



Opinion on the notification for prior checking from the Data Protection Officer of the Education Audiovisual and Culture Executive Agency concerning grant award and management procedures

Brussels, 11 May 2012 (case 2011-1083)

1. Proceedings

On 23 November 2011, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Education Audiovisual and Culture Executive Agency (EACEA) a notification for prior checking concerning grant award and management procedures submitted on the basis of Article 27(5) of Regulation (EC) 45/2001 (hereinafter "the Regulation").

Additional information requested by the EDPS was submitted on 20 March 2012. The draft Opinion was sent to the DPO for comments on 21 March 2012. These were received on 10 May 2012.

2. Facts

Activity in the frame of which the processing is carried out

In the framework of the education, culture and industry policies, numerous measures have been taken to promote education, vocational training, audiovisual, culture, youth and active citizenship in the European Union. These measures include a variety of programmes.

The Education, Audiovisual and Culture Executive Agency (EACEA), operating under the European Commission's supervision, is responsible for managing certain strands of these programmes e.g. "Lifelong learning", "Culture", "Youth in Action", "Europe for Citizens", "MEDIA", "Erasmus Mundus" and "Tempus". In this respect, it implements the aid of the Union, except for programme evaluation, strategic studies and any other task which requires discretionary powers in translating political choices.

The **purpose** of the processing in question is the management and administration of grant award and management procedures organized by the EACEA. The processing operations include in particular:

- the evaluation of technical and professional capacity of applicants, their staff and subcontractors where applicable;
- award funding;
- financial follow-up and monitoring of the grant agreements.

The **controller** is the EACEA, represented here by its Director.

Data subjects are natural persons participating in the grant award procedures as applicants for grants and staff of applicant organisations (and subcontractors) involved in submitted proposals; and persons in charge of engaging legally the organisation in the relevant grant agreement (legal representatives).

The following **data categories** may be processed:

- Data relating to the evaluation of personal aspects of the data subject in respect of selection criteria: financial and economic capacity (bank statement, professional risk indemnity insurance, balance sheet, statement of turnover), expertise (main works published or projects carried out), technical and language skills, education background, professional experience including details on current and past employment, proof of self employment etc.;
- Personal data of applicants, their staff and subcontractors which may include in particular: name, function, contact details (company and department, postal address, country of residence, business telephone number, mobile telephone number, fax number, e-mail address, internet address);
- Health related data: some health data concerning Erasmus Mundus scholarship holders and/or their family members are necessary in order to assess a request for additional funding due to special needs. In order to ascertain these needs and to determine the amount of the additional grant, candidates provide medical proofs of the health condition that justifies their special needs. Students may also spontaneously submit medical certificates to EACEA as part of a specific request (for example justifying the need of a break in studies);
- Certificates for social security contributions and taxes paid, extract from judicial records;
- Bank account reference (account number, name of the account holder, address of the bank, IBAN and BIC codes);
- Legal entity file (required by DG BUDG): company registration number (legal persons) or passport/ID number (natural persons), VAT number, membership in a trade or professional organisation;
- A declaration of honour that applicants are not in one of the exclusion situation referred to in Articles 93 and 94 of the Financial Regulation.

Since the information is often provided on CVs, the applicants may supply information which might not be necessary for the purpose of the selection procedure (such as gender, age, nationality, credentials).

Personal data is provided by the applicants for a grant themselves in submitting an application for a grant. Applications are submitted on paper or via an electronic e-form via the Agency's website. Data may be processed manually or electronically for the purpose of management of the grant award procedure.

With regard to **health data**, the EACEA requests proofs of illness or special health condition or any other documentation in support to applicants' special needs and receives different types of medical documents (medical diagnosis, examination report from rehabilitation centres, detailed laboratory reports, etc). The applicants submit also a detailed breakdown on the additional costs relating to their special needs. Staff members of the EACEA verify only if the documents provided by the students are genuine and if the diagnosis/situation explained constitutes a "special need" situation. A "special need" situation arises if a health issue concerns a student directly or of one of their young children accompanying the student. If this is the case, the EACEA staff members analyse the estimated costs, which include in particular

the verification if the costs seem to be reasonably justified (based on the above certification) and issued by a competent person (surgeon, doctor, hospital, etc.).

The following **retention policy** applies:

- *Data relating to health*: up to 10 years after the closure of the grant agreement¹;
- *Data relating to the evaluation of personal aspects of the data subject*: for rejected projects, by 31 December of the 3rd year following adoption of the award decision. For accepted projects, 10 years after the closure of the grant agreement²;
- *Personal data of applicants, their staff and subcontractors*: for rejected projects, by 31 December of the 3rd year following adoption of the award decision. For accepted projects, 10 years after the closure of the grant agreement³.

Personal data provided by the applicants is **processed by automated means and manually**. The processing operations concerns the management, coordination and organisation of calls for proposals, including in particular: reception of proposals; proposal opening, copying, distributing, evaluation, ranking, filing, archiving and destruction; evaluation report; selecting projects, award decision and the grant agreement or grant decision; correspondence with applicants; financial management, contract execution and termination; monitoring of projects (intermediate and final reports, controls); transferring financial transactions to and from the Commission's accounting system for further validation and processing; publication of the results of the relevant procedure in the EACEA's website; statistics, reporting and information relating to management and monitoring of programmes and initiatives (includes project information storage for statistics and auditing purposes).

Data processed within the processing operations may be disclosed on a need-to-know basis to the following **recipients**:

- Designated EACEA staff members: staff (including interim staff) in charge of operational, financial and/or legal tasks participating in the management of the selection of beneficiaries;
- Evaluation Committee members: the evaluation committee is composed by EACEA and European Commission staff members. Under some programmes, the Committee includes also members from other international organizations, like the African Union and the Intra-ACP secretariat. In addition, there may be other members of the evaluation committees such as external experts for MEDIA or academic experts for Erasmus Mundus. Members are designated by the Director of the Agency or the Head of Department and sign a declaration of confidentiality;
- In the context of the Intra-ACP Academic Mobility Scheme personal data are provided to the African Union Commission, the Intra-ACP Secretariat and the South African Ministry of Education. Likewise, under the TEMPUS programme which covers 27 partner countries of Eastern Europe, Central Asia, the Eastern Balkans and the Mediterranean region, personal data are transferred from EACEA to the national Tempus offices established in those countries;
- External experts on the basis of Article 179a of the Financial Regulation: external experts are used to assess the quality of applications submitted and in some cases also the quality of progress and final reports of selected projects. External experts are designated and sign a confidentiality declaration before they are given a copy of the

¹ Common Conservation List (CCL), SEC (2007) 970 adopted by the Commission on 04/07/2007, Annex 1, p.11, point 7.1.2, 7.1.3 and p. 23, point 12.6.1:

² Common Conservation List (CCL), SEC (2007) 970 adopted by the Commission on 04/07/2007, Annex 1, p.11, point 7.1.2, 7.1.3 and p. 23, point 12.6.1.

³ Common Conservation List (CCL), SEC (2007) 970 adopted by the Commission on 04/07/2007, Annex 1, p.11, point 7.1.2, 7.1.3 and p. 23, point 12.6.1.

application or the report, which includes personal data. In addition, the order form contains a specific confidentiality clause;

- DG BUDG: data relating to a natural person contained in the legal identity form (company registration number, VAT, etc) or in the bank account form (account number, name of the account holder, address of the bank, IBAN and BIC codes); they are submitted to other Commission services (DG BUDG) for central validation and processing;
- EU Delegations for some programmes: they receive copies of the applications for eligibility check and assessment of the relevance;
- Programme committee and EP: whether comitology or information procedure is applied to a selection, the members of the programme committee (representatives of the Member States) receive information on selected proposals that may contain limited personal data (name of the coordinator, phone and fax number, email and address);
- In addition, Commission staff prepares and participates in the meetings. Information on selected proposals is provided in parallel to the European Parliament;
- National Contact Points: under some programs National Contact Points (national offices/national agencies) receive copies of the proposals from their countries;
- Members of the public: At the end of each selection a description of selected projects (so-called 'compendia') is published in the Agency's website. The project description may contain the name of the coordinator, phone and fax number, email and address. In addition, project data are also made available to the public through the EVE database (EVE is an electronic platform for the dissemination and exploitation of results of projects and results of programmes implemented by the Directorate General for Education and Culture).

Experts involved in the assessment of the applications may be recruited from EU Member States or from outside the EU. In case of electronic submission, the expert is provided with a user name and access password in order to access the applications assigned to him/her in the 'Expert Assessment Tool'. If submission of proposals is paper-based, copies of the applications are either provided to the expert at EACEA premises or sent to his/her domicile. If the latter is the case, the expert is instructed in the general conditions attached to the purchase order to destroy all documentation received to perform his task three months after his commitment with EACEA has expired.

The recipients (intra and interinstitutional) are reminded of the purpose limitation of the transfer in question and the obligation of confidentiality according to Articles 7 (3) and 23 (2) read together with Article 21 of the Regulation. A reminder is included in the Declaration of Confidentiality (for experts and evaluating committee members), a contractual clause in the contract with the experts and the "EACEA grants manual of procedure" reminds internal staff, inter alia, of the purpose limitation.

The data subjects are granted **rights of access and rectification** upon a request to the controller. Considering the competitive nature of the selection process, the right to rectify information can only apply to the factual data processed within the concerned grant award procedure. The right to rectify these data can only be exercised up to the closing date for submission of applications. However, inaccurate identification factual data may be rectified at any time during and after the grant award procedure.

According to Article 13, paragraph 3 of EACEA's Implementing rules of Regulation 45/2001, when the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data". Thus, when receiving a request for blocking on this ground, the EACEA should immediately

block the data for the period necessary for verifying the accuracy and completeness of the data. When the data subject requests the blocking of his/her data by pretending that the processing is unlawful, or when data must be blocked for purpose of proof, the EACEA will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. The decision as to whether to block the data is taken by the EACEA as soon as possible and at the latest within the delay of 15 working days. For erasure of data, a deadline of 15 working days after the reception of the request is applicable.

Information to data subjects is provided at different stages of the procedure in the following documents:

- Call for proposals, programme guide or permanent guidelines (depending on the programme) containing a standard clause on data protection (model in annex);
- Model grant agreement containing a specific provision on data protection (model in annex);
- Privacy Statement published on EACEA's website.

These documents provide information about the following details:

- identity of the controller;
- categories of data processed;
- purpose of the processing;
- legal basis of the processing;
- modalities for the processing operation;
- recipients of the data processed;
- retention policy;
- rights of access and rectification;
- right to have recourse to the DPO and EDPS.

The *model data protection clause* to be inserted in every grant agreement specifies that personal data included in or related to the agreement shall be processed in accordance with the Regulation and solely for the purposes of the performance, management and monitoring of the agreement by the person who has represented the Agency for the purpose of the signature of this agreement, without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

Where the grant agreement requires **processing of personal data on behalf of the controller**, the above mentioned *model data protection clause* states that the beneficiary may act only under the supervision of the data controller, in particular with regard to the purposes of processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his rights. Further, the data protection clause requires that the beneficiary should limit access to the data to the staff strictly necessary for the performance, management and monitoring of the procurement agreement. The beneficiary should also undertake to adopt appropriate technical and organisational security measures as required by Article 22 of the Regulation.

As regard **security measures**, (.....)

3. Legal aspects

3.1. Prior checking

The processing of personal data related to grants award and management falls within the scope of the Regulation and it is subject to prior checking by the EDPS pursuant to its Article 27(2)(a) and (b). It relates to the evaluation and ranking of information on personal aspects of the data subjects in respect of selection criteria, incl. expertise, technical and language skills, education background, professional experience including details on current and past employment, financial and economic capacity, etc. It may also involve processing of data relating to (suspected) offences and criminal convictions in the form of an extract of the judicial record and data relating to health provided in support of requests for additional funding due to special needs.

In principle, prior checks by the EDPS should be carried out before the processing operation is implemented. Since the relevant data processing operations have already been established, the check has to be carried out *ex post*. The EDPS finds this regrettable and reminds EACEA that in any case all recommendations made by the EDPS should be fully taken into account.

The notification of the DPO was received on 23 November 2011. According to Article 27(4) of the Regulation, the EDPS Opinion must be delivered within a period of two months. The procedure was suspended for 107 days to allow for the submission of additional information requested by the EDPS and comments on the draft Opinion. Therefore, the present Opinion must be delivered no later than 14 May 2012.

3.2. Lawfulness of the processing

Under Article 5(a) of the Regulation, 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 other legal instruments adopted on the basis thereof*".

The legal basis of the processing of personal data within the grant award and management procedures can be found in the following legal acts:

- Treaty on the Functioning of the European Union, and in particular Articles 165-167;
- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1), as subsequently amended ('Financial Regulation'): in particular Article 109 and Articles 114-116 on the award procedure for grants;
- 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 (OJ L 357, 31.12.2002, p. 1), as subsequently amended ('Implementing Rules'): in particular Articles 173-178;
- Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes⁴: Article 6;
- Commission Decision C (2009) 3355 final of 6 May 2009 setting up the Education, Audiovisual and Culture Executive Agency for the management of Community action in the fields of education, audiovisual and culture in application of Council Regulation (EC) No 58/2003⁵: Article 4.

Processing of respective personal data within grant award and management procedures at the EACEA can clearly be considered as necessary for the performance of tasks carried out in the public interest on the basis of the above mentioned legal acts and to ensure compliance with

⁴ OJ L 11 of 16.1.2003, p. 1.

⁵ Available on EACEA's website: http://eacea.ec.europa.eu/about/about_eacea_en.php.

obligations arising from them. Therefore, the data processing under review is lawful within the meaning of Article 5(a) of the Regulation.

3.3. Processing of special categories of data

The processing of personal data contained in the extracts from judicial records and other certificates to this respect or the above mentioned declarations of honour is explicitly authorised in Article 93(1) of the Financial Regulation. Thus, the condition for processing of data relating to (suspected) offences and criminal convictions set out in Article 10(5) of Regulation (EC) 45/2001 is met.

The processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and (3) of the Regulation.⁶ In the present case, students from EU Member States and third countries who wish to apply in the frame of the Erasmus Mundus programme for additional financial support resulting from "special needs" may submit health related data. Thus, health data are provided by the applicants on a voluntarily basis when they wish to have their health situation taken into consideration for a higher grant based on their "special needs". The EDPS notes that the Privacy statement mentions explicitly that "*data related to health may be submitted by students themselves and further processed by the University Consortia, EACEA and/or the Evaluation Committee (e.g. medical certificates, declarations on the health status, etc.)*". Therefore, the respective processing of health data could be justified on the basis of Article 10 (2)(a) of the Regulation.

The EDPS takes note that the EACEA does not request a specific medical document certifying the existence of special needs and related costs. This may lead to the submission of a significant number of medical documents. Taking into account the sensitive character of health data, the EDPS invites the EACEA to modify this practice and reduce the number and types of medical documents processed by the Agency's staff by requesting a specific medical certificate from a national health service and an estimation of the additional costs made by a national medical centre. Further, the EDPS notes that health related data are processed by EACEA staff members and recommends that the EACEA prepares specific confidentiality declarations regarding the processing under analysis. The staff members, who are in charge of the processing of health related data, should sign these declarations that they are subject to an obligation of professional secrecy equivalent to that of a health professional in compliance with Article 10(3) of the Regulation.

3.4. Data quality

Pursuant to Article 4(1)(a), (c) and (d) of the Regulation, personal data must be processed fairly and lawfully, be adequate, relevant and not excessive in relation to the purpose for which they are collected or further processed, as well as accurate and kept up to date.

Lawfulness of the data processing has been already discussed in section 3.2. Data are provided by the respective data subjects; hence the procedure itself helps to guarantee accuracy of data being processed. The rights of access and rectification contribute further to ensure that the data processed are accurate and up to date. Furthermore, the collection of data listed above seems to be adequate and necessary for the purpose of the grant award and management procedure subject to considerations and recommendations set out in section 3.3 of the present Opinion.

⁶ See EDPS Guidelines concerning the processing of health data in the workplace by Community institutions and bodies, adopted in September 2009.

The EDPS takes note that the grant documentation provides information on the categories of data requested for the purpose of the evaluation of applications and management and administration of grant award procedures. However, it cannot be excluded that despite this guidance provided, applicants may submit via their CVs and other supporting documents information which might not be necessary or excessive for the purpose pursued by the procedure such as gender, age, nationality, credentials and others. Provided that the controller does not process data that are irrelevant and excessive to what is requested and necessary for the processing operations at hand, compliance with the principles relating to data quality as stipulated by Article 4 (1)(c) of the Regulation can be ensured. The EDPS invites the EACEA to procedurally ensure that unnecessary and excessive information submitted by applicants is not processed (e.g. by providing specific guidance or instructions in this respect).

3.5. Data retention

According to Article 4(1)(e) of the Regulation, personal data may be kept in a form enabling 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.

As indicated above, EACEA applies the Common Conservation List (CCL) adopted by the European Commission on 04/07/2007 and keeps data as follows: data relating to health - up to 10 years after the closure of the grant agreement; and data relating to the evaluation of personal aspects of the data subjects and personal data of applicants, their staff and subcontractors - for rejected projects, by 31 December of the 3rd year following adoption of the award decision, and for accepted projects, 10 years after the closure of the grant agreement.

The data retention period for unsuccessful grant applicants is based on the CCL and can be considered lawful. Furthermore, the EDPS is of the opinion that keeping files of successful applicants, including their health data, for seven years (instead of ten years) following the closure of the grant agreement would correspond to the maximum time period for which personal data is necessary for control and audit purposes in line with Article 49(1)(d) and (2) of the Implementing Rules to the Financial Regulation⁷. Therefore a longer retention of these data would be in violation of Article 4 (1) (e) of the Regulation. Thus, the EACEA is requested to reconsider the retention period and establish a shorter retention period for all files concerning engaged experts. Given the fact that the archives of EACEA are physically managed by the archives services of the Commission, EACEA should subsequently request the Commission to apply the shortened retention period to the relevant data. However, if EACEA is formally bound by a legal obligation to apply the European Commission's policy for electronic archiving and document management (e-domec rules) including compliance with the common Commission-level CCL and therefore EACEA has legally no competence to modify or otherwise influence the retention period settled by the Commission, the EDPS will pursue this matter further with the Commission services at a general level.⁸

3.6. Transfer of data

Transfer of data to internal and inter-institutional recipients and external experts

The internal and inter-institutional data transfers mentioned above are subject to Article 7 of the Regulation. They should be necessary for the legitimate performance of tasks covered by

⁷ cf. case 2007-222 – EDPS Comments on the Draft Common Conservation List (CCL) of 7 May 2007 as well as EDPS Note concerning the CCL adoption of 12 October 2007.

⁸ See also EDPS Opinions of 22 March 2012 on the notification for prior checking from the Data Protection Officer of the Education Audiovisual and Culture Executive Agency concerning call for expression of interest for selection of experts (case 2012-0007).

the competence of the particular recipient who can process the data only for the purposes for which they were transmitted.

In the present case, the transfers of personal data to EACEA staff, the European Commission, the European Parliament and some EU delegations are in principle considered as necessary in the context of their specific competences.

Further, the notification for prior checking specifies that external experts may also take part in the assessment of applications when external expertise is required in accordance with Article 179a of the Financial Regulation. The selection procedure of these external experts has been already prior checked by the EDPS.⁹ Therefore, the present Opinion relates to their work after their selection, namely to their participation in the evaluation and selection of grant applications.

In this case data are transferred to recipients subject to national law adopted pursuant to Directive 95/46/EC. Such a transfer will be covered by Article 8 (a) of the Regulation which provides that data may be transferred "*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*". In this case external experts process data on behalf of EACEA in connection with tasks described above which are carried out in the public interest. Given that the data are not requested by the recipient but rather are transferred on the basis of a decision by the controller, it is for the latter to establish the "necessity" of the transfer. The EDPS notes that the "necessity" of the processing for the purposes of performing EACEA's tasks was established in section 3.2.

The EDPS takes note that a reminder on the purpose limitation is included in the declaration of confidentiality (for experts and evaluating committee members), the contractual clause in the contract with the experts and "EACEA grants manual of procedure". The EDPS is therefore satisfied that the requirements of Articles 7 (3) and 23 (2) read together with Article 21 of the Regulation are taken into consideration and all data recipients (intra -and inter-institutional) are reminded of the purpose limitation of the transfer in question and the obligation of confidentiality.

Transfer of data to third countries and international organizations

As described in the notification, under some programmes managed by EACEA it is necessary for the purpose of the grant evaluation and management procedures to transfer personal data to third countries and international organizations.

Under Article 9 (1) of the Regulation, the transfer of personal data to recipients other than EU institutions and bodies which are not subject to national law adopted pursuant to Directive 95/46/EC, is allowed if two conditions are met: a) an adequate level of protection must be ensured in the country of the recipient or within the recipient international organization; and b) the data must be transferred solely to allow tasks covered by the competence of the controller to be carried out.

In the present case, the second condition is fulfilled since the transfer of data is necessary to allow EACEA to carry out its mission of managing the EU programmes conferred to it by the Commission.

⁹ EDPS Opinions of 22 March 2012 on the notification for prior checking from the Data Protection Officer of the Education Audiovisual and Culture Executive Agency concerning call for expression of interest for selection of experts (case 2012-0007), and the monitoring of external experts' work (case 2012-0008).

As far as the first condition is concerned, Article 9 (2) of the Regulation states that "*the adequacy of the level of protection afforded by the third country or international organisation in question shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the recipient third country or recipient international organisation, the rules of law, both general and sectoral, in force in the third country or international organisation in question and the professional rules and security measures which are complied with in that third country or international organisation*".

As EACEA mentions, it is common ground that the Commission has not adopted a decision pursuant to Article 9 (5) of the Regulation stating that the third countries or international organizations concerned in this case do not ensure an adequate level of protection. In the absence of such a decision EACEA is of the opinion that the level of protection ensured in the international organizations and third countries concerned may be regarded as adequate within the meaning of Article 9 (2) of the Regulation. The EDPS takes note of the opinion of EACEA in this respect.

3.7. Right of access and rectification

Article 13 of the Regulation provides for a right of access and sets out the modalities of its application following the request of the data subject concerned. Article 14 of the Regulation provides that "*the data subject shall have a right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data*".

As already mentioned, the data subjects are granted rights of access and rectification upon a request to the controller. Considering the competitive nature of the selection process, the right to rectify information can only apply to the factual data processed within the concerned grant award procedure. The right to rectify these data can only be exercised up to the closing date for submission of applications. The EDPS considers that this limitation of the rectification right aims to ensure transparency and equality of treatment; hence it is admissible in light of Article 20(1) (b) and (c) of the Regulation.

3.8. Information to the persons concerned

Articles 11 and 12 of the Regulation provide that the data subjects must be informed of the processing of data relating to them and list a range of general and additional items which apply insofar as they are necessary to guarantee fair processing in respect of the data subject having regard to the specific circumstances of the processing operation.

The EDPS notes that the Privacy statement, the data protection clause included in the call for proposals, programme guide or permanent guidelines (depending on the programme) and the data protection provision included in the grant agreement contain all necessary information to be supplied to data subjects as prescribed by Articles 11 and 12 of the Regulation.

3.9. Processing of data on behalf of the controller

The present case implies two different aspects of processing of data on behalf of the controller:

a) processing of data on behalf of the controller where external experts participate in the evaluation of applications/proposals submitted by the applicants for a grant

As already mentioned, external experts may participate in the evaluation of proposals and applications for a grant as members of the evaluation committee. The EDPS is satisfied that

the external experts are legally bound to respect the obligation of confidentiality by signing a declaration of confidentiality and agreeing with the data protection clause included in their contracts with the controller. Thus, the procedure seems to ensure compliance with the requirements of Article 21 of the Regulation.

b) processing of data on behalf of the controller where the grant agreement to be signed with the beneficiary requires such processing

According to Article 23 of the Regulation, the carrying out of a processing operation by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating that the processor should act only on instructions from the controller. The processor should provide sufficient guarantees in respect of the technical and organisational security measures required by Article 22 and comply with the obligation set out in Article 21 of the Regulation.

As already mentioned, the grant agreement to be signed with the beneficiary contains a *data protection clause* which refers to the obligations set out in Articles 21 and 22 of the Regulation. The security obligation in terms of applicable technical and organisational measures is explicitly mentioned and the obligations to act only under the supervision of the data controller and to respect confidentiality are included. The EDPS considers that this data protection provision contributes to guarantee compliance with the Regulation.

3.10. Security measures

On the basis of the available information, the EDPS has no reason to believe that the security measures implemented by the EACEA are not adequate in light of Article 22 of the Regulation.

4. Conclusion

The processing under review does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. This means, in particular, that:

- the number and types of medical documents requested by the EACEA should be reduced and staff members processing health data should be required to sign a specific confidentiality declaration in line with section 3.3 of the present Opinion;
- the controller should ensure that data supplied by the data subjects but that are irrelevant or excessive to what is requested for the purpose of the processing operation, are not processed in line with section 3.4 of the present Opinion;
- the retention period for files concerning successful applicants should be reconsidered in line with section 3.5 of the present Opinion.

Done at Brussels, on 11 May 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor