



## **Opinion on the notification for prior checking from the Data Protection Officer of the European Commission regarding "*Junior Experts in Delegation*"**

Brussels, 22 April 2009 (Case 2008-0754)

### **1. Procedure**

Notification within the meaning of Article 27(3) of Regulation EC No 45/2001 concerning "Junior Experts in Delegation" was given by the Data Protection Officer (hereinafter referred to as the "DPO") of the European Commission (hereinafter referred to as the "Commission") by letter received on 8 December 2008.

In connection with this notification, questions were put to the Commission's DPO by e-mail on 22 January 2009 and replies were received on 24 February 2009 and 4 March 2009. On 19 March 2009 the draft opinion was sent to the Commission's DPO for comments. Comments were supplied on 20 April 2009.

### **2. Facts**

The Junior Experts in Delegation programme, also known as the JED programme, was set up in 1984 and is currently administered by Unit K.6, Directorate K (External Service) of DG RELEX at the Commission. It aims to provide qualified young university graduates from EU Member States with invaluable experience working as diplomatic and technical staff for a period of up to two years in the European Commission's External Service delegations situated, for the most part, in developing countries. The programme is financed by the Commission and certain Member States by means of bilateral agreements.

#### **Data subjects**

Any person who submits an application for a JED post, any referees named by candidates or any person indicated by the JED as the person to contact in the event of an accident/emergency and, where applicable, the JED's spouse.

#### **Purpose**

The purpose of the processing operation in this case is to examine the eligibility of JED candidates put forward by the Member States, select JEDs, determine who will be offered a posting to a delegation, ensure proper implementation of all aspects of their two-year contract and evaluate their performance in discharging their duties within the delegation.

#### **Legal basis**

The legal basis for the processing operation is Article 3 of the Commission Decision of 27.12.2002 (E2690/2002) which refers to the JEDs managed by DG RELEX. The programme

procedure is described on the internet site [http://ec.europa.eu/external\\_relations/jed/index.htm](http://ec.europa.eu/external_relations/jed/index.htm).

The contract concluded between the JED and the Commission, which is represented by Unit K.6, DG RELEX, is a private law contract governed by Belgian labour law. The contract lays down, *inter alia*, the nature of the contract, remuneration and reimbursement of expenses, allowances, including family allowances, and other financial benefits, as well as the probationary period and period of appraisal, etc.

### **Procedure**

The different stages of preselection and selection are as follows:

- an application form is sent by the data subject to the competent national authority of the Member State to which the candidate has decided to apply;
- the preselection (also called pre-qualification) procedure is undertaken exclusively by that Member State's authority and neither commits nor involves the Commission;
- preselection is a national procedure, according to the national rules of the Member State, the result of which is communicated to the Commission by the competent national authority of the Member State to which the candidate has applied, via the Member State's Permanent Representation, in the form of a list of candidates proposed for a selection interview;
- after checking the proposed candidates' eligibility criteria, the Commission invites preselected candidates to interviews by selection panels;
- these panels are composed of representatives from the relevant Commission departments, who receive an official version of the preselected candidates' applications (as forwarded by the Member States) so that they can conduct the interviews appropriately;
- interviewed candidates are marked by the Commission's representatives. Their marking decision is not subject to appeal<sup>1</sup>;
- the results are officially communicated by the Commission to the respective Permanent Representations of the Member States.

In the event that a candidate is selected and has agreed, through the authorities of the Member State to which he/she applied, to the posting offered by the Commission,

- he/she undertakes to inform the Commission of any change in that decision to accept the offer at least three (3) weeks before the announced starting date of the JED contract, and
- he/she agrees to undergo the statutory medical examination organised by the Commission's Medical Service to ascertain that he/she is physically fit to serve in a third country.

The above forms part of a statement contained in the application form which must be read, approved and signed.

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<sup>1</sup> The controller acknowledges that this sentence may give rise to misunderstandings and will reword it to indicate more clearly the available channels and procedures for appeal (name, administrative address of the department to which appeals should be submitted and the deadline to be met).

The data requested in the *application form* (first stage) are as follows:

- ❖ photo, name, forename, sex, date and place of birth, nationality at birth and current nationality, marital status, maiden name, legal address, mobile telephone number, e-mail address, current address, home and office telephone numbers;
- ❖ whether the candidate has fulfilled his military obligations;
- ❖ whether the candidate has dependants and if so, their name(s), forename(s), date(s) of birth and relationship to the candidate;
- ❖ secondary education and higher education (name of the institution, duration of studies, diplomas and degrees obtained, main subjects and final mark);
- ❖ scholarships and traineeships (name of the institution, duration and awarding body, activities and certificate obtained);
- ❖ brief description of the candidate's final dissertation and any published works or articles;
- ❖ extra-curricular activities and interests (description, type of participation and involvement), mother tongue and knowledge of other languages (written, spoken and reading);
- ❖ work experience (full-time/part-time/voluntary work, duration, post held, employer's name and address, nature and place of work, description of tasks and expiry of current contract);
- ❖ IT skills;
- ❖ extended periods abroad (country, period and brief description of motivation and activities);
- ❖ special skills and qualifications acquired;
- ❖ referees (name and title, address and telephone number and candidate's consent that referees be contacted);
- ❖ candidate's motivation (indication of the main reasons for choosing the programme);
- ❖ preferred field of activity or post at a Commission delegation and/or geographical area and
- ❖ other elements to be taken into consideration.

Upon the JED's recruitment, the following *information sheets* are collected by Unit K6, DG RELEX (second stage):

- title (MR, MRS, MS);
- name, maiden name, forename, sex, date, country and town of birth, current nationality, address in Europe and place of origin;
- family situation (single, if married, date of marriage, if separated, date of separation, if divorced, date of divorce, if widowed, date of spouse's death). The JED must provide the relevant documentary evidence;
- information regarding the spouse (name, forename, date of birth, nationality(ies), whether or not the spouse is gainfully employed and, if so, his/her annual income before deduction of tax, indicating the amount and the currency so that the JED's entitlement to allowances can be assessed);
- information concerning children (whether the JED has children and if so, how many, their names, forenames and dates of birth) and
- information about the JED (title, name, forename and address of two persons to be contacted in the event of an emergency).

These information sheets must be signed by the data subject.

- Under the JED's **contract** with the Commission a form relating to the JED's bank details for payment of the salary and allowances, is also collected by Unit K6, DG RELEX.

***Data collected by the Head of Delegation for the JED's appraisal report*** (third stage):

The exercise evaluating the JED's performance and conduct during the probationary period and at the end of the first year of the contract is conducted by the delegation, overseen by Unit K.6, DG RELEX. A note on this subject dated 19 February 2009 was sent by the Director of the External Service, Unit K.6, DG RELEX, to all Heads of Delegation hosting a JED in 2009. This note stated that "*The work of the JED and his/her integration in the delegation should be overseen and supervised by you personally or by an experienced official designated by you (usually Head of Section) who, in the course of a dialogue, will specify and explain to the JED his/her duties and tasks, aims, working conditions and methods and deadlines. This will be the basis for assessing the JED's performance and conduct*".

An appraisal report is issued by the Head of Delegation at the end of the JED's three-month probationary period determining whether (or not) to continue the JED's contract. At the end of the first year of the contract, a second appraisal report is issued by the Head of Delegation determining whether or not the contract should be extended for a second year. At the end of the second year of the contract (the end of the contract), a final appraisal report is issued. All these reports are drawn up on the basis of dialogue with the JED who countersigns the reports and receives a copy. They are sent to Unit K.6, DG RELEX at headquarters and filed in each JED's personal file.

The data collected for the appraisal report are as follows:

- the JED's name, nationality, programme, date of taking up the post in the delegation, place of employment, Head of Delegation and Supervisor (name and title);
- whether or not the probationary period was completed successfully;
- whether the qualifications, abilities and experience of the JED corresponded to the Head of Delegation's initial request;
- indication of the JED's professional and social qualities and justification of this evaluation:
  - whether the JED adapted to local circumstances fairly quickly, with some difficulty or did not adapt at all;
  - whether the JED fitted in with the delegation team fairly quickly, with some difficulty or did not adapt at all;
  - indication of the JED's knowledge of languages (written, spoken, reading) and
  - whether the JED's knowledge of languages is adequate for the JED to be effective in the local environment;
- description of the designated tasks and indication of any changes vis-à-vis the tasks signed up to at the start of the contract;
- appraisal (excellent, good, satisfactory) of the JED's ability to learn, organisational skills, working methods, ability to adapt, cooperation, judgement, ability to set priorities and precision and speed in learning on the job and working;
- whether it is recommended that the JED's contract be extended until the end of the first year of the contract, and
- any additional comments.

The processing in this case is primarily manual with electronic backup, involving transmission of data by internal mail, e-mail or diplomatic bag. The personal file drawn up for each JED at the time of recruitment, which contains all the data described above, is kept by DG RELEX and is not transmitted to the administration of the delegation where the JED is employed.

## **Recipients**

The recipients of the data are:

- For the selection stage: officials representing DGs RELEX, DEV, ELARG, AIDCO and TRADE who are on the selection panels receive a copy of the application form submitted by candidates and a summary of their application prepared by Unit K.6, DG RELEX. Members of the selection panels have signed a statement in which they undertake to *"assume their responsibilities honestly, fairly and impartially; to declare any conflict of interest immediately; ... to keep information and documents (in particular candidates' applications) secure and confidential (...); not to disclose any document or information (...) to any third party without the prior consent of Unit K.6, DG RELEX; to comply with the rules on the protection of personal data within the meaning of Regulation (EC) No 45/2001"*;
- For the stage of the decision to post the JED: officials representing DGs RELEX, DEV, ELARG, AIDCO and TRADE (at the level of Heads of Unit, Human Resources Directors and Directors-General) on the Steering Committee of the Commission's External Service receive a summary of candidates' applications and the proposed places of employment;
- The Head of Administration and the delegation's human resources officers receive a copy of the JED's application form;
- In the framework of an appraisal and confirmation of the JED in his/her post after a three-month probationary period, for the renewal of the contract after one year and at the end of the two-year contract, the Head of Delegation, the JED's supervisor and lastly, Unit K.6, DG RELEX have access to the three appraisal reports corresponding to those periods;
- The results are communicated officially by Unit K.6, DG RELEX to the respective Permanent Representations of the Member States. The transferred data are the names and forenames of the candidates who will be offered a post in a delegation, ranked in order of priority.

## **Right of access and rectification**

All candidates for a JED post and all JEDs can access their dossier or request the rectification of their data at any time on request to the administrator of their dossier in Unit K.6, DG RELEX. Contacts to that end may be by post or electronic e.g. a functional mailbox set up to facilitate correspondence. Candidates may also request access to their marks and to any comments by members of the selection panel relating to their individual assessment sheet and may also obtain explanations if they wish.

Data are blocked or erased as soon as possible following a reasoned request by the persons concerned.

## **Right to information**

As regards the right to information, candidates for a JED post are directed to the website where they can find full information on the process of preselection, selection and recruitment. The website contains a text entitled: *"Concerning the content of the above statements and my rights to personal data protection"*. The application form contains the same text. The passage contains, *inter alia*, the following information:

*"I am informed that any of my personal data included in or relating to this application, and any possible future contract, including its execution, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and*

*follow-up of the contract by Commission Directorate-General for External Relations (DG RELEX), Directorate K, Unit K6, without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law.*

*I take note that I have the right of access to my personal data and the right to rectify any such data that is inaccurate or incomplete. Should I have any queries concerning the processing of my personal data, I shall address them to the Data Protection Officer of the European Commission. I have right of recourse at any time to the European Data Protection Supervisor.*

*I take note that applications (in whatever format) received by the Commission from EU Member States are kept in locked archive rooms and electronic servers of the European Commission to which access is restricted to its staff alone: this includes the applications of pre-selected candidates proposed for interview, of candidates retained for interview, of selected candidates with a view to being offered a JED position, and of candidates included on a reserve list in the event that those selected decline the offer or withdraw from the programme."*<sup>(\*)</sup>

### **Data storage**

It is stated that the data storage policy adopted in this case is based on Regulation (EC) No 45/2001 and on Belgian labour law.

Application forms are destroyed by members of the JED selection panels once the selection panel's work is done.

#### *Unsuccessful candidates:*

No personal files exist for these candidates. Their application forms are kept for two years, which the controller considers to be the necessary period for finalising the selection process and to be able to reply to any questions, notify them of their marks or the panel's comments or reply to any questions by the authorities of the Member States which took part in the preselection process (and wish to keep track of their candidates).

#### *Selected candidates:*

- if the selected candidates accept the offer of the posting and the contract, a personal file is created at the time of drawing up the contract. That file, in accordance with Belgian labour law, is kept for as long as necessary to enable the employer to supply all the relevant certificates to the JED, during and after the end of his/her contract. The minimum storage period for documents for the purpose of drawing up a certificate is at least five years (rule of thumb);
- if those candidates decline the offer of the posting or the subsequently proposed contract or withdraw from the programme, no personal file is drawn up. In that case, the application form is kept for the period necessary to complete the selection exercise (two years), in order to be able to reply to any questions from candidates or the authorities of the Member States which took part in the preselection exercise. It may happen, however, that a candidate cannot take up the post by the stated deadline but nevertheless wishes to remain a "*candidate on the reserve list*";
- Since persons placed on the reserve lists for their respective Member States have no contract with the Commission, no personal file exists for them. The Commission keeps their applications for at least one year so that it can, if necessary, contact them in order to propose that they replace a candidate who has withdrawn from the initial list or to replace a JED who terminates his/her contract early, generally during the first year of the contract.

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<sup>(\*)</sup> Translation from the Commission.

Beyond the storage period for data relating to JEDs, data are kept for the purpose of statistics and are anonymised.

### **Storage and security measures**

Data in paper form (application forms, notes taken by panels, information sheets, etc.) are filed in each JED's personal file in one or more locked filing cabinets and kept in a locked archive room or in a locked cupboard in the administrators' offices. Personal files of successful candidates involving contracts of over five years are stored in the Commission's central historical archives. More recent files from which former JEDs often still need certificates, copies of their files etc., are stored in the archives of Unit K.6, DG RELEX. Ongoing files and contracts are stored in locked cupboards in administrators' offices in Unit K.6, DG RELEX. These offices are situated in Commission buildings and may be accessed only subject to the security conditions laid down.

Personal files are also stored on an internal, secure drive which is backed up every day. This drive is not connected to the Intranet or the Internet. Only members of staff from Unit K.6, DG RELEX have access to it.

It is stated that Unit K.6, DG RELEX (Head of Unit, Deputy Head of Unit and Head of Section) regularly remind staff administering the files of the security rules and guidelines and the rules governing the protection of personal data; ask administrators to follow training courses in these areas: regularly inspect the archives and offices where personal files are stored and the content and structure of servers and files to verify compliance with security rules.

It is also stated that processing of data (whether in paper or electronic form) by delegations must meet the same security standards as applied at headquarters. The Inspection of the Delegations Unit carries out regular checks, issues recommendations and ensures their follow-up. The units of the Commission's External Service Directorate also carry out inspection visits, identify any problems and ensure that their findings are followed up.

## **3. Legal aspects**

### **3.1. Prior checking**

Regulation (EC) No 45/2001 applies to the processing of personal data 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(1)). In the case in point, the data processing is carried out by the Commission in the exercise of activities under the first pillar which thus fall within the scope of Community law.

The processing in this case is primarily manual with electronic backup, involving transmission of data by internal mail, e-mail or diplomatic bag. The data are therefore subject to processing intended to form part of a filing system. Article 3(2) therefore applies in this case.

Accordingly, the processing falls within the scope of Regulation (EC) No 45/2001.

It is important to note that in contrast to the data processing for the first stage of selection and the second stage of the award of contracts to JEDs, processing for the JED's appraisal report (third stage) is not carried out by Unit K.6, DG RELEX but by the delegation to which the JED is posted. However, all delegations are part of the Commission and are under the

authority and supervision of Directorate K (of the External Service) of DG RELEX. Unit K.6, DG RELEX administers and manages the whole selection process up to the JED's appraisal. Moreover, all appraisal reports must be sent to Unit K.6, DG RELEX by the Head of Delegation. It follows that Unit K.6, DG RELEX is the controller for appraisal reports, as it is for the selection and award of contracts to JEDs. Consequently, all three stages are subject to prior checking and together form part of the same dossier notified to the EDPS.

Article 27 of Regulation (EC) No 45/2001 requires prior checking by the EDPS of processing operations likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) lists processing operations likely to present such risks, such as "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" (Article 27(2)(b)). In the case in point, the processing relates to the selection of JEDs, administration of their contracts and evaluation of their performance and aims to evaluate certain personal aspects relating to the data subjects, namely their ability. This case therefore falls within the scope of the prior checking procedure.

In principle, checking by the EDPS should be performed before the processing operation is implemented. In this case, as the EDPS was appointed after the system was set up, the check necessarily has to be performed **ex post**. This does not make it any the less desirable that the recommendations issued by the EDPS be implemented.

The formal notification was received on 8 December 2008. In accordance with Article 27(4) of the Regulation, the two-month time limit within which the EDPS must deliver an opinion was suspended. Taking into account the 41 days of suspension, the EDPS will deliver his opinion by 24 April 2009 (41 days of suspension + 32 days for comments).

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

Article 5 of Regulation (EC) No 45/2001 provides that personal data may only be processed if at least one of its five conditions is met.

The processing operation under examination meets the condition in Article 5(a) of the Regulation, in accordance with which 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 establishing the European Communities or [...] in the legitimate exercise of official authority vested in the Community institution*".

Two matters have to be considered in relation to this condition: firstly, whether the processing operation is provided for under the Treaties establishing the European Communities or other legal instruments and secondly, whether the processing is necessary in the public interest (the necessity test).

The **legal basis** for the processing in this case is Article 3 of the Commission Decision of 27 December 2002 (E2690/2002) which refers to the JEDs managed by DG RELEX. The processing procedure is described on the website of the Junior Experts in Delegation programme.

Moreover, the contract between the JED and the Commission, represented by Unit K.6, DG RELEX covers, *inter alia*, the nature of the contract, remuneration and reimbursement of expenses, allowances including family allowances and other financial benefits, the probationary and appraisal periods, etc. The EDPS would draw attention to the fact that in this



case the data are collected and processed by a Community institution, and would therefore emphasise that although the contract concluded between the data subjects and the Commission is regulated by Belgian labour law, the processing in this case must be carried out in compliance with the principles set out in Regulation (EC) No 45/2001 (see point 3.4 below).

As for the procedure, it is stated that the marking decision of the Commission representatives is not subject to appeal. In this connection, the controller acknowledges that this sentence might give rise to misunderstandings and will reword it to indicate more clearly the available channels and procedures for appeal. The EDPS recommends that this sentence be reworded as soon as possible so that the procedure is consistent with the provisions of the contract concluded between the JED and the Commission in relation to appeals to the competent courts and the provisions of Regulation (EC) No 45/2001.

**The necessity** of the processing operation is also covered by recital 27 of the Regulation, which states that "*processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies*". In the case in point, the processing operation is necessary for the management and functioning of the Commission. More specifically, the EDPS considers the tasks performed by Unit K.6, DG RELEX to be in the public interest in the field of labour law. To that effect, data are processed so that the brightest and best qualified young graduates can be selected for a two-year post in one of the Commission's delegations.

The processing operation also meets the requirements of Article 5(d) of the Regulation. The data are collected on the basis of the data subject's consent, i.e. the application form, the information sheets, documents showing bank details and the appraisal report.

The processing operation proposed is therefore lawful.

### **3.3. Data quality**

In accordance with Article 4(1)(c) of Regulation (EC) No 45/2001, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed.

The data described in point 2 above (facts) relate to the JED's identity, qualifications and skills, and include administrative, financial and family data. The EDPS considers the data in question relevant and not excessive in relation to the purposes for which they are collected. However, it wishes to make the following two points:

The EDPS is uncertain of the necessity and the relevance of the inclusion of a photograph among the data collected with the application form, in relation to the purpose of processing, during the stage of selection of the best-qualified candidates for a JED post. The EDPS consequently recommends that the submission of a photograph no longer be required when completing the application form, without prejudice to the formal identification of the data subject at a later stage in the selection process.

The EDPS would also question the need for the data in the application form under "*Other elements to be taken into consideration*" and does not consider the requested data sufficiently clear in relation to the purpose for which they are collected. The EDPS finds, in particular, that this phrase could give rise to questions or doubts among candidates about the kind of

information they should provide, given that the other data requested in the application form appear to be exhaustive. Furthermore, this sentence could prompt candidates to supply information considered sensitive, e.g. on their health, sex life, political opinions, etc. This category of sensitive data is not proportionate to the purpose for which the application form is collected. For this reason, the EDPS recommends indicating that this sentence is firstly optional and, secondly, that it be reworded to specify that the information provided under "*Other elements to be taken into consideration*" should be strictly relevant to the candidate's university and professional career, in order to ensure compliance with Article 4(1)(c).

The data must also be "*processed fairly and lawfully*" (Article 4(1)(a)). The lawfulness of the processing operation has already been discussed in point 3.2 of this opinion. As for fairness, this relates to the information which must be transmitted to the data subject (see point 3.7 below).

Article 4(1)(d) of the Regulation stipulates that data must be "*accurate and, where necessary, kept up to date*". Furthermore, under that Article, "*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*". In this case, the data subjects themselves provide the required data (application form, information sheets, appraisal report drawn up on the basis of a dialogue). All those data are kept in the JED's personal file, to which the JED has access on request at any time. The procedure in place gives sufficient cause to believe that the data are accurate and kept up to date. Data subjects' right to access and rectify their data is a second means of ensuring that their data are accurate and up-to-date (see point 3.6 on the right of access).

### **3.4. Data storage**

The general principle set out in Regulation (EC) No 45/2001 is that data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*" (Article 4(1)(e) of the Regulation).

Application forms are destroyed by members of the JEDs selection panels when the panel's work is done. Data on unsuccessful candidates are kept for a period of two years. In the case of candidates who are selected, it is stated that under Belgian labour law the personal file is stored for five years. Application forms of candidates who do not accept the offer of a posting are stored for two years. Application forms of candidates who wish to be placed on the reserve list are stored for one year.

Data are also stored anonymously for statistical purposes.

The EDPS considers that the storage of unsuccessful candidates' application forms for two years is reasonable and necessary for the purpose for which the data are processed subsequently, as indicated by the controller, in particular to be able to reply to candidates' questions, inform them of their marks or the panel's comments or to reply to any questions from the Member States which took part in the preselection process (and wish to keep track of their candidates). The EDPS would also point out that the period of two years is considered necessary for the Commission to respond any complaints made to it or the Ombudsman or legal appeals, etc.

As mentioned under point 3.2, the processing in this case is governed by the principles set out in Regulation (EC) No 45/2001 and not by provisions of Belgian law. The period of five years

for the storage of the personal files of selected candidates is proportional to the purpose of the processing operation in the light of Article 4(1)(e) of Regulation (EC) No 45/2001 which, moreover, coincides with the principle set out in Belgian labour law. The period of five years is also in keeping with the provisions of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup>.

The EDPS considers that the respective storage periods of two and one years for the application forms of candidates who do not accept the place of employment and those who wish to stay on the reserve list, are not excessive within the meaning of Article 4(1)(e) of the Regulation.

The EDPS is content for the data to be stored anonymously for statistical purposes.

### **3.5. Transfer of data**

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data between or within Community institutions or bodies *"if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

To comply with Article 7(1), the Commission must ensure that all the recipients have the appropriate competence and that the transfer is necessary. Here a transfer takes place within the Commission itself involving officials of DGs RELEX, DEV, ELARG, AIDCO and TRADE on the selection panels, the officials on the External Service Steering Committees representing those DGs and the Head of Delegation, the JED supervisor and the Delegation's administration. The recipients have a specific competence and the data transferred to them are necessary for the legitimate performance of the tasks falling within their respective competences. The EDPS therefore considers the transfer acceptable under Article 7(1) of the Regulation.

It should be pointed out that as each Delegation is part of the Commission and falls under the authority and supervision of Directorate K (External Service), DG RELEX, the transfer of the application form to the Delegation concerned is considered an internal transfer within the Commission. It has been demonstrated that the provisions of Article 9 of Regulation (EC) No 45/2001 do not apply in this case.

It is stated that members of selection panels must sign a statement undertaking to comply with the rules on the protection of personal data within the meaning of Regulation (EC) No 45/2001. It is also stated that the Inspection of the Delegations Unit and the External Service Directorate carry out inspection visits to examine how data is processed within the Delegation. The EDPS welcomes the fact that Article 7(3) of the Regulation, which provides

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<sup>2</sup> OJ L 357, 31.12.2002. In particular, Article 49 of the Implementing Rules of the Financial Regulation lays down that *"Personal data contained in supporting documents should be deleted where possible when those data are not necessary for budgetary discharge(...)"*. This subparagraph of Article 49 of the Implementing Rules of the Financial Regulation was added following recommendations from the EDPS made in his opinion of 12 December 2006 on proposals for amending the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules (COM(2006) 213 final and SEC(2006) 866 final), OJ C 94, 28.4.2007, p. 12 (see paragraphs 33-47 of the opinion).

that "*the recipient shall process the personal data only for the purposes for which they were transmitted*", is duly complied with.

The EDPS would point out that he himself may be considered a data recipient under Regulation (EC) No 45/2001. For instance, pursuant to Article 33 (Complaints by Community staff) or Article 47(2)(a), he is entitled to be granted access by the controller or Community institution or body to all the personal data and information necessary for his inquiries.

Where Unit K.6, DG RELEX transfers the names and forenames of the candidates who will be offered a post in a Delegation, ranked in order of priority, to the Permanent Representations of the Member States, the transfer is to a recipient subject to the legislation of the Member States of the European Union, adopted for the implementation of Directive 95/46/EC. The data transfers in the processing operation will therefore be scrutinised under Article 8 of Regulation (EC) No 45/2001. This particular transfer is covered by Article 8(a) which states that transfer is possible "*if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority*". The necessity of the transfer of these administrative data to the competent administrators in the Permanent Representations of the Member States is justified because the transfer is necessary for the performance of the Permanent Representation's task in the framework of the JED programme carried out in the public interest. However, it is recommended that administrators at the Permanent Representations concerned be reminded that they may only use the data in the strict and limited context of the performance of their tasks of cooperation with the Commission.

### **3.6. Right of access and rectification**

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – at the request of the data subject. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source.

Article 14 of the Regulation allows the data subject a right of rectification. In addition to being given access to their personal data, data subjects may also have the data amended if necessary.

All candidates for a JED post and all JEDs can access their dossier or request the rectification of their data at any time on request to the administrator of their dossier in Unit K.6, DG RELEX. They may contact them by post or e-mail. Candidates may also request access to their marks and to any comments by members of the selection panel on their individual assessment sheet and may also obtain explanations.

The EDPS therefore welcomes the fact that the obligations mentioned in Articles 13 and 14 of Regulation (EC) No 45/2001 are duly complied with.

### **3.7. Information to be given to the data subject**

Articles 11 and 12 of Regulation (EC) No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of compulsory and optional items of information. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subject and some from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject applies in this case, as the data subjects themselves fill in the application forms and information sheets.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on the information to be given to the data subject also applies here, since the data are obtained from the members of the selection panels, the members of the External Service's Steering Committees, the Head of Delegation, the Delegation's administration and the JED's supervisor.

It is mentioned that data subjects have access to the website which provides full information on the process of preselection, selection and recruitment. The website contains a text entitled: "*Concerning the content of the above statements and my rights to personal data protection*". The application form contains the same text.

The EDPS notes that the text contains certain items of information provided for in Articles 11 and 12, including the identity of the data controller, the purpose of the processing operations, the existence of rights of access and rectification, and the right to have recourse at any time to the EDPS. The EDPS would nevertheless point out that the following items of information based on Articles 11 and 12 should be added to the text:

- the exact recipients of the data;
- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply;
- the legal basis of the processing operation and
- the different time-limits for storing the data of selected and unsuccessful candidates.

Moreover, the sentence in the text "*Should I have any queries concerning the processing of my personal data, I shall address them to the Data Protection Officer of the European Commission*" should be corrected to read as follows: "*The data subject should contact the controller, namely Unit K.6, DG RELEX, European Commission*".

The EDPS therefore recommends that the text be supplemented and rectified in accordance with Articles 11 and 12. The EDPS also recommends that a note be added to the application form and to the information sheets, stating that the data subjects themselves should inform their referees, the persons to be contacted in the event of an emergency and their spouses that their data might be processed in the course of the processing operation.

### **3.8. Security**

In accordance with Article 22 of Regulation (EC) No 45/2001, the controller is required to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and prevent all other forms of unlawful processing.

Following an analysis of the security measures indicated (locked filing cabinets kept in locked cupboards and a restricted-access, secure internal drive), the EDPS finds them appropriate within the meaning of Article 22 of Regulation (EC) No 45/2001.

## Conclusion:

The proposed processing operation would not appear to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. This means, in particular, that, in the context of the processing operation, the Commission should take into account compliance with the rules of Regulation (EC) No 45/2001, despite the fact that the contract concluded between the JEDs and the Commission is governed by Belgian labour law. In that context, the Commission should:

- as soon as possible, reword the sentence on the candidate's right of appeal against the decision of the selection panel, in order to indicate more clearly the available channels and procedures for appeal;
- remove the requirement to submit a photograph with the application form without prejudice to the formal identification of the data subject at a later stage in the selection process;
- indicate that the sentence "*Other elements to be taken into consideration*" on the application form is optional and reword it so that it specifies that the information provided should be strictly relevant to the candidate's university and professional career;
- remind administrators at the Permanent Representation of the Member State concerned that they may only use this data in the strict and limited context of the performance of their tasks of cooperation with the Commission;
- supplement and rectify the text on the website relating to data protection so that it reflects the explanations given in point 3.7;
- insert a note in both the application form and in the information sheets stating that the data subjects themselves should inform their referees, the persons to be contacted in the event of an emergency and their spouses that their data might be processed in the course of the processing operation.

Done at Brussels, 22 April 2009.

(signed)

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor