

**Opinion on the notification for prior checking received from the Data Protection Officer (“DPO”) of the European Anti-Fraud Office (“OLAF”) on 12 January 2007 regarding OLAF's selection and recruitment of its temporary agents**

Brussels, 14 November 2007 (Case 2007-6)

## **1. Proceedings**

On 8 January 2007, OLAF's DPO informed the European Data Protection Supervisor (“EDPS”) via e-mail about OLAF's data processing operations related to the selection and recruitment of its temporary agents. On 12 January 2007, the EDPS received the formal prior checking notification (“**Notification**”) by regular mail.

On 12 January 2007 the EDPS requested additional information from OLAF. OLAF's DPO replied on 1 February 2007.

On 23 March 2007 the EDPS requested further information. In response, on 26 March 2007 OLAF's DPO requested a meeting to discuss the points raised in the information request. The meeting took place on 2 April 2007. As agreed at the meeting, certain remaining issues were clarified in a telephone conversation on 12 April 2007, and in an email message to the EDPS, which was delivered on 18 June 2007. On the same day, due to the complexity of the case, and in accordance with Article 27(4) of Regulation (EC) 45/2001 (“**Regulation**”), the EDPS extended the deadline by two months.

On 22 September 2007, the EDPS sent to OLAF's DPO a summary of his understanding of the facts, to ensure the accuracy of the information received from OLAF verbally. Until OLAF's final written confirmation of the facts on 15 October 2007, the case remained suspended.

Finally, the procedure was suspended for 24 days between 19 October 2007 and 12 November 2007 during which OLAF's DPO was offered the possibility to comment on the draft EDPS Opinion.

## **2. The facts**

**2.1. Scope of the Notification.** The Notification concerns the selection and recruitment of OLAF's temporary staff referred to in Article 2(a) of the Conditions of Employment of other servants of the European Communities (“**Conditions of Employment**”).

There are two distinct procedures covered by the Notification: (i) a selection and (ii) a recruitment procedure. During the selection process, a selection committee established by OLAF selects a number of applicants to be included on a reserve list. The recruitment

procedure consists of the recruitment of candidates from the reserve list for specific vacancies within OLAF.

**2.2. Legal basis of the selection and recruitment procedures.** Article 8 of the Conditions of Employment provides for the engagement of temporary staff but does not require a competitive selection procedure for this staff category.

Article 6 of Commission Decision 1999/352/EC establishing OLAF provides that the Director of OLAF shall exercise, with regard to the staff of OLAF, the powers conferred by the Staff Regulations on the authority authorized to conclude contracts of employment. Pursuant to Article 6 of this decision, he shall lay down the conditions and detailed arrangements for recruitment. On 30 June 2005, based on this authorization, OLAF's director issued the Decision of the Director General of OLAF on a new policy for the engagement and use of OLAF's temporary agents ("**Recruitment Policy**").

Article 1 of the Recruitment Policy discusses the recruitment of temporary staff referred to in Article 2(a) of the Conditions of Employment. Paragraph (1) provides that such staff should be engaged to fill temporary posts of a specialized nature requiring "OLAF specific" knowledge and experience. According to recital (6), the OLAF establishment plan provides for a significant proportion of temporary posts in categories A\* and B\* at all levels. Article 2 provides for a selection procedure to fill in such posts. This selection procedure, along with the subsequent recruitment procedure, constitutes the subject matter of the present Notification.

**2.3. History of OLAF's selection procedures.** In order to fill the temporary agent posts in its establishment plan, OLAF has organized a total of five selections of temporary agents since its creation in 1999, as follows: 2 AD and 1 AST selections in 2000; 1 AST selection in 2002; and 1 AD selection in 2005. The first four of these selections took place prior to the adoption of OLAF's Recruitment Policy noted above. Given OLAF's current plans to keep the temporary agents for an unlimited duration, and the fact that there are still a large number of candidates on the reserve lists, OLAF stated that it is unlikely that it will organize further selections for temporary agent positions in the near future.

## **2.4. Selection Process**

**2.4.1. Profile and advertisement.** The selection is carried out on the basis of a profile established by OLAF. This profile lays down the requirements for applicants in terms of education and professional training, professional experience, and linguistic knowledge. OLAF describes the requirements of the profile in a call for applications and transmits this call in English, French, and German to the Permanent Representations of the Member States. The call is also published on the website of OLAF and reference is also made to it on the EPSO website. OLAF may give further publicity that it considers useful.

**2.4.2. Establishment of the selection committee.** The selection procedure is conducted by a selection committee acting on behalf of OLAF. The selection committee is established by OLAF. It is chaired by an OLAF member appointed by the Director General of OLAF, and composed of one member appointed by the Director General of OLAF, one member appointed by the Director General of the Commission's DG ADMIN, and two members designated by the OLAF Staff Committee. The committee's task is to establish a list of successful candidates ("**reserve list**") from which the persons to be engaged are to be drawn.

**2.4.3. Applications.** The next step is the receipt of applications. This is carried out with the technical assistance of EPSO, using an automated system based on an Oracle database. This database is identical to the Oracle database used by EPSO for the general competitions but it is adapted for OLAF's use. The Oracle database is stored in the Commission data centre. The data are entered into the Oracle database by the candidates themselves, who need to apply on-line. For the selection procedure, a registration number is automatically allocated to each applicant. This number is used only during the selection process leading up to the establishment of the reserve lists, and is not used during the recruitment procedure.

The database collects the following information on-line: name, address, date of birth, gender, citizenship, telephone and fax numbers, main language and second language, language of the selection test, date when the candidate obtained his or her degree, name of the degree and the institution, indication of where the candidate heard about the selection procedure, and disability, if any (for reasons of accommodation during the tests).

In addition, applicants also submit their curriculum vitae on-line. OLAF made available to EDPS a standard curriculum vitae in the so-called "europass" format.

This document requires the following information: photograph, personal information (name, address, telephone and fax numbers, including mobile telephone numbers, email, nationality, date of birth, gender); desired employment/occupational field; work experience (including dates, occupation or position held, main activities and responsibilities, name and address of employer, type of business or sector); education and training (dates, title of qualification awarded, principle subjects/occupational skills covered, name and type of organization providing education and training, level in national or international classification); personal skills and competences (mother tongue, other languages, social skills and competences, organizational skills and competences, technical skills and competences, computer skills and competences, artistic skills and competences, other skills and competences, driving license), additional information and annexes.

OLAF confirmed that some of these entries, for example, attachment of a photograph, are optional. Candidates, however, are not advised which entries are mandatory and which ones are optional.

Candidates must also send, by regular mail, photocopies of the following supporting documents to OLAF: (i) an identity card or passport proving citizenship, (ii) certificates and degrees attesting educational qualifications, and (iii) evidence of professional experience, clearly indicating the starting and finishing dates and the exact nature of duties.

No motivation letter is requested. OLAF also does not request references (e.g. names and contact information of the persons willing to provide reference, or a detailed written evaluation of the applicant by the persons providing the reference). At this stage, there is also no other data on the data subjects that OLAF acquires from third parties. For example, OLAF does not, at this stage, require a copy of the criminal records of the candidates, and does not require that candidates undergo security clearance. Nor does OLAF use any database for background check.

**2.4.4. Reception of applications by the selection committee.** The head of OLAF's Human Resources Unit ("OLAF HR"), acting as a secretary to the selection panel, has password-protected access to the applicants' on-line applications via the Oracle database. He also receives the hard-copy of the supporting documents required in the calls for applications. He then provides the selection panel with all copies of the on-line applications in paper form, as

well as with copies of the applications received by regular mail. The members of the selection panel themselves do not have access to the on-line database.

**2.4.5. Admission to the selection procedure.** Before any tests are organized, the selection committee examines each and every application received, including supporting documents, and decides which applications meet the requirements set forth in the call for applications. These requirements are of two types: eligibility and qualification.

The eligibility requirements include that candidates (i) must be citizens of one of the Member States, and enjoy full rights as citizens, (ii) must have fulfilled any obligations imposed by the laws concerning military service, (iii) must meet the character requirements for the tasks involved, (iv) must be physically fit to perform the expected duties, (v) must have the requisite level of education and (vi) the requisite level of professional experience, and, finally, (vii) must have a thorough knowledge of one of the official languages of the European Union and a working knowledge of English, French, and/or German.

The qualifications requirements depend on what type of vacancies OLAF is planning to fill with the reserve lists. For example, calls for an AD grade position as an investigator might require candidates to demonstrate professional experience in one of the following areas: (i) investigations carried out within a national or international anti-fraud and/or anti-corruption service, (ii) prosecution or investigation work related to the fight against fraud and corruption and performed within a national authority responsible for penal proceedings, (iii) legal work related to the operational activities against fraud affecting one or more sectors of the European Union budget revenue and expenditure. The call for applications might additionally specify, for example, that working knowledge of the judicial and police cooperation instruments, as well as of the mutual administrative instruments would be an advantage. Calls for applications to fill positions as intelligence analysts, or AST grade positions may list a different set of qualifications.

During the examination of applications, the selection board draws up an evaluation form with respect to each applicant who submitted an application. The evaluation form is a sheet established for the purpose of checking the compliance of the candidate with the eligibility and qualification requirements as set forth in the call for applications. The fulfilment of each requirement is separately evaluated. Applicants who do not fulfil all eligibility criteria are automatically excluded from the selection procedure. As for the qualification criteria, a more nuanced approach is taken. The selection board will compile a list containing a number of candidates specified in the call for applications who best meet the requirements. In selecting the applicants to be admitted, the selection committee, within the limits set by the principle of non-discrimination, may also encourage the selection of applicants of the underrepresented gender or of underrepresented nationalities.

The selection committee brings its decisions by consensus. Its deliberations are confidential.

**2.4.6. Written tests.** Since 30 June 2005 when OLAF adopted its new Recruitment Policy, the selection procedures include both a written and an oral test. Written tests were organized for the first time in the 2005 AD grade selection. Previously, only oral tests were used.

According to these new procedures, once the list of eligible and qualified applicants has been prepared, the selection committee organizes a written test. The content of written tests may vary call by call. In 2005 the call for applications noted that the selection test may focus on relevant legal instruments, including those listed in the call for applications. For investigators, the actual written tests consisted of a case study on a fraud case, while for analysts, the tests

consisted of drafting a memorandum summarizing the information in a dossier containing several documents. At the time of completing their applications on-line, candidates had to choose a language for the written test among English, French, or German (but they were not allowed to choose to write in their mother tongue, if this was one of these three languages).

The written tests are organized by the selection board with the assistance of the secretary of the selection board (head of OLAF HR and his staff), but without the involvement of EPSO. For example, as a practical matter, in 2005, the invigilators present at the written exam were all engaged by OLAF rather than by EPSO.

Correction of the written tests is carried out by the members of the selection board themselves. Based on their linguistic capabilities, the members of the selection board are each allocated a number of written test papers to be corrected. Each applicant's written test is corrected by two different members of the selection committee, independently from each other.

During the correction of the written tests, the selection board draws up an evaluation sheet for each applicant who took the test. The evaluation form is a sheet established for the purpose of ensuring consistency in the correction of the tests. The criteria based on which the written tests are evaluated may vary call by call, but in general, the criteria are established having in mind that the aim of the written tests is to verify the applicants' capacity to analyze, draw logical conclusions from given texts and to communicate them clearly in writing.

In practice, each of two markers completes an evaluation sheet independently. The selection board then compares the two marks and calculates the average, which is recorded on the final evaluation sheet. In cases where there is a significant difference between the two markings, the paper is also marked by a third person designated by the selection board before the final mark is established.

The call for applications specifies the criteria for marking and the number of candidates who will pass to the next stage of the selection procedure. The 2005 call, for example, mentioned that the written tests "will be marked out of 40" and that a "maximum of 200 candidates, who have obtained the best marks in the written tests" will be invited to the interview.

**2.4.7. Interview.** The interview aims to verify the applicants' capacity to carry out the functions noted in the job description in the call for applications. Candidates take the interview in the same language that they chose for the written test.

To evaluate the candidate's performance at the interview, the selection board draws up an evaluation sheet with respect to each participating candidate. The evaluation form is a sheet established for the purpose of ensuring consistency, that is, that evaluations are comparable. OLAF explained that a further guarantee of consistency is that the composition of the selection board does not change, unless unavoidable, and therefore, the same people interview every candidate. The exact criteria for evaluation of the written tests may vary call by call, but they normally focus on knowledge, skills, personality characteristics, as well as the ability to efficiently work in a multi-cultural environment.

The call for applications provides information about marking of the interview. The 2005 call, for example, mentioned that the interview will be "marked out of 60" and that the marks of the written test and the interview will be summed up to obtain the total score.

**2.4.8. Creation of reserve lists.** Once all candidates have been interviewed, a reserve list is drawn up. The reserve list is created on an excel sheet containing the names of the successful candidates in alphabetical order. There are no merit classes. No other data are kept on the spreadsheet. Also, no other data are linked electronically to the reserve list. The list is kept by the head of OLAF's HR unit, along with hard-copies of the curriculum vitae of each candidate whose name is on the reserve list.

