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GB/XK/sn/D(2014)2565 C 2013-0718 & 0719
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Subject: EDPS Opinion on the prior checking notifications on staff selection and recruitment procedures at SJU, cases 2013-0718 and 2013-0719.

Dear Mr Guillermet,

We have analysed the documents you have provided to the EDPS concerning the notifications for prior checking under Article 27(3) of Regulation 45/2001 ("the Regulation") relating to staff selection and recruitment procedures at SJU.

The notification under case reference **2013-0718** relates to the *selection* of temporary agents (TA), contract agents (CA), seconded national experts (SNE) and trainees; whilst **2013-0719** deals with the *recruitment* of TA and CA.

Both notified cases will be analysed together in light of the EDPS Guidelines on staff recruitment ("the Guidelines").

In this letter, the EDPS will only identify and examine SJU's practices which do not seem to be in conformity with the principles of the Regulation and the Guidelines, providing SJU with relevant recommendations.

As these are **ex-post cases**, the deadline of two months for the EDPS to issue his Opinion does not apply. These cases have been dealt with on a best-effort basis.

1) Grounds for prior-checking under Article 27

Although not specified in either of the SJU notifications, the processing operations under examination are subject to prior-checking in conformity with Article 27(2)(b) of the Regulation, since they are intended to evaluate the applicants' ability to perform the

functions for which the selection procedure has been organised. The processing operations in question might also involve data related to health (collection of medical information) and to criminal offences (collection of criminal record extract), which would constitute ground for prior-checking the recruitment procedure in light of Article 27(2)(a) of the Regulation. This provision was mentioned in the notification. SJU has also specified Article 27(2)(d) as a prior checking ground for both cases. This provision is not applicable here as the primary purpose of selection and recruitment is not to exclude individuals from a right, benefit or contract, but to select candidates on the basis of certain criteria.

2) Right of information

Articles 11 and 12 of the Regulation provide that data subjects must be informed of the processing of data relating to them, and be given specific additional information in order to guarantee fair processing.

Right of access (Articles 11(1)(e) and 12(1)(e))

In light of the EDPS Guidelines, data subjects should also be made fully aware that they are able to access their evaluation results regarding all stages of the selection procedure (i.e. pre-selection, interview and written tests) unless the exception of Article 20(1)(c) of the Regulation- in line with Article 6 of Annex III to the Staff Regulations- is applied. This relates to the exception of comparative results of other applicants or of the individual opinions of the Selection Committee.

Recommendation: The EDPS invites the SJU to include the above information in the privacy statements in accordance with the EDPS Guidelines.

3) Retention period

Article 4(1)(e) of the Regulation states that personal data must be *"kept in a form which permits 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"*.

In terms of recruitment, the "necessary" retention period will vary depending on the status of each individual's particular application. As such, the Guidelines point out the need to differentiate between three categories of data subject; the recruited applicants, the non-recruited applicants, and the non-recruited applicants whose names were put on the "reserve lists for appointment".

For unsuccessful candidates, SJU retains the personal data for five years following the procedure. It is worth-noting that in various previous opinions, the EDPS accepted that it was reasonable to retain their personal data for two to three years *following the recruitment procedure* as that period was derived from the length of time during which a complaint may be brought to the European Ombudsman.

In terms of non-recruited applicants placed on a reserve list, the EDPS considered that a retention period of two to three years following expiry of the reserve list is reasonable.

Moreover, with regard to the selection procedure for trainees, the EDPS recommends that the SJU adopts specific retention periods in the case of both pre-selected (but not recruited) candidates and successful trainees in light of the Guidelines.

Recommendations: The EDPS recommends that the retention periods specified in both the notifications and privacy statements, are reconsidered. The retention periods for all categories of data subjects should be clearly stated (including trainees) in light of the EDPS Guidelines.

On the basis of the accountability principle, the EDPS expects the SJU to implement the above recommendations accordingly. The EDPS has therefore decided to close the case. Please do not hesitate to contact us if you require further information.

Yours sincerely,

Giovanni BUTTARELLI

(signed)

Cc: Ms Daniella PAVKOVIC - Data Protection Officer