



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Jan-Paul BROUWER
Head of Unit Human Resources
European Defence Agency
Rue des Drapiers, 17-23
1050 Brussels
BELGIUM

Brussels, 05 November 2013
GB/OL/sn/D(2013)0326 C 2013-0743
Please use edps@edps.europa.eu for all
correspondence

Dear Mr Brouwer,

On 28 June 2013, the Data Protection Officer (DPO) of the European Defence Agency (EDA) submitted a notification concerning the "EDA Selection and Recruitment procedure for Temporary Agents (TA), Contract Agents (CA), Seconded National Experts (SNE) and Interns" to the European Data Protection Supervisor (EDPS) for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 (the Regulation).

On 18 July 2013, the EDPS requested additional clarification; EDA provided answers on 2 August 2013. On 14 October 2013, the draft Opinion was sent to EDA for comments; on 4 November 2013, EDA confirmed that there were no comments. As this is an ex-post case, the deadline of two months for the EDPS to issue his Opinion does not apply; this case has been dealt with on a best-effort basis.

The EDPS has already issued guidelines on recruitment and selection procedures.¹ For this reason, the description of the facts will only mention those aspects which diverge from the Guidelines.

The Facts

EDA is subject to its own staff regulations.²

The notification and the privacy statement refer to the head of the HR unit as the controller; the members of the selection board, the Director of the Corporate Services Directorate, the Deputy Chief Executive and the Chief Executive are all mentioned as organisational parts entrusted with the processing of personal data.

The privacy statement explains that "candidates are free to give their data on a voluntary basis, although failure to reply will exclude them automatically from recruitment".

¹ Available on the EDPS website.

² Council Decision 2004/676/EC as amended, consolidated version: <http://www.eda.europa.eu/docs/default-source/documents/consolidated-eda-staff-regulations-en.pdf>.

EDA collects a criminal record (or other similar document) of candidates selected for employment. This record is checked by a HR representative and then returned to the candidate; a signed form stating that the candidate has provided suitable character references and enjoys her/his full rights as a citizen is put in the personal file.

Data on unsuccessful applicants are stored for five years following budgetary discharge. The online application form has an optional field for "family status" and a mandatory field for "civil status".

Legal Analysis

EDA is subject to its own staff regulations; the EDPS Guidelines on the other hand are based on the staff regulations of officials and conditions of employment of other servants of the European Community. Nonetheless, due to the fact that EDA's staff regulations are largely identical to the other European institutions' staff regulations, the Guidelines can be applied by analogy.

Controllership

In the view of the EDPS, the controller of the processing operation is EDA as an agency, with the Human Resources Unit, represented by you, as the organisational part entrusted with the processing of personal data. The members of the selection board, the Director of the Corporate Services Directorate, the Deputy Chief Executive and the Chief Executive, which are all mentioned in the same field of the notification form, should be rather seen as recipients of personal data, as correctly described in the privacy statement. It is your unit which manages the procedure; the other recipients only receive certain personal data for their specific tasks and roles.

Similarly, the information provided to applicants in the privacy statement should be adapted accordingly: EDA is the controller and the HR unit is entrusted with the processing of personal data.

Data quality

According to Article 4(1)(c) of the Regulation, personal data must be "adequate, relevant and not excessive" in relation to the purpose of their processing.

The EDPS notes that the standard online application form includes data fields on "civil status" (mandatory) and "family status" (optional). It is understandable that this information is relevant for the establishment of rights after recruitment (e.g. family allowances), but it is not relevant or necessary for the recruitment procedure at this stage. The EDPS therefore recommends that EDA should not collect these data categories from all applicants, but only from the recruited candidates at a later stage. Consequently, EDA should remove the data fields from the online recruitment form **or at least to make them both optional**.

Conservation Periods

According to Article 4(1)(b) of the Regulation, personal data should not be stored for longer than is necessary for the fulfilment of the purpose for which they were collected, namely selection and recruitment, and/or further processed, meaning audit, financial controls, possible complaints against the outcome of the procedure.

The EDPS therefore **recommends a conservation period of two or three years following the recruitment procedure** for non-recruited candidates.³

³ This period is derived from the deadline for filing complaints with the European Ombudsman, see the Guidelines.

Processing of special categories of data

Extracts of criminal records are checked by EDA and then returned to the applicant. This is the approach which the EDPS has recommended in his Guidelines on recruitment published in 2008. However, we would also like to draw your attention to our letter to EDA's Chief Executive on this matter.⁴ The Court of Auditors does not consider this approach to be sufficient for audit purposes and favours storing the complete extract as collected for two years following the recruitment procedure. While the EDPS has accepted the "check and return" approach in the past, we would like to stress that this approach could lead to further discussions with the Court of Auditors. We are approaching them to identify appropriate solutions.

Information to the data subject

Articles 11 and 12 of the Regulation set out which information needs to be supplied to data subjects. When data are collected directly from the data subject, one of the items of information to be provided is whether answers are mandatory or optional, and if the former, what the consequences of failure to reply are.

It should be clarified that the statement that "failure to reply will exclude them automatically from recruitment" only applies to mandatory fields in the application form.

Rights of Access and Rectification

According to Articles 13 and 14 of the Regulation, data subjects have the right to access their own data and to have inaccurate or incomplete data rectified. Restrictions are possible in line with Article 20 of the Regulation.

According to the notification, data subjects can only rectify their data until the deadline for applications. Afterwards, no changes are possible. The privacy statement, which was attached as supporting documentation, states that identification details can also be updated after the deadline. In its answer, EDA clarified that the description in the privacy statement is the correct one. The approach as described in the privacy statement is fully in line with our Guidelines.⁵ However, the EDPS recommends that EDA explains in the notification that identification data can be rectified at any stage of the procedure, whereas qualification data only until the deadline for applications.

Conclusion

The EDPS has no reason to believe that there is a breach of the Regulation, provided that the recommendations contained in this Opinion are followed.

Please inform the EDPS of the measures taken based on the recommendations within a period of 3 months.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Gabriele Borla, Data Protection Officer, EDA

⁴ Letter of 15 March 2013, our reference GB/OL/mch/D(2013) 524 C 2011-0482

⁵ See p. 8 of the Guidelines.