



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

Mr [...]
Head of Human Resources Section,
Translation Centre for the Bodies of the
European Union (CdT)
Bâtiment Drosbach
12E, rue Guillaume Kroll
L-1882 Luxembourg

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Please use edps@edps.europa.eu for all
correspondence

Subject: Prior-checking Opinion regarding the updated notifications for staff appraisal and reclassification at CdT (EDPS cases 2016-0011 and 2016-0292)

Dear Mr [...],

On 17 March 2016 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) promotion/reclassification from the Data Protection Officer (DPO) of the Translation Centre for the Bodies of the European Union (CdT)².

This processing operation concerns the revision of the procedures for the appraisal and reclassification of CdT's staff members – which had already been prior-checked by the EDPS in in the past (cases 2009-0018 and 2012-0475)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 highlights that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for staff evaluation at CdT.

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.

1. Facts and analysis

(i) the data protection notice for the appraisal procedure

The data protection notice given to CdT officials, temporary and contract staff includes the minimum elements listed in Article 11 of the Regulation regarding the data subjects' rights to information, access and rectification.

However, the data protection notice does not inform the data subjects of any time limits for requests and responses. It is a good practice to include information on which time limit a reaction can be expected by CdT (e.g. 3 months for access request, without delay for rectification, etc.). Consequently, the EDPS recommends that such a time limit should be added to the data protection notice.

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

(ii) 'unsatisfactory performance'

The documentation provided explains the appeal procedure in case of an 'unsatisfactory performance'⁵. Only the information strictly necessary is communicated to the competent entity with authorised staff dealing with a complaint or appeal.

However, neither the implementing provisions regarding Article 45 of the Staff Regulations and 87(3) of the Conditions of Employment of Other Servants of the European Union, nor the privacy notices provide sufficient information on the concept of 'unsatisfactory performance' and its consequences for the data subjects. In order to guarantee a fair and transparent processing in respect of the rights of the staff members, the CdT should provide more information on the concept of 'unsatisfactory performance'.

The EDPS recommends that the CdT include in the data protection notice both for staff reclassification and staff appraisal a definition of 'unsatisfactory performance', as well as its consequences for the data subjects.

(iii) confidentiality and information on a need-to-know basis

There is a significant number of actors involved in the appraisal and the reclassification procedures, who have access to all the information.

At this regard, the EDPS welcomes that the information is only shared with people on a need-to-know basis. The principle of data minimisation under Article 4(1)(e) is therefore respected.

However, the EDPS highlights that the CdT shall remind all these actors of their obligation not to use these data for any other further purposes than the one for which they are transmitted. This reminder will be in line with the CdT's obligation under Article 4(1)(b) of the Regulation, that all case officers involved should collect data for a specified, explicit and legitimate purpose and not further process them in an incompatible way with the initial purpose of collection.

The EDPS recommends that the CdT remind all the actors involved in the appraisal and the reclassification procedures of their obligation not to use these data for any other further purposes than the one for which they are transmitted.

⁵ Article 4 of the Decision of the Management Board of the Translation Centre 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 - CT/CA-046/2015EN.

(iv) data retention periods

Pursuant to Article 4(1)(e) of the Regulation, personal data can be kept for no longer than necessary for the purpose for which they were collected or further processed. The Guidelines indicate a retention period up to ten years of the promotion and appraisal reports after the termination of employment.

According to the information provided, the appraisal reports of staff members who leave the CdT to join other Institutions or Agencies of the European Union will be kept for 5 years after their departure. For staff members who leave the CdT and do not join other Institutions or Agencies of the European Union the appraisal reports are kept for 10 years after their departure.

The EDPS reminds the CdT that, according to the accountability principle, the controller is responsible for demonstrating the necessity of the data retention periods. Nonetheless, after the staff member leaves the CdT, the promotion and appraisal reports can be kept in a quarantine regime, being only accessible if indeed needed. The reasons for accessing those reports should be documented.

The EDPS recommends that the CdT limit the access to appraisal reports of staff members who have left and only access them when necessary.

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 CdT to implement the above recommendations accordingly and has therefore decided to **close the cases**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc.: Mr [...], DPO, CdT