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GB/ALS/sn/D(2014)1302 C 2013-1288
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correspondence

Subject: Prior-checking notification on the processing operations related to renewal of contracts for temporary and contract agents in the Innovation and Networks Executive Agency (case 2013-1288)

Dear Ms Maion,

I am contacting you with regard to your notification sent to the European Data Protection Supervisor ("EDPS") for prior-checking under Article 27 of Regulation (EC) No 45/2001 ("the Regulation") relating to the processing of personal data in the context of renewal of contracts for temporary and contract agents in the Innovation and Networks Executive Agency ("INEA").

The processing operation has been notified under Article 27(2)(b) of the Regulation, which refers to "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

After examining the data processing operations described in the prior checking notification we have reached the conclusion that, for the reasons described below, the processing covering the renewal of contracts for temporary and contract agents at the INEA is **not subject to prior checking**.

Contracts contain information relating to the administrative situation of data subjects. However, there is no evaluation of the data subject when a staff member at INEA is subject to a contract renewal. The evaluation of staff members is done through the CDR procedure. The

contract itself is not used to assess the ability or efficiency of the data subject and it does not therefore fall under Article 27(2)(b) of the Regulation.

None of the other grounds for prior checking seems to apply either. However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.

Nonetheless, the EDPS would like to make comments on the notifications and the information provided therein:

Conservation periods: The EDPS would like to comment on the retention period of personal files. INEA foresees a retention period for the personal files of 120 years. In light of Article 4(1)(e) of the Regulation, the EDPS has always considered this retention period as excessive and unnecessary to the purpose for which personal data are collected and further processed. As the EDPS recommended in his Guidelines on Staff recruitment¹, personal data should be stored in personal files (Article 26 of the Staff Regulations), for a period of ten years as of the termination of employment or as of the last pension payment. The EDPS highlights that the issue of the retention period of personal files is a pending issue subject to on-going discussions between the EDPS and the EU institutions. The EDPS invites INEA to re-consider this issue in light of the agency's practical needs and experiences.

Information provided to the data subjects: With regard to the procedures for data subjects to exercise their rights of access, rectification and others, it is a good practice to include information on in which time limit a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.).

The notification and the privacy statement both mention a number of possible recipients of personal data, such as OLAF and the European Ombudsman. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not *need* to be mentioned in the privacy statement.²

The EDPS expects that INEA implements the recommendations accordingly and will therefore **close** the case.

Thank you for your cooperation.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

¹ EDPS Guidelines concerning the processing operations in the field of staff recruitment, https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf.

² This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the OLAF, the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.