

Opinion on the notification for prior checking from the Data Protection Officer of the European Commission regarding the "activities of the European Administrative School and EPSO in the context of the certification procedure"

Brussels, 7 March 2008 (2006-396)

1. Procedure

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "activities of the European Administrative School and EPSO in the context of the certification procedure" was given by the Data Protection Officer (DPO) of the European Commission, by e-mail on 29 August 2006.

The note of 13 April 2005 addressed to the EDPS states that EPSO decided to use the services of the Commission's DPO in order to ensure consistent interpretation of the Regulation and also owing to a lack of resources. That is why the Commission's DPO has given notification on EPSO's behalf.

Questions were put to the European Commission's DPO by e-mail on 28 September 2006. The reply was sent to the EDPS on 12 October 2006. Other questions were put in an e-mail dated 17 November 2006, to which answers were given on 20 November 2006. The e-mails sent to the EDPS never reached him, which is why the replies were sent on 30 August and 23 March 2007. On 11 September 2007, the EDPS's draft opinion was sent to the DPO for his comments. The response was received on 23 October 2007. An additional question was sent by e-mail on 5 November 2007. The reply was given on 5 March 2008.

2. The facts

The European Communities Personnel Selection Office (EPSO) was established by Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002¹. The way in which EPSO is organised and operates was laid down in Decision 2002/621/EC of 25 July 2002, adopted by the Secretaries-General of those institutions. In accordance with Article 2(2) of the Staff Regulations of officials, the signatory institutions of the Decision establishing the Office entrusted it with exercising powers in the recruitment of officials. EPSO may also assist Community institutions, bodies, offices and agencies with recruitment of other servants.

The European Administrative School (EAS) was legally established by the Decision of 26 January 2005, on the basis of an agreement concluded between all the participating

¹ The EDPS was established at the end of 2003 and is not one of the signatory institutions; the EDPS sits as an observer on the Management Board and will be a full member after the basic Decision has been revised.

institutions and bodies, namely the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the European Ombudsman ². The way in which it is organised and operates was laid down in Decision 2005/119/EC ³.

The abovementioned institutions entrusted the EAS with implementing certain vocational training activities geared to the development of human resources and career development. The task of the EAS is therefore to promote interinstitutional cooperation on training and to disseminate common values and harmonised professional practice.

Pursuant to the Decision of the Secretaries-General, its initial brief is to plan, organise and evaluate training activities in the following areas:

- management courses for members of staff who are called upon, or may be called upon, to perform management functions;
- induction courses for new members of staff;
- compulsory training as provided for in Article 45a of the Staff Regulations as part of the process for transferring from the AST function group to the AD function group ("certification").

For administrative purposes, the School is attached to the European Personnel Selection Office (EPSO) for an initial period of three years, after which the situation will be reconsidered.

2.1. The certification procedure

The certification procedure is the measure provided for in Article 45a of the new Staff Regulations which entered into force on 1 May 2004, the aim of which is to make it possible to select officials in the AST function group (category B* during the transitional period provided for in Annex XIII to the Staff Regulations) of at least grade 5 who qualify for appointment to a post in the AD function group (category A* during the transitional period), on condition that they have been selected to take part in a compulsory training programme and have proved (on the basis of examinations) that they have successfully completed that training programme.

The certification procedure replaces the old system of internal competitions for changing from category B* to A* and is organised annually. The training programme set up by the European Administration School has been operational since 2006.

The legal bases applicable to certification are, firstly, Article 45a of the Staff Regulations and, secondly, the general provisions for implementing the certification procedure adopted by each institution on the basis of Article 45a(5). Thus, each institution has adopted its own general implementing provisions for the certification procedure.

² Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 26 January 2005 establishing the European Administrative School.

³ Decision No 2005/119/EC of the Secretaries-General of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and the Representative of the European Ombudsman of 26 January 2005 on the organisation and running of the European Administrative School. The EDPS was established at the end of 2003 and is not one of the signatory institutions; the EDPS sits as an observer on the EPSO Management Board, which is also the EAS Management Board, and will be a full member after the basic Decision has been revised.

2.1.1. The stages in the procedure

Generally speaking and irrespective of the practical differences between the general implementing provisions, the certification procedure consists of the following five stages:

- publication of a call for applications from officials interested in the certification procedure;
- drawing up by the AA (Appointing Authority) of each institution, after it has assessed the admissibility of the applications, of the list of officials authorised to take part in the compulsory training programme;
- participation in the training programme provided by the European Administrative School, terminating in an assessment;
- organisation of written and oral examinations and the drawing up by the European Personnel Selection Office (EPSO) of the list of officials who have passed the examinations;
- publication by the AA of the list of officials who have passed the examinations, thereby demonstrating that they have successfully taken part in the training programme.

It is clear from the above that the EAS is involved only in stage 3 and, to a lesser extent, stage 4. Because the EAS is attached to EPSO for administrative purposes, EPSO is also involved in these two stages, principally in stage 4.

2.1.2. The training course

The training course provided for as part of the certification process is approved annually in advance by the EPSO/EAS Management Board (made up of a representative from each institution) and is mainly divided into two blocks covering all the compulsory modules which each official must take.

The training programme is covered by a services supply contract and training will be provided mainly by outside instructors. The contractor is regarded by EPSO as a processor within the meaning of Regulation (EC) No 45/2001.

Officials must follow the training course in a language other than their mother tongue/main official language, the choice being limited to French or English. The same condition will apply to the assessment process.

So that the information necessary for organising training modules can be collected, each official on the list published by the AA will be asked to fill in a questionnaire in the EPSO (NAC) database – also used for competitions. The encoded information will be used only for administering the course and for monitoring any absences and will be extracted into Excel files for those purposes.

Information relating to each official concerned which is contained in the record of absences from the training course as drawn up by the EAS may be forwarded to his institution of origin on request because he continues to be answerable to that institution during the training period.

2.1.3. Assessment examinations

Candidates will be registered for the course examinations exclusively via the EPSO (NAC) database. The candidate creates an EPSO profile with a view to filling in an electronic

registration form similar to the one used for competitions ⁴. All communications between EPSO and the candidates (relating only to examinations which are part of the certification procedure) will take place via the EPSO profile.

There will be no single examination period at the end of the training course, both for organisational reasons and so that participants will not have to spend too much time revising. Examinations will therefore take place both during and at the end of the course at different times. The officials concerned will have to pass all the examinations.

Examinations will be assessed directly by the Examination Board appointed for the purpose (cf. point 2.1.4 below). Each examination will be awarded an overall assessment mark on a "successful/unsuccessful" basis. To preserve the independence of the Examination Board and ensure that it works efficiently without any outside pressure, EPSO will fully apply the principle of secrecy of Selection Board proceedings as provided for in Article 6 of Annex III to the Staff Regulations. Officials' anonymity will be preserved in written examinations.

The officials concerned will have to pass all the examinations. Officials who fail one or more examination will be able to retake them at a later date without having to complete the relevant training modules again. At the end of the exercise, the AAs of the institutions will receive the list of those who have passed all the examinations and details of examinations failed by those who have not passed all of them (this is necessary since officials will have the right to retake only those examinations which they have failed without being subject to a further selection procedure and without being obliged to complete the relevant training course again). All candidates will also be informed of their results.

Candidates who have failed some or all of the examinations may also receive on request – by analogy with the practice followed in competitions and established by the relevant case law – copies of their written papers (two examinations). Moreover, candidates who have failed will also be able to obtain on request for all examinations (including the two examinations for which there are no written papers, i.e. observation and oral), a copy of the assessment form signed by the Chairman of the Examination Board. After the EDPS put a question regarding the difference in access rights between successful candidates (no access rights) and unsuccessful candidates (access rights), EPSO announced that the right of access would be extended to all candidates in certification examinations, thus putting an end to the distinction.

2.1.4. Membership of the Examination Board

The Examination Board will be made up of officials representing the Community institutions. Assessors (internal or external) who are experts in the specific areas concerned may if necessary assist the Examination Board in its work.

2.2. Processing of personal data in the context of the certification procedure

The aim of the data processing procedure which is being submitted to the EDPS for consideration is to organise training modules and related examinations so that the AA of the institutions concerned can publish the list of officials who have successfully passed the

⁴ For practical reasons however, data for the first exercise relating to certification in 2006 will be encoded directly by EPSO on the basis of information sent by candidates to the EAS. This does not in any way prejudice candidates' subsequent right to have access to and check their data. Starting with the next annual certification exercise, candidates will be asked to create their own EPSO profiles and encode their data themselves.

examinations, thereby demonstrating that they have successfully taken part in the training programme and may therefore be appointed to a post in the AD function group.

In running the training course, the EAS will be assisted by both internal instructors (officials of the institutions) and external instructors, provided by a contractor.

As regards the organisation of the examinations, EPSO and the EAS will be assisted by an Examination Board (registration and administration of candidates for the examinations will take place via the EPSO (NAC) database which is also used for competitions for the recruitment of permanent staff and of which the European Data Protection Supervisor has already been notified by EPSO ⁵)

2.2.1. Personal data protection notice

This notice states that the personal data communicated are processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000. It is sent individually to the officials concerned on the basis of the list finalised by the AAs.

As regards the training modules organised by the EAS, the confidentiality notice informing candidates of the conditions relating to processing of their personal data is available permanently on the EAS website and can therefore be consulted by the officials concerned at any time.

Before registering on-line for the certification examinations, candidates will systematically familiarise themselves with the confidentiality notice informing them of the conditions for processing their personal data. The notice appears on the first page of the on-line application form, permanently on the EPSO site and in every candidate's on-line EPSO profile, and may therefore be consulted by candidates at any time.

Pursuant to Articles 11 and 12 of the abovementioned Regulation, EPSO and the EAS supply candidates with the following preliminary information:

- the identity of the controller⁶,
- the purposes of the processing operation,
- the data concerned,
- the nature of the data processed:
 - personal data by which an official may be identified;
 - information provided by officials to facilitate the practical organisation of training and examinations;
 - presence at the training course and results of the relevant examinations;
- the legal bases,
- recipients of the data processed:
 - where candidates have passed the examinations demonstrating that they have successfully completed the compulsory training, each Community institution (and, where appropriate, each agency) will receive the necessary information relating to its own officials only so that the formal list can be published by each AA and the AA can, where appropriate, appoint the officials concerned to AD category posts;

⁵ See Opinion 2004-236 of 24 February 2006 on the EDPS website.

⁶ Because the EAS is attached to EPSO for administrative purposes for the first three years after its creation, the Director of EPSO is the sole controller.

- solely at the request of the institution of origin concerned, the record of an official's absences (if any) from the training course may be transferred because the official continues to be answerable to his institution;
- the lawfulness of the processing operation,
- the date on which processing commences: the date on which the EAS receives candidates' completed questionnaires and, in the case of EPSO, the date on which each candidate enters his details in the NAC database (use of the EPSO profile),
- the period for which data is stored:
 - 2 years in the case of officials who have successfully completed the training and passed the examinations and 5 years in the case of officials who have not passed all of the examinations (this period is necessary because of the possibility of retaking the tests without having to complete the training course again);
 - during the first year of storage, data may also be used for statistical purposes;
- rights of access and rectification (excluding results), known as checking.

2.2.2. Nature of the personal data collected and processed and grounds for the processing operation

In order to organise training and assessment in the context of the certification procedure, it is necessary to collect and process the following personal data for the reasons set out below:

1. surname, first name, date of birth, personal number (*data for identifying the candidate in the context of the certification procedure – training and examinations*);
2. sex, citizenship, institution of origin, place of employment, administrative address, work telephone number, work fax number, work e-mail address, second telephone number for use in an emergency, mother tongue/main official language, language chosen for the training course (only FR or EN), working time (part-time or full-time).

The sole aim of collecting and processing the personal data is to enable the EAS and EPSO successfully to complete the task entrusted to them in the certification procedure: organising training and the assessment proving that the officials concerned have successfully completed the training.

Right of access and rectification

Candidates have access to all the data they have supplied both in the questionnaire (paper version) and their EPSO profile. Candidates will also have access to the results issued by the Examination Board for the various examinations. However, the right of rectification does not apply in any way to those results. All officials will also be able to have access on request to the record of their absences (if any).

The officials concerned can also indicate any changes to their personal data by mail, except for changes to results. If necessary, on written request together with a copy of an identity document, they can obtain a copy of their personal data as recorded by the EAS and/or EPSO.

From the time they enter data on line in their EPSO profiles, all candidates will also be able at any time to check the data entered and make alterations on line, other than to their name and date of birth; if they wish to alter these, they must send a substantiated request to EPSO at: epso-PDP@ec.europa.eu. It is not possible to change the language chosen for the training and examinations.

Candidates may also have recourse at any time to the European Data Protection Supervisor (<http://www.edps.europa.eu>).

The allocation of roles between EPSO, the EAS, the members of the Examination Board and the instructors as regards the processing of personal data

The EAS is responsible for defining and organising the training course for the certification process. The EAS deals with all the administrative and logistical aspects of organising the training course. This includes processing all the candidates' files and organising and delivering all the required training modules.

EPSO, assisted by the EAS, is responsible for organising the assessment examinations which are part of the training course. This includes responsibility for defining the content of the examinations and for their practical organisation.

The Examination Board is mainly responsible for assessing each official in relation to the various examinations required and for taking the necessary decisions on the matter. In the context of the administrative aspects of personal data processing, EPSO considers the Examination Board to be a "*processor*".

Instructors from the institutions and external instructors are also regarded as "*processors*", to the extent that they will acquaint themselves with candidates' files when teaching the training modules for which they are responsible.

In order to inform members of the Examination Board responsible for assessment and any assessors, as well as instructors, of the rules intended to guarantee the security and confidentiality of candidates' personal data and to ensure that they are in a position to abide by them, at their first meeting each member/assessor/instructor is given a note setting out their obligations; once they have signed this document EPSO keeps the original and gives them a copy (cf. Annex I).

Instructors, whether external or internal, have access only to that information on participants in the training programme which is necessary to ensure that the programme is properly managed. Under no circumstances will instructors have access to information on examinations or the work of the Examination Board.

Drawing up the list of officials who have passed the examinations

EPSO will draw up the list of officials from each institution who have passed the assessment examinations and consequently successfully taken part in the training course. The relevant part of the list will be forwarded to each institution for formal publication by the respective AAs (see below).

Publication of the list of officials who have passed the examinations demonstrating that they have successfully taken part in the training programme

This last stage is mentioned only for the record since it is the sole responsibility of the AA, including the personal data processing aspects.

2.3. Other information from the notification

Manual and/or automatic processing

Two computer applications are used here, only for assessments/examinations: NAC ONLINE (a web-based application) allowing candidates to register on line and used as a channel of communication with candidates (via the EPSO profile) and NAC, which is already used by EPSO for running competitions (based on Oracle tools with a database at the Commission's Data Centre).

The EDPS has already been informed about both these tools in connection with data processing relating to the recruitment of permanent staff for the European institutions. The automatic processing of data by means of these tools in the context of the certification procedure is no different from processing in the context of recruitment of permanent staff.

So that the information necessary for organising training modules can be collected, each candidate official on the list published by the AAs will be asked to fill in a questionnaire (on paper only) and send it back to the EAS. With regard to registration for the training course, the EAS does not use any specific computer tool; the information is simply manually encoded in Excel solely for the purposes of administering the courses and keeping track of any absences.

Data Storage

The questionnaires (self-assessment of candidates' profiles) are stored in paper form, in password-protected Excel files and on CD-ROM stored in a secure cupboard. Data relating to examinations/assessments are stored electronically (on the Commission's Data Centre server or on CD-ROM for archiving in a secure area accessible only by magnetic card).

Blocking and erasure

Any request that EPSO or EAS receives for data to be blocked or erased is answered within 15 working days as from the date on which the relevant department receives the letter; however, it may send a duly justified holding reply on the conditions provided for under point 4 of the Code of Good Administrative Behaviour.

The time-limit for blocking or erasing data is a maximum of 10 working days for computerised data, with the period starting only as from the date the competent authority takes the final decision on the request to block or erase data (an administrative decision taken by EPSO or, in the event of dispute, a decision taken by the European Data Protection Supervisor or the competent court). The same maximum time-limit is applied for data in paper form.

Security measures

Security measures are taken.

3. Legal aspects

3.1. Prior checking

The notification received on 29 August 2006 with regard to the handling of data in the context of the certification procedure 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 body in the exercise of activities which fall within the scope of Community law (Article 3(1)).

Processing in the context of the certification procedure is partly by automatic means, within the meaning of Article 3(2) of Regulation (EC) No 45/2001. Nevertheless, the data encoded by the official in the questionnaire in the EPSO-NAC application have to appear in a file, notably when the information in the questionnaire is encoded solely for administrative purposes and is therefore extracted into Excel files, but also, and finally, when the Commission has finished scanning all the personal files, which include the complete files of each person certified. Article 3(2) is therefore applicable in this case.

This processing operation therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes processing operations likely to present specific risks to the rights and freedoms of data subjects subject to prior checking by the EDPS. Article 27(2) contains a list of processing operations that are likely to present such risks. Article 27(2)(b) describes as processing operations likely to present such risks *"processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct"*.

The certification procedure for officials of the European institutions is an operation for the processing of personal data covered by Article 27(2)(b), and as such is subject to prior checking by the EDPS.

In principle, checks by the EDPS should be performed before the processing operation is implemented. It is regrettable that this processing operation was not submitted for prior checking before being implemented, since EPSO did not begin certification procedures until 2006. In these circumstances, checking must of necessity be ex post. This does not alter the fact that the recommendations issued by the EDPS should be implemented.

The formal notification was received by e-mail on 29 August 2006. There were several requests for additional information. The EDPS will therefore deliver its opinion no later than 12 March 2008 (30 October plus 306 + 42 + the 121- day suspension+ the month of August).

3.2. Lawfulness of the processing operation

The lawfulness of the processing operation 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 for staff of the European institutions which involves collecting and processing personal data relating to officials who are candidates for the administrator grade falls within the legitimate exercise of official authority vested in the institutions. The processing operation is therefore lawful.

The legal basis for the data processing operation relating to certification is to be found in:

- the Staff Regulations of officials of the European Communities (Council Regulation (EEC, Euratom, ECSC) No 259/68, as last amended by Council Regulation (EC, Euratom) No 23/2005, and in particular Articles 45a of the Staff Regulations and 7(2)(c) of Annex III thereto;
- Decision No 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office;
- Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 26 January 2005 establishing the European Administrative School;
- Decision No 2005/119/EC of the Secretaries-General of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and the Representative of the European Ombudsman of 26 January 2005 on the organisation and running of the European Administrative School;
- the general provisions for implementing the certification procedure adopted by each institution on the basis of Article 45a(5) of the Staff Regulations (available from the administration of each institution concerned).

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

3.3. The controller and the processor

Pursuant to Article 2(d) of the Regulation, the controller is "the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data.". The controller is responsible for ensuring that the obligations laid down in the Regulation are met (information to be given to the data subject, ensuring the rights of the data subject, choice of processor, notification of the data protection officer, etc.). The processor is the "natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller" (Article 2(e)).

Under Regulation (EC) No 45/2001, EPSO must be considered to be the main controller in this case, in the context of this certification procedure. In fact, because the EAS is attached to EPSO for administrative purposes for the first three years after its creation, the EAS can only be considered to be joint controller.

The Examination Board is mainly responsible for assessing each official in relation to the various examinations required and for taking the necessary decisions on the matter. In the context of the administrative aspects of personal data processing, EPSO considers the examination board to be a "*processor*".

Training is given by external and internal instructors (members of the Community institutions but not of EAS). They are regarded as processors who process personal data on behalf of EPSO, to the extent that they will acquaint themselves with candidates' files when teaching the training modules for which they are responsible.

Finally, the Commission's Data Centre in Luxembourg, which is responsible for storing EPSO data, is also considered to be a processor.

In any event, the role of the various processors, as such, is to help EPSO organise the certification procedure by providing training for candidates. Article 2(e) of the Regulation is therefore applicable.

3.4. Data quality

Article 4 of Regulation (EC) No 45/2001 sets out a number of obligations regarding the quality of personal data. Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c)). The processed data described at the beginning of this opinion should be regarded as fulfilling these conditions in relation to the processing operation, and this includes data processed in the event of the absence of a candidate from one of the training classes, since the candidate is obliged simply to inform the EAS by mail, fax or telephone. Any data forwarded to the institution of origin (*solely at the request of the institution of origin concerned, transfer of the record of the official's absences (if any) from the training course because the official continues to be answerable to his institution*) will include only surname, first name and day(s) of absence. All other data, particularly relating to the actual nature of the absence, are the sole responsibility of each institution and are not processed by the EAS. In this connection, all candidates have been reminded that if illness prevents their attendance at the course they must follow their institution's standard procedures, such as submitting a medical certificate (to the person/department responsible in their institution) and informing their superiors. If they are ill, they are simply asked to let the EAS know if possible (optional) how long the absence is likely to last, for obvious reasons relating to the practical organisation of the course.

The data required are administrative in nature and are necessary to ensure that the various stages of the certification procedure run smoothly. The EDPS considers that Article 4(1)(c) of Regulation (EC) No 45/2001 has been complied with in this respect.

The data must also be processed "*fairly and lawfully*" (Article 4(1)(a) of Regulation (EC) No 45/2001). The lawfulness of the processing has already been discussed (see point 3.2 above). As regards fairness, this relates to the information given to the data subjects. See point 3.10 below on this point.

Under Article 4(1)(d) of the Regulation, "*data must be accurate and, where necessary, kept up to date*". The description of the system gives reasonable grounds for believing that data will be accurate and kept up to date, since the controller is obliged to check their accuracy and to update them. The data subject has the right to access and the right to rectify data, so that the file can be as comprehensive as possible. This also makes it possible to ensure the quality of data. See point 3.9 below on the dual rights of access and rectification.

3.5. Data retention

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*".

For the record, data are kept for 2 years in the case of officials who have successfully completed the training and passed the examinations and 5 years in the case of officials who have not passed all of the examinations (this period is necessary because of the possibility of

retaking the tests without having to complete the training course again). During the first year of storage, data may also be used for statistical purposes.

Since all the candidates for the certification procedure are officials, some elements of their application file are kept in their personal file for an indefinite period after they have completed the procedure. Data are thus stored for a long, but unspecified period. Paragraph 7 of Article 26 of the Staff Regulations states that: "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."

In a similar case⁷, the EDPS considered that it was reasonable to set the storage period at 10 years, starting from the moment when the staff member leaves or after the last pension payment. This would apply to those parts of application files stored in personal files.

This long-term data storage in personal files will have to be accompanied by appropriate guarantees. 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, data stored over a long period must be covered by adequate measures for transmission and storage, like any other personal data. EPSO should make that known to the institutions to which it sends the files.

The EDPS welcomes the fact that successful candidates' data will be kept for a period of only two years and partially successfully candidates' data for a period of 5 years.

As regards the data of candidates who have failed outright, EPSO points out in the first place that each institution adopts its own general provisions for implementing the certification procedure on the basis of Article 45(5) of the Staff Regulations. Consequently, there may be differences between the institutions in terms of the precise arrangements for allowing candidates to retake the examinations. At this stage, since it is the first time the certification exercise has taken place, no decision has as yet been taken on the specific situation of any candidates who fail all the examinations. As matters now stand, it is therefore impossible to indicate how long the data will be stored, apart from the general remark that the data of those candidates should be stored at least until clear rules applicable to cases of this type have been adopted. The EDPS recommends that the institutions decide on a time-limit for storing the data of candidates who have failed outright.

According to the notification, there is a possibility of the data being stored for statistical, historical or scientific purposes during the first year. The EDPS recommends that EPSO render the data anonymous when using them for statistical purposes.

In connection with the long-term storage resulting from the retention of data that EPSO transfers to the institutions recruiting, the EDPS recommends that EPSO remind the institutions that such data, like all personal data, must be covered by adequate measures for transmission and storage. The EDPS also considers it advisable for EPSO to render anonymous any data used during the first year for statistical purposes. Finally, the EDPS recommends that the institutions decide on a time-limit for storing the data of candidates who have failed outright.

3.6. Change of purpose/Compatible use

⁷ Case 2004/274 – Staff appraisal – European Central Bank.

Data are entered into or retrieved from the staff databases. The processing operation under review involves no general change to the stated purpose of staff databases, of which selection is only one aspect. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) are fulfilled.

3.7. Transfer of data

The processing operation should also be scrutinised 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*".

The data are to be circulated to various people within EPSO and the EAS. Personal data may be transferred within an institution only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient. In this instance, data transfer to all of these recipients is in line with the legitimate performance of the tasks of the various parties.

Such data are obviously transferred to Community institutions, bodies, offices and agencies when officials pass the certification procedure examinations. Data are also transferred to the body managing the internal network and the EPSO computer system storage and hosting environment (DG DIGIT). The following people are also involved in this transfer of data to the institutions: the internal instructors (members of the institutions), members of the Examination Board and any internal assessors.

That means that personal data can be transferred within an institution only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient. Moreover, Article 7(3) of Regulation (EC) No 45/2001 provides that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". There must be an explicit guarantee that all those receiving and processing data in the context of the certification procedure for permanent staff of the institutions cannot use them for other purposes. The EDPS recommends that in this particular instance data be divulged only to departments in charge of recruitment procedures.

Moreover, although that is not mentioned, the Civil Service Tribunal⁸ may receive copies of items from such files at its request in the event of proceedings before it. The Ombudsman and the EDPS may also receive such data. These transfers are still legitimate since they remain necessary for the legitimate performance of the tasks of the recipient and of the intermediary.

Finally, when data are transferred to people outside the institutions, the following are involved: the various processors, namely the external instructors and the external assessors who sit on the Examination Board. Such processing needs to be examined in the light of Article 8 ("*Transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC*"). In this case, such transfers are covered by Article 8(a), since "*the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority*" in so far as the processor is acting on behalf of EPSO.

3.8. Processing including an identifying number

⁸ The European Union Civil Service Tribunal, established by the Council Decision of 2 November 2004 (2004/752/EC, Euratom) is competent in place of the Court of First Instance. The Court of First Instance is the appeal body.

In the case in point EPSO uses the personal number of officials who qualify to take part in the certification procedure. This use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the task of the personal data controller. Such use may, however, have significant consequences. That is why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the EDPS.

In this instance, the use of the personal number may result in interconnection of data processed in different contexts. This is not the place in which to determine the conditions under which EPSO may process a personal number, but it is appropriate here to emphasise the attention that must be paid to this aspect of the Regulation. In the case in point, EPSO's use of the personal number is reasonable as it is used for the purposes of identifying the person and keeping track of the file, so as to make processing easier. The EDPS considers that this number may be used in the context of certification procedures.

3.9. Right of access and 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, data subjects have access to their application files so that they can complete all the sections required for the procedure to take its course.

Article 14 of Regulation (EC) No 45/2001 allows the data subject the right of rectification. In the same way that the data subject has a right of access, he or she may also directly change personal data or have them changed, if necessary.

In its introductory note on certification EPSO sets out all the access rights, including the right to access all data provided by the candidates themselves, both in the questionnaire (paper version) and in their EPSO profile, and the right to access the results of the various examinations as issued by the Examination Board. All officials will also be able to have access on request to the record of their absences (if any). It will also be possible for candidates who have failed some or all of the examinations to obtain copies of their written papers (two examinations). Candidates who have failed will also be able to obtain on request for all examinations a copy of the assessment form as signed by the Chairman of the Examination Board. The Examination Board's work is subject to the principle of confidentiality; the EDPS welcomes the fact that this principle is correctly applied since candidates have access to their results and, in the event of failure, to their assessment forms.

After the EDPS put a question regarding the difference in access rights between successful candidates (no access rights) and unsuccessful candidates (access rights), EPSO announced that the right of access would be extended to all candidates in certification examinations, thus putting an end to the distinction; the EDPS welcomes this.

The right of rectification, on the other hand, can obviously apply only to factual data. Marks allocated cannot under any circumstances be open to a right of rectification by the data subject.

The officials concerned can also indicate any changes to their personal data by mail, except for changes to results. Moreover, from the time they enter data on line in their EPSO profiles, all candidates will also be able at any time to check the data entered and make alterations on line, other than to their name and date of birth; if they wish to alter these they must send a

substantiated request to EPSO. The language chosen for training and tests may not be changed.

The EDPS welcomes the fact that candidates have access rights, in particular to the results issued by the Examination Board, but nevertheless recommends that this essential information be mentioned in the confidentiality notices published on both the EPSO and EAS sites (see 3.10 below).

3.10. Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. 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. Inasmuch as the applicant for the competition personally fills in the data required of him or her, the data subject provides the data himself or herself.

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 applies in this case, since the information is collected from the different participants in the process (members of the Examination Board, instructors, processor responsible for self-assessment, other institutions).

For the record, data subjects are informed in this instance via the notice on the protection of personal data. That notice appears on the first page of the on-line registration form, on the website as a permanent feature and on each candidate's EPSO profile on line; candidates are thus in a position to consult it at any time. The confidentiality notice also appears on the EAS site as a permanent feature so that the officials concerned can consult it at any time. It is sent individually to the officials concerned on the basis of the list finalised by the AAs.

Moreover, the essential information on the rights of the data subject to access the results issued by the Examination Board (see 3.9 above) is missing from the notice on the protection of personal data. The EDPS recommends that it be inserted in the notice.

As for the information provided in the confidentiality notice as a whole, it does not specify whether replies to the questions are obligatory or voluntary or the possible consequences of failure to reply (Article 11(1)(d)). In order to ensure that the information provided when officials register for the certification procedure fully meets the conditions in Articles 11 and 12 of Regulation (EC) No 45/2001, the EDPS recommends including the information referred to in Article 11(1)(d).

3.11. Processing of personal data on behalf of controllers

Article 23 of the Regulation stipulates that, where a processing operation is carried out on its behalf, the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The carrying out of a processing operation by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor must act only on instructions from the controller and that the obligations with regard to confidentiality and security are also incumbent on the processor.

For the record, processors carrying out processing operations on behalf of EPSO are external instructors, external assessors sitting on the Examination Board and, finally, the Commission's Data Centre in Luxembourg, which is responsible for storing EPSO data.

External instructors and assessors have been sent a note on confidentiality informing them of the need to comply with the provisions of Regulation (EC) No 45/2001 on the protection of personal data. The note has to be dated, signed and returned by each external instructor and assessor.

The internal network and the EPSO computer system storage and hosting environment are covered by a service contract between the controller and the processor which transposes Article 23, together with Articles 21 and 22, of Regulation (EC) No 45/2001. DG DIGIT, as a Directorate-General of the Commission, is also directly subject to Regulation (EC) No 45/2001.

In this instance, the service contracts concluded between EPSO and both the processors in charge of training and the processors responsible for storing EPSO data comply in full with Article 23 of Regulation (EC) No 45/2001.

3.12. Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on the security of processing, the controller is to 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 European Data Protection Supervisor considers that the full set of security measures (see above) and the other organisational and technical measures taken to ensure maximum processing security are such that they can be regarded as adequate within the meaning of Article 22 of Regulation (EC) No 45/2001.

Conclusion

The proposed processing operation does not appear to infringe the provisions of Regulation (EC) No 45/2001, subject to the comments made above. Specifically, that means that EPSO must:

- remind institutions recruiting (in connection with the long-term storage resulting from the retention of data transferred by EPSO to those institutions) that such data, like all personal data, must be subject to appropriate transmission and storage measures;
- decide on a time-limit for storing the data of candidates who have failed outright;
- render anonymous the data used during the first year for statistical purposes;
- divulge data only to departments in charge of recruitment procedures;
- include in the notice on protection of personal data the right to access the results issued by the Examination Board;

- include in the notice on the protection of personal data the information referred to in Article 11(1)(d) of Regulation EC No 45/2001 so that the information provided when officials register for the certification procedure fully meets the conditions in Articles 11 and 12 of Regulation (EC) No 45/2001.

Done at Brussels, 7 March 2008
(signed)

Peter HUSTINX
European Data Protection Supervisor