



Opinion on a notification for Prior Checking received from the Data Protection Officer of European Commission on the Selection, recruitment and management of grantholders at the Joint Research Centre (JRC)

Brussels, 9 October 2008 (Case 2008-138)

1. Proceedings

On 4 March 2008, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer at the European Commission a notification for prior checking relating to the processing of personal data in the selection, recruitment and management procedures of grantholders at the Joint Research Centre (JRC).

Also included in the documentation were:

- Description of the treatment of personal data for recruitment and management of working contracts for scientific fellows (for Sevilla site);
- Privacy statement;
- Rules governing the recruitment of grantholders under national law contracts within the framework of the research programmes managed by the JRC adopted on 18 February 2008 with the accompanying note by Director General of JRC;
- Vademecum for Grantholders with annexes (for Ispra site);
- References to national labour law in Member States concerned (Spain, Belgium, Germany, Nederland, Italy).

The EDPS requested further information on 09 April 2008. This was provided on 25 April 2008. Supplementary information was requested on 08 May 2008 and the answer provided on 11 July 2008. The draft Opinion was sent to the European Commission for comments on 15 July 2008 and these were not received before the adoption of the Opinion on 9 October 2008.

2. The facts

The purpose of the processing is to manage administratively the different stages of selection, recruitment and management of grantholders of categories 20, 30 and 40 through calls for interest published on the JRC's Institutes internet by the Human resources Unit (HRU) Ispra or the Institute Management Support Unit (for other JRC sites, namely Petten, Karlsruhe, Sevilla, Geel, Brussels).

The Joint Research Centre (JRC) offers grants for doctoral researchers (cat. 20), post-doctoral al researchers (cat.30) and senior scientists (cat. 40).

The grantholders are contracted by the JRC Institutes located at different sites (IPTS - Sevilla, IES, IHCP, IPSC - Ispra, IRMM - Geel, IE - Petten, ITU - Karlsruhe and the administrative services in Brussels) on the basis of the new internal rules introduced in 2008 in the JRC and in respect of the applicable national labour law of the country of employment.

The launching of the procedure for recruitment of grantholders is initiated by a call published on the JRC corporate website.

During the selection phase, candidates make a request for a grant by filling in an application form. Applications for open calls for grantholders are collected through dedicated functional email boxes, one per Institute/Directorate.

In the application form, the following data are requested:

For Ispra site (IES/IPSC/IHCP) and Petten site (IE):

From all candidates (categories 20, 30 and 40):

- surname, usual forename, other forename, maiden name,
- address/permanent address, telephone number at home and at work, mobile phone number, e-mail address,
- country and place of birth, date of birth, citizenship at birth, present citizenship (or citizenships if dual),
- gender,
- marital status (to be chosen from: single, married, widowed, divorced, separated),
- the information if the applicant or his/her wife/husband receive any children allowance;
- in case of dependants their name, age and degree of relationship,
- the information if the applicant accomplished a military service and if so its start and end dates,
- whether relatives by blood or marriage are employed at the institutions of the EC and if so their name, surname, relationship and post held,
- whether the applicant held any other type of contract with the Commission and if so its start and end dates, type of contract and workplace location.
- university education information (name and location of establishment, years of study, whether the course was completed and qualification obtained, whether the university degree give access to doctoral studies).

From candidates categories 30 and 40 only:

- research experience (start and end dates, full time or part time, duties, name and address of employer, nature of work), for current post also period of notice required and reasons for leaving or wanting to leave,
- language skills,
- other skills,
- availability (preferred starting date and duration).
- a curriculum vitae (CV)

For Sevilla site (IPTS) and Geel site (IRMM):

From all candidates (categories 20, 30 and 40):

- name, surname, maiden name,
- date and place of birth,
- gender,
- marital status (to be chosen from: single, married, widowed, divorced),
- in case of dependants their surname and name, date of birth and degree of relationship,
- nationality,
- address, telephone number and/or fax, e-mail address,

- whether the applicant held any other type of contract with the Commission and if so its start and end dates, type of contract and workplace location,
- whether relatives by blood or marriage are employed at the institutions of the EC and if so their name, surname, relationship and post held,
- university degrees information (name and location of establishment, degree title, field and date of award),
- a detailed curriculum vitae (CV),
- copy of university degrees,
- *Geel site only*: motivation letter, copy of passport or similar document proving age and nationality.

From candidates category 20 only:

- title of the doctoral studies,
- university professor who accepted to follow the doctoral study (name, university, address, e-mail/fax)
- *Sevilla site only*: present or most recent employment (start and end dates, full time or part time, type of employment contract, name and full contact details of employer).

From candidates category 30 only:

- *Sevilla site only*: present or most recent employment (start and end dates, full time or part time, type of employment contract, name and full contact details of employer).

From candidates category 40 only:

- work experience (start and end dates, full time or part time, type of employment contract, name and full contact details of employer),

For Karlsruhe site (ITU) - all candidates:

- name, surname, maiden name,
- date and place of birth,
- nationality,
- family status (open question) and children (yes/no answer),
- gender,
- address, telephone number and/or fax, e-mail address,
- whether the applicant held any other type of contract with the Commission and if so its start and end dates, type of contract and workplace location,
- whether relatives by blood or marriage are employed at the institutions of the EC and if so their name, surname, relationship and post held,
- university degrees information (name and location of establishment, degree title, field and date of award),
- a detailed curriculum vitae (CV),
- copy of university degrees,
- motivation letter,
- *from candidates category 20 only*: university professor who accepted to follow the doctoral study (name, university, address, e-mail/fax)

On the basis of the application documents received, the MSU/HRU checks whether the candidate meets the eligibility criteria according to Commission's rules (nationality, age, academic qualifications, research experience and proposed duration of the research project). The documents are printed and filed. MSU/HRU prepares an individual evaluation sheet of each candidate which indicates whether the administrative eligibility criteria are met.

The list of received candidatures, copy of the application documents and the administrative evaluation sheets are transmitted electronically to the corresponding scientific unit, so that they can assess the candidatures and inform MSU/HRU with an evaluation note whom to invite for interview. The candidates are assessed on the basis of the scientific excellence of their CV's. On the basis of this analysis the candidates may be either chosen directly on the strength of their CV's or called to an interview with a scientific selection committee. The scientific selection committee is composed of the Head of the Management Support Unit of the Institute concerned (chair), one member representing the unit where grantholder would be hosted and one member appointed by the Scientific Committee of the Institute.

The invitation note sent to the preselected candidates requests her/him to return the financial and legal identity form together with copy of passport or identity card and a declaration of the bank confirming the details of the bank account. This is necessary for the reimbursement of the travel costs.

The dossiers of preselected candidates who refuse the invitation are archived in the general archive for the given selection process.

Once conducted the interviews, the selection committee elaborates the selection minutes including a proposal for recruitment that follows an approval procedure by the Director. The MSU/HRU contacts the selected candidates following the priority list set up in the minutes. Candidates who are not selected or not eligible are also informed.

Once the selected candidate accepts the offer, he/she is asked to send the copies of the following documents to MSU/HRU for the preparation of the working contract:

IES (Ispra):

- passport or identity card
- one photograph
- birth certificate
- university diplomas and certificates
- professional experience form
- if applicable marriage certificate and/or birth certificates of children
- legal entity form and financial identification
- certificate of good conduct
- visa (if required)

IPSC and IHCP (Ispra):

- passport or identity card
- one photograph
- birth certificate
- university diplomas and certificates
- professional experience form
- if applicable marriage certificate and/or birth certificates of children
- legal entity form and financial identification
- certificate of good conduct
- extract from the police register
- official declaration concerning military service
- medical tests

IPTS (Sevilla):

- passport or identity card
- two photographs
- university diplomas and certificates
- professional experience

- if applicable marriage certificate and/or birth certificates of children
- legal entity form and financial identification
- national social security card, or if applicable the form requesting for a national Social Security number
- extract from the police register
- proof of residence form
- bank statement confirming the data of the bank account number

IRMM (Geel):

- passport or identity card
- two photographs
- birth certificate
- all diplomas and certificates
- certificate of good conduct
- CV
- certificate of main residence including family composition or single status
- legal entity form and financial identification
- if applicable marriage certificate or divorce or legal separation judgments, or official declaration of partnership recognition
- if applicable birth certificates of children
- if applicable declaration concerning professional income of the spouse/partner and declaration of eventual family allowances

IE (Petten):

- passport or identity card
- one photograph
- birth certificate
- university degree and certificates
- professional experience form
- if applicable marriage certificate and/or birth certificates of children
- proof of residence previous to the deadline of the call of interest to establish place of origin / recruitment
- extract from the police register
- legal entity form and financial identification form
- official declaration concerning military service
- certificate of good conduct

ITU (Karlsruhe):

- passport or identity card
- one photograph
- declaration concerning the personal reliability screening according to Article 12b of the Atomic Energy Act
- extract from the police register
- Request for entrance permission to the German Forschungszentrum fuer Technik und Umwelt GmbH
- if applicable, German national social security card
- if applicable, marriage certificate and/or birth certificates of children
- legal entity form and financial identification form
- only for category 40 grantholders: certificates proving minimum 10 years experience at postdoctoral level, or minimum 16 years research experience at post-university level

The selected candidate must undergo the compulsory medical examinations with a doctor of his/her choice. These are listed in a document sent to the candidates. They include a general and oculist medical visit, electrocardiogram, chest X-ray and complete blood tests as well as urine analysis with sediment examination. These test results must be provided by the grantholder in a

marked "confidential" envelope to the Occupational Health and Safety Unit of Ispra for candidates for the Ispra and Sevilla sites and to the Occupational Health and Safety Unit of Luxembourg for candidates for the Petten, Geel and Karlsruhe sites. On the base of the results the Occupational Health and Safety Units deliver the medical aptitude certificate.

Requests for security check/security clearance are also made. These requests imply that the candidate must provide a recent certificate of good conduct/police record/criminal record from the country/countries of recent/usual residence¹.

Requests for security clearance ("Zuverlässigkeitsüberprüfung") are also required for all persons executing job related tasks at the Karlsruhe site, in consequence also for traineeships. The "Sicherheitsüberprüfung" form (Declaration concerning the personal reliability screening) will be filled in and signed in original by the person concerned for an obligatory security check carried out by the competent German authorities (Ministry of Environment). This form contains information such as the names of person; birth date and place; nationality; personal ID card or passport number; address; name and address of present employer; domicile and stays of more than three months during last five years/ten years. The persons concerned will be requested to give their informed consent to the personal reliability screening and automatic processing and saving of his/her personal data by the Ministry of Environment, state criminal investigation department, state office for the purpose of the protection of the constitution and nuclear plant. The German authorities, after proceeding with the necessary research, will subsequently issue a security clearance as appropriate.

The MSU/HRU prepares a file containing the documents contained in the list thereby creating a grantholder's file. The file manager checks that the file is complete according to the checklist. The file manager must also check the nationality of the grantholder and if non EU citizen must check that there is derogation for nationality and must prepare a visa request. This visa request is transmitted by the grantholder to the competent embassy in his country of origin in order to obtain a visa to the country in which he/she is to perform his/her grant period. At Ispra, the file manager must also request le "codice fiscale" (a fiscal registration number) for all non Italian citizens.

After receiving the medical aptitude and security clearance/check, the file manager prepares the contract and sends it to the Head of Unit of the MSU/HRU for authorisation and signature of the Director or of the Institute Director. The contract is then sent to the grantholder and to the services involved. The rules governing the grantholder scheme of the JRC, a job description and a declaration of taking up of duties to be signed by the grantholder are sent to the grantholder along with his/her contract.

Data are transferred to the following recipients:

- Relevant JRC scientific staff taking part in the selection procedure,
- JRC corporate services (human resources, medical, security),
- National authorities (the national employment office, the national social security office, the national taxation office),
- The company in charge of work related-risks (Sevilla site only)
- The legal consultancy company (in charge of the preparation of monthly payments and contributions to social security).

The following data are transferred to each category of recipient:

IES, IPSC and IHCP (Ispra):

¹ Contradictory information has been repeatedly given on this point, the last information received from the controller being that a "certificate of good conduct" is requested for following categories of staff: Officials, Temporary agents, Contract Agents, Seconded National Experts, Trainees and Grantholders.

- JRC relevant scientific staff: all data present in application form, CV, correspondence with candidate;

- JRC corporate services (human resources, medical, security,):

Human Resources: copy of the contract, proof of residence, if required

Medical Service: the candidates have to send the medical results directly to the Medical Service, the MSU provides the SPL in order to obtain the medical approval

Security Service: Certificate of good conduct/Police record/Criminal record, Birth certificate, copy of ID, application form, CV, presence on the site;

- Welcome Desk (DG ADMIN)

Accommodation form has to be filled with the personal data of the candidates.

IPTS (Sevilla):

- JRC relevant scientific staff: all data present in application form, CV, list of publications;

- JRC corporate services (human resources, medical, security) :

JRC HR ISPRA: copy of application form, passport, working contract, PNS "Fiche personnelle" form with (including personal number, job number, first name(s), middle names, surname(s)/last name(s), title, gender, date of birth, place of birth, marital status, number of children, nationality(ies), language(ies), contract type, category, start date, end date, directorate/unit/sector, JRC supervisor)

Medical service: the staff's first and last name, date and place of birth, nationality, contractual status, duration of working contract, results of medical text of entry into service.

Security service: the staff's first and last name, date and place of birth, nationality, contractual status, duration of working contract, IPTS unit, copy of CV, application form, passport and original police record.

- National authorities (national employment office, national social security office, national taxation office)

National social security office: staff's first and last name, first names of parents, date of birth, nationality, family situation, private address, contractual status, social security number, Personal Identification numbers for foreigners (NIE).

National taxation office: staff's first and last name, date and place of birth, nationality, family situation, private address, contractual status, Personal Identification numbers for foreigners (NIE).

National employment office: copy of signed working contract.

"Marpfe Prevention Service" (carries out the medical examinations before the entry into service and at the end of the contract and the annual medical checks): staff's first and last name, date of birth, nationality, passport number and professional category.

The company in charge of work accidents (Fremarp): in case of accident the grantholder contacts this company directly and gives his/her personal data directly to it. No personal data are transmitted from IPTS HR to Fremarp.

- The legal consultancy company (in charge of the preparation of monthly payments and contributions to social security): staff's first and last name, date of birth, nationality, family situation, education level, private address, contractual status, copy of the working contract, social security number, Personal Identification numbers for foreigners (NIE).

IRMM (Geel):

- JRC relevant scientific staff: all data present in application form, CV; copy of ID, copies of diplomas and evaluation sheet

- JRC corporate services (human resources, medical, security):

Human resources staff: all information

Medical service Luxemburg: application form, CV, copy of ID, access to controlled area required or not, copy of Workplace Exposure Sheet

Medical service IRMM: original Workplace Exposure Sheet

Security service Ispra: application form, CV, copy of ID, certificate of good conduct

Security service IRMM: badge request with personal details

- National authorities and the social secretariat: personal details, salary and allowance paid by IRMM.

IE (Petten):

- JRC relevant scientific staff: all data present in application form, CV

- JRC corporate services (human resources, medical, security):

Occupational Health and Safety Unit – TP 040: results of medical exams

Security service: certificate of good conduct

All the other documents to be sent to Human Resources for processing.

- National authorities (the national employment office, the national social security office, the national taxation office) : only information necessary to carry out their respective roles are sent to the national authorities and external companies such as consultants.

ITU (Karlsruhe):

- ITU staff taking part in the pre-selection or the selection procedure, with obligation to return the documents after decision (except 'gestionnaire' MSU).

-Commission/JRC/ITU corporate services (Medical Service Luxembourg, Human Resources, Nuclear Safety Unit and MSU Medical Service at ITU).

- National authorities (Social security scheme, the national health insurance chosen by the candidate, the ministry for environment for the security clearance acc. § 12b of the AtG (German Atomic Energy Act)).

According to the notification, the information transferred to these recipients is limited to what they need to carry out their respective role. No other details were provided by the controller.

According to the notification form, the data subjects are informed of the processing of their data by a Privacy Statement published on the JRC Internet website as part of the on-line application. The Privacy Statement includes information on the identity of data controller and the data processors, purpose of the processing, categories of data collected and technical means used, legal basis of the processing, right of access and rectification, conservation periods, the persons having access to the files and to whom the data are disclosed, contact information and the possibility to recourse to the EDPS at any time.

In case a grantholder or candidate wish to access his/her factual data or ask for data to be corrected in his file, he/she can contact his MSU/HRU or send an e-mail to the functional mailbox address mentioned under "Contact Information" in the Privacy Statement, explicitly specifying the request. Upon a justified request by the data subject the personal data will be modified within 14 days.

Selection files on paper and electronic media for successful candidates or potential candidates (reserve list) are classified and stored for a period of 5 years. For non-selected candidates, electronically stored and paper files are kept for 1 year after the closure of the selection procedure.

A reduced personal file of recruited grantees will be kept for 5 years after the end of the grant period in order to facilitate any requests from grantees for confirmation or certification of their presence on a JRC site.

Storage for historical, scientific or statistical purposes is not envisaged.

Paper documents are archived in physical files which are stored at the personnel premises and are accessible only for authorised officers of the HRU and MSUs. The electronic files are stored in the ICT infrastructure of the JRC. According to the notification this infrastructure is in line with the Commission security standards.

3. Legal aspects

3.1. Prior checking

This notification relates to the procedure that takes place within JRC, towards selecting scientific grantees and also managing certain data of successful candidates in order to recruit them. The data processing operations start with the collection of application forms and underlying documents. They continue with the assessment and selection of candidates. Taking this into account, this Opinion will assess the extent to which the data processing operations described above carried out by the Commission with the purpose of selecting the best candidates are in line with Regulation (EC) No 45/2001.

Applicability of the Regulation. Regulation (EC) No 45/2001 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*"². For the reasons described below, all elements that trigger the application of the Regulation are present here:

First, the selection of grantees in JRC entails the collection and further processing of *personal data* as defined under Article 2(a) of Regulation (EC) No 45/2001. Indeed, as described in the notification, personal data of individuals who apply for grants are collected and further processed. Second, the personal data collected undergo "*automatic processing*" operations, as defined under Article 2(b) of Regulation (EC) No 45/2001 as well as manual data processing operations. Indeed, some of the personal information is collected and/or further processed electronically. Finally, the processing is carried out by a Community institution, in this case JRC in the framework of Community law (Article 3(1) of the Regulation (EC) No 45/2001).

Grounds for prior checking. Article 27(1) of Regulation (EC) No 45/2001 subjects to prior checking by the EDPS "*processing operations likely to present specific risks to the rights and freedoms of data subject by virtue of their nature, their scope or their purposes*". Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes, under paragraph (b), the processing operations intended to evaluate personal aspects related to the data subject, including his or her ability, efficiency and conduct. The processing operations that occur in the context of selecting grantees in JRC aim at evaluating the capacity of each candidate for a particular position. In order to carry out such evaluation, the data controller will perform various assessment activities such as weighing up whether the individual matches the eligibility and selection criteria, judging his/her performance on the base of the CV and during the interviews, etc. In sum, taking the above into account, the data processing operations fall within Article 27(2)(b) and must therefore be prior checked by the EDPS. In addition, because the selected candidate has to provide a certificate/record which may reveal his/her involvement in criminal activity, the processing is also subject to prior checking under

² See Article 3(2) of Regulation (EC) No 45/2001.

Article 27(2)(a). Furthermore a medical certificate is requested from selected candidates which also qualifies the processing operation for prior checking under Article 27(2)(a) ("*processing of data relating to health*").

Scope of the Opinion. The present prior check only relates to the procedure that takes place at the JRC concerning the selection of grantholders which starts from the launch of a call published on the JRC corporate website, goes through the selection process (managed by JRC Institutes/Directorates), the finalisation of the grantholder file (managed by the MSU/HRU), the preparation of the relevant acts (managed by the MSU/HRU) and ends with the entrance into service of the selected grantholder. Taking this into account, this Opinion will assess the extent to which the data processing operations described above carried out by the Commission with the purpose of selecting the best candidates are in line with Regulation (EC) No 45/2001. This Opinion will not address data processing operations that go beyond this scope. Since the opinion of the EDPS on processing of medical data by the Medical Service at Ispra/Seville (2007-0329) includes the processing of data relating to grantholders, this Opinion will not address issues of data processing by this Service. Nor will the opinion address the Security procedure by the Security Services which is the object of a separate prior check (2007-0380).

Ex-post prior checking. Since prior checking is designed to address situations that are likely to present certain risks, the Opinion of the EDPS should be given prior to the start of the processing operation. In this case, however, the processing operations have already been established. This is not an insurmountable problem provided that all recommendations made by the EDPS are fully taken into account and the processing operations are adjusted accordingly.

Notification and due date for the EDPS Opinion. The Notification was received on 4 March 2008. The two months period within which the EDPS must deliver his Opinion was suspended for 80 days for information and for 87 days for comments since 15/07/08 to the date of the signature to allow the data controller to answer to questions, review the draft Opinion and provide comments. The Opinion must therefore be adopted no later than 18 October 2008.

3.2. Lawfulness of the processing

Personal data may only be processed if legal grounds can be found in Article 5 of Regulation (EC) No 45/2001. As pointed out in the notification, the grounds that justify the processing operation are based on Article 5(a), pursuant to which data may be processed if the processing is "*necessary for performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof*".

In order to determine whether the processing operations comply with Article 5(a) of Regulation (EC) No 45/2001, two elements must be taken into account: first, whether either the Treaty or other legal instruments foresee a public interest task, and second, whether the processing operations carried out by the data controllers are indeed necessary for the performance of that task.

On the basis of the Treaty establishing the European Atomic Energy Community (Title II - Provisions for the encouragement of progress in the field of nuclear energy, Chapter 1 Promotion of Research) and Decision n° 1982/2006/EC of the European Parliament and Council of 18 December 2006 concerning the Seventh Framework Programme of the Community for research, technological development and demonstration activities, rules have been adopted on 21 February 2008 governing the recruitment of grantholders under national law contracts within the framework of the research programmes managed by the JRC. They supplement the administrative rules approved on 17 November 2004 applicable to the recruitment of fellows within the framework of the research programmes managed by the JRC.

The EDPS is satisfied that the data processing operations in which JRC is engaged are necessary to enable JRC to perform the task consisting in selecting the most appropriate grantholders. In reaching these views, the EDPS has also taken into account that Recital 27 of the Regulation makes clear that *"the processing of personal data for the performance of tasks carried out in the public interest by the Community intuitions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies"*. A recruitment procedure is necessary for the management and functioning of JRC. It is necessary for the performance of tasks carried out in the public interest.

The collection of personal data in the declaration concerning the personal reliability screening for the Karlsruhe site ("Sicherheitsüberprüfung" form) is based on a legal obligation the nuclear site is subject to (Article 5(b)) and on the informed consent of the data subject (Article 5(d)) and is therefore also considered as lawful.

3.3. Processing of special categories of data

Article 10.(1) of Regulation 45/2001 establishes that *"the 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"*. The prohibition is lifted if grounds can be found in Articles 10(2) and 10(3) of the Regulation. Among others, such grounds include the consent of the data subject.

The notification does not discuss the collection of data falling under the categories of data referred to in Article 10.1. Taking into account the overall purpose pursued by the Commission when it engages in data processing operations to select grantholders, the EDPS understands that the collection of special categories of data is not the Commission's intention in the context of such selection. Indeed, the gathering of special categories of data does not seem helpful towards selecting candidates insofar as such data may be irrelevant for the purposes of selecting the best suited candidate. However, the EDPS considers that in the context of selecting candidates, applicants may nevertheless reveal information on their disability or other types of special categories of data. If this occurs, it should be considered that candidates have given their consent to the processing of that data, thus, the condition of Article 10(2) (a) would be met. As to the inclusion of a photograph, this may reveal racial or ethnic origin and therefore should also be based on consent of the data subject.

In addition, a medical certificate potentially containing health related data is processed during the recruitment procedure³. Provided that the data are relevant, this processing conducted in the context of staff management (recruitment) in order to enable JRC to comply with its specific obligations arising from the Staff regulations (Article 33) and from the relevant national employment law. In fact, according to Article 10(2)(b) of the Regulation, the prohibition shall not apply where the processing is *"necessary for the purpose 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"*⁴.

Article 10.5 of Regulation (EC) No 45/2001 establishes that *"processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised 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."* Requests for security clearance at the Karlsruhe site ("Zuverlässigkeitsüberprüfung") may lead to the processing of special categories of data to the extent that the refusal of a security clearance may give an indication of the presence of an offence committed by the person concerned. The EDPS considers

³ See EDPS Opinion 2007-0329.

⁴ As to the transfer of data between Medical Service and HRU/MSUs see section 3.6.

that this processing may be authorised on the basis of Article 10(5) of Regulation (EC) 45/2001 since the processing occurs in order to respect a national legal obligation to which the site is subject (Article 12.b. of the German Atomic Act (*Atomgesetz* and *Atomrechtliche Zuverlässigkeitsüberprüfung*)).

According to the Notification, police records/criminal record/certificate of good conduct are collected from selected candidates. As further illustrated below, the EDPS considers that existing legislation justifies that JRC collects such a document.

The legal basis for processing of a recent extract from the police register regarding officials and other servants can be found in Article 28 of the Staff Regulations, which require that a candidate may be recruited as a member of the staff only on condition that he "*enjoys his full rights as a citizen*" and "*he produces the appropriate character references as to his suitability for the performance of his duties*"⁵. This legal instrument provides the basis to process data related to criminal convictions. Whereas these articles are not directly applicable to grantholders but only to officials and other servants, the EDPS considers that given the rationale behind these articles, they should apply *mutatis mutandis* to grantholders.

3.4. Data quality

Adequacy, Relevance and Proportionality. Pursuant to Article 4(1)(c) of Regulation (EC) No 45/2001, personal data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed. This is referred to as the data quality principle.

As mentioned above, in the application form and annexed documents a number of data are requested to all candidates before they are even selected. According to the documents accompanying the notification and the subsequent information provided by the controller, the eligibility of candidates is assessed on the base of the nationality, age and qualification of the candidates as well as the duration of the research project. The final selection is based on the scientific excellence of the candidates. Therefore, information on the education, professional experience and publications, details of the proposed research project, as well as the candidate's identification and address details including nationality and date of birth is fully adequate and relevant for the selection process.

However, the EDPS is concerned about the collection, at this point of the procedure, of certain data requested in the application forms, such as:

- citizenship at birth,
- if dual/multiple citizenship candidates must specify all of them,
- marital status (single, married, widowed, divorced, separated),
- in case of dependants their name, age and degree of relationship,
- the information if the applicant or his/her wife/husband receive any children allowance,
- the information if the applicant accomplished a military service and if so its start and end dates,
- the information whether relatives by blood or marriage are employed at the institutions of the EU and if so their name, surname, relationship and post held.

Indeed, according to the EDPS, these data are excessive and not relevant at the stage of selection of candidates for a grant. In fact, during the selection process only the eligibility criteria (nationality, age, academic qualifications, research experience and proposed duration of the research project) and the scientific excellence of the candidate are examined and assessed. This is without prejudice to the fact that some of these data could be relevant at a further stage for selected candidates such as the names and degree of relationship with dependants, martial status or information on children allowances received. For this reason, the EDPS is of the view that JRC

⁵ See also Articles 12 (2) and 82 (3) of the Conditions of Employment of Other Servants

should not continue collecting data mentioned above on the application form for scientific grants. The vademecum for grantholders and the privacy statement should be modified accordingly.

As to the information whether relatives by blood or marriage are employed at the institutions of the EU and if so their name, surname, relationship and post held, the EDPS considers that the collection of those data is manifestly disproportioned and unnecessary to the finality of avoiding nepotism in the selection process. Firstly, the fact that a family member of the candidate is employed by any EU institution, even totally unrelated with the JRC activities, has no or a very little potential relevance in this context. Secondly, there is no legal obligation for the candidate to prove that he/she doesn't have any potential conflict of interest with the members of the selection committee. It is in fact the obligation of the JRC personnel participating in the selection to guarantee that they do not have any conflict of interest. Thirdly, it can be maintained that in practice, a specific knowledge about relatives of the candidates could influence the members of the selection committee. Such knowledge could distort the selection process and play in favour of a candidate, and in this way increase the nepotism, or cause a discrimination of a candidate compared to other candidates. Therefore the EDPS recommends refraining from collection of those data.

As for data collected at a later stage from selected candidates, the EDPS is concerned about the collection of the following data in some of the JRC sites:

- birth certificate (Ispra, Geel and Petten sites),
- official declaration concerning military service (Ispra and Petten sites),
- bank statement confirming the data of the bank account number (Sevilla site),

In fact, a birth certificate is usually redundant with a passport or an ID card, both documents containing similar data. In case if a birth certificate would contain other data (i.e. fact of being adopted, change of name, profession of parents), a collection of such data would be excessive to the purpose of the processing. As to the official declaration concerning military service, the EDPS does not see the grounds to process such a document in case of the grantholders. Concerning the bank statement confirming the data of the bank account number, it is redundant with the Financial Identification Form. For those reasons, the EDPS is of the view that JRC should not continue collecting data mentioned above. The vademecum for grantholders and the privacy statement should be modified accordingly.

As for the adequacy and the necessity of the processing of police record/criminal record/certificate of good conduct, the EDPS is concerned about the collection of those documents. It should be noted that those documents have a very diverse content in different Member States and carry diverse denominations. In certain Member States, they contain information that goes beyond a lawful finality for their collection, namely to establish if the selected candidate "*enjoys his full rights as a citizen*" and has "*the appropriate character references as to his suitability for the performance of his duties*" (see Section 3.3 above)⁶. Even if, in principle, the EDPS considers that the collection of those documents is lawful, a case by case analysis of the content of the national police record/criminal record/certificate of good conduct should be carried out so as to collect only relevant data in the light of the Staff Regulation requirements. The JRC recruitment services should be particularly careful not to collect excessive and irrelevant data in this context. The Rules for Grantholders and the Privacy Statement should also be modified accordingly.

Fairness and Lawfulness. Article 4(1)(a) of Regulation (EC) No 45/2001 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 which is further addressed in Section 3.8.

⁶ In French version "'ne jouit de ses droits civiques" and " les garanties de moralité requises pour l'exercice de ses fonctions".

Accuracy. According to Article 4(1)(c) of Regulation (EC) No 45/2001, personal data must be *"accurate and, where necessary, kept up to date, and "every reasonable step must be taken to ensure that the 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"*. In this case, an important part of the data has been provided by the applicant himself/herself. This procedure itself helps to guarantee the accuracy of the personal data. However, other information is not provided directly by the individual but generated by the various assessment bodies. In this regard, as further developed below, it is important for the candidate to be able to exercise the right of access and rectification insofar as it enables individuals to control whether the data held about them is accurate. In this respect, see also Section 3.8.

The JRC request an extract from the police record/criminal record/certificate of good conduct which is kept for as long as the selection file is kept. Even if, in principle, it is legitimate for the JRC to collect this data at the moment of recruitment, the data contained in this document can no longer be considered as accurate after the date of reception of the document. On this basis, the JRC should find a system whereby this information should be deleted. This may be achieved through the right of access and rectification, as described below under 3.7. Another solution would be a "standard form" stating that the person is suitable for the performance of his duties kept in the file whereas the police record/criminal record/certificate of good conduct would be returned to the person.

3.5. Conservation of data

Pursuant to Article 4(1)(e) of Regulation (EC) No 45/2001 personal data may be kept in a form which permits identification of data subjects for no longer than necessary for the purposes for which the data are collected and/or further processed.

According to the notification, the data of non-selected candidates, electronically stored and paper files are kept for one year after the closure of the selection procedure. Selection files on paper and electronic media for successful candidates or potential candidates (reserve list) are classified and stored for a period of five years. A reduced personal file of recruited grantholders will be kept for five years after the end of the grant period.

The EDPS is satisfied with those conservation periods. A conservation of data during five years after the end of the grant is justified on the provisions of Article 49 of the detailed rules for the implementation of the financial regulation which provides that the authorising officers must keep supporting documents for five years.

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 JRC. For example, if a candidate withdraws his/her application and specifically requests JRC to delete his/her name, CV, and supporting documents from its database (both in paper and in electronic form), JRC should accommodate such a request, unless exceptional circumstances (e.g. an ongoing litigation) warrant otherwise.

3.6. Transfers of data

Articles 7, 8 and 9 of Regulation (EC) No 45/2001 set forth certain obligations that apply when data controllers transfer personal data to third parties. The rules differ depending on whether the transfer is made to (i) Community institutions or bodies (based on Article 7), (ii) to recipients subject to Directive 95/46 (based on Article 8), or (iii) to other types of recipients (based on Article 9).

Concerning the transfers made to Community institutions and bodies, Article 7 of the Regulation applies. Article 7 of Regulation (EC) No 45/2001 requires personal data to be transferred *"for the*

legitimate performance of tasks covered by the competence of the recipient". In order to comply with this provision, in sending personal data, the data controller must ensure that (i) the recipient has the appropriate competences and (ii) the transfer is necessary.

The EDPS considers that the transfers of data to the recipients described in the notification for the purposes stated comply with the first requirement. Indeed, all the recipients have the competences to perform the task for which the data is transferred: relevant JRC scientific staff who takes part in the selection procedure and JRC corporate services (human resources, medical) which are managing the selection procedure. The transfer of data to the Security Service, in particular the legal basis for its competence, in order to conduct a security check or obtain the "security clearance" will be considered in detail in the opinion 2007-0380.

As to the necessity of the transfer for the performance of their tasks, the EDPS is concerned with the transfer of the application form, the CV and the copy of passport/ID card to the Medical service by the MSU of the Geel site. The necessity of this transfer has to be assessed. The EDPS also stresses on the fact that Article 7.2 of the Regulation must also be complied with. If the data is transferred following the request of the recipient, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer. The controller shall be required to verify the competence of the recipient and to make a provisional evaluation of the necessity of the transfer of the data. This entails that in case of transfer of data to the Medical Service, the HRU/MSUs must determine the necessity of transfer of the data to this Service. As concerns transfers of data from the Medical Service to the Recruitment services, the Medical Service should not transmit any results of the medical tests to the Recruitment services, but may only transfer a medical certificate.

The EDPS further emphasises that pursuant to Article 7(3), the recipients shall process the personal data they received from JRC only for the purposes for which they were transmitted.

Article 8 also applies as data are transmitted to national authorities (the national employment office, the national social security office, the national taxation office) and, in Sevilla site only the legal consultancy company (in charge of the preparation of monthly payments and contributions to social security). This provision stipulates that the data may be transferred if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the public authority. The transmission to the national authorities and notably to the German Ministry of Environment is justified by a task carried out by these authorities in the public interest, based on national legislation.

3.7. Right of access and rectification

According to Article 13 of Regulation (EC) No 45/2001, the data subject shall have the right to obtain without constraint from the controller, communication in an intelligible form of the data undergoing the processing and any available information as to their source. Article 14 of the Regulation provides the data subject with the right to rectify inaccurate or incomplete data.

According to the notification and privacy statement, individuals are granted such rights. In case a grantholder or candidate wish to access his/her data or ask for data to be corrected in his file, he/she can contact his MSU/HRU or send an e-mail to the functional mailbox address mentioned under "Contact Information" in the Privacy Statement, explicitly specifying the request. Upon a justified request by the data subject the personal data will be modified within 14 days.

The EDPS recalls that candidates should be able to have access to their entire file, comprising the assessment/eligibility notes concerning them drafted by the human resources sections of the MSU and selection committee competent for their assessment. Because part of the assessment procedure is based on answers given in oral interviews, candidates should also be able to receive the marks/comments obtained in this type of test. For example, written feed-back could be a re-

transcription of the parts of the selection file which concern the evaluation of performances of each candidate.

The EDPS is aware that there is a limitation to this rule; this is the principle of the secrecy of selection committee's proceedings. Accordingly, no marks given by individual members of the committee should be given. The EDPS notes that in the area in which the selection committee is covered by the principle of secrecy, the right of access does not apply even though personal data are processed, if that area is covered by the exception in Article 20(1)(c) for the protection of the rights of others, in this instance both the right of selection board member themselves and their need to have their independence reinforced and the right of other applicants to be treated fairly and in like fashion.

The EDPS considers that in the context of this data processing, the applicant's right of access to information concerning them directly and individually must be strictly complied with. It enables applicants to see which elements were taken into account for the overall assessment. Access to such data should be offered on the basis of Article 13 of the Regulation, thus not implying any right of rectification. Right of access under Article 13 does not serve the same purpose as under Article 14 of the Regulation (right of rectification). The applicant's right of access enables them to see that the selection has carried out fairly and objectively. Such a right does not interfere in any way with the principle of equal treatment of applicants since it is open to all of them.

The right of rectification on the other hand can apply only to factual data. Marks allocated could not under any circumstances be open to a right or rectification by the data subject, except in the context of established appeals procedures.

3.8. Information to the data subject

Pursuant to Articles 11 and 12 of Regulation (EC) No 45/2001, those who collect personal data are required to inform individuals that their data are being collected and processed.

In order to comply with this obligation, the data subjects will be informed by a Privacy Statement published on the Internet web site as part of the on line application process. The EDPS considers the provision of information is appropriate.

The EDPS reviewed the content of the information provided in the privacy statement to verify whether the content satisfies the requirements of Articles 11 and 12 of Regulation (EC) No 45/2001. The privacy statement contains information on the identity of the data controller, the purposes of the processing and how the data is processed, to whom the data is transferred, etc. The EDPS considers that the privacy statement contain the information required under Articles 11 and 12 of the Regulation (EC) No 45/2001. However, he considers that section under the title "Categories of data" of the privacy statement should be amended. In fact, the EDPS considers that this section should include a full list of data collected in all JRC sites. Furthermore, the application form for grant at the JRC should indicate whether the replies to the questions are obligatory or voluntary and possible consequences of failure to reply.

3.9. Security measures

According to Articles 22 and 23 of Regulation (EC) No 45/2001, 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 unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration and prevent all other forms of unlawful

processing. JRC confirms that the security measures are the standard JRC security measures based on the Commission standards.

The EDPS needs to receive more detailed information on the specific measures taken so as to conclude that appropriate technical and organisational measures have been adopted to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

3. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations in this Opinion are fully taken into account. In particular, JRC must:

- Refrain from collecting, at the stage of application form, data related to: citizenship at birth, dual/multiple citizenship, marital status, in case of dependants their name, age and degree of relationship, whether the applicant or his/her wife/husband receive any children allowance, whether the applicant accomplished a military service and if so its start and end dates, whether relatives by blood or marriage are employed at the institutions of the EU and if so their name, surname, relationship and post held;
- Refrain from collecting, from successful candidates: the birth certificate, the official declaration concerning military service, if a Financial Identification Form is collected the bank statement confirming the data of the bank account number, *all* diplomas and certificates;
- Carry out a case by case analysis of the content of the different police records/criminal records/certificates of good conduct in order to collect only relevant data in the light of the Staff Regulations requirements;
- Find a system whereby information contained in the police record/criminal record/certificate of good conduct should be deleted;
- Put in place 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 JRC;
- Ensure that data transferred to recipients within the Community institutions, to the national authorities and to private bodies are strictly necessary for the lawful purposes for which they are transmitted as recommended in section 3.6 of this Opinion;
- Ensure that applicants have access to their file including the assessment notes concerning them drafted by the selection committee and Human Resources Services. This applies without prejudice to the application of Article 20(1) (c) of Regulation 45 /2001;
- Amend the privacy policy statement as recommended in section 3.8 of this Opinion;
- Provide the EDPS with more detailed information on the specific security measures adopted.

Done at Brussels, 9 October 2008

(signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor