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Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all correspondence

Dear Ms Fierro Sedano,

Thank you for your consultation of 7 March 2012 under Article 46(d) of Regulation 45/2001 ("the Regulation") regarding the collection of CAST certificates from all contract agents (CA) working at the EACI. The question raised concerns whether this processing is new and it should therefore be notified or whether it could be covered by the notification on staff recruitment, already prior-checked by the EDPS<sup>1</sup>.

The EDPS has sought further clarifications about the specific purpose of the collection of the CAST certificates and the legal basis of the processing.

According to the information provided, on 7 March 2012, EACI's Human Resources (HR) sent the following e-mail to all EACI staff members:

*"Dear colleagues,*

*In order to complete and update all the personal files, I would be grateful if you could send me a scan copy of your CAST certificate if you passed a CAST selection.*

*If you succeeded a CAST in a different function group you have been recruited at EACI, I would also appreciate to receive a scan copy".*

It was explained to the EDPS that when the agency was set up, CAST certificates were not always placed in the personal file of each CA, because the latter never informed or submitted them to the HR. EACI is currently in process of preparing the first wave of indefinite contracts for CAs (some have already been signed). The collection of CAST certificates from the data subjects is a compulsory requirement for the CAs to be eligible for indefinite contracts.

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<sup>1</sup> Joint Opinion of 7 May 2009 regarding the staff recruitment procedures by 12 agencies, case 2009-0287

The legal basis of the processing of CAST certificates is covered by the following norms:

- Articles 82(5) and 82(6) of the Conditions of Employment of Other Servants (CEOS),
- Article 5(1)(g) of the Commission's Decision C 2004/1313 on the procedures governing the engagement of CAs,
- Commission Decision of 18-III-2008 on the implementing rules applicable for the recruitment of CAs. In particular, Article 4 (Succession of contracts) and Article 5(5) (selection procedure).

As mentioned above, the EDPS has already carried out a prior-checking analysis of the EACI's notification on staff recruitment. The notification covered, inter alia, the recruitment of CAs. On 7 May 2009, EDPS issued a Joint Opinion providing specific recommendations to EACI. On 30 July 2010, the EDPS considered that EACI complied with his recommendations and closed the case.

According to the information provided, it seems that the collection of CAST certificates is not a new processing operation, but rather an additional element to the already existing procedure. The EDPS will therefore focus on certain specific issues raised by the introduction of this element to the procedure, namely the data quality principle, the right of information and the update of the notification form. For the rest the EDPS refers to the Guidelines on recruitment<sup>2</sup> and to the Joint Opinion referred to above.

#### **a) Data quality**

According to Article 4(1)(c) of the Regulation, personal data must be, "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*". Furthermore, on the basis of Article 4(1)(d), the controller must take every reasonable step to ensure that data are "*accurate, and where necessary, kept up to date*" having regard to the purposes for which they were collected or further processed.

In the present case, the purpose for processing CAST certificates is to complete and update CAs' personal files, as it is a requirement in order to benefit from an indefinite contract within the EACI. CAST certificates are therefore adequate, relevant and proportional data for the purpose for which they are collected under Article 4(1)(c) of the Regulation and EACI ensures that Article 4(1)(d) of the Regulation is complied with.

However, the EDPS notes that in the e-mail of 7 March 2012, EACI's HR asked the staff members to also provide CAST certificates which relate to a different function group than the one they have been recruited for at the EACI. Although the EDPS has no concerns with regard to the purpose limitation principle (Article 4(1)(e) of the Regulation), he notes that in this particular case, CAST certificates cannot be considered as relevant to the new purpose for which EACI intends to collect them, namely the attribution of indefinite contracts for its staff in their specific function group. The HR's request is hence not in compliance with Article 4(1)(d) of the Regulation. The EDPS therefore recommends that EACI ensures that the HR collects only the CAST certificates which are relevant to the function group for which a staff member has been recruited.

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<sup>2</sup> Guidelines concerning the processing operations in the field of staff recruitment, adopted on 10 October 2008

## **b) Right of information**

In the present case, CAs provide the CAST certificates themselves to the HR, hence Article 11 of the Regulation applies. EACI should also provide information on the legal basis of the processing for which the data are collected, within the meaning of Article 11(1)(f)(i) of the Regulation. The EDPS therefore recommends that EACI includes in the privacy statement addressed to the CAs the specific legal instruments covering the processing of CAST certificates.

## **c) Notification to the Data Protection Officer**

Moreover, in light of Article 25(3) of the Regulation, any changes regarding the information in the notification should be promptly notified. EACI should therefore ensure that the notification on staff recruitment procedures includes

- the collection of CAST certificates (Article 25(2)(c)) and
- the legal basis of the processing for which the CAST certificates are collected (Article 25(2)(d)).

In order to ensure respect with the Regulation, the EACI should:

- only collect the CAST certificates which are relevant to the function group for which a staff member has been recruited;
- update both the privacy statement and notification to the DPO accordingly.

The EDPS invites you to implement the above recommendations and submit to us the relevant documents as requested, within 2 months upon receipt of this letter.

Best regards,

**(signed)**

Giovanni BUTTARELLI