued storage of application forms, offers of traineeship and letters of acceptance after the first five years; **only the attestation certificate should be stored for the whole period.**¹ In its replies to questions asked, TEN-T EA confirmed that the extract of the criminal record will only be stored for two years maximum.² In this context it should also be mentioned that in some Member States, the content of such certificates might go beyond what is required for the check under Article 5.1(g) of the "rules governing in-service traineeship of the TEN-T EA".

The EDPS reiterates its position that criminal records should be kept for a maximum period of two years and highlights that while their collection can in principle be seen as lawful, only the data relevant for this check should be processed.³

Transfers

The notification on blue book trainees mentions possible transfers for appeals and complaints under Articles 90 and 90c of the Staff Regulations. It should be noted that, as they do not have a status under the Staff Regulations, trainees cannot lodge such appeals and complaints; therefore, **no transfers for dealing with them will be necessary.**

Information to data subjects

In all four privacy statements, the **phrase on the right of recourse to the EDPS should be adapted** to simply state that data subjects have the right to have recourse to the EDPS at any time. The current formulation could be understood to imply that the right to have recourse only applies "in case of conflict" with the agency or the DPO, so that it would be contingent on prior attempts to resolve the situation with the DPO or the agency. While it is true that for many possible conflicts (e.g. on access), the EDPS recommends data subjects to address the issue with the agency first, this is not a matter of standing, as could be seen to be implied by the formulation used in the privacy statements.

The privacy statements both for blue book trainees and interim staff refer to the head of unit T1 as controller *ad personam*. The EDPS considers TEN-T EA, an agency, to be the controller here, as it is correctly acknowledged in the privacy statement for internal mobility: the agency is the controller, while the Human Resources Unit (represented by its head of unit)

¹ Please note that in case only the data necessary for re-issuing a certificate are stored, the EDPS has also accepted longer periods (cf. recruitment guidelines).

² See case 2011-0482.

³ See recruitment guidelines, p. 4.

is the organisational entity entrusted with the processing of personal data.⁴ **The other privacy statements should be adapted accordingly.**

The privacy statement for interim staff sometimes refers to "trainees" or "trainee advisors", presumably oversights which should be rectified.

Conclusion

There is no reason to believe that there is a breach of Regulation 45/2001, provided the recommendations contained in this Opinion are taken into account.

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: Ms Caroline Maion, Acting Data Protection Officer, TEN-T EA
Mr Ignacio Ramallo, Deputy Data Protection Officer, TEN-T EA

⁴ It would also be appropriate to include a functional mailbox as contact point, if only for the reason that this would avoid having to adapt the statement in case of staff changes.