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2017-1062
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**Subject: Prior-checking Opinion regarding the updated notifications for staff appraisal
and reclassification at EACEA (EDPS case 2017-1061 and 2017-1062)**

Dear [...],

On 30 November 2017 the European Data Protection Supervisor (EDPS) received an updated notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on A) staff appraisal and B) reclassification from the Data Protection Officer (DPO) of the Education, Audiovisual And Culture Executive Agency (EACEA).²

This processing operation concerns the revision of the procedures for the appraisal and reclassification of EACEA's staff members – which had already been prior-checked by the EDPS in 6 February 2012 (cases 2010-0589, 2011-1071 and 2011-1072)³.

The EDPS has issued Guidelines concerning the processing of personal data in the area of staff evaluation⁴ ('the Guidelines'). Therefore, this Opinion analyses and highlights only those practices which diverge from the earlier notifications and/or do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for staff evaluation at EACEA.

1. Facts and analysis

1 OJ L 8, 12.1.2001, p. 1.

2 As this is an ex-post case, the deadline of two months does not apply. The EDPS has dealt with this case on a best-effort basis.

3 We have therefore updated our register of notifications accordingly.

4 Guidelines of July 2011, available on the EDPS website at:
https://edps.europa.eu/sites/edp/files/publication/11-07-15_evaluation_guidelines_en.pdf.

The main differences to EACEA's earlier notifications on staff appraisal and reclassification are:

A) for the notification on Staff Appraisal (case 2017-1061)

(i) the elimination of the paper workflow in favor of an electronic circuit in Sysper2

At all moments the staff member has access to his/her own report. For reports until 2014 such information is available in paper and copies can be requested from the controller, while as of 2015 this information is accessible to the job holder in Sysper2. The EDPS highlights that paper or electronic format of the procedure need to apply the same data protection rules *mutatis mutandis*, namely the data subject's rights to information, access and rectification, technical and organisational measures and confidentiality.

The EDPS appreciates the change of procedure to an electronic format, since it will improve data security.

(ii) the simplification of the appeal procedure in the context of the appraisal

The new appraisal appeal procedure⁵ observes the data subjects rights to information, access and rectification. The data subjects receive a privacy statement from EACEA which states *inter alia* that they have the right to access the appraisal report directly through Sysper2 and the possibility to rectify factual data⁶ errors through the Human Resources (HR).

The privacy statement does not appear to inform the data subjects of any time limits for requests and responses. It is good practice to include information on which time limit a reaction can be expected by EACEA (e.g. 3 months for access request, without delay for rectification, etc.). **Consequently, we recommend that such a time limit will be added to the privacy statement.**

As an improvement, the EDPS suggests that the EACEA include in the privacy statement for staff appraisal a time limit to reply to requests for rectification of factual errors.

B) for the notification on Reclassification (2017-1062)

(i) 'unsatisfactory' performance

The documentation provided explains the appeal procedure in case of an 'unsatisfactory' performance⁷. Only information strictly necessary is communicated to the competent entity with authorised staff dealing with a complaint or appeal.

However, neither the implementing rules nor the privacy statement provide sufficient information on the blocking effects in the reclassification and the consequences for the data subjects.

⁵ Article 7 of the Decision of the Steering Committee of the EACEA's on general provisions for implementing Article 87(1) of the Conditions of Employment of Other Servants of the European Union and implementing the first paragraph of Article 44 of the Staff Regulations.

⁶ This refers to hard data, such as misspelled names; for disagreements on the content of the appraisal, other appeals procedures apply. In case of a successful appeal (appeal procedure), an appeal of article 7 of the Decision of the Steering Committee on the implementation of art. 87(1), a decision under Article 90 of the Staff Regulations (SR) or from a Court decision, the HR department can adapt the information in Sysper2 or give access to the Director or Head of Department to make such changes.

⁷ Article 4 of the Decision of the Steering Committee of the EACEA's on general provisions for implementing Article 87(1) of the Conditions of Employment of Other Servants of the European Union and implementing the first paragraph of Article 44 of the Staff Regulations

The EDPS recommends that the EACEA include both in the privacy statement for staff reclassification and in the privacy statement for staff appraisal a definition of “unsatisfactory” performance. A good practice would be to insert the link to the “Tool Kit For Managers: How To Deal With Underperformance”⁸, as well as the respective details on the blocking effects in the reclassification for the data subjects.

(ii) the elimination of reclassification points

Since reclassification points will no longer be applicable, additional information should be given to data subjects, in order to clarify the implementation of this new proceedings.⁹

As an improvement, the EDPS suggests that the EACEA inform their staff about the changes and consequences of the elimination of reclassification points.

C) for both the appraisal and reclassification notifications

(i) the modification of the actors

There is a significant number of actors involved in the appraisal and the reclassification procedures, who have access to all the information. EACEA has stated that all these actors are reminded of their obligation not to use these data for any other further purposes than the one for which they are transmitted. In this regard, the EDPS welcomes such a reminder and highlights that the information should only be shared with people on a need-to-know basis.

2. Conclusion

In this Opinion, the EDPS has made some recommendations to ensure compliance with the Regulation, as well as some suggestions for improvement. Provided that the recommendations and suggestions are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

In light of the accountability principle, the EDPS expects the EACEA to implement the above recommendations accordingly and has therefore decided to **close the case**.

Yours sincerely,

[signed]

Wojciech Rafał WIEWIÓROWSKI

cc.: [...], DPO, EACEA

⁸ As the version from April 2016 provided by EACEA.

⁹ Although this is not a data protection suggestion, it seems that informing the data subjects at this regard would be a best practice.