



Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Aviation Safety Agency (EASA) regarding "EASA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment".

Brussels, 29 July 2010 (Case 2010-318)

1. Proceedings

On 30 April 2010, the European Data Protection Supervisor (EDPS) received by regular mail from the Data Protection Officer (DPO) of the European Aviation Safety Agency (EASA) a notification for prior checking data processing operations related to the "EASA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment".

On 20 May 2010, the EDPS requested further information from the controller. He received the responses on 20 May 2010. A second set of questions was sent on 27 of May and answered on the second of June 2010.

On 5 July 2010, the EDPS sent the draft opinion for comments to the controller. He received the comments on 29 July 2010.

2. Examination of the matter

This prior check analyses the data processing operations carried out by EASA to prevent psychological and sexual harassment. EASA adopted a policy (hereinafter: the policy) on "protecting the dignity of the person and preventing psychological and sexual harassment". Confidential counsellors will play an essential role in the policy. Processing operations under analysis include therefore the selection and appointment of confidential counsellors for the purpose of dealing "informally" with cases of psychological and sexual harassment and the informal procedure policy itself.

The data processing operations start with the collection of application forms. They continue with the assessment of candidates and with the selection and the appointment of the most suitable applicants. This Opinion will also address data processing operations put in place by the counsellors to accomplish their new tasks once appointed. However, the opinion will not make the analysis of the formal procedure that falls into the scope of "administrative inquiry and disciplinary procedures" prior checking opinion.

2.1. The Facts

a) The data processing operations that take place in the context of selecting and appointing **confidential counsellors** (a minimum of 15 counsellors) to the EASA can be summarized as follows:

- Further to the receipt of application forms and motivation letters, the dedicated staff from the Human Resources will check whether applications comply with the eligibility conditions and incompatibility criteria referred to in point 2.2.2 of the policy. Applicants whose applications are rejected at this stage will be notified by email.
- A consolidated list of eligible candidates and their application files will then be sent to the members of the selection panel. The selection panel is composed of representatives of the Human Resources department, the Staff Committee and possibly an external expert (psychologist).
- The selection panel will hold an individual interview with each eligible candidate. The deliberations of the panel are confidential. The selection panel will then draw up the shortlist of candidates to be submitted to the Executive Director (ED) who, as appointing authority, shall nominate a minimum of 15 confidential counsellors. A reserve list may also be elaborated. The HR Department shall inform all interviewed applicants of the outcome of the selection procedure.
- The list will then be published on the EASA intranet. This list specifies any information on the confidential counsellors (e.g. language, gender, department), which could be of interest for the alleged victim.

b) The data processing operations put in place by the counsellors to accomplish their new tasks once appointed can be summarized as follows:

Before opening an informal procedure, the confidential counsellor completes and signs a declaration of confidentiality that is handed over to the alleged victim. With the consent of the victim, he/she may take personal notes and any documents related to the case are kept in a file. The confidential counsellor informs the victim about the need to fill in the opening form, which includes the names of the concerned persons (confidential counsellor, complainant, and alleged harasser), the start date of the informal procedure, the type of complaint and the directorate, department, section, grade and category of the persons concerned. The opening form is transferred to the HR Department only in person. The HR Department assigns a unique reference number to the case. Thereafter the case is only referred to by this reference number to maintain confidentiality.

The confidential counsellors fill in an anonymous statistical report for any meeting with an alleged victim even if, after the meeting, the victim did not wish to open an informal procedure. This report contains the name of the confidential counsellor, the type of complaint, whether there is a hierarchical link between the parties or not, gender, status, age and directorate of both the complainant and alleged harasser; nationality of the complainant and the actions taken (number of interviews, date of first interview and closing date). This form is sent to the HR Department as soon as a case is closed. The collection of this data enables the HR Department to draw up regular statistical reports and to evaluate the development of the informal procedure.

When attempts to reach an amicable solution are made, the confidential counsellor informs the alleged harasser that an informal procedure concerning him/her is ongoing.

If conciliation fails or if no solution can be found within the given timeframe (two months), the confidential counsellor closes the case and shall provide a report to the HR Department. She/he may inform the victim of the possibility to lodge a formal complaint.

