



Opinion on the notification for prior checking from the Data Protection Officer of the Commission on the "Annual exercise for early retirement without reduction of pension rights" dossier

Brussels, 20 March 2007 (Case 2006-577)

1. Procedure

A notification under Article 27(3) of Regulation No 45/2001 was issued by the Commission's Data Protection Officer (DPO) in a letter received on 12 December 2006 concerning the "*Annual exercise for early retirement without reduction of pension rights*" dossier.

The European Data Protection Supervisor (EDPS) has identified certain priority topics and selected a number of processing operations subject to prior checking ex-post that require notification. The "*Annual exercise for early retirement without reduction of pension rights*" dossier is one of these, being a dossier which includes data relating to the evaluation of personal aspects of the data subject, including his or her ability, efficiency and conduct (Article 27(2)(b)).

In the context of this notification, certain questions were put to the Commission's DPO by e-mail on 12 January 2007 and the replies were received on 6 February 2007. On 28 February 2007 the EDPS extended the time-limit to enable the DPO to make comments. Comments were received on 12 March 2007.

2. The facts

This case involves a processing operation carried out by the Commission's Personnel and Administration DG (DG ADMIN). The processing relates to implementation of the annual exercises for early retirement without reduction of pension rights in the interests of the service. These exercises have been taking place since 2004. The data subjects are officials and temporary staff from all Commission departments (including the Office for Official Publications of the European Communities and the European Personnel Selection Office) who respond to the call for applications launched each year for the purposes of the annual exercise. It should be noted that the EDPS received information on the 2006 exercise (currently under way) and that this has been taken into account.

The processing has been carried out in accordance with Article 9(2) of Annex VII to the Staff Regulations of Officials of the European Communities (hereafter "the Staff Regulations") and Article 39 of the Conditions of Employment of Other Servants (CEOS). Also applicable are the Commission Decision of 16 October 2002 and Council Regulation (EC, Euratom) No 1746/2002 of 30 September 2002, along with the Commission Decisions of 28 April 2004 and 10 August 2006 amending them. These decisions concern the general implementing provisions (GIP) on the early retirement of officials and temporary staff without reduction of

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pension rights. The general implementing provisions of 28 April 2004 and the new general implementing provisions of 10 August 2006 cover the scope of the scheme, calculation of the number of possibilities, the call for applications, eligibility, the procedure for examining applications, the selection procedure, consultation of the Joint Committee, adoption of the list by the Appointing Authority and implementation of the decision ¹.

The early retirement exercise at the Commission can start at any time during the year and the retirements can take place in the course of a year to be specified, in practice the same year or the year after. Under Article 1 of the GIP of 10 August 2006, amending Article 3 of the GIP of 28 April 2004, the Director-General of DG ADMIN invites applications for early retirement, with retirement taking place in the calendar year specified in the call for applications. This call for applications, published in the Administrative Notices, specifies the potential number of possibilities, the deadline for applications and the form in which they are to be made, the conditions of eligibility and the calendar year or years when retirement can take place. Applications may only be submitted with a view to retirement in the year specified in the call for applications. Unsuccessful applicants are not obliged to retire and may reapply for later exercises. The submission of an application may not be taken into consideration for any other purposes relating to the applicant's career (Article 3 of the GIP of 28 April 2004, as amended by the GIP of 10 August 2006).

Under the 2006 exercise, the Commission may authorise up to a maximum of 33 officials and temporary staff to retire without reduction of pension rights. That figure represents the quota allocated to the Commission after interinstitutional negotiations.

To be eligible for the 2006 exercise, officials and temporary staff must:

- be at least 55 on 1 January 2007;
- be unable to retire without reduction of pension rights in the course of 2007;
- have completed at least 10 years of service on 1 January 2007.

On 1 January 2007, officials must be in active employment, on leave for military service or on parental or family leave (within the meaning of Article 35 of the Staff Regulations) or seconded in the interest of the service (within the meaning of Article 37(a) of the Staff Regulations).

Temporary staff must, on 1 January 2007, be in active employment or on parental or family leave.

The aim is for successful applicants to leave the Commission on 31 August 2007 at the latest.

Each applicant must fill in an online application form. The data processed are: surname, first name, personal number, sex, age, nationality, length of service, grade, function, assignment, situation in relation to the eligibility criteria, evaluation of the criteria set by the GIP, i.e. the organisational aspects of the DG (structure, reorganisation, redeployment, sensitivity of posts), suitability of profile (individual abilities and training opportunities), personal situation (need to be present at home or somewhere other than the workplace) and services rendered (length of service and positive contribution to work). The purpose of these data is to evaluate

¹ On 28 April 2004, the Commission adopted provisions for implementing a scheme for early retirement without reduction of pension rights by means of a Decision published in Administrative Notice No 63-2004 of 11 June 2004. The Commission amended those implementing provisions in its Decision of 10 August 2006. The text of the new GIP is published in Administrative Notice No 56-2006 of 20 November 2006.

applicants' professional and personal situation to ascertain whether they could be granted early retirement. Applicants and their DGs/Departments also fill in information in the free fields and in relation to the evaluation criteria mentioned. In theory this is information provided by applicants in support of their applications and by the department to endorse or oppose the application. The data enable the Appointing Authority, in this case the Commissioner handling personnel matters, to come to a decision.

More specifically, when the Commission's DGs/Departments examine applications, compliance with the criteria set by the GIP, as regards the official's tasks, is regarded as giving the official's application a high degree of priority in terms of the interest of the service (Article 5(4) of the GIP of 28 April 2004). These criteria may be grouped as follows:

Firstly, criteria relating to reorganisation measures

- if, as a result of reorganisation measures, the official's tasks cease and it is impossible to find suitable new tasks (Article 5(4)(a)(i) of the GIP of 28 April 2004)
- if it is difficult to find a new assignment because of the nature of the applicant's skills (Article 5(4)(a)(ii))
- if the new tasks assigned have not proved appropriate to the applicant's skills (Article 5(4)(a)(iii))
- if identifying a new assignment is likely to prove difficult in the near future owing to the nature of the applicant's skills (Article 5(4)(a)(iv))
- if the applicant occupies a sensitive post and would be obliged to change duties and cannot find a suitable new post in the next 12 months (Article 5(4)(a)(v))

Secondly, criteria relating to the applicant's skills

- Do the new job requirements correspond to the applicant's skills? (Article 5(4) (b)). If not
- Are the official's skills such that finding an appropriate new assignment is likely to prove difficult?
- Is it possible to deal with the problem of reassigning the official to a new task by means of training measures? (Article 5 (5)). If so
- Will the training measures require disproportionate time and resources? (Article 5 (5)).

Three priority groups are then established, depending on whether the interest of the service is considered to be high, low or non-existent. Applicants placed in the first or second group are listed in order of priority, irrespective of their category/function group, grade or status (Article 5(2) of the GIP of 28 April 2004). In establishing the priority groups and the order of priority within them, the department may also take into account:

- a particular personal situation, put forward by the applicant, requiring his or her presence at home or at a place other than the place of assignment;

- the applicant's length of service with the Commission and/or positive contribution to the work of the department and/or the Commission (Article 5(6) of the GIP of 28 April 2004).

Under Article 6 of the GIP of 28 April 2004, the Director-General of DG ADMIN verifies compliance with the eligibility criteria on the basis of these lists. Applicants who are not found to meet the eligibility criteria are informed in writing, with an indication of which criteria were found not to be met. The Director-General of DG ADMIN draws up a proposed list of officials and temporary staff who should benefit from this possibility of early retirement. This list is subdivided into two groups of unequal size, the first representing at least 80 % of the early-retirement possibilities, and the second comprising a reserve list corresponding to the remaining number of early-retirement possibilities.

Under Article 7 of the GIP of 28 April 2004, the draft proposal is submitted to the Joint Committee², which gives its opinion within 15 working days, pursuant to Article 10a of the Staff Regulations. Following this consultation, DG ADMIN submits the final list to the Appointing Authority for approval, so that the final decision can be taken.

Processing is partly automatic and partly manual. Automatic processing is used for making applications via the online form available in a special computer application for early retirement. Applications are evaluated by the human resources officers in the DGs and a level of priority is established at DG level. Applications are also evaluated by DG ADMIN, particularly with regard to the level of priority at Commission level. The criteria used are those set by the GIP, as described above. As for manual processing, the draft lists and reserve lists are submitted to the Joint Committee for its opinion. DG ADMIN submits draft lists to the Appointing Authority for final decision. Ten working days later (a breathing space is left for any who might wish to withdraw their applications), the final list is published in the Administrative Notices. On that list, the order of each applicant on the list is shown, along with his or her surname, first name, personal number, assignment and function group, but not any data relating to the actual evaluation.

The data recipients are as follows:

- After the deadline for the submission of applications, each Commission DG or Department sends a list of eligible applicants to DG ADMIN (for the 2006 exercise this was done in January 2007).
- A draft list of eligible applicants and possibly a draft reserve list are proposed by DG ADMIN (for the 2006 exercise this step was carried out in February 2007).
- The draft proposal is submitted to the Joint Committee, which gives its opinion within 15 working days (planned for March 2007 in the case of the 2006 exercise).
- DG ADMIN submits the final list to the Appointing Authority for approval, and 10 days later the list is published. Once the Commission has taken its decision, individual measures for termination of service are implemented.

² Under Article 2 of Annex II to the Staff Regulations, the Joint Committee of an institution consists of a chairman appointed each year by the Appointing Authority and of members and alternates appointed at the same time in equal numbers by the Appointing Authority and by the Staff Committee. Under Article 3 of Annex II to the Staff Regulations, the Joint Committee meets when convened by the Appointing Authority. Its chairman does not vote, except on questions of procedure, and the Committee's opinions are communicated in writing to the Appointing Authority within five days of adoption.

As regards right of access, the message in the computer application for registering an application on line states that data subjects may exercise their right of access by applying to their human resources officer or to the controller. Any questions must be e-mailed to "ADMIN Early Retirement".

Any errors or omissions on the part of an applicant or the human resources officer can be reported to the controller by the person concerned, and the controller will enter the information in the part of the application reserved to him or her.

A data subject who has submitted an application may apply to the controller to withdraw that application up until the time of the decision; once the Appointing Authority has taken its decision, applicants still have 10 working days in which to announce that they do not wish to take early retirement. When applicants withdraw their applications or announce that they do not wish to take early retirement, the controller records this in the computer application. This operation does not erase the application, which remains on record for the purposes of sound documentation of the procedure, but it does mark the end of the processing operation as regards that particular data subject. If a selected official withdraws his or her application, the official at the top of the reserve list automatically takes that official's place. The same applies in the case of temporary staff.

Blocking of data is possible at any time by exporting the data on an applicant to a PDF file and copying onto CD-ROM.

As regards the right to information, at the start of the exercise an Administrative Notice is circulated to Commission staff (the last one sent to the EDPS concerned the call for applications for the 2006 exercise) and an information message entitled "*Protection of personal data*" pops up when people access the online form.

Through publication of the Administrative Notices, officials and temporary staff who fulfil the necessary conditions are invited:

- to read carefully the Commission's general implementing provisions of 28 April 2004 (Administrative Notice No 63-2004 of 11 June 2004) and the Decision of 10 August 2006 amending the general implementing provisions (Administrative Notice No 56-2006 of 20 November 2006), as well as Article 9(2) of Annex VIII to the Staff Regulations, and Article 39 of the Conditions of Employment of Other Staff;
- to take note of the criteria to be applied for the selection of the applicants;
- to confirm their application by completing the online application form.

The information message entitled "*Protection of personal data*" states the purpose of the processing, its legal basis, the identity of the controller, the data collected, the obligation for applicants to complete the form accurately and to answer each request for information, the data recipients, how long the data will be kept, the existence of a right of access and a right to refer to the EDPS at any time. The message also states that "*by filing an application the applicant will be considered as having given unambiguously his or her consent to processing of these data in the context of this exercise*".

At the end of the exercise, in accordance with Article 9 of the GIP of 28 April 2004, all applicants, whether or not selected, are informed of the outcome in writing. Non-selected applicants are informed in writing of the Appointing Authority's decision and, if they so

request, are given a reasoned decision³. In addition, staff receive a special edition Administrative Notice publishing the list and the reserve list.

The data are kept for 5 years, in order to be able to deal with any appeals and ensure consistent treatment of applications from one exercise to the next. The same policy is applied to unsuccessful applications. Applications that are withdrawn are not deleted but remain on file for the purposes of sound documentation of the procedure for 5 years, in order to be able to deal with any appeals and provide proof that an application was made and then withdrawn.

When this 5-year period is up, only data relevant to an overview of the exercise in question are kept, for statistical or historical purposes. These data concern in particular the number of eligible and ineligible applications and the total number of applications per Directorate-General and per function group and sex. The controller accordingly maintains that the statistics collected over this 5-year period are not personal data and do not therefore come under Regulation No 45/2001, inasmuch as they are anonymous and do not enable any data subjects to be identified either directly or indirectly.

The data are compiled in a database at the Commission's Data Centre in Luxembourg. Procedural documents are not included in the application and are not stored at the Data Centre. These documents are held permanently in the archives of the Joint Committee's Secretariat (minutes, opinions, etc.) and in the Commission's archives for historical purposes (permanent documentation on procedures and decisions).

Access to the database is restricted and the Commission's computer security systems are in operation. The computer application is designed to have various levels, so that none of the three individual levels (applicants, human resources officers in the DGs and controller) can intervene at the other levels; as a corollary, once someone at one level has validated his or her contribution, that contribution is blocked when it passes to the next level. The "need to know" principle is also observed: applicants have access only to their own files; human resources officers have access only to applications from staff in their DG; and the controller, together with the staff of his or her unit who are responsible for the procedure, have access to all applications.

3. Legal aspects

3.1. Prior checking

Regulation No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1)). In this case it is a matter of data processing carried out by the Commission in the exercise of activities under the first pillar, thus falling within the Community sphere.

The processing is partly manual and partly automatic. On the one hand, the data are collected, evaluated and stored by automatic means and, on the other, the data relating to the final decision and to the selection lists, although processed manually, are stored in an electronic file. Article 3(2) is therefore applicable.

³ The first paragraph of Article 9 of the GIP of 28 April 2004 stated that non-selected applicants would be informed in writing with a reasoned decision. However, in the light of experience acquired in implementing the special early retirement programmes in 2002 and 2004, the hundreds of would-be applicants made this unfeasible. The GIP were accordingly amended on 10 August 2006.

The processing therefore falls within the scope of Regulation No 45/2001.

Article 27(2)(b) provides that "The following processing operations are likely to present such risks: processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct", which is the case here, especially as regards evaluation of ability (Article 27(2)(b)). These are personal data processed for the purpose of evaluating certain aspects of the applicant's professional situation (organisational aspects, services rendered to the institution, scope for training) and personal situation (profile and individual abilities).

In principle, the check carried out by the EDPS is done before the processing is introduced. In this case, because the EDPS was notified after the procedure had been launched, the check is of necessity an ex-post one. This in no way detracts from the desirability of following the EDPS's recommendations.

Official notification was received by post on 12 December 2006. A request for information was made by e-mail on 12 January 2007. In accordance with Article 27(4) of the Regulation, the two-month period within which the EDPS has to deliver an opinion was suspended. The replies were sent by e-mail on 6 February 2007. On 28 February 2007, the procedure was suspended for 13 days for comments. The EDPS will therefore produce his opinion for 22 March 2007 (13 February plus 38 days' suspension).

3.2. Lawfulness of processing

The lawfulness of the processing has to be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which stipulates that the processing must be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution*".

The procedure for evaluating and possibly selecting officials and temporary staff who are eligible for early retirement falls within the legitimate exercise of official authority vested in the institutions, notably concerning the maintenance of suitably skilled staff in the interests of the service. The proposed processing operation is therefore lawful.

As regards the data subjects' consent via the information message, it is doubtful whether this is adequate to render the processing completely lawful, since the consent in question is given in the context of labour law.

The legal basis for the processing is Article 9(2) of Annex VIII to the Staff Regulations, Article 39 of the CEOS and the GIP of 10 August 2006.

Article 9 of Annex VIII to the Staff Regulations stipulates that "*An official leaving the service before reaching the age of 63 years may request that his retirement pension be deferred until the first day of the calendar month following that in which he reaches the age of 63 or be paid immediately, provided that he is not less than 55 years of age. In this case, the retirement pension shall be reduced by an amount calculated by reference to the official's age when he starts to draw his pension.*"

Article 9(2) of Annex VIII to the Staff Regulations, emphasises that:

"The Appointing Authority may decide, in the interests of the service on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions,

not to apply the above reduction to the officials concerned. The total number of officials and temporary servants, who retire without any reduction of their pension each year, shall not be higher than 10 % of the officials in all institutions who retired the previous year. The annual percentage may vary from 8 % to 12 %, subject to a total of 20 % over two years and the principle of budget neutrality....."

Similarly, Article 39 of the CEOS stipulates that Article 9(2) of Annex VIII shall apply subject to certain conditions, in particular "*... the Appointing Authority may decide [...] not to apply any reduction to the pension of a temporary servant, up to a maximum of eight temporary servants in all institutions in any one year. The annual number may vary, subject to an average of ten every two years and the principle of budget neutrality...."*

The GIP of 10 August 2006 lay down the specific procedure to be followed.

The legal basis is therefore appropriate and bears out the lawfulness of the processing.

From the description of the processing given, the EDPS concludes that there is no processing of sensitive data within the meaning of Article 10 of the Regulation.

3.3. Data quality

In accordance with Article 4(1) (c) of the Regulation, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed. The processed data described at the beginning of this opinion are to be regarded as satisfying these conditions. The data requested are necessary in order to evaluate a number of points relating to the data subject's professional and personal situation, so that he or she may apply for early retirement. The EDPS considers that Article 4(1) (c) is complied with in this respect.

However, the procedural step of publication of the final list and the reserve list of people eligible for early retirement in the Administrative Notices might be regarded as excessive.

Of course, Article 25(2) of the Staff Regulations stipulates that "*Specific decisions regarding appointment, establishment, promotion, transfer, determination of administrative status and termination of service of an official shall be published in the institution to which the official belongs. The publication shall be accessible to all staff for an appropriate period of time.*" Internal publication of the final list concerning termination of the service of the persons concerned on grounds of early retirement is therefore legitimate.

DG ADMIN argues that publication of the reserve list is equally necessary, so that applicants can exercise their right of appeal. In particular, according to DG ADMIN, people who feel they have been unjustly treated must be afforded all possible means of bringing a complaint in full knowledge of the facts, which means providing a certain minimum amount of information on the early retirements which are going to take place when theirs has been refused. It is thus argued that Article 25(3) also holds good for publication of the reserve list.

The EDPS does not share DG ADMIN's view that Article 23(3) of the Staff Regulations "also holds good". That Article does not specify at any point that the reserve list should also be published internally, and neither is there any other legal basis for such publication. Since not all the people on the reserve list are going to be able to take early retirement, the list cannot be regarded as a decision within the meaning of Article 25(3). The purpose of the final list is to announce which applicants will be allowed to take early retirement, which is reasonable and

necessary, since all applicants can thus exercise their rights under Article 90 of the Staff Regulations if they wish to do so. It is thus publication of the final list (once some applicants have withdrawn their applications within the 10-day time limit and been replaced by others from the reserve list) which provides the necessary information for any appeal. Publication of the reserve list consequently does not serve the same purpose as publication of the final list and seems excessive, inasmuch as the aim of providing information has been achieved by publication of the final list.

Since there is no legal basis and publication of the reserve list does not appear to be necessary, the EDPS recommends that publication of the reserve list should be reconsidered.

The EDPS welcomes DG ADMIN's proposal that the names of the successful applicants on the final list should be published in alphabetical order, which is adequate for publication purposes.

In addition, data must be processed "*fairly and lawfully*" (Article 4(1) (a) of Regulation (EC) No 45/2001). The lawfulness of the processing has already been discussed (see point 3.2 above). The issue of fairness is linked to the information which must be transmitted to the data subjects. This is dealt with in point 3.8 below. Nowhere is it indicated (Administrative Notice to staff or information sheet) that the lists published should give the order of the applicant on the list, and his or her surname, first name, personal number, assignment and function group.

Under Article 4(1)(d) of the Regulation, personal data must be "*accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*". The system itself ensures that the data are accurate and up-to-date. The form filled in by the official or temporary staff member has to be filled in each year for each new application, which helps ensure that the information is up-to-date. Data subjects also have a right of access and a right of rectification, so that they can ensure that the file is as complete as possible. These rights enable them to ensure that their data are accurate and up-to-date. See also point 3.7 below on these two rights.

3.4. Data retention

The general principle laid down in Regulation No 45/2001 is that data must "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*" (Article 4(1)(e) of the Regulation).

It will be remembered that the data are kept for 5 years in order to be able to deal with any appeals and ensure consistent treatment of applications from one exercise to the next. The same policy is applied to unsuccessful applications. Applications that are withdrawn are not deleted but remain on file for the purposes of sound documentation of the procedure for 5 years, in order to be able to deal with any appeals and provide proof that an application was made and then withdrawn.

The EDPS considers that, for both successful and unsuccessful applicants, this 5-year period is excessive in relation to the purposes for which the data were collected (application for early retirement) and further processed (possible appeals and consistency of treatment).

The reasons given by the controller to justify the 5-year period relate to possible appeals, consistency of treatment and the submission of an evaluation report to the Parliament and the Council.

As regards possible appeals, firstly any appeal must be made within three months and, secondly, any further appeal only relates to specific cases, in which the data need to be kept until the end of the proceedings. DG ADMIN argues that some people apply several years running and that keeping data for only two years is not enough to ensure consistent handling of applications. In connection with the consistent treatment argument, DG ADMIN points out that a consistent approach also needs to be ensured by means of fair treatment of individual cases over the years. DG ADMIN further points out that under Article 9(2) of Annex VIII to the Staff Regulations, before five years have elapsed the Commission has to submit to the European Parliament and the Council an evaluation report on the implementation of the exercise for early retirement without reduction of pension rights. DG ADMIN states that consideration might be given to reducing the period for which data are kept after these first five years and after the Commission has submitted its report to the Parliament and the Council, but without being able to prejudge the decision of the European institutions as to the possible renewal of the evaluation reports every 5 years.

The EDPS considers that DG ADMIN's arguments about possible appeals and consistent treatment only apply to special and exceptional cases, which are rare. The EDPS nevertheless considers that the 5-year conservation period can be justified by Article 9(2) of Annex VIII to the Staff Regulations. As explicitly stated in that Article, the evaluation report has to be submitted before five years have elapsed after implementation of the measure. This means that the report can be submitted 1 year, or even 2 or 3 years after completion of the early retirement exercise, taking into account also the few special cases which may occasionally arise. The EDPS welcomes the fact that DG ADMIN may be able to consider reducing the 5-year conservation period after the first five years.

It is therefore recommended that DG ADMIN should inform the EDPS if it is decided to renew the evaluation reports every 5 years and, if not, should reconsider the conservation period and inform the EDPS of the result.

It is stated that all documents relating to the Joint Committee (minutes, opinions, etc.) are held permanently in the archives of the Joint Committee's Secretariat and in the Commission's archives for historical purposes (permanent documentation on procedures and decisions). The EDPS would point out that these documents must not be used for any purpose other than archiving and sound documentation.

The fact that the data are archived for long-term retention does not divest them of their personal nature. This long-term data conservation will therefore have to be accompanied by appropriate guarantees. For that reason, even data conserved over a long period must be covered by adequate measures for transmission and retention, like any other personal data⁴.

3.5. Transfer of data

The processing operation must also be scrutinised in the light of Article 7(1) of Regulation No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient".

⁴ Opinion of the EDPS on case 2006/422 "Court of Auditors' attestation procedure", page 6.

The case in point involves transfer within one and the same institution. The data recipients are the human resources officers of the Commission DGs/Departments, DG ADMIN, the Joint Committee, the Appointing Authority and the PMO. The transfer thus complies with Article 7(1), since the data collected are necessary for the processing operation and are "*necessary for the legitimate performance of tasks covered by the competence of the recipient*". As regards internal publication of the final list, see point 3.3.

Article 7(3) of Regulation (EC) No 45/2001 stipulates that "*The recipient shall process the personal data only for the purposes for which they were transmitted*". And Article 3(3) of the GIP does indeed state that "*The submission of an application may not be taken into consideration for any other purposes relating to the candidate's career*".

Article 7(3) is therefore fully complied with.

3.6. Processing including an identifying number

Under Article 10(6) of Regulation No 45/2001, the EDPS "*shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body*".

The personal number of the official or temporary staff member is collected and processed in the context of the early retirement exercise, and so Article 10(6) applies. While the use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the task of the personal data controller, its effects may nevertheless be significant. That was why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the EDPS. The point here is not to establish the conditions under which the Commission may process the personal number, but rather to draw attention to that provision of the Regulation. In this instance the Commission's use of the personal number is reasonable because it is a means of facilitating the processing task, as part of an evaluation and selection procedure.

3.7. Right of access and rectification

Article 13 of Regulation No 45/2001 provides for a right of access upon request by the data subject, and lays down details concerning that right. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, the communication in an intelligible form of the data undergoing processing and of any available information as to their source. Article 14 of Regulation (EC) No 45/2001 gives data subjects a right of rectification.

In the case in point, the rights of access and rectification and the right to block data can be exercised by the data subjects upon application to the controller.

The EDPS therefore considers that the conditions of Articles 13 and 14 of Regulation (EC) No 45/2001 have been fully met.

3.8. Information to be given to the data subject

Articles 11 and 12 of Regulation No 45/2001 cover the information to be given to data subjects in order ensure transparent treatment of their personal data. These Articles list a series of obligatory and optional particulars. These apply insofar as, having regard to the

specific circumstances in which the data are collected, they are necessary to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subjects themselves and some come from other sources.

The provisions of Article 11 concerning the information to be given to the data subject (*Information to be supplied where the data have been obtained from the data subject*) apply in this case, since the data subjects themselves fill in the application form for early retirement.

The provisions of Article 12 concerning the information to be given to the data subject (*Information to be supplied where the data have not been obtained from the data subject*) also apply in this case, since data are supplied by the Commission DGs/Departments and by DG ADMIN concerning the evaluation criteria and the level of priority, on the basis of the forms filled in by the data subjects.

It will be remembered that an Administrative Notice is circulated to Commission staff concerning the call for applications for the annual exercise and that an information message entitled "*Protection of personal data*" pops up when people access the online form.

The information message complies with Articles 11 and 12 of Regulation No 45/2001, except for the information on the data which will be published.

The lists for officials and temporary staff publish the order of each applicant on the list, along with his or her surname, first name, personal number, assignment and function group. However, there is no reference to these data either in the Administrative Notice sent to staff or in the information message.

Further to comments received by DG ADMIN, it has been proposed that in future it would be sufficient to publish the order of priority only for the reserve list and that the list of successful applicants could be published merely in alphabetical order.

As regards the reserve list, see point 3.3. Publication of the final list, as provided for in Article 25(3) of the Staff Regulations, also involves a transfer of data. However, the conditions of publication are not announced in the Administrative Notices. In the light of Article 12(1) (d) of the Regulation, applicants should be informed of the data that will be published.

3.9. Security

In accordance with Article 22 of Regulation No 45/2001 on the security of processing, "*the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected*".

In the case in hand, access to the database is restricted and the Commission's computer security systems apply.

In the light of all the security measures taken to ensure maximum security of processing, the EDPS judges that they may be considered adequate in terms of Article 22 of the Regulation.

Conclusion:

The proposed processing operation does not appear to infringe the provisions of Regulation (EC) No 45/2001, subject to the comments made above. This implies, in particular, that the Commission should

- consider publishing only the final list of people taking early retirement in the Commission's Administrative Notices;
- inform the EDPS if the evaluation reports are going to be renewed every 5 years and, if not, reconsider the conservation period and inform the EDPS of the result;
- ensure that appropriate guarantees accompany the long-term archiving of data;
- inform applicants of the data that will be published.

Done at Brussels, 20 March 2007

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