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GB/TS/ktl D(2014)2377
C 2012-0853, 0854
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notifications concerning promotion and renewal of contracts of employment

Dear Ms Serban,

I refer to the notifications for prior checking concerning promotion and renewal of employment contracts submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Training Foundation (ETF) on 8 October 2012. I also take note of the information on modification of the data conservation period provided additionally by the ETF DPO on 11 September 2014.

We note that these procedures are in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

1. Data conservation. According to the information provided in the respective notification, personal data processed in this context are kept in the following manner:

- promotion decisions for an unlimited period of time;

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.

² Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-0042).

- reports from the Promotion Board for five years after the end of the particular procedure (except in case of litigation);
- memos from Reporting Officers proposing promotion, third language certificates, as well letters from the Director to the staff member concerned by the contract renewal are kept in personal files for up to thirty years after termination of employment or the last pension payment.

The Article 4(1)(e) of the Regulation states that personal data can be kept for no longer than necessary for the purposes for which the data were collected or further processed.

We observe that no maximum time limit was set for the conservation of promotion decisions and would like to invite the ETF to establish one in accordance with the necessity to keep the data for a specific purpose. In similar cases, the conservation until the end of service was considered in line with the requirements of the Regulation.

Furthermore, we note that there is no sufficient evidence provided that the lengthy storage of the above mentioned memos, letters and language certificates beyond the end of service and/or last pension payment is necessary for the accomplishment of the particular procedure or any further purposes. Also, the necessity of the storage of the Promotion Board reports beyond the end of the particular promotion exercise seems to be questionable. Therefore, we invite the ETF to reconsider the existing time limits or to provide for precise justifications in this respect.

2. Information to data subjects. According to the information provided in both notifications, data subjects are informed about the scope and the outcome of the respective data processing operations. In addition, the lists of staff members eligible for reclassification and the list of the staff members actually re-classified are made available at the ETF Intranet.

Articles 11 and 12 of the Regulation provide for a list of information that the controller has to provide to the data subjects at the time of the data collection and/or the first disclosure to a third party, namely information about the identity of the controller, the purpose of the processing, the data recipients, the rights of access and rectification, the legal basis of the processing, time limits for data conservation as well as the right of recourse to the EDPS.

We note that no information is provided to data subject in this context. Therefore, we recommend that specific privacy statements outlining all information listed above are established for both procedures concerned and posted on the ETF Intranet.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the consideration contained in this Opinion is fully taken into account. In particular, the ETF should:

- establish a maximum time limit for conservation of the promotion decisions;
- reconsider the existing time limits for conservation of Reporting Officers memos, Director's letters, third language certificates, as well as Promotion Board reports or provide for precise justifications as to their necessity;

- establish specific privacy statements for both procedures and make them available on the Intranet.

We would like to invite the ETF to inform us about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI

Cc: Ms Tiziana CICCARONE, Data Protection Officer