The confidential counsellor shall pass a closing form and the file related to the case to the HR Department. The closing form contains the name of the confidential counsellor, the complaint Nr., the date of the first meeting, the closing date, the type of complaint, the type of problem identified, the reasons given for complaint, the actions taken/results, the concluding remarks.

If an alleged harasser was never informed of an informal procedure opened concerning him/her, no personal data of this person shall be retained by the confidential counsellors or the HR Department beyond an additional period of three months after the closure of an informal procedure (the timeframe necessary to enable a victim to reconsider his/her decision and to decide notifying the alleged harasser or seeking an amicable solution).

c) As regards confidential counsellors, the **data subjects** are temporary or contract agents at EASA who have at least two years of work experience at EASA and who send an application following the call for expression of interest. As regards the informal policy, data subjects are every person working at the Agency (trainees and persons working under a contract under national law included), as they may initiate an informal procedure.

For the confidential counsellors, the **categories of data** collected and further processed include the following: (i) identification data, which may include surname, first name, sex, office phone number, office number, department, team, current function, status, starting date at the EASA, (ii) relevant trainings, (iii) languages spoken, (iv) previous working experience; (v) personal data provided by the candidates in their motivation letter, (vi) data related to the suitability of a candidate for a confidential counsellor, which may include the assessment by the selection panel.

The above information is partially provided directly by the candidate by filling up the application forms and drafting motivation letter and partially by the selection panel and the human resources in the context of the selection procedure.

For the informal procedure, personal data are collected through the **opening and closing forms** and through the **anonymous statistical report**. Apart from these forms, there is no systematic rule with regard to different types of data which may be collected through the personal notes of the confidential counsellors. In general, the processing operations might refer to data connected to the working and personal situation of the data subject. In particular, sensitive data might be processed.

The selection dossiers (application form, motivation letter and assessment of the selection panel) are kept for seven years as well as the data from the candidates not appointed.

The data related to the informal procedure are stored for a period of five years (from the start of the procedure)¹. Confidential counsellors do not keep personal data for more than three months after the closure of a case. Afterwards data are returned to the alleged victim or forwarded to the HR Department with the victim's prior consent.

¹ If an alleged harasser was never informed of an informal procedure opened concerning him/her, no personal data of this person shall be retained by the confidential counsellors or the HR Department beyond an additional period of three months after the closure of an informal procedure

The HR Department **transfers personal data** gathered to the selection panel. The Selection panel will send a list of selected candidate to the Executive Director (ED) for appointment.

During the informal procedure, the data are transferred from the confidential counsellors to selected members of the HR Department and from the HR Department or from the counsellors to the Head of Personnel, the Executive Director and the Legal Department. In case a formal procedure is open, information may be transferred to the investigation team or expert.

The candidates for the counsellor' position may **request access** directly to the controller. The proceedings of the selection panel are confidential. EASA provides no further information on the right of access of the confidential counsellors' candidates.

In the frame of the informal procedure, the data subjects may not access files relating to them in their entirety. Within a period of fifteen working days, the data controller gives the person requesting access to the documents related to their case in accordance with the following procedures:

- All persons concerned may access documents which they have provided themselves;
- The data subjects will have access to the opening form of a case relating to them;
- Persons who believe they have been subject to harassment are also entitled to have access to the closing form relating to their case;
- Access to any other documents shall be permitted to the extent that they do not contain personal data relating to other persons or confidential declarations, and that the forwarding of a document is not likely to prejudice a party involved, the proper operation of the procedures or future relations between the parties.

The persons concerned are informed in the “declaration on data protection” of their right to contact the European Data Protection Supervisor to inquire whether their data have been processed correctly.

As far as the **right of information** is concerned, a privacy statement concerning confidential counsellors' selection will be available on EASA's Intranet. The call for expression of interest will provide information on the selection procedure itself and give the instructions for applying.

The manual of procedures and a specific privacy statement on the informal procedure are available on EASA's Intranet. During the initial meeting with a confidential counsellor, the privacy statement is also given to the data subject. The privacy statement contains information on the controller of the processing operation, the purpose, the legal basis, the data processed, the origin of the data, the recipients, the retention period, the right to be informed and the derogations to this right, the right of access and verification, the security measures taken and the right to have recourse to the EDPS.

As far as **security measures** are concerned, the notification does not provide for specific information. The privacy statement specifies that the files are kept in a specific safe in the HR Department. Access to these files is restricted to dedicated HR staff. The manual of procedures (point 6.9) states that the confidential counsellors shall always hand over personal notes and documents received from the victim to the HR Department.

3. Legal Aspects

3.1. Prior Checking

Applicability of the Regulation. Regulation (EC) No 45/2001 (the 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 a body of the EU (former "community body") insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of former "Community law" (Article 3 of Regulation (EC) No 45/2001, in the light of the Lisbon Treaty).

First, the processing operations put in place in the frame of the fight against harassment entail the collection and further processing of personal data as defined under Article 2(a) of the Regulation. Indeed, personal data of agents who apply for confidential counsellors' position in EASA are collected and further processed. The notes taken by confidential counsellors include personal data from the alleged victim, the alleged harasser and/or third parties. Second, as described in the notification, the personal data collected undergo "manual processing" operations where personal data form part of a filing system, as stated under Article 3(2) of the Regulation. Indeed, the personal information of the applicants are structured in "selection files" accessible according to the name of the applicant, as defined in Article 2 (c). The notes taken by the counsellors are collected during an "informal" procedure. This informal procedure is nevertheless institutionalised and personal data are structured and accessible following specific criteria and therefore also form part of a filing system.

Finally, the processing is carried out by EASA, in the framework of former "Community law" (Article 3(1) of the Regulation).

Grounds for Prior Checking. Article 27(2) of the Regulation contains a list of processing operations that shall be subject to prior checking due to the specific risks they are likely to present. This list includes the processing operations intended to evaluate personal aspects related to the data subject, including his or her ability or conduct. Obviously, the processing operations that occur in the context of selecting confidential counsellors in EASA precisely aim at evaluating the capacity of each candidate to ensure this specific position. In addition, the notes of the counsellors contain information about the conduct of the data subjects. Therefore, the data processing operations fall within Article 27(2)(b) and must be prior checked by the EDPS.

Prior Checking. Since prior checking is designed to address situations that are likely to present certain risks, the Opinion of the EDPS should be given prior to the start of the processing operation. Any recommendations made by the EDPS must be fully taken into account prior to the collection and subsequent processing of personal data.

Notification and Due Date for the EDPS Opinion. The Notification was received on 30 April 2010. The two months period was suspended for 31 days to obtain further information from EASA. The Opinion must therefore be adopted no later than 1 August 2010.

3.2. Lawfulness of the Processing

Personal data may only be processed if legal grounds can be found in Article 5 of the Regulation. One of the criteria provided in Article 5 (a) is that the processing is necessary for performance of a task carried out in the public interest or in the legitimate exercise of official

authority vested in the institutions or bodies. The selection of confidential counsellors and the informal procedure are the elements put in place by EASA to combat psychological and sexual harassment in the Agency. Fight against harassment is a task carried out in the public interest based on Article 12 (a) of the Staff Regulations. This Article and the EASA Decision 2008/180/A, concerning the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment provide the legal basis for the processing operations at stake. Finally, the draft manual of procedure for the implementation of the EASA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment will complete, once adopted, the legal basis of the processing operations at stake.

3.3. Processing of Special Categories of Data

Article 10.1 of the Regulation establishes that "*the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and of data concerning health or sex life, are prohibited*". The prohibition is lifted if grounds can be found in Articles 10.2 and 10.3 of the Regulation.

EASA's intention is not to collect special categories of data for the selection of counsellors. However the possibility that applicants provide sensitive data in their motivation letters can not be excluded. If this occurs, it should be considered that candidates have given their express consent to the processing of that data, so that the condition of Article 10.2.a would be met.

As for the informal procedure, data concerning health or sex life may, in particular, be processed. Article 10.2.b states that the prohibition may also be lifted if the processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties or other legal instruments adopted thereof. The legal basis described here above (Article 12.a of the Staff Regulations) shows that the Agency has the obligation to fight against harassment.

3.4. Data Quality

Adequacy, Relevance and Proportionality. According to Article 4(1)(c) of Regulation 45/2001 "*personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*". In the light of the information collected by EASA it appears to the EDPS that the data listed in the notification and collected from the candidates for the purposes of the selection of confidential counsellors complies with the criteria set out in Article 4(1)(c).

Concerning the informal procedure, the EDPS will first distinguish two types of data. Data qualified as "hard data" collected through the forms (opening form, closing form and statistical report) and the data qualified as "soft data" collected through the personal note of the confidential counsellors. Hard data are considered as objective data (name, age of the data subject, etc.) whereas soft data must be considered as subjective data as they are based on "subjective" perception of individuals. This distinction will also play a role in the exercise of the right of rectification of the data subject (see point 3.7 below).

The collection of soft data does not follow systematic rules as to the type of data processed, it is not possible to determine a priori the type of data collected. This does not mean that the collection may be random. The data collected by the counsellors must be adequate, relevant and not excessive in relation to the fight against harassment. This analysis must be conducted

on a case by case basis by the counsellors. The EDPS welcomes the fact that the principle of Article 4.1.c is reminded in the point 6.2 of EASA's draft manual of procedures. On the other hand, the EDPS questions the necessity of the transfer of soft data to the HR Department in particular in the frame of an informal procedure (see point 3.6 on transfers).

The purpose of the collection of hard data through the opening and closing forms is the management of the historical records and most importantly the identification of recurrent and multiple cases (to bring them to the attention of the ED). The necessity and the relevance of the data collected through those forms should be re-evaluated in a few years time in relation to the purposes above mentioned.

The EDPS also questions the anonymous nature of the statistical report. Indeed, the information collected will easily reveal the identity of the alleged victim. The necessity of collecting the nationality and the age of the complainant need to be proved by EASA. If EASA needs to further process the data for statistical purpose, it should provide appropriate safeguards and in particular ensure that the data are kept in anonymous form only (see conservation of data below).

Article 4(1)(d) provides that personal data must be **accurate and, where necessary, kept up to date**. The selection system itself ensures that the data are accurate and kept up to date as much of the personal data supplied during the selection process is provided by the data subject. However, other information is not provided directly by the individual but generated by the selection panel. In this regard, as further developed below, it is important for the data subjects to be able to exercise the right of access and rectification insofar as it enables individuals to control whether the data held about them is accurate. In this respect, see also point 3.7.

As for the informal procedure, the requirement of accuracy cannot appertain to the facts brought by the alleged victim (or alleged harasser) - part of the notes is based on the subjective perception of the data subject - but to the fact that these specific facts have been brought by the data subject. In this regard, the right of access and rectification of the data subject enable individuals to control whether the data held about them reflect the facts they wanted to transmit and, in that sense are accurate (see also point 3.7).

Fairness and Lawfulness. Article 4(1)(a) of the Regulation requires that data must be processed fairly and lawfully. The issue of lawfulness was analyzed above (see Section 3.2). The issue of fairness is closely related to what information is provided to data subjects, which is further addressed in Section 3.8.

3.5. Conservation of Data

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

As stated in the facts, the selection dossiers (application form, motivation letter and assessment of the selection panel) are kept for seven years as well as the data from the candidates not appointed.

The data related to the informal procedure are stored in the HR Department for a period of five years (from the start of the procedure)².

The EDPS recommends the adoption of a different retention period for the candidates not appointed. This retention period should be proportionate to the purpose for which the data were collected, in accordance with Article 4.1.e.

EASA should ensure that the data stored for a longer period (statistical purpose) are kept in anonymous form only, following Article 4.1.e. (see data quality above).

3.6. Transfers of Data

Articles 7, 8 and 9 of Regulation (EC) No 45/2001 set forth certain obligations that apply when data controllers transfer personal data to third parties. The rules applicable to transfers to Community institutions or bodies (based on Article 7) apply in this case. Article 7(1) establishes that data shall only be transferred if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient.

The EDPS considers that the transfers of information to the recipients described in the notification for the selection of counsellors seem to comply with the Article 7(1) requirement.

As for the informal procedure, the controller of the processing operations is also the recipient of the data processed. Indeed the HR Department which determines the purposes and means of the processing operation treats and store the opening and closing forms as well as the statistical reports and the notes transmitted by the counsellors. The confidential counsellors' network may be seen as a co-controller as far as the informal procedure is concerned. Indeed, due to the sensitive nature of harassment, the counsellors' network is in charge of the core activity of the informal procedure whereas the HR Department is playing a role of administrative support. In the light of Article 7.1, the transfers of the forms seem necessary for the legitimate performance of the tasks of the HR Department: the administrative support. On the other hand, the necessity of the transfer of the notes of the counsellors to the HR Department should be evaluated by EASA following Article 7.1.

As for the transfer to other persons (legal Department, ED, superiors, medical advisors) or to the investigation team (in case a formal procedure is open), EASA should evaluate on a case by case basis the necessity of the data to be transferred. The EDPS welcomes the fact that the point 6.7 of the manual of procedures reminds the principle lay down in Article 7.1 and that in principle the consent of the alleged victim is necessary. In the latter category of transfer, the principle of accuracy of the data exposed in point 3.4 should be taken into account. Additional information might be necessary to enable the recipient to assess/understand the notes of the counsellors.

EASA must also ensure that the recipients process the personal data only for the purposes for which they were transmitted, in compliance with Article 7(3) of the Regulation. This is particularly important due to the sensitive nature of the data part of which are soft data as explained in the point 3.4.

² If an alleged harasser was never informed of an informal procedure opened concerning him/her, no personal data of this person shall be retained by the confidential counsellors or the HR Department beyond an additional period of three months after the closure of an informal procedure

3.7. Right of Access and Rectification

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

EASA did not provide information on the possibility for the candidates to exercise such rights. In previous Opinions, the EDPS reminded that:

He is aware that there is a limitation to the right of access of the data subject; this is the principle of the secrecy of selection committee's proceedings, as set out in Article 6 of Annex III to the Staff Regulations. So, the EDPS would accept that EASA limits the application of the right of access concerning data related to assessment to the overall final assessment of the selection process. This principle should nevertheless be read in the light of Article 20 (1)(c) "*The Community institutions and bodies may restrict the application of (...) Articles 13 to 17 (...) where such restriction constitutes a necessary measure to safeguard the protection of the data subject or of the rights and freedoms of others*". The EDPS therefore notes that in the area in which the selection panel is covered by the principle of secrecy, the right of access may not apply even though personal data are processed, if that area is covered by the exception in Article 20 (1)(c) for the protection of the right of others, in this instance the right of selection panel members themselves and their need to have their independence reinforced. This implies that according to this rule it is possible on a case-by-case approach to exclude from personal data requested by a data subject exercising his right of access information regarding particular remarks made by the members of the selection panel.

Furthermore, Article 20 (1)(c) may in certain cases also be applied to protect the rights of other applicants. In cases where comparative data are involved, EASA may assess on a case by case basis whether full access to the data should be granted to the data subjects or whether certain restrictions should be applied in order to protect the rights and interests of others. The EDPS reminds EASA that Article 20(1)(c) should be applied restrictively; limitation to the right of access of the data subject should only be applied when strictly necessary to protect the rights and freedom of others.

EASA should distinguish objective and subjective data in granting the right of rectification. Furthermore, the EDPS notes that limitations to the right of rectification of candidates' data, after the deadline for the sending of documents regarding a given selection may be necessary for different reasons, including those of a practical nature. In this regard, the EDPS considers that these limitations can be seen as necessary to ensure objective, certain and stable conditions for the selection, and essential to the fairness of processing. Thus it can be recognized as a necessary measure under Article 20(1)(c) of the Regulation for the protection of the rights and freedoms of others.

EASA should provide the EDPS with information concerning the right of access and rectification of the candidates' counsellors.

As to the right of access in the frame of the informal procedure, the EDPS reminds that it should not be restricted outside the scope of Article 20 of the Regulation. Moreover, as an exception to the general rule laid down in Article 13, this exception must be interpreted restrictively and applied on a case by case basis, as developed below, never automatically and if necessary, after the consultation of the DPO.

Article 20 of the Regulation provides for certain restrictions to this right, in particular where necessary to safeguard "(...) (c) the protection of the data subject or of the rights and freedoms of others".

In this case, alleged harassers may have their right of access restricted. Access is subject to their having been informed by the confidential counsellor, with the agreement of the victim, of the existence of an informal procedure concerning them. The draft manual and the privacy statement state that access to other documents will be granted only if they contain no personal data relating to other persons or confidential declarations, and if forwarding them will not be prejudicial to anyone involved, to the proper operation of the procedures or future relations between the parties.

EASA must in any event take into account and comply with Article 20.3: "If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor". As regards the right of information, this provision must be read in conjunction with Articles 11, 12 and 20 of the Regulation.

Article 20.4 must also be taken into account: "If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made." The right of indirect access will come into play when, for instance, the data subject has been informed of the existence of the processing operation, or is aware of it, but has a restricted right of access under Article 20.

Article 20.5 provides that: "Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect". It may be necessary for EASA to defer provision of information in order to protect the victim.

As to the right of rectification, EASA should distinguish hard data and soft data in granting the right of rectification. If inaccurate hard data should be rectified following Article 14, the notion of inaccurate soft data, as explained above, refers to the fact that specific statements have been made by the data subject. In the case of soft data, the data subject may also ask to add his/her opinion to the file to ensure the completeness of the file in accordance with Article 14. The right of rectification should be granted as described above.

3.8. Information to the Data Subject

Pursuant to Articles 11 and 12 of Regulation (EC) No 45/2001, those who collect personal data are required to inform individuals that their data are being collected and processed. Individuals are further entitled to be informed of, *inter alia*, the purposes of the processing, the recipients of the data and the specific rights that individuals, as data subjects, are entitled to.

In order to comply with this obligation, EASA plans to draft an information note about the selection of the confidential counsellors which includes all the information necessary to comply with Articles 11 and 12. The EDPS would like to receive the draft note for consultation in the frame of the follow up of this Opinion.

Information is given in two stages. The manual of procedures and a specific privacy statement on the informal procedure are available on EASA's Intranet. During the initial meeting with a confidential counsellor, the privacy statement is also given to the data subject. The alleged harasser is informed when the counsellor attempts to reach an amicable solution. The same information must be given to witnesses and others involved.

Article 20 of the Regulation, discussed above (see point 3.7), provides for certain restrictions to the right of information, in particular where necessary to safeguard "(...) (c) the protection of the data subject or of the rights and freedoms of others". It may be necessary in certain cases not to inform the data subject (alleged harasser) in order to not prejudice the operation of the procedure. As has been stated, in the case in point an alleged harasser is informed by the confidential counsellor, with the prior consent of the victim, of the existence of an informal procedure relating to him (exception intended to protect the victim). In case the victim does give his/her consent, attention has to be given to the application of Article 20.1.c.

Article 20.5 must also be applied in specific circumstances: "Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect".

The EDPS analysed the privacy statement and the point 6.5 of the manual of procedures. The privacy statement and the manual of procedures should be adapted accordingly to reflect the provisions made in this Opinion. It applies in particular to the retention of data, to the right to be informed and to the right of access and rectification (and no verification as written in the privacy statement).

The notification should be updated as regards the procedure put in place in the frame of the selection of confidential counsellors.

3.9. Security measures

According to Articles 22 and 23 of Regulation (EC) No 45/2001, the controller and the processor must implement the appropriate technical and organizational 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 prevent all other forms of unlawful processing. EASA acknowledges that it has adopted the security measures required under Article 22 of the Regulation. On the basis of the available information, the EDPS does not have any indication suggesting that EASA would not have applied the security measures required in Article 22 of the Regulation.

4. Conclusion

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

- In a few years time, re-evaluate the necessity and the relevance of the data collected through the opening and closing forms in relation to the purposes for which they are connected;
- Adopt a different retention period for the candidates not appointed;

- Ensure that the data stored for a longer period (statistical purpose) are kept in anonymous form only;
- Evaluate the necessity of the transfer of the notes of the counsellors to the HR Department;
- Ensure that the recipients process the personal data only for the purposes for which they were transmitted, in compliance with Article 7(3) of the Regulation;
- Provide the EDPS with information concerning the right of access and rectification of the candidates' counsellors;
- Grant the right of rectification;
- Send the draft information note for consultation to the EDPS in the frame of the follow up of this Opinion;
- Give the same information to witnesses and others involved;
- Adapt the privacy statement and the manual of procedures to reflect the provisions made in this Opinion;
- Update the notification as regards the procedure put in place in the frame of the selection of confidential counsellors.

Done at Brussels, 29 July 2010

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor