

Opinion on the notification for prior checking from the Data Protection Officer of the European Commission regarding the "Management of recruitment files for officials at the JRC (transfers and laureates of open competitions)"

Brussels, 9 October 2008 (case 2008-140)

1. Proceedings

On 5 March 2008, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Commission a notification for prior checking relating to the processing of personal data for the purpose of management of recruitment files for officials at the Joint Research Centre¹ (JRC) (transfers and laureates of open competitions).

On 19 March 2008, the EDPS sent a request for additional information to the DPO. The replies were provided partially on 14 April 2008 and definitively on 25 April 2008. Further information was asked on 30 April 2008. Answers were provided on 14 May 2008. Other questions were put on 15 May and answers given on 20 May 2008.

The draft opinion was sent to the DPO for comments on 20 June 2008 and these were received on 11 July 2008. The EDPS decided to suspend the delay on 14 July 2008 in order to coordinate it with the other pending opinions on staff recruitment, which are also signed today.

2. Facts

2.1 The scope of the Notification: the notification concerns the constitution and management of recruitment files for officials (transfers and laureates of open competitions). The recruitment files collect all the information needed in order to start, process and finalize the recruitment procedure, which, at different stages, involve DG JRC Institutes/Directorates (Management Support Units –MSUs- and scientific staff), the other DGs of the Commission in case of transfers, the Human Resources Unit of the Resource Management Directorate and the candidates concerned.

¹ The JRC is a Directorate-General of the European Commission under the responsibility of the European Commissioner for Research. The Directorate-General is located in Brussels. The seven JRC institutes are located on five separate sites in Belgium, Germany, Italy, the Netherlands and Spain. The Institutes are:

The Institute for Reference Materials and Measurements (IRMM)

The Institute for Transuranium Elements (ITU)

The Institute for Energy (IE)

The Institute for the Protection and the Security of the Citizen (IPSC)

The Institute for Environment and Sustainability (IES)

The Institute for Health and Consumer Protection (IHCP)

The Institute for Prospective Technological Studies (IPTS)

The Programme and stakeholders relations Directorate and the Resource Management Directorate are based in Brussels and in Ispra, Italy. The Ispra Site Directorate is responsible for the site management and for the nuclear decommissioning, safety, security and protection

2.2 The selection process:

The principal steps of the above-mentioned processes are as follows:

1. Publication of vacancy
2. File preparation (by relevant Management Support Unit (MSU) of each JRC Institute/Directorate) with the organisation of interviews.
3. File verification [by Resource Management, Human Resources Unit (Ispra)]
4. File finalisation [by both Personnel and Administration, Staff and Careers, Officials and External Staff - Administrative Procedures Unit (ADMIN A4) and Resource Management, Human Resources Unit (Ispra)]

With specific reference to the candidates' selection phase, either internal or external, JRC Institutes/Directorates follow the following procedure: namely, in the framework of the interview, candidates are requested to answer a number of specific questions, depending on the job requirements. The questions serve the scope of identifying the best candidate and the results of the evaluation are reported in the appropriate candidates' evaluation sheet which allows the relevant short-list to be established, the entire process is summarised in the report of the selection panel.

The JRC cannot employ staff that is not present on the reserve lists of successful candidates, following participation in open calls or competitions established by the European Personnel Selection Office (EPSO)².

2.3 The data subjects are the officials to be transferred to the JRC and the laureates of open competitions to be recruited as officials with the JRC.

2.4 The data processed: The following personal data of the candidates (data subjects) are processed: name, surname, birthday, nationality, civil status, private address

The list of requested documents to selected candidates is as follows:

- certificate of good conduct (N.B. for candidates to work with the JRC, Karlsruhe site a certificate of good conduct for each country in which they lived for more than 6 months over the last 10 years is needed)³.
- "Sicherheitsüberprüfung" form, which should be filled in and signed in original for an obligatory security check carried out by the competent German authorities and required for all staff working in nuclear installations (for candidates to work with the JRC, Karlsruhe site only)
- A passport photo
- updated curriculum vitae
- birth certificate
- document proving the candidate's nationality
- civil status certificate

² But for scientific and technical staff, where no suitable candidates exist on EPSO reserve lists, the ELSA (External staff Online Submission Application) database may be consulted for available candidates. ELSA is a database managed by DG RTD allowing the storage of spontaneous CVs. Less than one month ago DG RTD announced that it is no longer maintaining this database. A final decision has yet to be taken, but most probably ELSA will be eliminated and the notification will be modified. This database is used as a source of candidates for temporary staff contracts. See opinion 2008-143 in process.

³ Contradictory information has been repeatedly given on this point, the last information received by the Human Resources Unit from JRC ISPRA being that a certificate of good conduct is requested for following categories of staff: Officials, Temporary agents, Contract Agents, Seconded National Experts, Trainees and Grant holders

- residence certificate
- copy of passport or identity card
- marriage certificate
- birth certificate of children
- document proving the fulfilment of any obligations imposed on the candidate by the laws concerning military service
- official application form to the relevant competition
- diploma giving access to the relevant competition
- all other diplomas considered relevant
- all previous working contracts with exact dates and functions plus last salary slip (the reasons given being that candidates do not generally have a certificate from their current employer, the salary slip is used for the following:
 - 1/ to verify the candidate's employment status, in order to calculate the amount of work experience as precisely as possible. The grade is dependant on this.
 - 2/ to evaluate if the employment is full time or not as experience is considered on a "pro rata" basis).
- professional experience form
- Legal entity form (except for staff already working in the country of assignment)
- Financial Identification form (except for staff already working/resident in the country of assignment)
- Reimbursement of travel and subsistence expenses form

2.5. The recipients:

For every recruitment file:

1. A master file collecting all documents pertaining to the recruitment process is available and registered via NOMCOM (COM name/number for the recruitment file) and ADONIS (document management system).
2. A file for transmission to DG ADMIN for further processing is available and registered via NOMCOM and ADONIS.
3. A file for transmission to the personal dossier is available and registered in SYSPER2 via NDP ("Numérisation Dossiers Personnels"). The same file is previously processed by PMO.6 (Office for administration and payment of individual entitlements) in order to establish the candidate's individual rights.

In the framework of the recruitment procedure, specific documents have to be provided to both the Medical Services (Ispra, Brussels and Luxembourg) and the JRC Ispra Security Service (except for candidates to work with the JRC, Karlsruhe site) as follows:

To the Medical Service:

- Request for medical visit
- Workplace exposure sheet (WES)

Regarding all data collected by the JRC Ispra Security Service, in the framework of a request for security clearance for recruitment, please refer to the EDPS opinion related to ARDOS⁴.

For candidates to work with the JRC, Karlsruhe site:

- a certificate of good conduct for each country in which they lived for more than 6 months over the last 10 years

⁴ File 2007-380 ARDOS in process.

- "Sicherheitsüberprüfung" form

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.

Requests for medical examinations are submitted as soon as the selected candidate confirms his/her interest in the proposed job. Requests for security clearances are submitted as soon as the selected candidate provides his/her certificate of good conduct.

Based on the above-mentioned documents, the Medical Service and the JRC Ispra Security Service/German Competent Authority issue the medical aptitude and the security clearance respectively.

The JRC Ispra Welcome Desk (or equivalent service on the other sites) receives the personal data of transferred officials and laureates recruited as officials on the occasion of their entrance into service.

According to the notification and information received, data are not transferred to third countries.

2.6 Manual and/or automatic processing:

* As regards manual processing:

Templates for the management of the paper version of the file are available as follows:

At MSU (Management Support Unit) level:

- Standard replies to candidates applying via the relevant FMB (Functional Mail Box)
- Note of applications received via the relevant FMB
- Invitation letters to interviews
- Report of the selection panel
- Evaluation sheets
- Recruitment request
- Request for inter-institutional republication

At HR level:

- Internal circulation fiche
- Letters to selected candidates
- Request for medical visit
- Request for security clearance (called Nulla Osta in the joined annex)
- Request for "codice fiscale" (except other sites, staff already working with the JRC, Ispra site and candidates already resident in Italy)

- Acknowledgment of receipt of Staff Regulations and Commission Decision C(2004) 1313 on general implementing provisions concerning the criteria applicable to classification in grade and step on appointment of engagement
- Note of transmission of file to DG ADMIN
- Transfer act of selected official
- First offer letter to selected candidate
- Nomination act of selected candidate and corresponding accompanying letter
- Programme of first day of work (Ispra site only)
- Form to request a flat (Ispra site only)
- Negative letters to non-selected candidates

* As regards automatic processing:

1. There are Functional Mail Boxes (FMB) for every JRC Institute/Directorate for collecting candidates' applications for open vacancies which are available and accessible via SYSPER2
2. A spreadsheet detailing all recruitment steps is available for the exclusive use of the file managers and, in a reduced version, for the MSUs.

2.7 Conservation period: the notification states that for the recruitment files, both paper and electronic versions, are stored for 10 years to allow for consultation in accordance with Commission SEC(2007)970 of 4 July 2007 (Common Commission level retention list for European Commission files). The EDPS, in his comments on the draft Common Conservation List⁵ has approved this kind of retention period.

Personal data of recruited candidates in SYSPER2 are stored according to the retention policy of SYSPER2 which is the following: "The data is stored, as a general rule, until the end of activity within the Commission. Certain data is preserved beyond the period of activity, insofar as this data is in relation to rights or obligations which remain. The personal data on an external candidate is suppressed after the expiry of the period of possible complaint admissibility".

Regarding the time limit to block/erase data: duly motivated requests (addressed to the following Functional Mail Box: jrc-recruitment-data-protection@ec.europa.eu) submitted by the relevant candidate with regard to the integration, modification and/or deletion of personal data, shall be evaluated on a case by case basis. Where acceptable, the relevant integrations, modifications and/or deletions will be done within 14 days from the corresponding request.

2.8 Information to data subjects: The notification states that the data subjects will be informed by Privacy Statement at the first time the candidates are contacted by mail or letter. The Privacy Statement has been provided to the EDPS. It contains: the description of the processing operation; what personal information is collected, for what purpose and through which technical means, the identity of the controller and of the processors; the categories of recipients of the data; the security measures to protect the data; the right of access and rectification to the personal data; the conservation period; the contact information and the right to have recourse to the EDPS.

2.9 Right of access and rectification: The notification states that the procedure is foreseen in the Privacy Statement.

⁵ Cf. letter of 7 May 2007, file 2007-222, on EDPS website, Supervision / administrative measures.

The Privacy statement contains a paragraph on "how can you verify, modify or delete your information?" which include a contact information functional Mail Box. Moreover, the notification also foresees that personal data of recruited candidates are stored in SYSPER2 and NDP, which may be consulted at anytime as provided for in Article 26 paragraph 7 of the Staff Regulations of Officials of the European Communities. Duly motivated requests submitted by the relevant candidate with regard to the addition, modification and/or deletion of personal data shall be evaluated on a case by case basis. Where accepted, the relevant additions, modifications and/or deletions will be done within 14 days from the corresponding request

2.10. Security

[...]

3. Legal aspects

3.1. Prior checking

This Notification relates to the procedure that takes place within JRC, towards managing the recruitment files for officials (transfers and laureates of open competitions). The recruitment procedures collect all the information needed in order to start, process and finalize the recruitment procedure, which, at different stages, involve DG JRC Institutes/Directorates (Management Support Units –MSUs- and scientific staff), the other DGs of the Commission in case of transfers, the Human Resources Unit of the Resource Management and the candidates concerned.

Applicability of Regulation (EC) 45/2001: 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*"⁶. For the reasons described below, all elements that trigger the application of the Regulation are present here:

First, the management of data contained in the applications and personal files for permanent staff posts 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 a permanent post are collected and further processed. The concept of "personal data" has to be clarified due to the fact that JRC has not included evaluation results in the categories of personal data mentioned in the notification, with consequences on the right of access (see below point 3.8.). Personal data are not restricted to identity data, such as surname, forename or date of birth as they appear, for example, on letters sent to applicants They are neither restricted to the requested documents asked to the selected candidates. Personal data are any information relating to an identified or identifiable natural person⁷. Data relate to a person, for instance, if they concern the identity, characteristics or conduct of a person or if that information is used to determine or influence the way in which that person is treated or evaluated; this is clearly the case of recruitment procedures, which include the personal assessments of the panel members through the evaluation grid based on the interview of the pre-selected candidates and their assessment report. 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

⁶ See Article 3(2) of Regulation (EC) No 45/2001.

⁷ See Article 2.a of Regulation 45/2001.

operations but meant to be part of a filing system. 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: According to Article 27 (1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27 (2) (b): "*processing operations intended to evaluate personal aspects relating to the data subject, including his ability, efficiency and conduct*".

The processing operations that occur in the context of managing the recruitment files for officials to be recruited 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 selection criteria, judging his/her performance during the interviews, judging the performance of each candidate in his/her current positions, 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, Article 27(2)(a) is also relevant for the processing to be subject to prior checking as the selected candidate has to provide a certificate of good conduct which may reveal his/her involvement in criminal activity, and also has to provide to the Medical service the request for the medical visit and the Workplace exposure sheet (WES) which may reveal data relating to health.

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 have been given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

Notification and Due Date for the EDPS Opinion: The notification of the DPO was received on 5 March 2008. According to Article 27 (4) of the Regulation, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 77 days (37 + 14 + 5 + 21). The EDPS decided to suspend this opinion pending clarifications asked for the other JRC recruitment opinions, which are also signed today.

3.2. Lawfulness of the processing

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data lawful. One of the criteria provided in Article 5 (a) is that 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 or in the legitimate exercise of official authority vested in the Community institutions or body*". The processing of personal data for performance of tasks carried out in the public interest includes "*the processing necessary for the management and functioning of those institutions and bodies*" (recital 27).

The processing is necessary for performance of a task carried out in the public interest. Indeed, in the case in point, the procedure for recruitment officials in the framework of the European institutions is part of the legitimate exercise of official authority vested in the institutions and,

in this case, in JRC. The EDPS agrees that the selection procedure is necessary for the management and functioning of the JRC.

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.

Moreover, the legal basis for the selection of the JRC permanent staff can be found in the following provisions:

- Articles 27 - 34 of the Staff Regulations,
- The other Commission Decisions mentioned below. According to the Staff Regulations of officials of the European Communities, the Commission Decision C(2006) 2318 amending Decision C(2005) 1792 of 16 June 2005 on the exercise of powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Responsible for Concluding Contracts of Employment, and finally the Commission Decision C(2004) 1313 on general implementing provisions concerning the criteria applicable to classification in grade and step on appointment of engagement shall apply to the staff of the JRC.

This legal basis confirms the lawfulness of the processing.

3.3. Processing of special categories of data

Pursuant to Article 10 (1) of the Regulation, *"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"* is prohibited except in specific predefined circumstances. In particular, these special categories of data can be processed in case the *"data subject has given his or her express consent"* (Article 10 (2) (a) of the Regulation) or if it *"is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof"* (Article 10 (2) (b) of the Regulation). According also to Article 10 (5) of the Regulation, *"the processing of data relating to offences and criminal convictions 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"*.

The recruitment procedure may involve processing of the following special categories of data:

- health-related data (information about applicant's disability necessary for the organisation of the selection or in the request of a furnished flat close to the JRC of ISPRA [on a voluntary basis] - data within the Workplace exposure sheet called WES - medical aptitude certificate),
- data revealing racial or ethnic origin (communication of a photograph),
- data revealing political opinions, religious or philosophical beliefs, or trade union membership (spontaneous communication of such data perceived as "social, organisational and other skills and competences" in the European CV),
- data relating to offences and criminal convictions (declaration that the applicant enjoys his/her full rights as a citizen - certificate of good conduct - security clearance).

Health related data: As regards processing of data concerning the applicant's disability, it should be considered that by communicating this information, the data subject is giving his/her consent to the processing of this type of data in terms of Article 10 (2) (a) of the Regulation. In

addition, this information is given in order to enable the controller to comply with its specific obligation in the field of employment law to adjust the selection procedure to the special needs of such applicant (extra time, specific IT equipment for the written tests etc.) in line with Article 10 (2) (b) of the Regulation. This last point also applies to the medical aptitude certificate.

The spontaneous communication of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership should also be considered as authorised in terms of Article 10 (2) (a) of the Regulation. In fact, by communicating this non-requested data, the data subject is providing his/her consent to the processing of these special categories of data. In this specific framework, it has to be noted that the communication of a photo is not necessary for the purpose of selection, but necessary for the purpose of recruitment (issuance of badges). During the selection procedure, this is considered as excessive (see point 3.4 below).

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

Criminal records and Security clearance: According to the Notification, certificates of good conduct are collected from successful candidates. As further illustrated below, the EDPS considers that existing legislation justifies that JRC collects such documents. However, the precise content of this document must be assessed in the light of the data quality principle (see discussion under section 3.4).

The legal basis for processing criminal records / police records regarding officials and other servants can be found in Article 28(a) of the Staff Regulations which requires that a candidate may be recruited as a member of the staff only on condition that "*he/she is a national of one of the Member States, and enjoys his/her full rights as a citizen*" but also in Article 28(e) which mentions that "*he produces the appropriate character references as to his suitability for the performance of his duties*"⁸. This legal instrument provides the basis to process data related to criminal convictions and is therefore in full compliance with Article 10 (5) of the Regulation. 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 that this processing may be authorised on the basis that 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*)).

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.

⁸ In French the Staff regulations read "garanties de moralité".

The type of information requested includes a list of requested documents. Only if JRC has information on the education and professional experience as well as on the candidate's suitability for a given job will JRC be able to select the best suited candidate. The EDPS has doubts on the proportionality of the salary slip. Whenever a work certificate exist for each different type of work done (depending of the national country), it is excessive to ask directly the salary slips. If those work certificates do not exist, the EDPS accepts the need of requesting the salary slip, but recommends the JRC to clearly explain it in the information given to the data subject.

Nevertheless, a distinction should be made between selected laureates of a competition and officials already engaged at the Commission or even more at the JRC and who are transferred. For those latter, only data processed in the context of the reimbursement of travel and subsistence expenses form are relevant in case of an official transfer. The "Sicherheitsüberprüfung" form is also relevant due to the specificity of JRC Karlsruhe site. It is obvious that the other documents are not relevant as they have already been provided when they were recruited. The JRC should make this distinction.

A distinction should also be made between the selection and the recruitment procedures. In the context of selection, asking a photo, a marriage certificate and a birth certificate are excessive as a photo could lead to discrimination and as marriage and birth certificates are only relevant for the purpose of establishing the data subject's individual rights. The purpose of asking a photo in the context of a security clearance will be assessed in the framework of the opinion 2007-380 "ARDOS" (in process).

The EDPS is concerned about the collection of police certificates of good conduct. In legal terms and particularly in certain Member States, police certificates of good conduct contain information that goes beyond a record containing criminal convictions. In particular, in some Member States a police certificate of good conduct may contain information about the character of an individual, his moral behaviour, etc. Whereas, it may be necessary for JRC to collect information contained in criminal records in order to filter individuals that may pose a risk to the JRC, it does not appear necessary to have the information that may be contained in a certificate of good conduct.

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.

As to the procedure leading to the security clearance/security check and categories of data to be provided to the JRC Security Service, please refer to the opinion 2007-380 "ARDOS", in process.

Otherwise, the EDPS considers that other information complies with Article 4(1)(c) of Regulation (EC) No 45/2001.

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 3.10.

Accuracy: According to Article 4(1)(d) 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 candidate himself/herself. The 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 3.9.

In so far as most of the personal data supplied during the recruitment process is provided by the data subject, the EDPS is of the opinion that this helps to ensure that the data are accurate and kept up to date during recruitment. The MSU and Human Resources Unit also request a criminal record/police record which is kept for as long as the staff personal file is kept. Even if it is legitimate for the JRC to collect this data at the moment of recruitment for transmission to the Ispra Security Service, the data contained in this criminal record/police record 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 information about crimes that have expunged should be deleted. This may be achieved through the right of access and rectification, as described below under 3.8. 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 criminal record would be returned to the person.

3.5. Data retention

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 for the recruitment files, both paper and electronic versions, are stored for 10 years to allow for consultation in accordance with Commission SEC(2007)970 of 4 July 2007 (Common Commission level retention list for European Commission files). Personal data of recruited candidates in SYSPER2 are stored according to the retention policy of SYSPER2 which is the following: "The data is stored, as a general rule, until the end of activity within the Commission. Certain data is preserved beyond the period of activity, insofar as this data is in relation to rights or obligations which remain. The personal data on an external candidate is suppressed after the expiry of the period of possible complaint admissibility". The EDPS recommends that this specific period be also mentioned in the privacy statement. In this respect see point 3.10 below.

The EDPS in his comments on the draft Common Conservation List has approved this kind of retention period in general terms. Nevertheless, as to the non-recruited applicants, the EDPS is of the opinion that the time-limit for storage of such data shall be set out in relation to the time-limits set out for the possible review of the decision taken in the selection procedure (complaint to the European Ombudsman, appeal with the Civil Service Tribunal), as well as in accordance with Article 49 of the Implementing Rules to the Financial Regulation (audit). In addition, the validity of the respective (reserve) lists shall be duly taken into account. In that sense, see also point 12.2.4 of the above mentioned letter (page 4).

As regards the recruited applicants whose data are ultimately stored in their personal file, the EDPS would like to recall that in a similar case, a data retention period of ten years as of the termination of employment or as of the last pension payment was considered as reasonable⁹.

Without prejudice of the general conclusions of the DPOs-EDPS working group on time limits and blocking, which is about to conclude its work, the specific criteria described above should be taken into account

3.6. Compatible use/ Change of purpose

Article 4(1) (b) of Regulation 45/2001 provides that personal data must be "*collected for specified, explicit and lawful purposes and not further processed in a way incompatible with those purposes*".

Data are retrieved from or entered in the staff databases (Sysper, RECLAU, e-LAUREAT). The processing being reviewed involves no overall change to the specified purpose of staff databases, the recruitment procedure being merely a part of that purpose. 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

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).

According to the Notification the transfers are made to Community institutions and bodies (DG ADMIN, Medical Services, JRC Ispra Welcome Desk and JRC Ispra Security Service), thus, 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 notes that the above referred internal transfers fall within the legitimate performance of the tasks covered by the competence of the respective recipient. Indeed, all the recipients have the competences to perform the task for which the data is transferred: DG ADMIN (A 04) is competent for the uploading of the information into Sysper 2 (some distinctions have to be made between transfers and recruitment of laureates of open competitions, see point 3.4.Data quality). Medical services have the competence to issue the medical aptitude certificate. Furthermore, the transfer of the information is necessary for the performance of such tasks. Consequently, Article 7 (1) of the Regulation is being complied with concerning those specific transfers.

As to the transfers regarding data sent to the JRC Ispra Security Service, please also refer to the opinion 2007-380 "ARDOS", in process. The legitimacy and necessity of this transfer will depend on the competence of the JRC ISPRA Security Service.

⁹ cf. the following opinions concerning evaluation of statutory personnel: EDPS **2007-406** of 3 August 2007 (European Ombudsman), EDPS **2006-297** of 19 October 2006 (ECOSOC), EDPS **2005-218** of 15 December 2005 (Commission), EDPS **2004-293** of 28 July 2005 (OHIM), EPDS **2004-281** of 4 July 2005 (ECJ)

Article 8.a of Regulation 45/2001 applies also in the case of the transfer for the nuclear centres to national security authorities and to the German Ministry for security checks for the Karlsruhe JRC site regarding the declaration concerning the personal reliability screening. This declaration is "to be handed to applicant/operator of the plan - if requested in a sealed envelope - for forwarding to the Ministry of the Environment Baden-Württemberg". The latter has of course to be considered as recipient subject to Directive 95/1/46/EC and the description of the processing shows clearly 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. The transmission to the national security authorities is justified by a task carried out by these authorities in the public interest, based on national legislation mentioned above. Nevertheless, the EDPS recommends that the use of the sealed envelope becomes mandatory in order to warranty the security of the processing.

Moreover, in order to ensure the full compliance with Article 7 (3) of the Regulation, the EDPS recommends that all recipients are reminded of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

3.8. Rights 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.

The rights of access and rectification may be restricted in terms of Article 20 (1) of the Regulation, in particular "*where such a restriction constitutes a necessary measure to (...) the protection of the rights and freedoms of others*".

According to the Notification and privacy statement, individuals are granted such rights. The Privacy statement contains a paragraph on "how can you verify, modify or delete your information?" which include a contact information functional Mail Box. Moreover, the notification also foresees that personal data of recruited candidates are stored in SYSPER2 and NDP, which may be consulted at anytime as provided for in Article 26 paragraph 7 of the Staff Regulations of Officials of the European Communities. Duly motivated requests submitted by the relevant candidate with regard to the addition, modification and/or deletion of personal data, shall be evaluated on a case by case basis. Where accepted, the relevant additions, modifications and/or deletions will be done within 14 days from the corresponding request.

The EDPS would like to underline that - in principle - the data subject shall be granted access to all his personal data processed within the particular selection procedure. In particular, the data subjects shall be given access to his **evaluation results**¹⁰ from the selection procedure in order to provide someone to a vacant post (interviews with the panel members), as evaluation results are personal data.

No further information is given about what is the scope of the access to the evaluation results. The EDPS recalls that candidates should be able to have access to their entire file, comprising the assessment 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

¹⁰ See third paragraph above of point 3.1. "Prior checking"

marks-ratio/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. In any case, data subjects shall be provided with aggregated results.

The EDPS considers that in the context of this data processing, the applicant's right of access to information concerning him/her directly and individually must be strictly complied with. It enables applicants to see which elements were taken into account for the overall assessment without that interfering in any way with the principle of the secrecy of selection board proceedings, as set out in Article 6 of Annex III to the Staff Regulations, since the marks or ration given would be overall averages. Access to such data should be offered, to selected and non selected candidates, 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 him/her 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 or ratio 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.

In the light of the above, the EDPS recommends that JRC sets up procedures to ensure access to candidates' personal data as described above.

3.9. Information to the data subjects

In order to ensure transparency and fairness of the processing of personal data, Articles 11 and 12 of Regulation 45/2001 provide for certain information to be supplied to the data subjects. The provision of Article 11 is applicable in case "*the data have been obtained from the data subject*", the provision of Article 12 in case the data have been obtained from another source. The data processed during the selection procedure are provided by the data subject (data contained in the applications), as well as by other subjects (evaluation data provided by the panel members). Consequently, both Articles 11 and 12 of the Regulation are applicable.

As indicated above, information concerning recruitment related data processing is provided in the privacy statement being given at the first time the candidates are contacted by mail or letter. This document contains the following information:

- identity of the controller and processors,
- purpose of the processing,
- categories of data processed,
- certain recipients of the data processed,
- existence of the rights of access and rectification,
- the time limits for storing the data,

- the recourse to the EDPS (including a link to his functional mailbox).

In order to ensure full compliance with Articles 11 and 12 of the Regulation, the EDPS recommends that:

- the legal basis be mentioned,
- it should be clearly stated that salary slip is only necessary when no work certificate exists
- information about possible recipients be completed indicating the Security Service and Medical services,
- the existence of the rights of access to assessment reports be indicated,
- the information about the time limits for storing the data be completed by the exact retention period of SYSPER2.

3.10. Security measures

According to Article 22 of Regulation (EC) No 45/2001, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented 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 to prevent all other unlawful forms of processing"*.

[...]

The EDPS has no reason to believe that JRC has not implemented 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.

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:

- ask only for salary slips when work certificates do not exist.
- make a distinction regarding the data processed depending on transfers of staff members or selection of laureates of competitions.
- cease requesting photos and marriage certificate during the selection procedure.
- replace the collection of certificates of good conduct by other tools that only demonstrate the prior criminal behaviour by carrying out a case by case analysis of the content of the national extracts of the police register, so as to collect only relevant data in the light of the Staff Regulation requirements;
- as to the non-recruited applicants, set out the time-limit for storage of data in relation to the time-limits set out for the possible review of the decision taken in the selection procedure (complaint to the European Ombudsman, appeal with the Civil Service Tribunal), as well as in accordance with Article 49 of the Implementing Rules to the Financial Regulation (audit).
- use the sealed envelope in a mandatory way when forwarding to the Ministry of the Environment Baden-Württemberg data of the data subject.
- remind to all recipients of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

- ensure that applicants (both selected and non selected candidates) have access to their file, including the assessment notes concerning them drafted by the panel members; this applies without prejudice to the application of Article 20(1) (c) of Regulation 45 /2001.
- amend the privacy statement as recommended in this Opinion.

Done at Brussels, 9 October 2008

(signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor