



Opinion on the notification for prior checking received from the Data Protection Officer (“DPO”) of the European Food Safety Authority (“EFSA”) regarding EFSA’s Expert Database

Brussels, 11 November 2008 (Case 2008-455)

1. Proceedings

On 17 July 2008, EFSA’s DPO submitted to the European Data Protection Supervisor (“EDPS”) via e-mail his Notification about EFSA’s Expert Database, complete with its attachments (“**Notification**”).

On 24 September 2008 the EDPS sent to EFSA’s DPO a summary of his understanding of the facts along with his remaining questions. Until EFSA’s written confirmation of the facts and response to the questions on 23 October 2008, the case was suspended.

The EDPS sent to EFSA his draft Opinion for comments on 7 November 2008. The procedure was suspended until 10 November 2008, when EFSA provided its comments.

2. The facts

2.1. Scope of the Notification and purpose of the processing. The Notification concerns EFSA’s Expert Database. This database contains professional data of external scientific experts who may be called upon to carry out advisory work for EFSA (and for national authorities in Member States with a similar mandate to EFSA). The experts’ professional data are recorded in the database to enable EFSA and national authorities, as the case may be, to select external scientific experts for specific tasks. Candidates apply on-line to be included in the database. EFSA then screens the applications to ensure that only those applicants are included in the database who meet the eligibility criteria.

In addition to the phase of collecting data in the database and the issues concerning management of the database, the Notification also covers EFSA’s procedure to select external scientific experts from the database for its specific scientific projects. However, the Notification does not cover the use of the Expert Database by authorities in Member States.

Thus, this Opinion separately discusses and analyses the following two issues: (i) establishment and maintenance of the Expert Database and (ii) use of the database for selection of external scientific experts for specific assignments with EFSA.

The data protection issues that arise in connection with processing of Declarations of Interests (see Section 2.9.4 below) also do not come under the scope of this Notification, and therefore, are not comprehensively discussed in this Opinion.

2.2. Legal Basis of the Expert Database. The Expert Database is based on the Decision of EFSA's Executive Director "concerning the selection of members of the Scientific Committee, Scientific Panels and external experts to assist EFSA with its scientific work" ("**Director's Decision**"). This decision was adopted on 30 May 2008 and describes, in general terms, the role of external experts, and the functioning and use of the Expert Database. The Director's Decision is available on the EFSA website at: http://www.efsa.europa.eu/cs/BlobServer/DocumentSet/selectionofexperts_decision.pdf?ssbinary=true

Further details are provided in the "Expert Database Project Plan". The final version of the Project Plan was adopted on 5 June 2008 and is available on the EFSA website at: http://www.efsa.europa.eu/EFSA/National_Focal_Points/Scientific_Cooperation_projects/efsa_locale-1178620753816_expert_database.htm

The Director's Decision is based on

- Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority (EFSA) and laying down procedures in matters of food safety,¹ and in particular to Article 28, paragraph 9(e) thereof, regarding the role of the Scientific Committee and the Scientific Panels,
- the Decision of EFSA Management Board concerning the establishment and the operations of Scientific Committee and Scientific Panels,² and in particular Articles 1 and 6 thereof, which foresee the delegation to the Executive Director of the Authority to draw up implementing rules for the selection of members of the Scientific Committee and Scientific Panels and of external experts, and
- the advice of the Advisory Forum and of the Scientific Committee.³

Sections 2.3 through 2.8 below summarize the relevant provisions of the Director's Decision.

2.3. Role of the external experts. Pursuant to Article 11 of the Director's Decision, "external experts possessing particular and relevant scientific knowledge may be invited to contribute to the work of:

- the Scientific Committee, Scientific Panels and their working groups;
- the work of networks, as defined under Article 36 of Regulation (EC) No 178/2002, and their working groups."

Article 11 further provides that "when a Scientific Panel or the Scientific Committee, an EFSA network or a working group identifies the need to appoint one or more external scientific experts in order to address specific scientific issues, the reasons justifying such a need for external scientific experts shall be recorded in the minutes of the meeting where that need was first identified. External scientific experts providing the required expertise could be invited on:

- an *ad hoc* basis for a single meeting or for the duration of the work on a specific mandate or project, or
- on a longer term when the required expertise is needed for more than one mandate or project."

¹ Official Journal L 31, 1.2.2002, p. 1 as last amended by Commission Regulation (EC) No 575/2006 of 7 April 2006.

² MB 11.09.2007- 4.1 Annex A.

³ Available at http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178668245478.htm and http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178700136320.htm, respectively.

2.4. The Expert Database. Pursuant to Article 12 of the Director's Decision, "EFSA, with support from the Advisory Forum, has taken the initiative to create a database of external experts to achieve the following:

- enhance the transparency of the process through which experts are invited to participate in the scientific activities;
- enhance EFSA's capacity to conduct risk assessments under the remit of EFSA; and
- respond more effectively and flexibly to the growing workload, particularly in cases where very specialised, unexpected or urgent work may be required.

Responsibility for the operation of this database lies with the Scientific Cooperation Unit in the SCA Directorate"

Article 12 further provides that "this database contains data on experts who are willing to contribute, on a temporary basis, to the work of (working groups of) the Scientific Committee, Scientific Panels, the networks as well as other working groups of EFSA."

Article 12 also explains that "the use of the database is not restricted to EFSA. Member States (via their Members of the Advisory Forum and National Focal Points) will also be able to query the database. This will allow them the option of approaching selected experts for their own scientific projects. Applicants will be requested to provide their consent for the use of their data in this database by Member States. The data provided in the Annual Declaration of Interests will reside in a separate database which is only accessible to EFSA."

Further, Article 12 explains that "the database is populated with experts that are invited to join, including current and past members of the Scientific Committee, Scientific Panels, networks and their respective working groups. The experts whose names are in the database are requested to annually confirm their interest to remain included in the database" and that "EFSA will actively promote the application of experts to the database and will invite Member States to support this. Specifically, the database is open to on-line applications submitted by experts from Member States and third countries."

2.5. Inclusion in the database: application, validity check, and eligibility of applicants.

Article 13 of the Director's Decision describes the process of inclusion into the database as follows:

1. The process for inclusion of scientific experts in the database of external experts is based on the submission and validation of a set of mandatory data consisting of personal data, institutional data, and data describing the expertise. The validity and eligibility check of each application is to be carried out by the Scientific Cooperation unit in the SCA Directorate. The applicant will be informed of the outcome of the validation and eligibility steps.

2. EFSA Scientific Cooperation Unit will perform a data validation, assessing whether for all mandatory fields in the application form valid data were provided. A valid submission requires inter alia that the applicant expert should have identified at least one area of expertise in the database application form. Inappropriate applications will not be further considered for inclusion in the database. The results of the validity and eligibility check carried out by the Scientific Cooperation Unit will be reported every quarter, for information and possible comments, to the Directors of RA and SCA and the Head of Unit of SCAF. This information will include an overview of the applications,

including non-valid or non-eligible applicant, with an analysis of the criteria that were not met.⁴

3. To be included into the Database of External Scientific Experts, the expert will need to satisfy all of the following eligibility criteria, which will be assessed from the information provided with a valid application:

- a university degree, or equivalent, in one or more areas of expertise within the remit of EFSA as listed in the database application form;
- relevant professional experience i.e. in risk assessment, data collection on biological or chemical hazards, as appropriate;
- scientific articles in peer reviewed journals or other scientific documents relevant to the expertise declared;
- ability to communicate and work in at least one Community language;
- and a completed Annual Declaration of Interests.

2.6. Use of the Expert Database by EFSA: selection of experts for specific assignments.

Articles 14 and 15 of the Director's Decision explain how EFSA uses the database, that is, how the experts in the database are selected from the database for a particular task.

The relevant provisions of Article 14 are as follows:

1. A list of potential experts shall be based on the scientific profiles needed for the tasks at hand. The Chair of the concerned body (working group, Scientific Panel, or Scientific Committee), following consultation with the Head of Unit concerned, shall recommend the scientific profiles required, following discussion at the relevant Scientific Panel, the Scientific Committee or network. In case EFSA staff is chairing a working group, the profiles shall be decided by the Head of the Unit supporting the concerned working group.

2. The Head of the Unit supporting that body shall consult the database of External Scientific Experts with a view to finding an adequate number of scientific experts possessing the relevant scientific profile.

3. The potential candidates who at least closely match the requested profile will be contacted by the Head of the Unit supporting the concerned body to find out about their interest to carry out the task at hand and their potential availability. The individuals that express such an interest will be requested to update the Annual Declaration of Interests, unless a current one is already available that has been completed less than one year ago. This Annual Declaration of Interests is reviewed by the concerned EFSA secretariat and only candidates without a conflict of interest will be retained for further evaluation.

4. For experts who are invited to join the Scientific Committee, a Scientific Panel or a (standing) working group for a prolonged term, as defined under Article 11.2 above, an evaluation such as described under Article 4 is conducted.

Article 4, in turn, describes the evaluation of eligible candidates as follows:

⁴ EFSA explained during the prior checking procedure that their intention is to report this information anonymously and statistically aggregated. The purpose of the reporting is to provide the heads of EFSA's Scientific Directorates with statistical information in order to measure the progress of applications received and the number of experts included in the database over time.

1. *The Annual Declaration of Interests is reviewed by the EET, consistent with EFSA Procedure for Identifying and Handling Potential Conflicts of Interest. The extent of any potential conflict of interest will be taken into account in deciding whether an applicant will be further evaluated.*

2. *The selection criteria are published with the call for expression of interest. These are:*

- *Experience in carrying out scientific risk assessment and/or providing scientific advice in fields related to food and feed safety in general and, in particular in the areas of competence and expertise of the Scientific Committee or the Scientific Panel preferred.*
- *Proven scientific excellence in one, or preferably several fields linked to the area covered by the Scientific Committee or the Scientific Panel preferred.*
- *Experience in peer reviewing scientific work and publications, preferably in fields related to the area covered by the Scientific Committee or the Scientific Panel preferred.*
- *The ability to analyse complex information and dossiers, often from a wide range of scientific disciplines and sources and to prepare draft scientific opinions and reports.*
- *Professional experience in a multidisciplinary environment, preferably in an international context.*
- *Experience in project management related to scientific matters.*
- *Proven communication skills, based on teaching experience, public presentations, active participation in meetings, publications.*

3. *Before starting the evaluation of the applications considered valid and eligible, the EET shall agree on the interpretation of the selection criteria as referred to in the call of expression of interest in order to achieve a consistent and objective approach thereto. To this end, a grading and scoring grid shall be drawn up and used to evaluate all candidates. The grid shall include a scoring range from 0 through 5 (0 being not fulfilled; 1-2 being inadequately fulfilled; 3-4 being generally adequately fulfilled, and 5 being fully and adequately fulfilled) for each of the selection criteria. In order to differentiate the impact of the various criteria, a weighting coefficient will be attributed to the criteria foreseen in the evaluation grid. It will be agreed upon before the evaluation is initiated.*

4. *Per Scientific Panel, as well as for the Scientific Committee, two evaluators shall be assigned to independently evaluate each application. One of the evaluators shall preferably be the member of the EET who is the Head of the Unit supporting the Scientific Panel or the Scientific Committee for which the applicant has expressed an interest, while the other one shall be an expert scientific staff member designated by the Chair of the EET (see Article 2.3). Scores shall be documented using scoring grids for all criteria. Candidates who have expressed an interest for more than one Scientific Panel and/or the Scientific Committee shall be scored independently by a different team of evaluators for each Scientific Panel and for the Scientific Committee.*

5. *Using the weighting coefficients, each evaluator will provide one overall score. Each candidate shall thus receive two scores for the Scientific Committee or each Scientific Panel for which he/she has applied for. Based on these scores, the applicants will be ranked and all differences in rankings between the two evaluators will be identified and discussed. The applications for which no consensus is reached shall be assigned to a third evaluator, to be chosen by the EET. The three sets of scores shall then be averaged.*

Thereafter, Article 14 describes the evaluation of the experts carrying out work on an *ad hoc* basis as follows:

5. For experts who join the Scientific Committee, a Scientific Panel, or a working group on an ad hoc basis, as defined under Article 11.2 above, the evaluation of candidates who have expressed an interest to join is conducted by the Head of the Unit concerned using the following selection criteria:

- *Experience in carrying out scientific risk assessment and/or providing scientific advice in fields with EFSA's remit in general and, in particular in the areas of competence and expertise of the Scientific Committee, the Scientific Panel, or working group concerned.*
- *Proven scientific excellence in one, or preferably several fields linked to the area covered by the Scientific Committee, the Scientific Panel or working group concerned.*
- *Experience in peer reviewing scientific work and publications, preferably in fields related to the area covered by the Scientific Committee or the Scientific Panel or working group concerned.*
- *The ability to analyse complex information and dossiers, often from a wide range of scientific disciplines and sources and to prepare draft scientific opinions and reports.*
- *Professional experience in a multidisciplinary environment, preferably in an international context.*
- *Experience in project management related to scientific matters.*
- *Proven communication skills, based on teaching experience, public presentations, active participation in meetings, publications.*

Finally, Article 15 completes the description of the evaluation process as follows:

1. Consistent with Article 6 of the Decision concerning the establishment and the operations of Scientific Committee and Scientific Panels, the decision on the preferred expert(s) is made either by the Chair of the relevant body (working group or Scientific Panel) in consultation with the Head of the Unit supporting that body or, in case EFSA staff is chairing the working group, by the Head of the Unit supporting the concerned working group. The following factors are considered in this evaluation:

- a. the match with the scientific profile required for the tasks at hand. This relates in particular to the candidate's potential contribution to the availability of all scientific expertise and experience required for the task at hand;*
- b. the nationality and gender of the candidate. Specifically, for otherwise equal candidates, priority will be given to underrepresented Member States. Experts from non-EU countries will be considered if appropriate candidates from Member States are not identified; and*
- c. a thorough knowledge of the English language.*

2. The selected expert(s) shall then be contacted by the Head of Unit to confirm his/her acceptance to assist EFSA. If that is confirmed, the selected expert(s) shall then be invited to attend the first meeting of the Scientific Committee, Scientific Panel or working group for which they have been selected. As described in the Guidance Document on the Declarations of Interest, he/she will be requested to submit a Specific Declaration of Interest (SDoI) and sign EFSA agreements on confidentiality and commitment.

3. *Experts that were not selected will also be informed by the Head of Unit about this.*

2.7. The invitation of external experts not included in the Expert Database. Article 16 of the Director's Decision provides for the case when appropriate experts cannot be found in the database. The Article reads as follows:

1. If a query in the database of External Scientific Experts reveals that experts with the sought profile are not present or when the search in the database for the sought profile reveals only experts whose nationality or gender would substantially unbalance the composition of the Scientific Committee, Scientific Panel or working group, the Chair of the relevant body or the head of unit concerned may identify other experts considering the following possible sources of information:

- *a literature search on the subject on which expertise is sought to identify experts with proven expertise;*
- *a web search for experts/expertise sought;*
- *a written request to the Advisory Forum members or Focal Points for suggestions for names of best national experts in the field required;*
- *a survey among members of the Scientific Panel, Scientific Committee or EFSA network seeking external experts;*
- *a survey among EFSA scientific staff.*

2. These candidate experts shall be contacted by the Head of Unit supporting the concerned body to find out about their interest and availability to assist EFSA. In case of a positive answer these experts will be requested to submit an application via the database of external scientific experts and may subsequently be chosen following the procedure as laid down in Articles 14 (4 and 5) and 15, above.

2.8. Personal Data Protection in relation to the selection. Finally, Article 17 of the Director's Decision reaffirms that "consistent with Regulation (EC) 45/2001, data protection requirements concerning the data on the experts in the database will be ensured." No further specific provisions are contained in the Director's Decision regarding data protection.

2.9. Data collected in the Expert Database. As noted above in Section 2.1 and further discussed in Section 2.5, candidates first apply on-line by filling out an application form. Their application is thereafter screened by EFSA to ensure that only eligible candidates are included in the database.

EFSA's Expert Database contains the information submitted by the applicants on the on-line application form, once the candidate has been screened and approved for inclusion in the database on account of meeting the eligibility criteria.

The on-line application form is divided into four segments.

2.9.1. Registration information. The first segment ("Registration") requires the following information:

- name,
- contact information,
- professional situation (employed, self-employed, unemployed or retired)
- gender,
- nationality.

2.9.2. Institutional information. The second segment ("Institutional Information") requires the following information:

- contact information for the organization that the candidate works for
- status and function of the organization (university/academic organization, governmental organization, public institute, foundation, private organisation, intergovernmental institution, non-governmental organisation, other)

2.9.3. Additional Expert Information. The third segment is further subdivided into four sections.

2.9.3.1. Language skills. First, the application form requires candidates to select at least one Community language that they speak by ticking off the relevant boxes on the screen. In addition, they may also select a number of other languages relevant to EFSA's work. These include languages in EFTA countries and EU accession countries with whom EFSA collaborates.

2.9.3.2. Education. Second, the form requires the following information about the applicants' university degree(s) and post-graduate studies:

- name, place and type of school/s, years attended
- certificates, diplomas, degrees and/or academic distinctions obtained.

2.9.3.3. Professional experience. Third, the applicants' professional experience also needs to be summarised. This part of the application form is broken down to three areas:

First, applicants must indicate what professional positions they held in the past and/or are currently holding. The information must include (according to the help menu) "all relevant information concerning the name and place of the organisations where you have worked and/or are working, the position held and the period (month + year) you have worked in each one of them."

Second, the applicants must also include all other relevant curriculum information (free text field, 4000 characters limit). This should include "all relevant additional curricular information, such as (1) experience in risk assessment; (2) experience in peer reviewing scientific documents; (3) analytical skills i.e. skills to analyze and interpret complex scientific information; (4) experience in a multidisciplinary and international environment; (5) communication skills; and (6) experience in project management related to scientific matters."

Third, candidates should list (using no more than 8000 characters) their relevant publications. These should include "(1) the main scientific articles published in peer reviewed journals, (2) technical reports and/or (3) other publications considered relevant to the expertise declared on the tab concerning Fields of Competence."

2.9.3.4. Fields of competences. Next, the application form contains a long and specific list of "fields of competence" where the applicant needs to tick the boxes next to all applicable competences. There are 12 main fields of competences (including, for example, food & nutrition; feed; animal production, health and welfare; plant health) and each of these 12 main fields are subdivided into numerous sub-competences. For example, "plant health" includes sub-competences in weed science, plant pathology, acarology, bacteriology, entomology, and others. There is also a free-text field (allowing 200 characters) which can be used to indicate

"all relevant information concerning fields of expertise not covered by the above fields/subfields that fall upon EFSA's remit".

2.9.4. Declaration of Interest. Finally, as the last, fourth segment of the application form, the candidate needs to submit his/her "Declaration of Interest". Interests to be declared can fall into the following categories:

- ownership or other investments, including shares
- member of managing body or equivalent structure
- member of scientific advisory board
- employment
- consultancy/advisory
- research funding
- intellectual property
- other membership or affiliation
- other

In each category, if applicable, the candidate needs to indicate the period during which the interest is/was held, the name of the organization, and the "subject matter".

2.10. Additional information collected during the screening process. Apart from those detailed in Section 2.9 above, no other information is collected on the on-line application forms or during the procedure which leads to the inclusion in the database.

For example, the applicants are not required to attach to their applications their photographs, their curriculum vitae, references, diplomas, criminal records, copies of publications or any other documents.

Nor does EFSA use any database for background check or carry out any background research on its own on the candidates.

Thus, EFSA's decision on eligibility of a candidate is based entirely on the text of the application, as submitted. EFSA does not guarantee the accuracy or veracity of the information submitted by the applicant. However, if there is an obvious mistake in the application or a mistake is suspected (e.g. all expertise fields are ticked off whereas the rest of the application only suggests expertise in one or two fields), EFSA will contact the applicant for clarification.

2.11. Additional information collected after an applicant is short-listed for an assignment. Further information and documents may be requested after an applicant has been short-listed for an assignment, pursuant to Articles 14 and 15 of the Director's Decision, as described in Section 2.6 above.

2.12. Documenting the screening process. The screening process is documented in the minutes drawn up about the meetings of the Expert Database Evaluation Committee. During the prior checking procedure, EFSA described the screening process to the EDPS as follows:

The SCO Unit performs a preliminary data validation, assessing whether all mandatory fields in the application contain valid data. This means that for an application to be considered valid, all mandatory fields should contain data according to the request made on the respective header. For the fields of competence, a valid submission requires also

that the applicant expert has identified at least one area of expertise in the expert database application form.

The SCO Unit further does a first preliminary assessment if applicant experts satisfy the following eligibility criteria:

- ❖ A university degree, or equivalent, in one or more areas of expertise within the remit of EFSA as listed in the database application form;
- ❖ Relevant professional experience *i.e.* in risk assessment, data collection on biological or chemical hazards, as appropriate;
- ❖ Scientific articles published in peer reviewed journals, technical reports and/or other publications considered relevant to the expertise declared;
- ❖ Ability to communicate and work in at least one Community language;
- ❖ A completed Annual Declaration of Interests.

The Expert Database Evaluation Committee meets as needed to discuss the results of the preliminary checks carried out by the SCO Unit. The SCO Unit provides to members of the Evaluation Committee, in advance of the meeting, a summary of the results of its preliminary checks. Before each meeting, all pending applications which need to be discussed in more detail are made available to the Members of the Evaluation Committee. The SCO Unit drafts the minutes of these meetings, recording all decisions made by the Committee, namely:

- ❖ A list of all non-valid and non-eligible applications and the criteria that were not met;
- ❖ A list of all non-valid applications and the criteria that were not met;
- ❖ A list of all non-eligible applications and the criteria that were not met;
- ❖ A list of all valid and eligible applications.

2.13. Documenting the selection process for specific assignments. Articles 4, 14 and 15 of the Director's Decision describe the selection of experts from the Expert Database for specific tasks and explain, among others, that an evaluation grid is used for comparing and documenting the selection among the short-listed experts.

The fact that the final decision on the selection of the experts should be documented is also foreseen as a "step" in an EFSA Standard Operating Procedure ("**SOP**"), entitled "Establishing and updating a working group under the Scientific Committee and Scientific Panel". Step 12 of the SOP provides that "*[t]he Unit properly documents and archives the selection procedure and the final decision, in line with the Decision of the Executive Director concerning the selection of members of the Scientific Committee, Scientific Panels and external experts to assist EFSA with its scientific work*"

However, as far as short-listing of candidates is concerned, who will then be participating in this regulated selection process, no specific requirements are set and this is left to the professional judgment of the head of unit carrying out the pre-selection using the Expert Database. The decision whom to shortlist is not documented in any way.

With that said, end-users (such as the competent heads of units) are assisted by an "Online Search User Guide" in their use of the database. This guide is also available to external end-users.

2.14. The expert database search environment. Page 7 of the Expert Database Project Plan referred to in Section 2.2 describes the search environment as follows:

Access to the expert database search tool is made through a secure web portal. This allows selected external users to identify experts for specific scientific activities, in areas such as data collection, preparatory work for the development of scientific opinions and other scientific and technical work.

A first set of search parameters allows queries on the full list of fields of competence applicable to experts. The search tool returns a list with experts that match any of the selected fields of competence. The experts are listed in order of relevance, where this corresponds to the number of selected fields of competence that match the query. A second set of search parameters is available for further refining the original query. These additional criteria include fixed search parameters (e.g. gender, nationality, knowledge of Community languages and number of years of relevant professional experience i.e. in risk assessment, data collection on biological or chemical hazards, as appropriate) and a free text search tool for each of the text fields existing on the application form.

A footnote to this explanation adds that "the database may also be queried by use of a more advanced search environment⁵ – see above under "The administrator environment"". The referred "The administrator environment" Section, in turn, provides the following:

The Microsoft "Customer Relationship Management (CRM)" system has been chosen as the database software to be used for setting up and managing the expert database. This tool will be used as the administrator environment, allowing a direct access to the database. In addition, it also allows the database to be queried for any data submitted in the different information fields of the online application form (see Annex I). It can therefore be used as a more advanced search environment.

2.15. Access rights of data subjects

2.15.1. Access to applications. When applying on-line, applicants are given notice that they are "able to update or modify at any time any inaccurate or incomplete personal data in the database concerning their own profile. This procedure is subject to validation by the expert database administrator. Experts are also able to exclude themselves from the database at any point in time." The Notification additionally specifies that data will be blocked and/or erased immediately upon legitimate request.

Further, the application form contains a link called "Send cancellation email request" and another named "Helpdesk" in case an expert wishes to be withdrawn from the database or needs to contact the database administrator for introducing changes in his/her profile. By clicking on these links, an email can then be typed and sent to a functional mailbox "helpdesk@efsa.europa.eu". There is no time estimate for a change/withdrawal defined, but experts are informed by email on this process as soon as possible.

⁵ This means that some end-users can also search the entire database by keywords. EFSA explained during the prior checking procedure that this "more advanced" search environment is the administrator environment, accessed by both the SCO Unit (i.e. only one person in this Unit) and the expert database IT project manager. It is used for management purposes but it can also be used, upon request, for a more advanced search in a specific case, i.e. to search for parameters that are not available in the end-user search environment.

2.15.2. Access to internal documents regarding the validation procedure. Information is given in writing to candidates on whether they are admitted for inclusion in the database based on the eligibility criteria. If they are not, explanations are also given as to the reasons for rejection.

EFSA explained that so far there is no time estimate for how long it will take EFSA to inform the candidates. The communication will be made via e-mail. There is no special procedure in place for revision of the decision. However, in case an expert understands that he/she satisfies the eligibility criteria, he/she may always contact the expert database administrator.

2.15.3. Access to internal documents regarding the selection procedure. As far as the actual selection for a particular task is concerned, once the selection has been made, the selected expert(s) are contacted by EFSA to confirm their acceptance. The selected expert(s) shall then be invited to attend the first meeting of the Scientific Committee, Scientific Panel or working group for which they have been selected. Shortlisted experts that are not eventually selected are informed of the fact (see point 3 of Article 15 of the Director's Decision).

2.16. Information provided to data subjects. Applicants are provided data protection notice on-line during the application process in the form of two "disclaimers"⁶.

2.16.1. Information prior to registration. The first disclaimer appears on the browser's window when an applicant clicks on "register" and before he entered any information in the database. Applicants need to tick an empty box to accept the text of the disclaimer before they move on to enter their data in the database. The text of this first disclaimer appears in the browser window the first time when the applicant submits his/her application.

This first disclaimer contains the following information:

- the purpose of the expert database;
- the desired profile of experts to be included into the database;
- a description of the data processing operation leading to the inclusion/exclusion of experts into/from the database (eligibility criteria, including the need to submit an Annual Declaration of Interest; validation process, including feedback to applicants regarding their eligibility and the reasons therefore);
- the nature of the commitment associated with the inclusion of experts into the database;
- the access rights of experts included into the database as concerns their own profiles;
- the nature of the tasks that may be requested by EFSA to a selected expert, including the need to regularly update the Annual Declaration of Interest, submit a Specific Declaration of Interest and sign EFSA agreements on confidentiality and commitment;⁷
- the policy for renewal and expiry of data;
- who are the internal and external end-users of the database (including the information that allowing access to the data to Member States authorities is optional);
- external end-users may share expert data with third parties at national level⁸;

⁶ EFSA noted during the prior checking procedure that 'disclaimer' may not be a correct term to use in this context. Therefore they will edit the system to replace the term with "data protection notice".

⁷ On the registration disclaimer, experts are provided with a link on clarifications about the Annual Declaration of Interests, which also contains general information on Declarations of Interest, including the Specific Declarations of Interests.

⁸ This means that external end-users (Advisory forum Members) may query the database for experts by request of other national scientific organisations.

- the fact that EFSA will process data in compliance with Regulation (EC) No 45/2001⁹ and that experts have the right to have recourse at any time to the European Data Protection Supervisor.

2.16.2. Information prior to application. In addition, a second disclaimer is provided to the applicants after they completed the application form and before they click on the "submit" button. This disclaimer explains, as was already noted in the first disclaimer, that applicants can decide whether or not they wish to allow their data to be accessible by Member States. They are also reassured (as a new element compared to the first disclaimer), that in any event, the Annual Declarations of Interests will only be accessible to EFSA.

After reading this second disclaimer, applicants can either tick the box to give consent to disclosure to Member States or they can leave the box un-ticked and proceed directly to conclude the registration process by hitting the "submit" button. This second disclaimer does not only appear in the browser's window when the applicant first submits his/her application, but also during subsequent updates. This serves to ensure that experts can any-time, when updating their profiles, choose to withdraw or give their consent to the use of their data by Member States after reviewing again the text of the second disclaimer.

2.17. Conservation period. The policy for data renewal and expiry is based on three main procedures:

- experts are requested to annually confirm whether they wish to remain listed in the database, and, if yes, to update their Declarations of Interest¹⁰;
- the status of the expert database project will be reassessed by EFSA after a 5 year period, counting from the official day of its launching (5 June 2008); and
- external scientific experts included in the database can, at any time, update/modify inaccurate or incomplete personal data on their individual profiles, or to request the exclusion of their profiles from the database.

With the exception of the reporting discussed above in Section 2.5, further processing of data for statistical or scientific purposes is not currently planned. However, this may be carried out in the future, for readjustment of the strategy for the population of the database. In this case, the data will be anonymized.

2.18. Recipients and data transfers. The administrator of the database (the Scientific Cooperation Unit) has access to information provided by data subjects for management purposes.¹¹

The IT supporting Unit has access to the information for provision of technical assistance.

In addition, the following persons have access to the database:

- internal end-users (selected EFSA staff on an as-needed basis with access to the search environment of the expert database located on a secure web portal) and

⁹ Information is given to data subjects about processing by users in Member States only in very generic terms in the disclaimer. EFSA has not established a specific procedure on use of the database by the Member States.

¹⁰ EFSA explained that the intention with the annual request for confirmation of profiles is to remind experts to keep their profiles updated. In case experts do not act upon this request, they are still kept in the database. This request is not automated for the time being.

¹¹ EFSA explained that currently, one person in this Unit has access to the database with administrator rights, using specific software (CRM). Other colleagues of the same Unit access the database as EFSA internal end-users.

- external end-users (identified Member State representatives (Advisory Forum Members) with access to the search environment of the expert database located on a secure web portal)¹².

No data are directly accessible or systematically transferred to any other recipients.

2.19. Security. On-line access to the Expert Database is password-protected and only on a need-to-know basis as explained in Section 2.18 above.

Access by experts to their individual application forms is made via a protected username/password feature at <http://edb.efsa.europa.eu/EfsaDBExpertWeb/jsp/Login.jsp>.

Access by (internal or external) end-users to the search environment of the expert database is made via a secure web portal at <https://sciencenet.efsa.europa.eu/portal/server.pt/>.

EFSA uses its own IT infrastructure and the standard security measures apply.

2.20. Launch of the database and consultation of the EDPS. In 2007 EFSA consulted the EDPS whether the Expert Database was subject to prior checking. By means of an email dated 13 November 2007, the EDPS confirmed the data processing operation is subject to prior checking. The EDPS reference number assigned to the case is 2007-659. The Expert Database was launched on 5 June 2008.

3. Legal aspects

3.1. Prior checking

Scope of Notification. As discussed under Sections 1 and 2.1 above, the Notification and this Opinion concern EFSA's Expert Database.

The Opinion separately discusses and analyses the following two issues: (i) establishment and maintenance of the Expert Database and (ii) use of the database for selection of external scientific experts for specific assignments with EFSA. However, the Notification does not cover the use of the Expert Database by authorities in Member States.

The data protection issues that arise in connection with processing of Declarations of Interests (see Section 2.9.4 above) also do not come under the scope of this Notification, and therefore, are not comprehensively discussed in this Opinion.

Applicability of the Regulation. Regulation (EC) No 45/2001 ("**Regulation**") applies to the "processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system" and to the processing "by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law" (Article 3).

All elements that trigger the application of the Regulation are present here:

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

¹² See http://www.efsa.europa.eu/EFSA/PartnersNetworks/AdvisoryForum/efsa_locale-1178620753812_MembersAF.htm for a list of the persons.

Second, the personal data collected undergo automatic processing operations as well as manual data processing operations, which form part of a filing system (Article 3(2) of the Regulation).

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

Based on the foregoing, the Regulation is applicable.

Grounds for prior checking. Article 27(1) of the Regulation subjects to prior checking by the EDPS all “processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes”.

Article 27(2) contains a list of processing operations that are likely to present such risks. This list specifically includes, under paragraph (b), “processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.” The notified processing operation involves

- evaluation of the applicants’ eligibility for inclusion in the database,
- and subsequently, when experts are selected for a specific assignment, evaluation of their ability to meet the requirements for a specific advisory task.

Therefore, the notified processing operation requires prior checking by the EDPS.

Notification and due date for the EDPS Opinion. The Notification was received on 17 July 2008. According to Article 27(4) of the Regulation this Opinion must be delivered within a period of two months. The procedure was suspended for a total of 32 days. Thus, the Opinion must be rendered no later than 19 November 2008 (18 September 2008 + suspension for the month of August + suspension for 29 days + 3 days for comments).

Ex-post prior checking. The processing operations started shortly before the EDPS had been notified (the database was launched on 5 June 2008), notwithstanding the result of the DPO's consultation on the need for prior checking.

Since prior checking is designed to address situations that are likely to present risks, the opinion of the EDPS should normally be requested and given prior to the start of the processing operation. Therefore, the EDPS calls EFSA's attention to the fact that new processing operations should be submitted for prior checking in the planning stage, so that data protection concerns could be taken into account when designing the processing operation.

With that said, in the present case the harm done by the delayed submission is very limited considering that

- the processing operation already includes a number of important data protection safeguards,
- the DPO was involved in the design of the procedure to ensure that adequate safeguards would be put in place; and
- further improvements can be made to the system to ensure full compliance with data protection rules and principles before the data in the database are put to use.

3.2. Lawfulness of the processing

General comments. Article 5(a) of the Regulation provides that personal data may be processed if “processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties ... or other legal instrument adopted on the basis thereof”... "by a Community institution or body" or "a third party to whom the data are disclosed".

The first issue under Article 5(a) is to determine whether there is a specific legal basis for the processing: a Treaty provision or another legal instrument adopted on the basis of the Treaties. The second issue is to determine whether the processing operation is necessary for the performance of a task carried out in the public interest.

With regard to the first issue, the expert database is based on the formal decision of EFSA's Director adopted on 30 May 2008, which was, in turn, based on the legal basis cited in Section 2.2 above.

Thus, specific legal instruments adopted on the basis of the Treaties allow for the notified processing operations. With regard to the second issue, the EDPS is also satisfied and does not challenge that the notified processing operation is necessary and proportionate for the performance of EFSA's mandate or the work of authorities in Member States having a similar mandate to EFSA.

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

3.3. Data Quality

Adequacy, relevance, and proportionality. According to Article 4(1)(c) of the Regulation personal data must be “adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.”

Based on the information provided to him, the EDPS does not question the adequacy, relevance and proportionality of the data collected in the database.

Fairness and lawfulness. Article 4(1)(a) of the Regulation requires that data must be processed fairly and lawfully. The issue of lawfulness was analysed above (see Section 3.2). The issue of fairness is closely related to what information is provided to data subjects (see Section 3.7 below).

Accuracy. According to Article (4)(1)(d) of the Regulation, personal data must be “accurate and, where necessary, kept up to date”, and “every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified.”

The EDPS sees the following two possible sources of inaccuracy in the database:

First, inclusion of data are based on the self-declaration of the applicants, and EFSA carries out no actual verification (other than based on the information submitted) whether an expert indeed qualifies for inclusion, and if so, whether with respect to all expertise fields indicated in the application. This may lead to situations when an expert who overstate his or her expertise, for example, by listing more expertise fields than he should, could come up in search results more often.

This source of inaccuracy is often present in similar databases which contain by and large unchecked (or only superficially screened) applications for particular positions or future vacancies. To reduce this inaccuracy, EFSA already made some steps by introducing the validity check of applications, based on the information submitted as part of the application. However, as this check does not in itself guarantee the accuracy of the information in the database, the EDPS recommends that the end-users' attention should be specifically called to the limited nature of the validity check that EFSA was carrying out, suggesting that they use the database as a pool of applications, rather than as a pool of experts whose skills and reliability have already been carefully checked by EFSA in each case.

Secondly, although experts are requested to update their profiles every year, they will remain in the database (with the old data which may possibly be outdated) even if they fail to update their profiles (or confirm the existing profile).

In this respect the EDPS recommends that

- automatic reminders would be periodically sent to experts who failed to update their profiles (or confirm their old profiles) within a reasonable amount of time after the first request has been made, and that
- these reminders should contain a warning that failure to respond following a certain specific period of time would entail the automatic deletion of their profiles.

If necessary, the EDPS would find it acceptable that in the initial period before more experience is gained with the use of the database, unconfirmed profiles could remain in the database, provided that they would be clearly identified as "unconfirmed", perhaps with a time-stamp noting the date when they were last updated.

3.4. Conservation of data. The general principle in the Regulation is that personal data may be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed (Article (4)(1)(e) of the Regulation).

The EDPS recommends that the update mechanism be strengthened as recommended in Section 3.3 above, which, in addition to improving the accuracy of the database would also have the added benefit that no data would be kept in the database longer than necessary.

In addition, the EDPS recommends that EFSA also provides for an appropriate conservation period for processing data during the selection procedure for specific assignments.

3.5. Recipients and data transfers. The EDPS welcomes that

- on-line access to the database is limited on a need-to-know basis, as described in Section 2.18 above;
- access by external users is optional and subject to the unambiguous written consent of the data subject; and
- the aggregate reports referred to in Section 2.5 contain only anonymous data.

The EDPS additionally calls EFSA's attention to the requirement that if unforeseen data transfers are requested by any third party, EFSA should allow transfers subject to (i) either the unambiguous (with respect to sensitive data, explicit) and informed consent of the data subject, or (ii) as otherwise specifically allowed by the Regulation. The EDPS also

emphasizes that pursuant to Article 7(3), the recipients may only process the personal data transferred for the purposes for which they were transmitted.

In case of doubt, the EDPS recommends that EFSA's DPO be consulted before the data transfer.

3.6. Right of access and rectification. Article 13 of the Regulation grants a data subject the right of access to personal data held about him. Article 14 provides a right of rectification of personal data.

The EDPS welcomes that, as described in Section 2.15 above,

- the experts have, at all times, on-line access to their application data;
- applicants are informed whether or not they are included in the database, and if they were not, about the reasons therefore;
- shortlisted experts informed about the decision whether or not they are eventually selected;
- EFSA confirmed its intention to provide access and respond to rectification requests as soon as possible; and that
- EFSA did not establish any specific restrictions on access to the data subjects to their data.

The EDPS makes the following recommendations to further improve EFSA's procedures:

First, the EDPS recommends that upon request internal documents such as eligibility grids and minutes would also be made available to the data subjects. Any exception to restrict access to internal documents should only be applied in justified cases. Restrictions on access pursuant to Article 20(1)(c) of the Regulation to protect "the data subject or the rights and freedoms of others", as the EDPS pointed out in previous prior checking procedures regarding EPSO's practices¹³, should not be interpreted to arbitrarily limit access of data subjects to the documents on the basis of which decisions were made about them. The acceptable restrictions, in principle, are of two kinds:

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

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

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

¹³ See EDPS opinions on recruitment of permanent staff, temporary staff, and contract staff for EU Institutions, agencies and bodies (cases 2004-236, 2005-365 and 2005-366).

Therefore, the EDPS recommends that EFSA should provide access, upon request, to evaluation grids, minutes, and other internal documents documenting the decisions of the selection bodies.¹⁴

Protection of the impartiality and independence of the selection body, which is the reason behind the requirement of confidentiality, would be unlikely to be prejudiced if the selection body disclosed to candidates, in a transparent manner, the criteria based on which it evaluated candidates and the actual detailed marks or comments a particular candidate received with respect to each criterion.

Second, EFSA should provide procedural safeguards to ensure that access rights are granted in a timely manner and in accordance with the requirements discussed immediately above. These may include a time-limit established for response to the request by EFSA, and the obligation for the controller to request the advice of the DPO in case of doubt whether a request can be granted.

3.7. Information to the data subject. Articles 11 and 12 of the Regulation require that certain information be given to data subjects in order to ensure the transparency of the processing of personal data. Article 11 is applicable to data obtained from the data subject, which is the case, for example, with regard to data contained in the candidate's on-line application form. Article 12 applies when the data have not been obtained from the data subject. This is the case, among others, of the evaluation data contained in documents prepared by the selection body.

The EDPS welcomes that EFSA provides comprehensive data protection notice to applicants prior to submitting their applications.

The EDPS further recommends the following:

- As already envisaged by EFSA, the term "disclaimer" should be replaced (or complemented) by the words "data protection notice".
- A reference should be made to the fact that EFSA's use of the database is governed by the provisions of the Director's Decision.
- A reference should be made to the fact that the Member States' use of the database is not specifically regulated in a legal instrument, but as far as data protection is concerned, it is subject to the provisions of Directive 95/46/EC.
- It should be ensured that experts could any-time, when reviewing or updating their profile, could have access to the full data protection notice that they initially acknowledged (that is, both "disclaimers" should continue to be available for viewing).

3.8. Security measures. According to Article 22 of the Regulation, the controller must implement the appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

¹⁴ If necessary to safeguard the confidentiality of the deliberations and decision-making of the selection body, certain information may be deleted from the documents provided. For example, if opinions varied about a candidate, it is not always necessary to indicate which selection body member favoured and which did not favour the applicant. Any deletions, however, should be assessed on a case by case basis.

The EDPS has not encountered any facts which would suggest doubts about the adequacy of the security measures for data processed in the framework of the notified processing operation.

Conclusion

There is no reason to believe that there is a breach of the provisions of the Regulation provided that the considerations noted in Sections 3.2 through 3.8 are fully taken into account. The recommendations of the EDPS include, most importantly, the following:

- Level of screening:

The end-users' attention should be specifically called to the limited nature of the validity check that EFSA carries out, suggesting that they use the database as a pool of applications, rather than as a pool of experts whose skills and reliability have already been carefully checked by EFSA in each case.

- Profile updates:

Automatic reminders should be sent to experts who failed to update their profiles (or confirm their old profiles) with a warning that failure to respond (after a number of reminders) would entail the automatic deletion of their profiles.

- Conservation period for selection data:

EFSA should also provide for an appropriate conservation period for processing data during the selection procedure for specific assignments.

- Rights of access:

EFSA should provide procedural safeguards to ensure that access rights are granted in a timely manner and without undue constraints (including access to certain internal documents). These may include a time-limit established for response to the request by EFSA, and the obligation for the controller to request the advice of the DPO in case of doubt whether a request can be granted.

- Information to data subjects:

Certain additional information needs to be provided as discussed in Section 3.7 above.

Done at Brussels, on 11 November 2008

(signed)

Peter HUSTINX
European Data Protection Supervisor