



## **Opinion on the notification for prior checking from the Data Protection Officer of the European Parliament regarding the "certification procedure" dossier**

Brussels, 6 June 2007 (Case 2007-168)

### **1. Procedure**

On 19 March 2007, the European Parliament's Data Protection Officer (DPO) submitted a notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the certification procedure dossier. The letter is accompanied by several annexes on the subject.

Decision 362.020/BUR/AN.1 on the certification procedure was dated 26 September 2005 and entered into force the day following that of its adoption. The present prior check is therefore subsequent to the processing being instituted. It is an ex post prior check.

The European Data Protection Supervisor (EDPS) has identified priority themes for ex post prior checks, including data processing operations relating to staff assessment. The certification procedure dossier, inasmuch as it contains data on the evaluation of personal aspects relating to the data subject, including his or her ability, efficiency and conduct (Article 27(2)(b)), is one of those priorities.

Further information was requested by the EDPS on 13 April 2007. Answers were given on 24 April. The draft opinion was sent to the DPO on 21 May 2007 for comments, which were provided on 4 June (the deadline for comments having been set at 2 weeks).

### **2. Facts**

The European Parliament, like the other institutions, organises a selection procedure for officials authorised to participate in training in the certification procedure framework, under Article 45a of the Staff Regulations of Officials of the European Communities (hereinafter Staff Regulations).

In this case, the certification procedure was set up in 2005 and came into use since 2006. The aim of the processing is to select the officials from the AST function group, grade 5 and above, who are authorised to participate in training in the certification procedure framework, which will give them the right to be appointed to a post in the same grade in the AD function group. The selection procedure for officials authorised to follow this programme is governed by a Bureau Decision of 26 September 2005 (hereinafter "the Decision").

The procedure consists of the following 6 stages:

1. determination by the Appointing Authority (hereinafter referred to as the AA) of the number of officials authorised to take part in the training programme, and publication of a call for applications;
2. consideration of the admissibility of the applications by the AA after consultation of the opinion of the Joint Committee provided for in Article 10;
3. establishment by the AA of the list of officials selected to take part in the training programme;
4. participation in the training programme organised by the European Administrative School (hereinafter referred to as the EAS);
5. organisation of written and oral tests and the establishment by the European Communities Personnel Selection Office (hereinafter referred to as EPSO) of a list of officials who have passed those tests;
6. publication by the AA of the list of officials who have passed the tests demonstrating that they have successfully taken part in the training programme.

## **2.1. Applications**

Every year, after consultation of the Joint Committee provided for in Article 10 of the Bureau Decision, the AA determines the number of officials to be authorised to take part in the training programme referred to in Article 45a(1) of the Staff Regulations. In doing so it takes account of the restriction laid down in Article 45a(4).

Once it has determined that number, the AA publishes a call for applications which lays down the maximum number of applications admissible, eligibility conditions and appeal procedures and the marks to be awarded in respect of qualifications together with the criteria used for selection.

Officials in function group AST, from grade 5 and above, who have been appointed to an established post in the Secretariat of the European Parliament in accordance with Article 1a of the Staff Regulations and who, on the date of publication of the call for applications, hold one of the following administrative statuses referred to in Article 35 of the Staff Regulations – active employment, secondment in the interests of the service, parental or family leave, or leave for military service – may apply for certification.

The following categories of officials may not apply for certification: those who have been automatically retired in application of Article 52 of the Staff Regulations during the year concerned or the following year; those in respect of whom a decision has been taken that their service should be terminated pursuant to Article 47 of the Staff Regulations; those who have been granted an invalidity allowance in application of Article 78 of the Staff Regulations.

## **2.2. Admissibility of applications**

Applications from the officials referred to in Article 3(2) above shall be deemed admissible if the officials concerned satisfy both of the following conditions:

- (a) Three of the last five annual staff reports must certify that the official concerned has the potential required to carry out the duties of Administrator.
- (b) The official concerned must have at least six years' seniority in function group AST. The minimum period of seniority must have been acquired by 31 December of the year preceding the year during which the certification procedure is opened. Account shall be taken of

seniority acquired as a temporary staff member, provided that there has been no interruption between the periods of employment in that capacity and the periods of employment as an official.

It should be pointed out that since the certification procedure is fairly new, it is currently in a transitional phase. That is why account is taken of three staff reports out of five at present. Article 11 of the Bureau Decision also contains a transitional provision on this point, because no provision was made in the past for assessing the potential required to carry out an administrator's duties in staff reports. After the transitional phase, it is intended that only the three most recent staff reports will be used.

The AA draws up a draft list of officials whose applications are considered admissible on the basis of the two criteria mentioned above and notifies those concerned. For the ten working days following that notification, officials whose names are not included in the draft list may appeal to the Joint Certification Procedure Committee (COPAC) instituted by Article 10 of the Decision. The appeal must state grounds and be accompanied by all relevant supporting documents and information. The Committee issues a reasoned opinion on any disputes within 15 working days of the appeal. It makes all the consultations it considers relevant. The opinion delivered by the Committee on each appeal is sent to the official concerned. After examining the applications, the AA adopts and publishes a list of eligible officials, taking the Committee's opinions into consideration.

### **2.3. Establishment of the list of officials selected to take part in the training programme**

After consultation of the Joint Committee provided for in Article 10 of the Decision, the AA establishes a list of officials whose applications have been deemed admissible in accordance with a ranking established on the basis of the following criteria and with account being taken of the principle of equal opportunities: staff reports from the three most recent reporting exercises; the applicant's level of education and training; professional experience acquired in the institutions, bearing in mind the interests of the service.

The actual content, value and weighting of the above criteria are determined by the AA before publication of the call for applications referred to in Article 3 of the Decision and after consultation of the Joint Committee provided for in Article 10. They are notified to the staff.

The AA establishes a draft list of the officials selected to take part in the training programme. The draft list includes the officials at the top of the list referred to in paragraph 1 down as far as the ranking corresponding to the number of officials to be authorised to take part in the training programme referred to in the first paragraph of Article 3 of the Decision. The AA notifies the officials concerned.

### **2.4. Appeals provided for in respect of the list of officials selected**

Within a period of ten working days following such notification, the officials who have submitted applications but whose names are not included on the draft list may lodge a duly justified appeal with the Joint Certification Procedure Committee (COPAC) provided for in Article 10 of the Decision. Appeals must be accompanied by all the requisite supporting documents and relevant information relating to the criteria set out in paragraph 1 of Article 5 of the Decision.

## **2.5. Role of the Certification Procedure Joint Committee**

Within a period of 20 working days following the forwarding of the draft list by the AA, the Committee delivers an opinion on each appeal referred to it, together with an overall opinion on the draft list. It may hear any officials who have lodged appeals and representatives of the AA. The opinion delivered by the Committee on each appeal is forwarded to the official concerned.

Taking account of the opinion of the COPAC, the AA adopts and publishes the definitive list of officials authorised to take part in the training programme.

## **2.6. Participation in the training programme organised by the EAS (European Administrative School)**

In application of Article 2(2) of the Staff Regulations, the European Parliament delegates to the EAS the power to define and organise the training programme<sup>1</sup>.

The training programme (as planned for the 2006 certification procedure) is spread over a period of seven to nine months and involves some 300 hours of classes. The training is made up of two types of modules: common modules and specific modules. The common block is made up of four modules (analysis, communication, organisation and budget). In addition, the participants each choose one specific module. To date seven specific modules are offered. The choice of specific module is made after the applicant selection stage, for the applicants selected to take part in the training.

## **2.7. Tests**

Furthermore, in application of Article 2(2) of the Staff Regulations, the European Parliament delegates to EPSO the power to organise the written and oral tests. In that context, and in accordance with Articles 45a(1)(c) of the Staff Regulations and 7(2)(c) of Annex III to the Staff Regulations, the contents of the written and oral tests are determined by EPSO. Only officials whom the EAS certifies as having completed the training programme are authorised to sit the tests. Officials certified by the EAS as having followed the training programme but who are not on the list of officials having passed the tests are authorised to take the tests in subsequent years.

The Decision provides that officials certified by the EAS as having followed the training programme but who have not passed the tests laid down by EPSO are authorised to take the tests in subsequent years. There are therefore at present no restrictions on taking the tests.

## **2.8. Drawing up and publication of the list of officials selected**

Finally, in application of Article 2(2) of the Staff Regulations, the European Parliament delegates to EPSO the power to draw up the list of the officials who have passed the tests. The AA publishes the list of officials who have passed the tests as drawn up by EPSO.

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<sup>1</sup> In accordance with Decision 2005/119/EC of 26 January 2005 (OJ L 37, 10.2.2005, p. 17).

## **2.9. Other provisions**

Officials on the list mentioned in Article 7(1) of the Bureau Decision may apply for vacant posts in the AD function group corresponding to their grade, in accordance with the terms of Article 29(1)(a)(ii) and (b) of the Staff Regulations.

The AA ensures, in accordance with Article 45a of the Staff Regulations, that the number of officials who have been successful in the certification procedure and who are appointed to posts in the AD function group does not exceed 20 % of the total number of appointments made each year in that function group pursuant to the second paragraph of Article 30 of the Staff Regulations.

## **2.10. Other information from the notification**

The stages of the procedure have been harmonised across the institutions. Given the possibilities for interinstitutional transfer of the officials who have received certification, all the institutions have adopted similar general implementing provisions. The board for the EPSO-organised tests is therefore interinstitutional in composition, to ensure that certified status is of equal value regardless of the institution of origin of the official concerned.

Processing is manual and based on the forms and documents submitted by applicants.

Data subjects: officials from the AST function group who have been at grade 5 for at least five years, who have been appointed to an established post in the Secretariat of the European Parliament and meet the criteria set out in Articles 3 and 4 of European Parliament Decision of 26 September 2005.

Data categories: the data needed to select the officials are the staff reports from the three most recent reporting exercises; copies of the diplomas or certificates obtained; any document (attestation from hierarchical superiors, for instance) that would facilitate explanation or specification of the exact nature of duties and professional experience; and the application form. The data list must be set out in the application (the staff number is also processed). In addition, it is stated in the Frequently Asked Questions that insofar as the certification procedure is analogous to a competition procedure, it is logical to ask applicants to establish a complete file, including completing their SKILLS file<sup>2</sup>. Finally, point 3 of the declaration in the application attached to the DPO's notification states that "the decisions of the AA are based solely on the supporting documents provided by candidates with their application form and no reference to the personal files will be accepted".

In this context, the administration reserves the right to check the truth of the statements made by the person concerned (e.g. to check the length of professional experience in cases of a career in two institutions, or where a person claims to have a diploma). What is ruled out is for an applicant to fail to include a document that is required in support of the application and to refer to a document contained in his or her personal file.

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The SKILLS database contains information on current tasks, studies, vocational experience, internal training courses and other information that can be provided optionally by the data subjects. These data may be forwarded to the departments concerned in the framework of a vacancy-filling procedure, or of attestation and certification procedures to facilitate preparation for a career counselling session – e.g. in the context of mobility – or of the establishment of working parties, competition boards and committees required to contribute to specific one-off tasks.

Information: the Parliament Bureau Decision of 25 September 2005 informs applicants as to the procedure. The call for applications, a specific summary of which is sent to all officials of the European Parliament when the certification procedure is launched, provides information on eligibility criteria and priority criteria and mentions the appeal procedures. A "frequently asked questions" document explains the procedure, the admissibility criteria, the content of the training and how it is implemented, the appeal procedures and a reminder of the principles of equal opportunities.

Data recipients: The following receive the data:

- officials and/or other staff of DG PERS tasked by the AA with examining files with a view to establishing eligibility and where applicable the ranking (this operation is currently handled in Directorate A);
- members and observers (and secretariat) of the Joint Certification Committee (appointed by the Secretary-General and Staff Committee);
- in the event of an appeal under the procedures of Article 90 etc., officials and/or other staff of the Legal Unit of DG PERS and, if appropriate, of the Legal Service.

Right of access and rectification: Furthermore, candidates are entitled to consult their files in the presence of an official from the unit concerned. They are also entitled to apply in writing for any duly justified rectifications. Once the certification procedure is completed, the appropriate appeal procedure is that of Article 90(2) of the Staff Regulations.

Because of the very selective nature of the procedure and the limited number of persons admitted to training, the AA wishes to enable all officials involved to draw attention to all relevant points supporting their applications. It is natural therefore to allow them all to explain the reasons that led them to apply.

Data retention: Documents are retained for three years. At no point are they filed in personal files. If an official has passed the certification examination and applied successfully for an AD vacancy, the AA's appointment decision is attached to the personal file as part of the transfer procedure. In the light of the controller's comments, it has been specified that the conservation period for documents concerning a certified staff member will not exceed ten years, from the date on which the member of staff or his legal successors are entitled to claim pension rights or from the date of the last payment of the pension. Apart from a few exceptions (e.g. disciplinary decisions or correction of erroneous data), all the documents added to individual files are kept there until the file as a whole is destroyed. This will apply to certification-related documents.

Historical, statistical or scientific purposes: Anonymous statistics may be drawn up to facilitate preparation for subsequent exercises.

Security measures: only officials from the department who are responsible for processing the procedure have access to the data, which are locked in cupboards in the offices of Directorate A (the Director's secretariat).

### **3. Legal aspects**

#### **3.1. Prior checking**

The notification received by e-mail on 16 March 2007 relates to processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)). The data processing in question is carried out by a Community institution in the exercise of

activities which fall within the scope of Community law (Article 3(1)). The processing of the certification procedure is manual processing within a structured whole. Article 3(2) therefore applies in this case. The processing therefore falls within the scope of Regulation (EC) No 45/2001.

The EDPS is not performing a prior check of the stage during which the EAS and EPSO are involved. That stage is the subject of a separate notification for prior checking<sup>3</sup>.

Article 27(1) of Regulation (EC) No 45/2001 makes subject to prior checking by the EDPS processing operations likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) contains a list of processing operations likely to present such risks including, in Article 27(2)(b), "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". The procedure for certification of officials of the European Parliament is an operation for the processing of personal data for the purpose of assessment and is therefore covered by Article 27(2)(b), and as such is subject to prior checking by the EDPS.

The selection – the evaluation of competence to change to another function group – even if based on existing staff reports, is an evaluation in its own right. Furthermore, the selection is based on other criteria: officials' training and education and the needs of the service and professional experience acquired in the service.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this specific case, the processing was set up before consultation of the EDPS, so the check necessarily has to be performed ex-post. However, this does not alter the fact that the recommendations issued by the EDPS should be implemented.

The official notification was received on 19 March 2007. Under Article 27(4), this opinion had to be delivered within two months, in this case no later than 20 May 2007. Questions were put by e-mail on 13 April. Pursuant to Article 27(4) of the Regulation, the two-month period within which the EDPS must deliver an opinion was suspended. Answers were given by e-mail on 24 April. On 21 May 2007 the procedure was suspended for 14 days to allow the DPO and the controller to comment. The comments were received on 4 June. The EDPS will deliver his opinion by 14 June 2007. (2 months + 11 days' suspension + 14 days for comments)

### **3.2. Lawfulness of processing**

The lawfulness of the processing must 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 in the legitimate exercise of official authority vested in the Community institution*".

The certification procedure, which involves collecting and processing personal data relating to officials, falls within the legitimate exercise of official authority vested in the institution.

The legal basis for the data processing concerned lies in Article 45a of the Staff Regulations (certification procedure) and in the Parliament Decision of 26 September 2005 on the general

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<sup>3</sup> Dossier 2006-0396 (Activities of the European Administrative School and EPSO in the context of the certification procedure), under examination by the EDPS.

implementing provisions relating to the certification procedure. The legal basis, which is sufficiently clear, raises no particular issues.

The legal basis is valid and supports the lawfulness of the processing.

### **3.3. Data Quality**

Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001). The processed data described at the beginning of this opinion should be regarded as fulfilling these conditions in relation to the processing operation. The data required are administrative in nature and are necessary to assess the work of officials. The EDPS acknowledges that the relevance and proportionality of the data that help to assess the data subject are more difficult to establish. In this context, the EDPS welcomes the fact that the European Parliament has established precise priority criteria and weightings in the presentation of the call for applications. Article 4(1)(c) of Regulation (EC) No 45/2001 thus seems to be duly complied with in this respect.

The data must be processed "*fairly and lawfully*", according to 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 subject (see point 3.9 below).

The 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*" (Article 4(1)(d) of the Regulation). The procedure itself must guarantee the accuracy of the data. In the case under examination, the system requires candidates to submit most of the documents necessary for the Appointing Authority to take its decision. Moreover, candidates are invited to fill in their SKILLS dossier, which will be made available to the Appointing Authority and to members of the Joint Certification Procedure Committee in the event of an appeal. Candidates are also required to inform the Competition Unit in sufficient time in writing of any changes to their personal particulars and/or address. The system provides for access and rectification and therefore seems to guarantee data accuracy.

Provision is made for two different appeals in the framework of the certification procedure established by the Parliament (Decision of 26 September 2006). First, officials whose names are not on the draft list drawn up by the Appointing Authority of officials whose applications have been deemed admissible may lodge an appeal, within a period of ten working days, to the Joint Certification Procedure Committee (COPAC). Secondly, officials who have submitted applications but whose names are not on the draft list of officials selected to take part in the training programme may, also within a period of ten working days following that communication, submit a duly justified appeal to the Joint Certification Procedure Committee (COPAC).

The EDPS requests that duly justified appeals contesting the list of admissible candidates and/or the final list, and the Committee's opinion(s) on those appeals, be attached to the files of data subjects, so as to ensure that the files are complete, in accordance with Article 4 of Regulation (EC) No 45/2001. The rights of access and rectification represent the second means of guaranteeing the quality of the data (see point 3.8 below on the rights of access and rectification).



### 3.4. Conservation of data

Article 4(1)(e) of Regulation (EC) No 45/2001 posits the principle that data must be "*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*".

The notification provides for conservation of the documents for a period of three years. According to the Parliament, this period commences when the call for applications is launched and concerns documents produced to take part in the certification procedure. The EDPS considers that this period is proportional to the fulfilment of the purposes of the processing operation. No purpose is served by keeping the files on unsuccessful applicants for more than a few years. Besides the routine data (surname, first name, etc.), the data relevant for evaluation will have changed. In the case of candidates who have passed the test, a list is published and an individual communication is sent by the European Administrative School (EAS) granting them certified status. However, this information concerning the data conservation period is not indicated anywhere else, either in the Bureau decision or in the call for applications. The EDPS considers that it should be provided. Moreover, the EDPS considers that all the documents necessary for the certification files should be kept until the official has exhausted all means of contesting the decision, including the time-limits for lodging an appeal with the Court of Justice.

The certification files of successful applicants are added to their personal files. This is made effective by the decision of the Appointing Authority appointing the data subject to a post in new category AD at the time when the appointment takes place. In this connection, Article 26 of the Staff Regulations is applicable, in particular: "*an official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them*".

Data are thus stored for a long period which is not specified in the notification. The controller specified in his comments that the conservation period will not exceed ten years from the date on which the member of staff or his legal successors are entitled to claim pension rights or the date of the last pension payment. This is in line with the comments of the EDPS concerning the need to establish a time-limit for the conservation of the data. In similar cases<sup>4</sup>, the EDPS considered that it was reasonable to set the data storage period at 10 years, starting from the time when the staff member leaves or the last pension payment.

The EDPS also believes that data of a purely informative nature could be disposed of after a minimum period of five years if they are no longer necessary for administrative reasons.

Long-term retention of data must be accompanied by appropriate safeguards. The data stored are personal. The fact that they are archived for long-term storage does not divest them of their personal nature. For that reason, even data stored over a long period must be covered by adequate measures for transmission and storage, like any other personal data.

Anonymous statistics may be drawn up to facilitate preparation for subsequent exercises. The purpose is to estimate the possible number of applicants in future years and not to conserve the data of a specific person. In the light of the Parliament's explanations, the EDPS considers that Article 4(1)(c) of the Regulation is complied with.

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Prior check 2006-109, Certification procedure, Court of Auditors, and Prior Check 2006-45, Certification procedure, Council of the European Union.

### **3.5. Change of purpose/Compatible use**

Data are retrieved from or entered in the staff data bases. The processing being reviewed involves no overall change to the specified purpose of staff databases, the certification procedure being merely a part of that purpose. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 is not applicable to the case in point, and Article 4(1)(b) of the Regulation is complied with, given that the purposes are compatible.

### **3.6. Transfer of data**

The processing operation should also be examined in the light of Article 7(1) of Regulation (EC) 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"*.

In this case, the data are for circulation among various departments within the Parliament. Personal data may not be transferred within an institution unless they are necessary for the legitimate performance of tasks falling within the competence of the recipient. Transfer to the Parliament's vocational training service, to the Appointing Authority, to the Joint Certification Procedure Committee and to Directors at the Parliament is consistent with the legitimate performance of the tasks of the various parties.

In addition, the data on officials authorised to follow training courses are transferred to the European Administrative School, which is attached to EPSO. After the training courses, EPSO forwards data concerning the officials who have successfully completed the training programme to the Appointing Authority. Finally, the European Union Civil Service Tribunal may receive these files in the context of a legal action. These transfers are legitimate in this instance since they are necessary for the legitimate performance of tasks falling within the competence of the recipient.

In this instance, Article 7(1) of Regulation (EC) No 45/2001 is duly complied with.

### **3.7. Processing including the personnel or identifying number**

The Parliament uses the personnel number for processing operations relating to the certification procedure (see application form). Use of the personnel number may allow the linkage of data processed in different contexts. The point here is not to establish the conditions under which the Parliament may process the personnel number (Article 10(6) of the Regulation (EC) 45/2001), but rather to draw attention to that provision of the Regulation. In the case in point, the use of the personnel number is reasonable as it is used for the purposes of identifying the data subject and keeping track of the file. The EDPS considers that this number may be used in the context of the promotion procedure.

### **3.8. Right of access and of rectification**

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. In the case in point, the data subject has access to his evaluation file in order to fill in all the sections required for the procedure. Furthermore, candidates are entitled to consult their file in the presence of an official from the unit concerned.

The right of rectification of data subjects is provided for in Article 14 of Regulation (EC) No 45/2001. In the case in point, the data subject has access to his personal file so that he can point out any errors or omissions which can then be rectified before the Appointing Authority's draft list is drawn up. The call for applications also requires candidates to inform the Competition Unit in sufficient time in writing of any changes to their personal particulars and/or address. It must therefore be concluded that Articles 13 and 14 of the Regulation are complied with; the data identifying the data subject can be consulted and rectified if they are inaccurate or incomplete.

### **3.9. Information for data subjects**

Articles 11 and 12 of Regulation (EC) No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of compulsory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subject and others from other persons.

The provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be given to the data subject apply in this case. Insofar as the official personally fills in the data required of him, the data subject supplies the data himself.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also apply in this case because information is obtained from the various parties involved in the process (Appointing Authority, Directors and Joint Committee).

It will be recalled that the provision of information to the data subjects is guaranteed in this case by the Parliament Decision of 25 September 2005 and by the communication entitled "Certification procedure (Article 45a of the Staff Regulations): call for applications".

The only information not provided in the present case is information concerning the time-limits for storing data, whether replies to the questions are compulsory or optional, as well as the possible consequences of failure to reply, and the right to have recourse at any time to the EDPS. The EDPS recommends that this information be included in the various documents which provide information on the certification procedure.

### **3.10. Safety**

In accordance with Article 22 of Regulation (EC) No 45/2001 on 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*".

The organisational and technical measures are taken to ensure a maximum level of security for the processing operation.

Having examined all of these measures, the EDPS considers that they are appropriate for the purposes of Article 22 of Regulation (EC) No 45/2001.

## Conclusion

The proposed processing does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001, provided that the comments made above are taken into account. This implies in particular that the Parliament should:

- establish precisely the time-period (three years) for which the data contained in the files are kept and stipulate that all the documents necessary for the certification files must be kept until the official has exhausted all means of contesting the decision, including the time-limits for bringing an appeal to the Court of Justice;
- establish and notify to staff the period of 10 years from the date on which the member of staff or his legal successors are entitled to claim pension rights or the date of the last pension payment as for period of time for which the data relating to the candidates selected may be stored in the individual file;
- establish, in the context of long-term storage, adequate measures for transmission and storage of personal data and information relating to the data subjects;
- add to the files of data subjects the duly justified appeals by candidates not included on the list of admissible candidates and on the definitive list, and the opinions of the Certification Committee on the appeals;
- inform data subjects of the time-limits for storing data, whether replies to the questions are compulsory or optional, as well as the possible consequences of failure to reply, and the right to have recourse at any time to the EDPS.

Done at Brussels, 6 June 2007

Peter HUSTINX  
European Data Protection Supervisor