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Brussels, 11 November 2011
GB/DH/AS/kd D(2011)1990 C **2011-0820**

Subject : Prior checking, case 2011-0820 : "Selection procedures for contractual agents working for the Commission"

Dear Mr Carlini,

We acknowledge receipt of the notification for prior checking of the data processing operations regarding the "selection procedures for contractual agents working for the Commission" forwarded by the European Commission Data Protection Officer (DPO) to the European Data Protection Supervisor (EDPS). The reason for subjecting the processing operations referred to above to prior checking by the EDPS is the fact that they involve assessing personal aspects of the candidates applying to be contractual agents – their ability to hold such a post for example – as specified in Article 27(2)(b) of Regulation (EC) No°45/2001.

The selection of contractual agents is covered specifically in the Guidelines¹ published by the EDPS on selection and recruitment procedures within the institutions and agencies of the European Union.

In the case in question, the notification was submitted after publication of the Guidelines. The EDPS will therefore begin by highlighting the practices which do not seem to comply in terms of data protection and will then confine its legal analysis to these same practices. It is understood that the recommendations made in the guidelines and relevant to the processing operations in question apply. In the case being studied, the Commission's letter specifies that its procedure does not present major divergences from the terms of the Guidelines.

¹ The guidelines are available on the EDPS website in the section on supervision under the heading "guidelines". The EDPS also published a joint opinion on 7 May 2009 (case 2009-0287), also available on the EDPS site.

Procedure:

The notification was received by e-mail on 13 September 2011. The case was suspended on 25 October 2011 to give the opportunity to ascertain that the procedure had been compared with the EDPS Guidelines on selection and recruitment, with any differences in terms of data protection having to be specified to the EDPS. On 25 October 2011, the Commission DPO replied that the procedure did not present any significant differences. The EDPS issues its opinion before 14 November 2011.

1. Right of access and rectification:

Facts: Point 8 of this notification explains that the data on the ERL CV can only be amended by the candidate himself via his EPSO profile. Point 13 a/ repeats this explanation. In this case, the rights of access and rectification are therefore guaranteed in respect of the data provided by the subject himself.

Reminder: These rights must also be guaranteed for all the data produced by the selection procedure itself. The notification refers to data concerning the results of discussions with the candidate and the data recorded in the minutes of the selection committee. The data subject must have access to the results of his or her assessment except where the circumstances of Article 20(1)(c) of the regulation apply. As a result of this exemption, access may be refused both to the data in relation to other candidates (comparative results) and to the respective opinions of the members of the selection committee (independence of the committee) if such access by the data subject in question affects the rights and freedoms of others (e.g. committee members, other candidates).

2. Conclusion:

Concerning the reminder referred to in this opinion, the EDPS would like to know the precise situation within the Commission. We would be very grateful if you would make available to the EDPS within three months following the date of the present opinion all the relevant documents in order to confirm that the recommendations have indeed been implemented.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Philippe RENAUDIÈRE, European Commission, Data Protection Officer