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Brussels, 03 April 2014
GB/OL/sn/D(2014)0822 C 2013-0703
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Dear Ms Langbakk,

On 25 June 2013, the Data Protection Officer (DPO) of the European Institute for Gender Equality (EIGE) submitted a notification concerning EIGE's "selection procedures for temporary agents, contract agents, seconded national experts, trainees and interims" 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 asked several questions for clarification, which were answered on 18 February 2014. The draft Opinion was sent for comments on 24 March 2014; on 3 April 2014, EIGE's DPO indicated that there were no comments.

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

The Facts

According to the notification, the categories of data processed in the course of the selection of temporary agents (TA), contract agents (CA) and seconded national experts (SNE) include also information on the families of applicants, notably information on the income of the spouse, marriage/divorce/separation maintenance judgments, birth certificates of children. These categories are neither mentioned in the privacy statement available to candidates nor in the application forms provided.

Personal data of applicants on reserve lists are stored for five years from the establishment of the reserve list. Applicants cannot submit any changes to their application following the deadline.

¹ Available on the EDPS website.

Regarding the right of access, EIGE's document on selection procedures for recruitment (p. 11) states that applicants have the right to access the "percentage of the overall mark allocated to each subject area on which applicants have been assessed".

The privacy statement refers to EIGE's Director *ad personam* as the controller. It does not explicitly refer to the right of access; the section entitled "right of access and rectification" explains the possibilities for submitting updated applications, noting that changes can only be made before the closing date. As for the legal basis, the statement refers to the Staff Regulations as amended by Regulation (EC, Euratom) 337/2007.

Legal Analysis

Data quality

The information on spouses and children does not seem to be relevant for the selection and recruitment procedure as such; they are relevant only for the establishment of rights following employment/appointment (e.g. household allowances). As it was clarified by EIGE, these items are in fact only collected from selected candidates for the establishment of rights. This is a separate procedure not covered by this notification.² **The notification form should therefore be updated to accurately reflect the distinction between these two procedures.**

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 (in the present case: selection and recruitment) and/or further processed namely audit, possible complaints against the outcome of the procedure).

The conservation period for the personal data of applicants on reserve lists should therefore be linked to the actual validity of the list; a conservation of two or three years from the expiry of the list would be appropriate.³

Information to data subjects

Articles 11 and 12 of the Regulation set out the information that needs to be provided to data subjects.

The privacy statement refers to EIGE's Director *ad personam* as the controller. **Legally speaking, the Agency as such is the controller;** a contact point can also be given as a functional mailbox.

The privacy statement should explicitly mention that candidates have the right of access to their personal data. While this principle is mentioned in EIGE's document on selection procedures for recruitment, it should also be mentioned in the privacy statement.

Concerning the legal basis mentioned in the privacy statement, it would be enough to refer to the Staff Regulations "as amended", to avoid having to update the statement after each change of the Staff Regulations. **As concerns SNEs, trainees and interim staff, the appropriate legal bases should be added to the privacy statement.**

The privacy statement could also mention that the application forms of recruited candidates will be transferred to their personal file.

² In several cases (2007-0558, 2013-0729) the EDPS has held the procedures for the establishment of rights are not subject to prior checking, since they do not constitute an evaluation of the data subject in the scope of Article 27(2)(b) of the Regulation, but rather an evaluation of objective external factors - e.g. distance to the place of origin, marital status, number of children etc.

³ This means that if the validity of a list is extended, the starting date for the two year period will shift back to the new expiry date.

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 and the supporting documentation, data subjects can only rectify their data until the deadline for applications. Afterwards, no changes are possible.

While the EDPS understands that for reasons of the fairness of the selection procedure, no changes affecting the admissibility should be possible after the deadline, it **should still be possible for data subjects to correct purely administrative information, e.g. updated contact details after the closing date.**⁴

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 Marc JACCARINI, Administration Unit, Human Resources, EIGE
Mr Ramunas LUNSKUS, Data Protection Officer, EIGE

⁴ See page 8 of the Guidelines.