The call for applications specifies the number of candidates who will be listed on the reserve list. The 2005 call, for example, mentioned that the reserve list will contain, in alphabetical order, the names of at least 120 candidates who obtained the best total score in the selection test.

The reserve lists are used to recruit candidates for vacant posts. For this reason, the lists, with CVs attached, are sent to DG ADMIN and, upon request, to OLAF heads of units who have to fill a vacant temporary post. This second stage of the procedure, recruitment of individual candidates for individual posts, is discussed under the heading "recruitment process" in Section 2.5 below.

**2.4.9. The respective roles of OLAF and EPSO during the selection procedure.** The selection process is carried out by a selection committee established by OLAF. It is OLAF, rather than EPSO, that creates the selection committee. It is also OLAF that publishes the call for applications on the OLAF internet site, although a reference is also made to the selection procedure on the EPSO website.

EPSO's role in connection with establishing, organizing, and carrying out the selection procedure is limited to providing its IT infrastructure for management of the candidates' on-line applications. This allows OLAF to communicate important information to candidates during the selection process, such as whether the selection board admitted their application, what time the written and oral tests will be held, and whether the candidate has been admitted to the next stage of the selection process, and ultimately, to the reserve list. There is no written contract between OLAF and EPSO regarding their respective tasks and responsibilities in the selection process.

## **2.5. Recruitment process**

As noted above in Section 2.4.8, a copy of the reserve lists, with CVs attached, is sent to DG ADMIN and to OLAF heads of units when they have vacant posts for temporary agents.

**2.5.1 Interviewing candidates for specific openings.** The recruitment process starts by OLAF heads of units selecting those candidates from the reserve lists whom they may be interested in recruiting for a specific position. The heads of units discuss their preferences with OLAF HR. When choosing candidates for a job interview, and ultimately, for a vacancy, in addition to professional experience and competence, issues such as promotion of the underrepresented gender or underrepresented nationalities are also considered, with due respect to the principle of non-discrimination. Once the candidates are chosen for the interview, OLAF HR invites the candidates and organizes the interview. OLAF HR also assists the interview panel by preparing a file for the panel, which contains the CVs of all invited candidates. This file, however, does not contain additional information collected during the selection process, such as degree certificates, certificates of professional experience, or test results.

**2.5.2. Final decision on selection by OLAF.** Upon completion of all interviews, and a formal decision regarding the selection of the candidate by his/her future supervisor (typically a head of unit in OLAF), OLAF HR transmits to DG ADMIN a note requesting recruitment. As noted in Section 2.4.8, DG ADMIN already has a copy of the reserve list, as well as the curriculum vitae of each candidate on the reserve list.

At this stage, OLAF does not yet formally notify the candidate that he/she will be recruited because recruitment is subject to a final check carried out by DG ADMIN. However, once a head of unit has interviewed all candidates, he/she normally informs the chosen candidate of her/his intention to recruit her/him and asks for her/his final agreement.

**2.5.3. Finalization of recruitment by DG ADMIN.** The subsequent steps in recruitment are taken by DG ADMIN. The scope of the Notification does not cover the activities carried out by DG ADMIN, but to aid a better understanding of the process, these activities are nevertheless briefly described below.

The tasks of DG ADMIN are twofold:

First, they include a final assessment whether the candidate meets the eligibility criteria, and therefore, whether he/she can be recruited. This assessment is based on, among others, (i) review of originals of supporting documents submitted by the candidate (e.g. diplomas), (ii) review of criminal records submitted by the candidate, and (iii) review of the certificate of suitability issued as a result of the pre-employment medical check-up.

The documents under (i) and (ii) above are provided to DG ADMIN directly by the candidates themselves at the time when they come to Brussels to the interview with the interested OLAF head of unit. As for the document noted under (iii) above, candidates are asked to participate in a medical exam organized by the Medical Service of the Commission, to verify whether they are physically fit for service. For practical purposes, as most candidates must travel to Brussels for the interview, the medical exam is scheduled on the same day as the interview.

Second, DG ADMIN also determines the candidates' entitlements and benefits according to the Conditions of Employment. This includes determination at which grade and at which step the employee will be recruited if this was not already specified in the call for applications. DG ADMIN also determines the amount of expatriate allowance, household allowance, children allowance, and educational allowance which the employee will be entitled to. During this procedure DG ADMIN requests additional documents and information from the candidates. This includes, among others, information about dependents to determine whether they are entitled to household and children allowances. The candidate is asked, among others, whether he/she is married or has children. DG ADMIN also processes sensitive data, including health-related data obtained as a result of the pre-employment medical check-up, and information regarding disability, if any.

It is DG ADMIN, rather than OLAF, which formally notifies the candidate that he or she will finally be recruited through a formal offer of employment. The contract of employment, however, will be signed between OLAF and the candidate, normally on the day when he/she takes up function.

## **2.6. Security clearance**

**2.6.1. OLAF's security clearance policy.** It is OLAF policy that all OLAF staff undergoes a security clearance procedure irrespective of whether staff members have access to highly classified information. The OLAF staff security clearance policy is established and formally communicated to staff in the OLAF Manual since the version of August 2003.

Some OLAF staff on occasion needs to have access to highly classified documents for which a security clearance procedure is mandatory pursuant to legislation applicable to access to classified information. Most of the work carried out by OLAF, however, does not require access to highly classified information.

To respond to the EDPS enquiry why, under such circumstances, it established a broad security clearance policy applicable to all staff members, OLAF explained that it wants to build confidence in its partners and also in public opinion that its staff is reliable and beyond any suspicion of wrongdoing. OLAF believes that vetted staff is a good indication that individuals concerned have not committed any recorded offence or crime and are not prone to bribery and fraud.

The standard requested level for security clearance at OLAF is "SECRET UE". However, a few EU TOP SECRET clearances were also requested for reasons of access to premises of certain Member States national authorities where this level of clearance was required to get access to those premises.

**2.6.2. The security clearance procedure and data collected during the procedure.** When requested information about what the security clearance consists of, in particular, what data are gathered about the candidates, OLAF referred the EDPS to the Commission's Directorate Security's "Security Notice 06" entitled "Security Clearances and Authorizations". This document is available to Commission staff on the Commission's intranet but it is not published on the Commission's internet site.

Accordingly, the security clearance is carried out by national security services and coordinated by the Directorate Security of the Commission. During the clearance procedure, OLAF staff members are required to complete a detailed questionnaire. The form may vary by Member State, but usually requires a very detailed set of personal data, including financial information, foreign travel, political activities, mental health issues, extramarital affairs, information about drug addiction or alcohol abuse, criminal history and so forth. The form completed is returned in a sealed envelope to the Security Directorate, and subsequently to the national security authority.

The national authority then reviews the completed questionnaire and carries out a thorough background check, which may include, for example, an interview with the applicant or others, and checks of criminal and counterintelligence records. There are usually checks to ensure that the applicant has no serious criminal record, is not a member of an extremist organization (e.g. one opposed to democracy) and has no problems such as debt or illegal drug abuse that could make him or her susceptible to being corrupted or blackmailed.

If clearance is withheld by the national security authority, the reasons why it was withheld are not communicated to the Security Directorate and the applicant may have recourse to national procedures for redress.



**2.6.3. Notice to candidates about the security clearance procedure.** OLAF informs candidates about the requirement to undergo a security clearance procedure in the call for applications. However, no information is given as to the procedure and the data collected until staff members are actually requested to undergo the procedure. In addition, in the call no information is provided to the applicants about the consequences of an eventual failure to obtain the clearance or refusing to complete the questionnaire. Neither is reference made to the Notice of the Directorate Security.

**2.6.4. Negative clearances and unreturned questionnaires.** According to the Notice of the Directorate Security, if a clearance is withheld, the applicant cannot occupy a post for which access to certain classified information is required.

In OLAF's history to date, no one received a negative clearance. On the other hand, not all staff members who were requested to complete their questionnaires have done so. Until now OLAF did not apply any sanctions to those staff members who refused to undergo the procedure. As of March 2007, statistics reported 140 vetted OLAF staff members, approximately 50 ongoing procedures and over 120 national security forms that were not returned to the Directorate Security by OLAF staff despite being requested to undergo the procedure.

## **2.7. Access rights**

**2.7.1. Access to applications.** OLAF confirmed that candidates can always access their own applications. If they submit any new information, substantiated by documentation, it will also be added to their file, and if this requires a rectification, it will be made immediately. The head of OLAF HR is responsible for such decisions. There are no specific rules relating to the procedure.

**2.7.2. Access to information relating to the security clearance procedure.** The Notice of the Directorate Security confirms that applicants have full access to their files regarding the security clearance procedure. This access, however, does not include access to the documents and information held by the national security authorities, which is governed by access rights under national laws and is not within the scope of this Notification.

**2.7.3. Access to test results and other internal documents.** As for results of the written or oral tests organized during the selection process and for other documents processed during the selection and recruitment processes, OLAF explained that it aims to follow the practices of EPSO in these matters. In principle, access is provided with the exception of confidential internal working documents, for example, the internal working documents of the selection committee.

When specifically asked by the EDPS, OLAF explained that it does not provide access to the evaluation sheets drawn up by the selection committees with respect to the written and oral exams. In this respect, it emphasised that it follows the practice of EPSO and relevant Court decisions.

**2.8. Information provided to data subjects.** When the candidate consults his/her EPSO profile, he/she will find a "Statement on personal data protection within the framework of selection procedures" in the mailbox together with the acknowledgement of receipt. This document identifies the controller, specifies the purpose of the processing, describes the categories of data and data subjects concerned, designates the legal basis for the processing,

recipients, conservation period, and informs the candidate about the rights of access and rectification, and right of recourse to the EDPS at any time.

As far as recipients are concerned, the document notes that the recipients of data are "mainly" the selection committees and OLAF managers. When asked by the EDPS, OLAF confirmed that in fact, no one other than the selection committees and the OLAF managers receive the documents.

As far as conservation periods are concerned, the document only provides that data will be retained until the expiry of the validity of the reserve list. Further information about data retention, including a ten-year retention period, as discussed in Section 2.9 below, is not mentioned in the data protection notice. This inconsistency will be addressed in Section 3.5 below discussing conservation of data and under Section 3.8 discussing provision of information to the data subject.

**2.9. Conservation period.** OLAF retains recruitment-related data for ten years as of the "conclusion of the selection procedure". The EDPS requested OLAF to explain the reasons why it needs to keep all recruitment-related data for ten years, what the deadlines are for submitting any appeal against recruitment decisions and if there are any mandatory rules for conservation of documents and data that OLAF believes would justify holding the data of unsuccessful candidates for ten years. OLAF explained that it follows the same procedures as EPSO as to retention period, in accordance with the advice of DG ADMIN. Thus, OLAF aims to conform to Commission practice in this regard. OLAF also confirmed that the deadlines for appeal are specified in Articles 90 and 91 of the Staff Regulations.

A ten year period applies with respect to documents relating to (i) unsuccessful candidates who were never placed on the reserve lists, (ii) to candidates on the reserve lists that never got selected for a position, and (iii) to successful candidates who were recruited from the reserve lists. OLAF further clarified that the conclusion of the selection procedure is the moment at which the selection committee draws up the list of successful candidates and finalizes its report.

No data are stored for historical, statistical or scientific purposes.

**2.10. Recipients and data transfers.** At the end of the selection procedure, DG ADMIN receives the list (in paper form) of successful candidates together with their CVs, to allow DG ADMIN to carry out, on OLAF's behalf, the recruitment procedure at the time when a candidate is actually chosen for a particular vacancy. They also receive a final report of the selection procedure by the selection committee. This report summarizes the main phases of the selection procedure, and provides statistics on the number of candidates participating in each phase. No personal data is included in the report. No documents are transmitted electronically. OLAF has no information whether DG ADMIN transfers data further. The practices of DG ADMIN do not form part of this Notification

During the prior checking procedure, EDPS asked OLAF who has access to the EPSO database containing the applications. The EDPS also specifically asked whether anyone outside OLAF HR, for example, anyone within EPSO or DG ADMIN have access to the database. OLAF confirmed that it is not in a position to respond to the question as to who has access to the EPSO database. The practices of EPSO do not form part of this Notification.

No one outside OLAF HR, DG ADMIN, and OLAF heads of units wishing to fill in vacancies have access to the reserve lists created by OLAF.

OLAF does not transfer any of the data processed other than to DG ADMIN. No data are transmitted to EPSO from OLAF.

**2.11. Security.** The Notification contains a detailed Section on security measures that does not specifically relate to recruitment procedures. In fact, it is identical to the security measures described in other OLAF notifications, in particular, in the notification regarding the OLAF IT Infrastructure (OLAF reference: DPO-97). With respect to the paper recruitment files, OLAF specifically noted, as an additional fact, that the files are stored and archived in a secured filing cabinet, accessible by authorized personnel only. The Notification did not cover the security measures taken by DG ADMIN and EPSO.

### **3. Legal aspects**

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

**Scope of Notification.** The scope of the notified processing operation, and thus, also the scope of this Opinion, is limited to the selection and recruitment of OLAF's temporary agents referred to in Article 2(a) of the Conditions of Employment. Although EPSO and DG ADMIN each plays a certain role in some phases of the selection and recruitment processes, as briefly outlined above, the scope of the Notification, and consequently, also the scope of the EDPS review, is limited to the activities of OLAF.

**Applicability of the Regulation.** The Regulation applies to the "processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system" and to the processing "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).

For the reasons described below, all elements that trigger the application of the Regulation are present here:

First, the notified selection and recruitment process entails the collection and further processing of personal data as defined under Article 2(a) of the Regulation.

Second, the personal data collected undergo "automatic processing" operations as well as manual data processing operations (Article 3(2) of the Regulation). Indeed, some of the personal information is collected electronically directly from applicants through the EPSO interface. Other information is submitted in hard-copies or created by the selection board manually on the basis of the candidates' performance.

Third, the processing is carried out by OLAF, a Community Institution/body, in the framework of Community law (Article 3(1) of the Regulation).

Based on the foregoing, the Regulation is applicable.

**Grounds for prior checking.** Article 27(1) of the Regulation subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27(2) contains a list of processing operations that are likely to present such risks. This list specifically includes, under paragraph (b), "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct." The notified

processing operation does, in fact, constitute processing of such data, and therefore, requires prior checking by the EDPS.

**Notification and due date for the EDPS Opinion.** The Notification was received on 12 January 2007. According to Article 27(4) of the Regulation this Opinion must be delivered within a period of two months. The procedure was suspended for a total of 154 days. Further, the deadline was also extended by two months in accordance with Article 27(4) of the Regulation. Thus, the Opinion must be rendered no later than 14 November 2007 (13 March 2007 + suspensions for 20 days + 87 days + 23 days + month of August 2007 + 24 days for comments + two months extension).

**Ex-post prior checking.** The processing operations started before the EDPS had been notified. The EDPS issued his Opinion on 14 November 2007.

Since prior checking is designed to address situations that are likely to present risks, the opinion of the EDPS should normally be requested and given prior to the start of the processing operation. However, taking into account that a large number of processing operations were already in place before the EDPS was established and became fully functional in the year 2004, these prior checking operations, by definition, have to be carried out ex-post.

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

**General comments.** Article 5(a) of the Regulation provides that personal data may be processed if "processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties ... or other legal instrument adopted on the basis thereof".

The first issue under Article 5(a) is to determine whether there is a specific legal basis for the processing: a Treaty provision or another legal instrument adopted on the basis of the Treaties. The second issue is to determine whether the processing operation is necessary for the performance of a task carried out in the public interest. To address this second issue in the present case, Recital 27 of the Regulation needs to be taken into account, which specifies that "processing of personal data for performance of tasks carried out in the public interest includes the processing necessary for the management and functioning of those institutions and bodies". Thus, the second issue in the present case is whether the processing is necessary and proportionate for the management and functioning of OLAF.

With regard to the first issue, the selection and recruitment procedure for temporary agents is based on the provisions of Article 8 of the Conditions of Employment, Article 6 of Commission Decision 1999/352/EC establishing OLAF and the Decision of the Director General of OLAF on a new policy for the engagement and use of OLAF's temporary agents ("**Recruitment Policy**") as described in Section 2.2 above. Thus, specific legal instruments adopted on the basis of the Treaties allow and provide the detailed conditions for the notified processing operations. With regard to the second issue, the EDPS is also satisfied and does not challenge that the notified processing operation is necessary and proportionate for the management and functioning of OLAF.

To conclude, the EDPS considers that the notified processing operations are lawful, so long as the recommendations made in this Opinion are followed.

This is with one notable exception regarding OLAF's policy requiring a security clearance for all staff.

**Lawfulness of OLAF's policy regarding security clearance of its staff.** OLAF's security clearance policy has been described in Section 2.6 above. The EDPS has serious concerns about the lawfulness of OLAF's policy to require security clearance for its staff other than those whose security clearance is justified by their need to have access to highly classified information as will be described below.

First, based on the information presented to the EDPS, it appears that there is no specific legal basis for requiring security clearance of those staff members who do not need to have access to highly classified documents: There is no Treaty provision or other legal instrument adopted on the basis of the Treaties, which would require or authorize such a policy.

Indeed, in the EU context, security clearance is a requirement only for allowing access to Euratom Classified Information (ECI) and to EU Classified Information (EUCI) above the level EURA-RESTRICTED and RESTREINT UE under Euratom Regulation Nr. 3 of 31 July 1958 and the Commission Security Provisions (Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001) respectively. OLAF's security clearance policy is not justified based on these provisions as it extends also to staff members who do not need to access the type of classified information for which clearance would be required.

Second, the EDPS also has serious doubts whether an all-around security clearance policy is necessary for the management and functioning of OLAF: that is, whether the processing is proportionate to the goals that OLAF aims to achieve by the security clearance of its staff. As described in Section 2.6.1 above, OLAF's stated goal is to build confidence in its partners and also in public opinion that its staff is reliable and beyond any suspicion of wrongdoing.

The EDPS emphasises that security clearance, by its very nature, is an exceptional procedure for cases where exceptional risks require exceptional intrusion to the private life of individuals. Some Member States, usually by an act of their democratically elected Parliaments, require security clearance procedures of certain military staff, certain counter-intelligence staff, and holders of certain other sensitive, high-level government jobs. At the national level, it is not at all customary to require security clearance for entire government office personnel or for low-level and middle-level government jobs, especially outside the national security and counter-intelligence area. Neither it is customary to enact such requirements in a low-level administrative decision. At the EU level, security clearance is customarily requested for personnel in need of access to certain highly classified information, and the policy is enacted in a Regulation and a Commission Decision, as described above.

The EDPS does not question that ensuring the integrity of OLAF staff is a very important goal in the fight against fraud. However, OLAF should carefully assess what other methods are available to it to achieve the same goals and should find solutions that are less intrusive into the private life of OLAF staff.

Apart from data protection and privacy concerns, the EDPS also points out that requiring security clearance for all staff may also be counter-productive for at least two reasons:

First, the security clearance policy is against the logic of a "need to know policy", which is an important element of OLAF's security policy: The more staff members within OLAF have a valid clearance, the more widely highly classified information will be able to circulate within OLAF. Data protection rules and confidentiality rules certainly limit the recipients of the information. Nevertheless, the fact itself that a very large number of OLAF staff has a valid

security clearance increases the risk of leakages and other misuses of highly classified information.

Second, currently, and in the foreseeable future, the security clearance procedure is not carried out by the Community Institutions, but by national authorities in Member States. This means that national authorities in Member States will hold a very sensitive file on each OLAF staff member. Considering that pursuant to Article 11 of the Staff Regulations, "an official shall carry out his duties and conduct himself solely with the interests of the Communities in mind" and that "he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution", the availability of highly sensitive information in the hands of national governments also gives rise to concerns regarding the independence of OLAF staff members. This situation of dependence should be best avoided.

Based on the foregoing, the EDPS recommends that OLAF revises its security clearance policy so as to require clearance only from staff members who need to access highly classified information based on applicable Community legislation.

### **3.3. Processing of special categories of data**

**Applicable provisions of the Regulation.** Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited unless an exception can be found in Articles 10(2) -(4) of the Regulation.

The prohibition is lifted among others where the data subject has given his/her express consent to the processing (Article 10(2)(a)) and where the processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards (Article 10(2)(b) of the Regulation).

Further, Article 10(5) provides that processing of personal data relating to offences, criminal convictions or security measures may be carried out only if authorized by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or, if necessary, by the European Data Protection Supervisor, subject to appropriate safeguards.

**Special categories of data collected during the selection and recruitment procedures.** During the selection and recruitment procedures certain "special categories of data" are systematically collected, including (i) health related data concerning disability (to provide accommodation at tests), and (ii) criminal records.

In addition, during the security clearance procedure, a broad range of special categories of data may be collected by the competent national authorities about the staff member and his/her family. These may include, among others, political opinions, religious or philosophical beliefs (e.g. affiliations with extremist political groups), and data concerning health or sex life (alcohol and drug problems, extramarital affairs, etc).

Finally, the applicant's curriculum vitae as well as other documents submitted or information provided during the oral interview phases may reveal additional sensitive data. These may

include, among others, trade union membership or membership or activities in religious or political groups that may reveal political opinions, religious or philosophical beliefs.

**Disability.** When an applicant reveals information on his/her disability, it should be considered as if he/she was giving his/her consent to the processing of that data, thus the condition of Article 10(2)(a) is met. In addition, this consent is given in order to enable the employer to comply with its specific obligations in the field of employment law to provide for extra time and to provide specific IT equipment for the test (Article 10(2)(b) of the Regulation).

**Criminal records.** Article 12(2) of the Conditions of Employment provides that a member of the temporary staff may be engaged only on condition that: "(a) he is a national of one of the Member States ... and enjoys his full rights as a citizen" and that "(c) he produces the appropriate character references as to his suitability for the performance of his duties". This legal instrument provides the basis to process data related to criminal convictions, pursuant to Article 10(5) of the Regulation.

**Additional sensitive data.** When an applicant reveals additional sensitive information, without this being specifically requested or the volunteering of information being encouraged by OLAF, it should be considered that the candidate gave his/her consent to the processing of that data, thus the condition of Article 10(2)(a) is met. With that said, it is important to emphasize that a valid consent can only be given by the candidate if OLAF does not put pressure on the candidate to provide such optional, additional information. In any event, the data quality principle, in particular, that no excessive or irrelevant information should be collected, must also be taken into account.

**Photographs.** The EDPS calls the attention of OLAF to the risks that the photographs attached to the on-line curriculum vitae of applicants may indicate sensitive data such as racial or ethnic origin, religious beliefs (e.g. veil), and possibly even disability (e.g. blindness, facial disfiguration). Therefore, the EDPS recommends that inclusion of photographs on the curriculum vitae (i) is either omitted altogether, or (ii) remains optional, and this is made clear to the candidates at the time when they are provided with the opportunity to attach their photographs to their on-line application.

**Security clearance.** The security clearance procedure includes systematic collection of a range of "special categories of data", as noted above. The issues related to security clearance are discussed in Section 3.2 above.

### 3.4. Data Quality

**Adequacy, relevance, and proportionality.** According to 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."

Apart from the exceptions noted below, based on the information provided to him, the EDPS does not challenge the adequacy, relevance and proportionality of the data routinely and systematically collected during the selection and recruitment procedures. With that said, the EDPS emphasizes that compliance with these three principles always requires an analysis "in concreto", on a case by case basis.

The two exceptions are the following:

- **Security clearance:** As discussed in Section 3.2 above, the EDPS has serious concerns that requesting security clearance for practically all OLAF staff is against the proportionality principle. The security clearance process mandated by OLAF for its staff includes an extraordinary intrusion into the private lives of a very large number of persons. This could only be considered proportionate if there were a clear and strong need which would counterbalance this excessive intrusion into staff members' private life. This need has not been demonstrated.
- **Photographs and other optional information:** The provision of photographs in the on-line application form should remain optional, as noted in Section 3.3, immediately above. The EDPS notes that certain other data entries, for example, for mobile or home telephone numbers, should also be clearly indicated as being optional (for example, candidates could choose whether they provide a mobile telephone number, a work telephone number, or a home telephone number).

**Fairness and lawfulness.** Article 4(1)(a) of the Regulation requires that data must be processed fairly and lawfully. The issue of lawfulness was analysed above (see Section 3.2). The issue of fairness is closely related to what information is provided to data subjects (see Section 3.8 below).

**Accuracy.** According to Article (4)(1)(d) of the Regulation, personal data must be “accurate and, where necessary, kept up to date”, and “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.”

Based on the information provided to him, the EDPS does not challenge the accuracy of the data routinely and systematically collected during the selection and recruitment procedures. The EDPS notes, however, as discussed in Section 3.7 below, that procedures allowing exercise of rights of rectification should be improved.

### 3.5. Conservation of data

The general principle in the Regulation is that personal data may 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 (Article (4)(1)(e) of the Regulation).

The EDPS recommends that OLAF independently evaluates the necessity of keeping all data for a period of ten years. During this assessment it must bear in mind that conservation periods should closely match the periods during which access to the personal data may be necessary for clearly specified purposes. OLAF should, in particular, assess how long it needs to keep the data in case of an eventual challenge to a selection or recruitment decision, or for the possibility of an eventual audit.

In addition, even if certain documents may need to be kept to facilitate future audits, others, which are not indispensable for purposes of the audit, should be deleted earlier. In this respect, the EDPS specifically calls the attention of OLAF to a recently added last paragraph



to Article 49 of the Implementing Rules of the Financial Regulation<sup>1</sup>, which provides the following: "Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of 16 Regulation (EC) No 45/2001 shall apply." This recent amendment was adopted following the recommendations provided in paragraphs 33-47 of the "Opinion of the EDPS of 12 December 2006 on proposals for amending the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules (COM(2006) 213 final and SEC(2006) 866 final), OJ C 94, 28.04.2007, p. 12".

The EDPS is especially concerned about keeping highly sensitive data, such as those regarding requested accommodations for disability for longer than absolutely necessary for purposes of selection and recruitment. These data should be deleted after the shortest possible timeframes following the lapse of deadlines open to challenge the selection or recruitment procedure (or following the date when any follow-up procedure on that challenge has been completed).

The EDPS also encourages a flexible approach to accommodate candidates who wish to withdraw their applications and wish to request that their data be deleted earlier than the general timelines provided by OLAF. For example, if a candidate on a reserve list withdraws his/her application and specifically requests OLAF to delete his/her name, CV, and supporting documents from its database (both in paper and in electronic form), OLAF should accommodate such a request, unless exceptional circumstances (e.g. an ongoing litigation) warrant otherwise.

### **3.6. Recipients and data transfers**

The EDPS welcomes the fact that the scope of the foreseen recipients is limited to EPSO, DG ADMIN, the selection board, OLAF's HR Unit, and OLAF heads of units looking to fill a vacancy, in the manner described in Section 2 above.

In particular, the EDPS considers that the data transfers to DG ADMIN and EPSO are in compliance with Article 7(1) of the Regulation, which provides that personal data may be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient. The EDPS, however, emphasises that pursuant to Article 7(3), the recipients shall process the personal data they received from OLAF only for the purposes for which they were transmitted.

The EDPS additionally calls OLAF's attention to the requirement that if unforeseen data transfers are requested by any third party, OLAF should allow transfers subject to (i) either the unambiguous (with respect to sensitive data, explicit) and informed consent of the data subject, or (ii) as otherwise specifically allowed by the Regulation. In case of doubt, the EDPS recommends that the head of OLAF HR consults OLAF's DPO before he makes the requested data transfer.

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<sup>1</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23/12/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

### 3.7. Right of access and rectification

**Right of access.** According to Article 13(c) of the Regulation, the data subjects have the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing the processing and any available information as to their source. Article 20 provides for certain restrictions to this right including the case when such a restriction constitutes a necessary measure to safeguard the protection of the data subject or of the rights and freedoms of others.

The Notification confirms that OLAF provides access to certain of their personal data to candidates or staff members, but does not establish any specific arrangements in this respect. OLAF also restricts access to certain documents that it deems to be necessary to safeguard the confidentiality of the deliberations and decision-making of the selection board. In particular, OLAF does not allow access to the evaluation sheets drawn up by the selection board.

The EDPS does not challenge the principle that certain restrictions on access may be necessary pursuant to Article 20(1)(c) of the Regulation to protect "the data subject or the rights and freedoms of others". These restrictions, however, as the EDPS pointed out in previous prior checking procedures regarding EPSO's practices<sup>2</sup>, should not be interpreted to arbitrarily limit access of data subjects to their test results. The acceptable restrictions, in principle, are of two kinds:

- restrictions on giving access to candidates of data of competing candidates; and
- restrictions on giving access to candidates of certain confidential internal documents of the selection board, where such access would jeopardize the confidentiality of the deliberations and decision-making of the selection board.

In line with the previous opinions of the EDPS on EPSO selection procedures and the follow-up of these opinions with EPSO, the EDPS recommends that OLAF should ensure that it does not restrict access more broadly than it is justified on grounds of safeguarding the confidentiality of the deliberations and decision-making of the selection board or safeguarding the rights of other candidates.

During this reconsideration OLAF must bear in mind that (i) the objective of any confidentiality requirement is to ensure that the selection board is able to maintain its impartiality and independence and is not under undue influence from OLAF, candidates, or others, and (ii) any restriction on access rights must not exceed what is absolutely necessary to achieve this purported objective.

Therefore, the EDPS recommends that OLAF should provide access, upon request, to the evaluation sheets drawn up by the selection boards. The impartiality and independence of the selection board, which are the reasons behind the requirement of confidentiality, would be unlikely to be prejudiced if the selection board disclosed to candidates, in a transparent manner, the criteria based on which it evaluated candidates and the actual detailed marks or comments a particular candidate received with respect to each criterion.

Finally, the EDPS recommends that OLAF sets safeguards to ensure that any access requests will be dealt with in a timely fashion and without constraints. This may include, for example, setting a reasonable timeline for OLAF in which to schedule an access visit, or provide copies of documents, and an obligation on OLAF HR to consult the OLAF DPO should they wish to

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<sup>2</sup> See EDPS opinions on recruitment of permanent staff, temporary staff, and contract staff for EU Institutions, agencies and bodies (cases 2004-236, 2005-365 and 2005-366).

limit access to any data requested. When establishing these safeguards, it must also be ensured that access must be allowed for any or no reason at all. Data subjects also cannot be required to specify the purpose of the request. The procedures and the notice to data subjects should also include the type of test results that candidates will be able to access.

**Right of rectification.** Article 14 of the Regulation provides the data subject with a right to rectify inaccurate or incomplete data. As discussed with respect to the right of access, the EDPS recommends that OLAF sets safeguards to ensure that any rectification requests will be dealt with in a timely fashion and without constraints.

### **3.8. Information to the data subject**

Articles 11 and 12 of the Regulation require that certain information be given to data subjects in order to ensure the transparency of the processing of personal data. Article 11 is applicable to data obtained from the data subject, whereas Article 12 is applicable to cases where the data have not been obtained from the data subject. On the facts of the case, Article 11 is applicable, among others, to data contained in the candidate's on-line application form, whereas Article 12 applies, among others, to the marking and evaluation data contained in documents prepared by the selection board, OLAF HR and DG ADMIN.

**Timing and format of the data protection notice.** Article 11 provides that when the data are obtained from the data subject, the information must be given at the time of collection. For the case when the data have not been obtained from the data subject, Article 12 provides that the information must be given when the data are first recorded or disclosed, unless the data subject already has it.

The EDPS welcomes OLAF's good practice of providing the required data protection notice on-line, on the EPSO website, on the occasion of, and before the time candidates have started to complete their on-line applications. This allows data subjects to start the application process with the reassurance that their data will be processed fairly and lawfully. The EDPS also welcomes OLAF's practice of providing detailed information about the selection procedure in the call for applications.

As there is no separate data protection notice with respect to the recruitment phase of the procedure, the EDPS recommends that OLAF should consider whether notice regarding the recruitment could be integrated to this initial on-line notice. Alternatively, a separate data protection notice should be provided at the time when candidates are invited for an interview during the recruitment process.

**Content of the data protection notice.** Articles 11 and 12 of the Regulation provide a detailed list of information that needs to be provided to data subjects. In essence, the controller must inform data subjects about who processes what data and for what purposes. The information must also specify the origins and recipients of data, must specify whether replies are obligatory or voluntary and must alert the data subjects to the existence of the right of access and rectification. Further information, including the legal basis of processing, the time limits for storing the data, and the right of recourse to the EDPS must also be provided if necessary to guarantee fair processing. This may depend on the circumstances of the case.

Finally, both Articles 11 and 12 allow certain exceptions from the notification requirement.

Considering that (i) none of the Article 11 or 12 exceptions apply to the facts of the case, and that (ii) all items listed in Articles 11 and 12 (including the legal basis of processing, time-

limits for storing the data, and the right of recourse to the EDPS) are necessary to guarantee fair processing, the EDPS is of the opinion that all items listed under Articles 11 and 12 respectively must be provided in the data protection notice.

*Additional recommendations.* The data protection notice includes a brief mention of much of the information required in Articles 11 & 12 of the Regulation. As a copy of the data protection notice was made available to the EDPS, he can now provide specific recommendations: improvements that can be implemented at the practical level. The EDPS will discuss below only those items listed under Articles 11 and 12 where he suggests further changes.

**Consequences of failure to reply.** Article 11 requires that data subjects should be informed whether replies to questions are obligatory or voluntary as well as what will be the possible consequences of failure to reply. In this respect, the EDPS recommends that any optional data entries should be clearly marked as such. This applies, in particular, to the photographs which some candidates may decide to include in their applications. Certain other data entries, for example, for telephone numbers, should also be clearly indicated as being optional as noted in Section 3.4 above. In any event, attention should be paid so that entries on the on-line application form and in the sample resume format would be clearly drafted in such a way to minimize collection of irrelevant data.

**Information about access rights.** Data subjects must also be informed about the existence of the right of access to, and the right to rectify the data concerning them. This right is addressed in the data protection notice only with respect to the application data entered on-line. The notice, therefore, needs to be complemented. The EDPS also recommends that information should go beyond merely mentioning the existence of this right, and should explain (i) what data, in particular, what test results, candidates can have access to, and (ii) how, in practice, data subjects can exercise such rights.

**Information about the legal basis.** The EDPS recommends that, in addition to the Conditions of Employment and the Commission Decision 1999/352/EC establishing OLAF, references should also be made to the OLAF Recruitment Policy when designating the legal basis of the processing.

**Recipients.** The recipients are indicated as being "mainly" the selection committees and OLAF managers. It should be clarified that applications and tests will be viewed only by the selection committee and OLAF HR acting as a secretary to the Committee, but that OLAF managers will have access to the reserve lists as well as CV data of successful candidates. It should also be clarified that DG ADMIN will also have access to data of successful candidates in the recruitment phase of the procedure.

**Information about the time-limits for storing the data.** The EDPS also points out to the inconsistency of the information provided in the Notification, which, in principle, describes a ten-year conservation period, and the notice to the data subjects, which appears to state that personal data of candidates are only kept until the expiry of the reserve list. OLAF must make sure that the notice provided to data subjects fairly reflects the actual practices followed by OLAF.

**Information about OLAF's security clearance policy.** Currently information regarding OLAF's security clearance policy is only briefly mentioned in the call for applications. In this respect, the EDPS recommends that more detailed and more specific information be provided to candidates. This may include, among others, providing candidates with the Commission's

Directorate Security's "Security Notice 06" entitled "Security Clearances and Authorizations", which is currently available only to Commission staff on the Commission's intranet.

**Information about selection decision by OLAF.** As discussed in Section 2.5.2, OLAF does not formally notify candidates of its final decision about selecting them for a vacancy, pending further steps in recruitment carried out by DG ADMIN. The EDPS recommends that this practice would be improved by providing a clear and formal notice to the candidate, immediately upon OLAF's decision to go ahead with recruitment, specifying that recruitment is conditional upon only (i) results of the medical tests, and (ii) verification by DG ADMIN of supporting documentation already provided by the candidate, including diplomas, criminal records, etc. This would reassure candidates that additional information that they provide to DG ADMIN in connection with establishing their rights and benefits will not interfere with the decision whether or not to recruit them. For example, candidates would not be concerned that the hiring decision may be prejudiced because they have a same-sex partner or that they need to provide for a large family or a disabled family member.

### **3.9. Security measures**

According to Article 22 of the Regulation, the controller must implement the 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. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

The EDPS notes that much of the processing related to selection and recruitment is, in fact, taking place using the Commission's regular IT infrastructure (e.g. e-mail system), rather than using OLAF's specific IT infrastructure used to handling its own cases, which has been horizontally reviewed by the EDPS in a separate procedure. This prior checking Opinion is not the place to review the Commission's entire IT infrastructure. With that said, the EDPS has not encountered any such facts which would suggest doubts about the adequacy of the security measures of the Commission for data processed in the framework of OLAF's selection and recruitment procedures.

In any event, the EDPS calls attention to the fact that OLAF should ensure, with the assistance of EPSO, as necessary, that applicant data in the on-line EPSO database are not accessible by and disclosed to anyone other than those specified in this Opinion.

### **Conclusion**

There is no reason to believe that there is a breach of the provisions of the Regulation provided that the considerations noted in Sections 3.2 through 3.9 are fully taken into account. The recommendations of the EDPS include, most importantly, the following:

- Proportionality of OLAF's policy regarding staff security clearance:
  - OLAF should revise its security clearance policy so as to require clearance only of staff members who need to access highly classified information based on applicable Community legislation.

- Optional data entries:
  - OLAF should clearly indicate on the on-line application form the provision of what information is optional.
- Conservation of the data:
  - OLAF should reconsider the periods contemplated to ensure that data are kept no longer than necessary for the purposes initially contemplated. Special attention should be paid to highly sensitive data such as information regarding disability.
- Rights of access:
  - OLAF should reconsider the restrictions it has put in place in order to preserve the confidentiality of the deliberations of the selection panel in view of reconciling this interest with the candidates' right of access.
- Information to data subjects:
  - More specific and accurate information needs to be provided to data subjects regarding some items listed under Articles 11 and 12 of the Regulation.

Done at Brussels, on 14 November 2007

Peter HUSTINX  
European Data Protection Supervisor