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Brussels, 19 May 2010  
GB/XK/sk/ D(2010)757 C 2009-0467

**Subject: Prior-checking notification, case 2009-0467**

Dear Ms Marigo,

We have analysed the documents you have provided the EDPS concerning the notification for prior-checking under Article 27(2) of Regulation 45/2001 on the recruitment of temporary and contract agents in the EEA.

The notification defined the recruitment processing operation as "*processing allowing linkages between data processed for different purposes*" and "*processing for the purpose of excluding individuals from a right, benefit or contract*". According to the facts, it seems that the data collected in the framework of recruitment are processed for the sole purpose of selecting the best candidates and recruiting them to the positions of temporary and contract agents within the EEA. It is therefore incorrect to state that the processing presents specific risks under Article 27(2)(c) of the Regulation. Furthermore, the purpose of selecting the best candidates on the basis of certain criteria and expertise requested by the EEA does not mean that this purpose intends to exclude an applicant from being recruited. On the contrary, the purpose of the processing intends to offer them an opportunity to be admitted and participate in a selection procedure based on certain specific criteria. It follows that the processing operations under examination are not prior-checkable due to the specific risks presented under Article 27(2)(d). They are subject to prior-checking under Article 27(2)(b) of Regulation 45/2001, since they involve an evaluation of the applicants' ability to perform the functions of a temporary or a contract agent for which the selection and recruitment procedures have been organised.

The processing operations in the present case also involve data related to criminal offences (collection of police records), which constitutes an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation.

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The procedures related to the recruitment of temporary and contract agents, as well as the data protection practices as presented in the notification, are similar to other processing operations in this field. We therefore suggest that you refer to the EDPS Guidelines on staff recruitment<sup>1</sup> as well as the EDPS Joint Opinion on "*Staff recruitment procedures carried out by some Community agencies*"<sup>2</sup>. Both documents concern, *inter alia*, the category of temporary and contract agents and they examine all data protection principles in light of the provisions of Regulation 45/2001. It follows that the principles laid down in both the EDPS Guidelines and the EDPS Joint Opinion on staff recruitment are applicable in the case of the recruitment of temporary and contract agents carried out by the EEA.

The EDPS shall firstly identify the EEA's practices which do not seem to be in conformity with the principles of Regulation 45/2001 as well as with the EDPS Guidelines, and it shall then provide the EEA with relevant recommendations.

### **1. Retention of the police record**

**Facts:** It has been stated that EEA's Human Resources collect the original of the criminal record before offering the position to the appointed candidate(s). The criminal record is kept in the personnel file for an indefinite period.

**Recommendation:** In light of his Guidelines, the EDPS would recommend that the police record should be returned to the data subject immediately after his/her recruitment and a "standard form" which states that the data subject is suitable for the performance of his/her duties and enjoys his/her full rights of citizenship should instead be stored in the relevant personal file.

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

**Facts:** There is no information provided by the agency as to the means of granting the right of access and rectification to the data subjects concerned.

**Recommendation:** As a general and fundamental rule, candidates should be able to contact the human resources unit of the agency or the DPO of the agency and submit their request to access or rectify personal data processed within the framework of their selection procedure. Their request may be submitted, for example, by e-mail or by filling in a non-mandatory "*personal data access request form*".

Moreover, as is highlighted in the EDPS Guidelines, a candidate for a temporary or contract agent's position should be given access to his/her own evaluation results regarding all stages of the selection procedure unless the exception at Article 20(1)(c) of the Regulation (in line with Article 6 of the Annex III to the Staff Regulations) is applied. This exception implies that access should not be granted to the comparative data concerning other applicants (comparative results), or to the individual opinions of the members of the Selection Committee. Nevertheless, data subjects should be provided with aggregated results.

As concerns the right of rectification, the EDPS acknowledges that this right can only apply in the case of factual data processed within the selection procedure. In addition, any limitation to the right of rectification after the closing date of submitting applications should

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<sup>1</sup> The EDPS Guidelines can be found on the EDPS website under the title "Thematic Guidelines".

<sup>2</sup> EDPS Opinion issued on 7 May 2009 (case 2009-0287).

only apply to data related to the admissibility criteria and not to the identification data that can be rectified at any time during the selection procedure<sup>3</sup>. The EDPS considers this limitation necessary for the fairness of the selection procedure and justified in terms of Article 20(1)(c) of the Regulation. It is however important that all applicants are informed about the scope of this restriction before the beginning of the processing operation ("*right of information*").

### **3. Right to information - Privacy statement**

**Facts:** The agency has not provided any information as to how this right is granted to the data subjects within the framework of the recruitment procedures.

**Recommendation:** The EDPS invites the EEA to prepare a privacy statement including all the information listed in Articles 11(a-f) and 12(a-f) of Regulation 45/2001. All information should be clearly explained and the privacy statement should be available to the applicants before their data are collected.

The EDPS invites you to adopt specific and concrete measures to implement these recommendations regarding the recruitment procedures of temporary and contract agents within the EEA. To facilitate our follow-up, it would therefore be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter to evidence that the recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

Cc: Mr Gordon McInnes, Data Protection Officer of EEA

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<sup>3</sup> EDPS Opinion of 7 January 2008 on the "Recruitment of permanent, temporary and contract agents" by the European Maritime Safety Agency, case **2007-566**.