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**Subject: EDPS prior check Opinion on "unsolicited job applications" at ERCEA**

Dear Ms Lenarduzzi,

On 13 February 2013, the EDPS received a notification for prior checking under Article 27(2) of Regulation (EC) No. 45/2001 (the Regulation) relating to "unsolicited job applications" from the Data Protection Officer of the European Research Council Executive Agency (ERCEA).

Pursuant to Article 27(4) of the Regulation, the EDPS shall render his Opinion within two months after the notification. When the EDPS requests additional information, the case is suspended until this information is received. On 11 March 2013, the EDPS sent a draft of the Opinion to ERCEA's DPO for comments, which were received on 18 March 2013. Therefore, the EDPS shall render his Opinion by 22 April 2013<sup>1</sup> at the latest.

As the EDPS has already provided guidance on recruitment procedures in his guidelines<sup>2</sup>, this Opinion will only highlight those aspects that differ from the Guidelines.

### **The Facts**

The processing operation relates to the treatment of unsolicited applications received by ERCEA. Spontaneous applications of CAST laureates are stored in an electronic database accessible to management (Heads of Unit, Heads of Department, Director, as well as their secretaries) and the human resources selection team for a period of one year. This database is used (together with the general CAST list and the EUCV database) for selecting suitable

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<sup>1</sup> 21 April 2013 being a Sunday, the deadline is the next working day.

<sup>2</sup> [http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10\\_Guidelines\\_staff\\_recruitment\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf)

candidates for contract agent posts. In case candidates are chosen for selection procedures and possibly recruited, their data are further processed as described in the notification of ERCEA's selection and recruitment procedures (EDPS case 2010-0244). In case applicants are invited to such a procedure, members of the selection panel will have access to their data as well, as described in case 2010-0244.

Applicants for other kinds of posts (temporary agent, seconded national expert, trainee, interim staff) are informed about the appropriate ways to apply; their applications are deleted immediately. Replies sent to candidates are stored for two years, in line with the standard conservation period for ARES documents. ERCEA stated that a specific privacy statement on the treatment of spontaneous applications was published on the ERCEA website. At the moment of writing, the statement did not seem to be published yet.

### **Legal Analysis**

The EDPS regrets that this processing operation was only submitted to him after it had already started. Notifications for prior checking should be submitted before the start of the processing operation, so that any recommendations made can be taken into account before starting to process personal data.

The specific privacy statement contains several points that need to be improved.

- As currently drafted, it sometimes confuses the controller (ERCEA as an Agency) and the organisation entity which is entrusted with the processing of personal data in practice (Unit D.2 - 'Human Resources, Infrastructure and Document Management'). To clarify this, the statement should explicitly state who the controller is (ERCEA as an Agency) and, in addition, who is entrusted with the processing of personal data (Unit D.2). For exercising data subject rights (point 4 of the privacy statement) and for contacting the controller, it should simply be mentioned that data subject should address the controller (using the contact information provided in point 6).
- Point 3 of the statement mentions that access to the list is given to the human resources selection team; however, this team is missing in the first sentence of point 2. This also seems to be inconsistent with the information contained in the procedure document (annex 1 to the notification, p. 2), where only Heads of Unit are mentioned as having access, while on the other hand, the information contained in the standard reply annexed to the procedure document seems to be accurate. These inconsistencies should be rectified.
- Finally, the privacy statement should be published on the website of the ERCEA in the section dedicated to recruitment.

The EDPS would like to remind ERCEA that the conservation periods foreseen in the subsequent processing of data of CAST laureates in the selection and recruitment procedure (as described in the specific privacy statement for the recruitment procedure, which was also attached to the notification) does not conform with the guidelines in one important aspect: the retention period foreseen by ERCEA is 5 years after the recruitment procedure or end of validity of the reserve list. In both cases, the period should only be two years from the relevant starting date. However, the EDPS is aware that the ERCEA is bound by the Commission Common Conservation List (SEC (2007)970), which establishes a five year period for conservation in these cases. The EDPS will raise this matter inter-institutionally as part of a general discussion on retention periods.

**Conclusion**

Provided that the recommendations made above are taken into account, there is no reason to believe that there is a breach of Regulation (EC) No. 45/2001. Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of 3 months.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Giuseppe BAMBARA, Acting Data Protection Officer, ERCEA  
Ms Ndeye Khady DIONGUE, Legal Adviser, ERCEA