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C 2014-1141

Subject: Prior checking Opinion on staff performance appraisal at the European Investment Fund – Case 2014-1141

On 10 December 2014, 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 Annual Performance Evaluation Exercise from the European Investment Fund ("**EIF**").

As this is an ex-post prior check, the two-month deadline within which the EDPS must deliver his opinion does not apply. This case has been dealt with on a best effort basis.

Since the EDPS has already issued Guidelines concerning the processing of personal data in the area of staff evaluation¹, this Opinion will focus on those aspects where the processing operation diverges from the Guidelines or otherwise needs improvement.

Legal analysis

Information to data subjects

The Performance Evaluation Guidelines (annexed to the notification), include a short section entitled "Data protection information", which contains some information on the legal basis, storing of data, right of access and right to rectify, as well as the right to have recourse to the EDPS. However, the notification does not include all the required information to staff

¹ [Guidelines concerning the processing of personal data in the area of staff evaluation](#)

members, nor is there any mention of the existence of a specific data protection notice including all the information listed in Articles 11 and 12 of the Regulation.

In order to ensure transparency and fairness of the processing, the following information should be provided to staff members:

- identity of the controller;
- purpose of the processing;
- data categories;
- whether replies to the questions are obligatory or voluntary, as well as possible consequences of failure to reply;
- possible data recipients;
- existence of rights of access, rectification and recourse to the EDPS;
- legal basis of the processing;
- applicable data retention periods.

Recommendation

1. The notification should be amended to include the required information in Section 7 (Information to be given to data subjects). Furthermore, a specific data protection notice should be made available on the Intranet, and a data protection clause (referring to the data protection notice), should be added to the respective report form, application form or message sent to the staff members.

Rights of data subjects

The notification specifies that staff may express themselves in the electronic forms provided for this purpose, and that after the closure of the evaluation process staff continues to have access to all performance documents during the period of employment.

Rectification of factual data should be possible upon request to the controller, whereas evaluation data can be rectified within the respective appeals procedure. In any event, it should be ensured that the revised reports are added to the personal file. Furthermore, staff should be granted access to all the documents in their personal file, even after leaving the service.

Reminder

The notification and the data protection notice and data protection clause should clearly set out the procedures for granting staff members' rights (cf. recommendation No. 1). Furthermore, the revised reports should be added to the personal file and staff members should be granted access to all documents in their personal file, even after the end of employment.

Time limits for blocking and erasure

According to the notification "personal data is automatically restricted" after "validation of the appraisal results by the Chief Executive".

It is not entirely clear what is meant by the above and in any event it is good practice to indicate a time limit for replying to requests for blocking and erasure.

Recommendation

2. The EIF should clarify the above and indicate a time limit within which they will react to requests for blocking or erasure of data.

Data retention

The notification states that personal data is kept for a period not exceeding three years following the termination of a staff member's active service. Working documents are accessible in electronic form or on paper for the current period plus the three precedent years.

According to Article 4.1(e) of the Regulation, personal data should not be kept for longer than necessary for the purpose for which they were collected or further processed. The EDPS Guidelines specify that while promotion decisions would need to be kept throughout the career of a staff member, not all related documents should be kept after a certain period. This is especially true for evaluation reports, which may not necessarily remain relevant during the whole career of the person concerned. The storage period of such reports for up to five years after the end of a particular evaluation procedure would be considered appropriate. For audit purposes, the same storage period can be applied to lists published on the Intranet within the promotion procedure.

Recommendation

3. The retention period of appraisal reports should be aligned with the EDPS Guidelines, i.e. up to five years after the end of a particular appraisal procedure, and the same information should be included in the data protection notice.

Transfer of data

The notification lists a number of recipients within EIF and, to some extent EIB, to whom data might be disclosed.

In accordance with Article 7.1 of the Regulation, EIF is required to verify both that the recipients are competent and that the personal information transferred is necessary for the performance of the related tasks. Furthermore, pursuant to Article 7.3 of the Regulation, the recipient shall process the personal data only for the purposes for which they were transmitted. In order to ensure full compliance with the Regulation, the EDPS recommends that all internal recipients be reminded of the purpose limitation obligation.

Recommendation

4. All internal recipients should be reminded of the purpose limitation obligation.

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 considerations and recommendations contained in this Opinion are fully taken into account.

Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of three months. Please do not hesitate to contact us, should you have any questions.

Kind regards,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Data Protection Officer, EIF