



Opinion on a notification for prior checking received from the Data Protection Officer of the European Commission on the system of "Recruitment, by competition, of permanent staff for the European institutions or for Community bodies, offices and agencies"

Brussels, 24 February 2006 (Case 2004-236)

1 Procedure

On 20 July 2004 the European Data Protection Supervisor (EDPS) wrote to the Data Protection Officers (DPOs) asking them to contribute towards making an inventory of data processing that might be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) No 45/2001. The EDPS asked to be informed of all processing operations subject to prior checking, including those begun before the Supervisor was appointed, for which checking could obviously not be regarded as prior, but which would be subject to "*ex post*" checking.

On 28 September 2004 the Data Protection Officer of the European Commission presented the list of cases that should be subject to such *ex post* checking, and in particular the case of "management of competitions for recruitment to the institutions", since it contains data relating to the evaluation of personal aspects relating to the data subject, including his or her ability, efficiency and conduct (Article 27(2)(b)).

The EDPS identified certain priority topics and selected a number of processing operations subject to notification for *ex post* checking; the "management of competitions for recruitment to the institutions" is among them.

On 28 July 2005, the EDPS received a note from Mr Erik HALSKOV, Director of EPSO, describing all the recruitment procedures carried out by EPSO. That note was studied and deemed to be a useful report for future notifications for prior checking.

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "management of competitions for recruitment to the institutions" was given by Mr Nico HILBERT, acting Data Protection Officer of the European Commission, by e-mail on 23 November 2005.

The note of 13 April 2005 addressed to the European Data Protection Assistant Supervisor states that EPSO has decided to use the services of the Commission's DPO in order to ensure consistent interpretation of the Regulation and also owing a lack of resources. That is why the Commission's DPO has given notification on EPSO's behalf.

Questions were put to the acting Data Protection Officer of the European Commission in e-mails dated 5 December 2005 and 8 December 2005. Replies were given on 22 December 2005.

After a telephone call from the DPO on 9 February 2006 on issues that could influence the forthcoming opinion of the EDPS, it was decided that a two-week extension would be given on the deadline for delivering the opinion. A meeting was held in the offices of the EDPS on 21 February 2006.

2 The facts

The European Communities Personnel Selection Office (EPSO) was established by Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002¹. The way in which EPSO is organised and operates was laid down in Decision 2002/621/EC of 25 July 2002, taken by the Secretaries-general of those institutions. In accordance with Article 2(2) of the Staff Regulations of officials, the signatory institutions of the Decision establishing the Office entrusted it with exercising powers in the recruitment of officials. EPSO may also assist Community institutions, bodies, offices and agencies for the recruitment of other servants, but this is not part of the current processing that is subject to prior checking.

EPSO's main task is to organise competitions to select highly-qualified staff on the widest possible geographical basis with a view to recruitment to permanent posts by the European institutions, Community bodies, offices and agencies. EPSO is responsible for the entire selection process, for preparing and publishing the notice of competition and for managing and checking the use of the reserve lists. This task is performed within the framework of the Staff Regulations of Officials of the European Communities. For the performance of its task EPSO is assisted by competition selection boards and, when computer-based tests are used, by a contracting party to organise these tests.

2.1 Selection of permanent staff by competition

There are four stages in a competition, as follows: publication of the notice of competition, on-line registration via the EPSO profile, pre-selection tests, written and oral tests, entry on the reserve list.

2.1.1 Publication of the notice of competition

For applicants, the publication of the notice of competition marks the beginning of the selection procedure. This legal text is very important, as it contains all the relevant information. It is published in the Official Journal of the European Union (OJ EU), which is available on the internet, including on the EPSO website.

The most important information given relates to the field of the competition, the nature of the duties and the specific qualifications required, the eligibility criteria for the competition, the successive stages of the competition, how to apply, the submission of applications, general terms and conditions, and, in annex, to requests for applications to be reconsidered, appeals and complaints to the European Ombudsman.

The section giving information on the successive stages of the competition focuses more

¹ The EDPS was established at the end of 2003 and is not one of the signatory institutions; the EDPS sits on the Management Board as an observer and will be a full member after the basic Decision has been revised.

closely on: the pre-selection tests, indicating the three fields on which applicants will be marked, together with the marking system; the written tests, indicating the field tested and the marking system; the oral test, indicating the three main points on which applicants will be judged and the marking system; the dates and time allowed for the test; placement on the reserve list.

Advertisements may also be placed in the national press of the countries concerned.

Once registration has been confirmed it generally takes about nine months for all the successive stages of a competition to be completed. However, the greater the number of applicants, the longer the competition takes. If at any stage in the procedure it is established that the information in the electronic registration form or official application form is incorrect, or that the applicant does not meet all the eligibility criteria for admission to the selection procedure, the applicant is disqualified.

2.1.2 On-line registration via the EPSO profile

Since June 2003, the only way to register is on-line, except, where appropriate, for people with disabilities. The applicant creates an EPSO profile with a view to filling in an electronic registration form. Thereafter, any communication between EPSO and the applicant is via that profile, which the applicant must consult regularly. There is no longer any communication via the post, either for sending invitations to sit the tests, or for informing applicants of the outcome.

To enable the selection boards to assess whether applicants satisfy the eligibility criteria, a file is put together in paper form only for those applicants who have been invited to submit a full application form (for example, applicants who have obtained the pass mark in each of the pre-selection tests, and the X highest marks in those tests, the figure X being set in the competition notice). The file contains the application form filled in by the applicant and the supporting documents supplied (a copy of an identity document, a copy of degrees/diplomas, a copy of certificates proving professional experience), the applicant's pre-selection and written tests, the admission sheet, the evaluation sheet for the applicant's written and oral tests, the applicant's curriculum vitae, correspondence sent by post and the most important e-mail messages.

2.1.3 Pre-selection tests and written and oral tests

A competition generally has three types of test, each one being eliminatory: pre-selection tests, a written test and an interview. The pre-selection tests are held in the applicant's second language. These are multiple choice questions, usually on verbal and numerical reasoning, on knowledge of the European Union and on the field of the competition. Some competitions, such as for lawyer/linguists, for example, do not include pre-selection tests. The written test usually has several questions on a case file given to the applicant. In general, there is one written test, but there may be several. The interview with the Selection Board enables knowledge of the competition field to be assessed, as well as knowledge of the EU and the ability to adapt to the multi-cultural and multilingual environment of the institutions.

2.1.4 Placement on the reserve list

Following the tests, the Selection Board draws up the reserve list according to merit groups (maximum 4) and by alphabetical order within those groups, from among the applicants who obtained the highest marks for all the written and oral tests, and who also obtained the pass

mark in each of those tests. If there are many successful applicants there are several merit groups. The best applicants are in the first group. The institutions must follow the order of the merit groups when recruiting. The reserve lists and their expiry dates are published in the OJ of the European Union and on EPSO's internet site. The reserve lists of successful applicants are managed electronically by a database, called the "electronic reserve list, eRL", that EPSO makes available to the institutions. The purpose of this database is to make it easier for the institutions to recruit successful applicants by providing a tool for searching for applicants. The database includes, in particular, the applicants' curriculum vitae, the reserve list they are on and their circumstances as regards possible recruitment. Successful applicants placed on the reserve list are eligible for recruitment as probationary officials according to the requirements of the service. Recruitment takes place in accordance with the provision of the Staff Regulations and according to the budget funds available.

2.2 Processing by EPSO of personal data in the context of a competition

Before registering for a competition on line, applicants are systematically informed of a notice on personal data protection. By clicking on "OK", applicants acknowledge that they have received the information. The notice appears on every page of the on-line application form, permanently on the site and in every applicant's on-line EPSO profile, and may therefore be consulted by applicants at any time.

2.2.1 Personal data protection notice

This notice states that the personal data communicated are processed in accordance with Regulation(EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000. Pursuant to Articles 11 and 12 of this Regulation, EPSO supplies applicants with the following information before they register:

The identity of the controller: Mr. Erik Halskov, Director of EPSO.

The purpose of the processing operation: to organise competitions to select staff with a view to their recruitment by the European institutions or by Community bodies, offices and agencies; to manage the administrative aspects of registration and the successive stages of the competition; to manage and control the use of the reserve lists.

The data concerned: the data from the applicants who register for the competitions.

The nature of the data processed:

- Data enabling the applicant to be identified (name at birth, forename, name currently used, date of birth, e-mail address).
- Information supplied by the applicant so that the pre-selection tests and subsequent tests can be organised (road or street, postcode, town, country, sex, telephone number, fax number, language for correspondence, disability).
- Information supplied by applicants so that it can be assessed whether they satisfy the eligibility criteria set in the notice of competition (citizenship, languages, year of award of diploma/degree, type of diploma/degree, name of awarding body, professional experience).
- Results of the pre-selection tests, written tests and interview. Overall statistics are made available in order to guarantee transparency in the procedure.
- Where computer-based tests are used, EPSO gives the contractor organising those tests some information concerning the identity of the applicants (surname, forename, date of

birth, e-mail address) so that the contractor can check the identity of the people attending the examination centre.

Legal basis: the Staff Regulations of officials of the European Communities as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, as last amended by Council Regulation (EC, Euratom) No 23/2005; Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office.

Recipients of the data processed: the European institutions or the Community bodies, offices and agencies have access to the data on successful applicants on the reserve list, so that they are in a position to offer them a post.

Lawfulness of the processing: processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities (namely, the recruitment of personnel).

Date on which processing commences: the date of registration.

Period for which data is stored: in the case of the on-line system, data is stored for 12 months after the successful applicant has been appointed, or until the reserve list expires, if the person has not been recruited. The paper file is archived and kept for ten years.

Right of access and verification: by consulting their EPSO profiles, candidates can check their personal data at any time and amend them on line, except for their name or date of birth; if they wish to change these, they must send EPSO a substantiated request at epso-PDP@cec.eu.int. Up until the closing date for registration applicants may alter any of their data. Thereafter, only data enabling the applicant to be identified may be changed.

Applicants may have recourse at any time to the European Data Protection Supervisor (<http://www.edps.eu.int>).

By clicking on "OK", applicants acknowledge that they have been informed of the terms under which their personal data are processed, as described above.

2.2.2 Grounds for collecting and processing personal data

The data collected are divided into three categories, based on the following grounds:

- 1) Data enabling the applicant to be identified during the various stages of the competition. (Name at birth, forename, name currently used, date of birth).
- 2) Information supplied by the applicant to enable the pre-selection tests and written and oral tests to take place:

Road or street, postcode, town, country: to enable correspondence to be sent by post, where necessary; to enable the location of the examination centres to be determined.

Sex: to enable statistical analyses to be carried out as part of equal opportunities policy; in the event of recruitment, to enable the institutions to implement that policy.

Telephone, fax: in case the applicant needs to be contacted urgently.

Language for correspondence: in order to facilitate communication between applicants and the departments of the institutions.

Do you have a disability which requires special arrangements for the successive stages of the competition?: to enable applicants to state which arrangements they consider necessary in order to make it easier for them to sit the tests; this information is kept by EPSO and is not disclosed to the institutions.

How did you learn about this competition? Statistical research on the response rate per media to enable EPSO to improve its method of communication if necessary.

- 3) Information supplied by applicants to enable it to be determined whether they meet the eligibility criteria set in the notice of competition:

Citizenship: the applicant must be a national of one of the Member States of the EU, or of a new Member State in the case of an enlargement-related competition.

Languages: in general, applicants must have a command of at least two official languages of the EU. Requirements vary according to the competition. A higher level of language skills is required for selecting linguists.

Diploma/Degree: year the diploma/degree was awarded, type of diploma/degree, name of awarding body: a minimum level of education is required for all competitions, and this level varies.

Professional experience: for certain competitions a specific amount of professional experience in a specific field is required.

2.2.3 Right of access and rectification

Any of the data supplied by the applicant may be amended via the EPSO profile before the closing date for registration. Thereafter, only personal data enabling the applicant to be identified can be changed. If an applicant moves house, provided proof is given and EPSO is informed not later than three weeks before the date of the pre-selection tests and the written test, the examination centre may also be changed. However, for organisational reasons, it is no longer possible to change the examination centre beyond that three-week deadline.

Applicants must fill in the personal details relating to the eligibility criteria before the closing date for registration, and this personal data can no longer be altered thereafter. The applicant does not have the right to alter these data because they form part of the eligibility criteria set out in the notice of competition.

The notice of competition also informs applicants of their right to access the information that directly concerns them individually. By virtue of that right, EPSO may give applicants, on request, additional information on their participation in the competition. Requests are treated with due regard for the confidential nature of Selection Board proceedings and in accordance with the rules on the protection of individuals with regard to the processing of personal data. EPSO considers that in this context information may be given on the following: for competitions that have pre-selection tests applicants may, on request, obtain a copy of their answers together with a list of the correct answers. For the written test, applicants may on request obtain a copy of their written paper and of their personal evaluation sheet including the Selection Board's remarks on that test. Thus the results of the various tests are systematically communicated. Applicants may also ask EPSO to send them a detailed evaluation sheet of their written paper.

EPSO considers that only the overall mark for the oral can be provided, and not a detailed breakdown for each heading under which the applicant was assessed (see section 2.1.1 above).

2.3 The allocation of roles between EPSO and the members of Selection Boards as regards the processing of personal data

EPSO is responsible for organising competitions with a view to selecting staff who will subsequently be recruited by the European institutions or by Community bodies, offices and agencies. EPSO deals with all the administrative, logistical and electronic data processing aspects of organising the competition. These include publishing the notice of competition, managing on-line registrations, organising the pre-selection tests, written and oral tests and overseeing the use of the reserve lists. EPSO is also responsible for ensuring that the common rules are adhered to and applied by all the Selection Boards, in particular as regards legal provisions on personal data protection.

For certain stages in the competition EPSO calls upon the assistance of Selection Boards, whose members are experts in the field of the competition. Selection Boards are appointed by EPSO's appointing authority, but the members are nominated by the institutions and by staff representatives. Its members are published in the OJ of the European Union and on the EPSO internet site before the tests are held. Selection Boards may call upon the assistance of assessors. The concept of assessor is interpreted broadly. It may refer, for example, to a company responsible for proposing test questions, members of the permanent staff assisting the Selection Boards in their examination of applications, translators for the tests and written papers, markers for the written papers or interpreters for the oral tests. Their role is, however, limited: they assist in an advisory capacity only and therefore have no role in determining the merits of applicants. They are bound by the same legal provisions on personal data protection.

The members of a Selection Board constitute a College responsible for selecting applicants. They work independently within a general, common regulatory framework drawn up by EPSO, which applies to all Selection Boards, and which is set out in detail in a guide for Selection Board members. On the basis of these common rules, the Selection Board draws up some of the pre-selection tests ², the written tests and a marking chart on the basis of the elements set out in the notice of competition. With the help of markers, the Selection Board assesses the written papers. It processes the application forms, the results of the written and oral tests, together with applicants' curriculum vitae, in order to draw up a list of applicants who best meet the criteria in the notice of competition. This processing calls for certain personal aspects of the applicants to be evaluated, such as their ability, their efficiency or their conduct, within the general regulatory framework established by EPSO.

Furthermore, as the Selection Boards act independently, any direct or indirect contact with them is strictly forbidden. They must be able to assess the merits of the applicants calmly, free of any pressure whatsoever, in order to be sure of the quality of the staff recruited. As the Selection Boards are not made up of professional recruiters, EPSO is responsible for ensuring that the boards are trained and given administrative, logistical and electronic data processing support. The main role of the Selection Boards is to assess each applicant and decide accordingly. In the context of the administrative aspects of personal data processing, EPSO considers the Selection Boards to be "processors".

² The tests on the EU and on the field of the competition are set by the Selection Board. Proposals for the verbal and numerical reasoning tests are put to the Selection Board. These proposals are drawn up by a specialised company chosen by EPSO through a tender procedure. In the case of certain competitions computer-based tests may be used.

At certain stages in the competition the principle of anonymity means that the Selection Board members do not have access to the applicants' personal data. If applicants write on papers showing their identity, this does not appear on the documents used for marking. The pre-selection tests are marked by optical reader, ie. automated computer technology. For the written tests, the applicant's identity is masked before the paper is marked and EPSO gives it a secret number. The front page of the written test answer paper sent for marking does not include no personal data. EPSO makes the link between the secret number and the applicant's identity and draws up a list with the names of the applicants who sat the written test. That list is given to the Selection Board so that it can draw up a list of applicants to be admitted to the oral.

At other stages in the competition members of the Selection Board have access to the applicants' personal data. When applicants are admitted to the competition the members of the Selection Board check that they meet the criteria set out in the notice of competition. This check takes place after every file has been examined on EPSO's premises. During the orals the members of the Selection Board have the applicant's curriculum vitae before them throughout the interview. If an applicant requests that his or her application be reconsidered, or in the event of a complaint, the applicant's letter and file are sent to the Selection Board. In all cases, where members of a Selection Board wish to consult an applicant's file, these must do so via EPSO's secretariat for the competition, and on EPSO premises. Board members may not take away original documents or copies of documents relating to the competition; these are kept by EPSO. Board members do not have direct access to the on-line registration system, or to the computerised database used for managing the competition, the new application for competitions (NAC). Access is strictly limited to the EPSO officials directly involved in the competition itself.

In order to inform members of the Selection Boards and to ensure that they abide by the rules intended to ensure the security and confidentiality of the applicants' personal data, at their first meeting Selection Board members are given a note setting out their obligations; once the members have signed this document EPSO keeps the original and gives the members a copy. The note also refers explicitly to the secrecy of the work of the selection board, its independence, impartiality and compliance with the legal provisions on personal data protection. The main point made with regard to data protection is set out below:

"Lastly, as the body in charge of the organisation of the competition. EPSO will ensure that the personal data of the candidates is processed in full compliance with the relevant rules³ particularly as regards the confidentiality and security of the data. You are asked to make a declaration that you will comply with the instructions drawn up by EPSO in this respect. Consequently, you will only be able to access candidates' application files through EPSO, while files may be consulted only on the premises. You will not have the right to remove originals or copies of competition documents that are to be kept by EPSO. You will not have access to the online registration system, nor to the computer database by which the competition is managed. In accordance with Article 23 of the Regulation mentioned above, you are asked to sign this note, a copy of which will be sent to you after signing."

Article 6 of Annex III to the Staff Regulations stipulates that "the proceedings of the Selection Board shall be secret". This being the case, members of selection boards are obliged to exercise the utmost discretion in order to ensure complete confidentiality. EPSO gives every selection board a guide explaining the concepts of independence, impartiality and personal data protection. The guide covers the publication of the notice of competition, the selection

³ Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, of 18 December 2000.

board, the applicants, checks by the AA, on the general admission criteria, support for the board from the AA, the work of the selection board, the decisions taken by the AA on the completion of the competition and, lastly, on the various types of complaint. Selection board members may not impart to third parties any information they have acquired in the course of their work. Moreover, they are obliged to report, at any stage in the proceedings and as soon as possible, any links they may have with the applicants that might impair their independence pursuant to Article 11a of the Staff Regulations.

The secrecy of Selection Board proceedings and the discretionary power enjoyed by the board, means that discussions comparing the merits of the applicants must be kept secret. The purpose is to ensure that the proceedings are independent and objective. Selection Boards are thereby protected from any form of external interference or pressure, whether from the administration itself, the applicants concerned or third parties. Boards are, however, obliged to substantiate their decisions by giving marks. In this respect, EPSO considers that it guarantees applicants' right of access to these marks, as already mentioned under section 2.2.3.

2.4 On-line CV

Applicants invited to the oral are requested to create and fill in a CV on line via their EPSO profile. The Selection Boards therefore have useful information available for the oral test. In order to ensure that boards have access to the most recent version of the on-line CV, applicants may no longer amend it in the fortnight preceding their interview and this is made clear to applicants in their invitations to the oral test and by messages in the on-line CV. Furthermore, the CV enables the institutions to match the requirements of a vacancy to a successful applicant's abilities. Once the CV is in the "eRL", successful applicants may access it via their EPSO profile.

The "eRL" database has a section for "Comments". EPSO may use it to record purely factual and objective comments such as, for example, the date on which a successful applicant is available or the preferred place of work. Successful applicants are immediately informed automatically of any notes made in this section. Applicants may send an e-mail to EPSO requesting their removal, giving the reasons, and will be informed when this has been done.

2.5 Publication of the names of successful applicants

The notice of competition informs applicants that the reserve list will be published in the Official Journal and on the EPSO internet site. It is also stated in several places that successful applicants may specifically request that their names will not be published. Successful applicants therefore have the right to object to publication. The name is automatically withdrawn as soon as the request is received, and the successful applicant is not obliged to give a reason. Under such circumstances it is stated on the reserve list that a successful applicant has asked for his/her name not to be published.

2.6 Other information

2.6.1 Computer-based tests

Computer-based tests will be used for the first time in the autumn of 2005, for selecting AC (contract staff), and thereafter for competitions. At this stage, there are no plans to use computer-based tests for selecting AT (temporary staff). When these tests are used EPSO will send the contractor responsible for organising them the following details for identifying applicants: surname, forename, date of birth and e-mail address. This will enable the

contractor to check the identity of applicants attending the examination centre. The contract has a specific clause on personal data protection, stipulating that any personal data on the applicants obtained by the contractor are acquired as a direct or indirect consequence of implementing the contract, and that this data must therefore be processed solely with a view to executing, managing or monitoring the said contract and in accordance with the Regulation already referred to. The terms of reference clarify this point explicitly⁴.

2.6.2 Security and confidentiality of personal data processing

EPSO has a relational database on a central server, with individual access via a browser, that is used for managing applications. The data are stored at the Commission's computer centre in Luxembourg, which is governed by the standard security measures. There are different levels of user access depending on requirements. Applicants' access is protected by a login and a password. The secure SSL/https protocol has been used since AC contract staff were selected from the 25 Member States; the information flow between applicants and EPSO is encrypted when applicants register and consult their profiles. Furthermore, the internal network and storage and hosting environment of EPSO's computer systems are covered by a Service Level Agreement. This Agreement transposes Article 23, including the content of Articles 21 and 22, of Regulation (EC) No 45/2001. That Article concerns the relations between controllers and processors.

Any use of the database is logged (by an audit trail system), thus ensuring that authorised users of a data processing system can access no personal data other than that to which they have right of access. Personal data are not accessible as they stand. They are stored in a central database and access is granted to the various categories of users according to their role during the specific stage of a competition. Exceptionally, personal data is communicated in the course of legal proceedings.

File Transfer Protocol and encryption are used for communicating partial data (surname, forename, date of birth and e-mail address) to examination centres for identification purposes in competitions that use computer-based tests.

The roles of the people involved are kept separate and limited to what is strictly necessary. EPSO staff must disclose the fact that they (or a relative) are participating in a competition. In such cases, that member of EPSO no longer has access to data relating to that competition.

There are three categories of eRL (electronic reserve list) users:

- The Central Administrator: EPSO publishes the reserve lists that come from the new application for competitions (NAC), possibly limiting them to a merit group. He/she has access to all the data generated by the application. He/she designates the local administrators in the institutions.
- A local administrator may consult the lists published, invite a successful applicant for an interview and grant other people in the institution access at a more restricted level.
- User with the most restricted access may access only the curriculum vitae, without the

⁴ The terms of reference state that in order to ensure the strictest confidentiality, any person involved in carrying out this contract or who has access to data of any kind relating to the contract must exercise utmost probity, integrity and discretion. The contractor will undertake to provide, on request, a certificate to anyone he has recruited, or who has been recruited by a sub-contractor, to carry out work directly or indirectly relating to this contract, and who wishes to participate in EU selection procedures. Such certificates must state whether the holder has had access to information which might give him/her an advantage in the pre-selection tests.

details enabling them to contact successful applicants. Access rights and profiles use the holder's name and are managed by the central database of application.

2.6.3 Procedures for automated/manual processing

Automated processing: 3 applications are used in this context. The first, "NAC On-line", is a web-based application allowing on-line registration, used as a communication channel with applicants. The second, NAC, is used by EPSO to manage the competition and is based on Oracle tools with a database stored at the Commission's Data Centre. The third, eRL, is used by the institutions to select successful applicants. It is also based on an Oracle database stored at the Data Centre. The data are shared or synchronised between the three systems so as to manage a single copy of the personal data at any given time.

Manual processing: A paper file is compiled for the Selection Board to assess applicants' full application dossiers (See section 2.1.2 above, second para, page 3).

This file contains the application form completed by the applicant, together with the supporting documents (copy of an identity document, diplomas/degrees, documents proving previous professional experience), the applicant's pre-selection tests and written tests, the admission sheet, the applicant's evaluation sheet for the written and oral tests, his/her curriculum vitae, the correspondence sent by post and the most important e-mail messages.

2.6.4 Data retention

On-line data is retained for twelve months after the successful applicant has been appointed or until the reserve list expires if the person concerned has not been recruited.

The paper file is archived and stored for 10 years, as recommended by the Legal Service of the Commission.

The options regarding EPSOs retention of paper files for ten years are as follows:

- either the person is not recruited (which is rare) and EPSO keeps the entire file for ten years;
- or the person concerned is recruited by an institution, and in this case EPSO transfers the application form, copies of diplomas/degrees and of documents proving previous professional experience. EPSO keeps all the other documents relating to the competition in which the applicant was successful (in particular, the applicant's written papers and any administrative correspondence exchanged during the competition).

Time-limits for blocking and erasing data

Any request that EPSO receives for data to be blocked or erased is answered within 15 working days as from the date on which the relevant department receives the letter; however, it may send a duly justified holding reply on the conditions provided for under point 4 of the Code of Good Administrative Behaviour (on dealing with enquiries).

The time-limit for blocking or erasing data is a maximum of 10 working days for computerised data, with the period starting only as from the date the competent authority takes the final decision on the request to block or erase data (an administrative decision taken by EPSO or, in the event of dispute, a decision taken by the European Data Protection Supervisor or the competent court). The same maximum time-limit is applied for data in paper form.

Data storage media

Data are stored in paper form in the case of the files listed under the heading "Manual processing" (on page 12 above). Other data are stored electronically (on the Commission's Data Centre server or on CD-ROM for archiving in a secure area accessible only by magnetic card).

2.6.5 Possible recipients of the data

Data relating to successful applicants on the reserve list may be communicated to the European institutions or, as appropriate, to Community bodies, offices and agencies to enable them to offer a post. Initially, they have access to the successful applicant's curriculum vitae via the eRL database, and thereafter, at the time of recruitment, to the applicant's paper file which, together with the application form, constitutes the legal basis for recruitment. Should that person not be recruited, the dossier is sent back to EPSO.

3 Legal aspects

3.1 Prior checking

The notification received on 23 November 2005 relates to processing of personal data ("any information relating to an identified or identifiable natural person" - Article 2(a)). The data processing in question is carried out by an institution in the exercise of activities which fall within the scope of Community law (Article 3(1)).

The importance of the subject calls for clarification of the concept of "personal data". Personal data are not restricted to identity data, such as surname, forename or date of birth as they appear, for example, on letters sent to applicants. Personal data are any kind of data that relate to an identified or identifiable person. Data relate to a person, for instance, if they concern the identity, characteristics or conduct of a person or if that information is used to determine or influence the way in which that person is treated or evaluated; this is clearly the case of competition tests, which include the personal assessments of Selection Boards.

Processing under the registration procedure for competitions, the management of the competitions and the selection of successful applicants is entirely automated within the meaning of Article 3(2) of Regulation (EC) No 45/2001. However, files are put together in paper form for applicants who are invited to submit a full application. This processing is manual, but the content is intended to form part of a filing system, in particular, for example, when the Commission has finished scanning all personal files, which contain the full file of every person recruited. Article 3(2) is therefore applicable in this case.

This processing therefore falls within the scope of Regulation (EC) 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 subjects processing operations likely to present specific risks to the rights and freedoms of data subjects to prior checking by the European Data Protection Supervisor. Article 27(2) contains a list of processing operations likely to present such risks including, in Article 27(2)(b), "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.*"

The procedure for recruiting officials of the European institutions is an operation for the processing of personal data covered by Article 27(2)(b), and as such is subject to prior checking by the European Data Protection Supervisor.

This opinion covers only the procedure for recruitment by competition. Two further opinions from the EDPS will be issued on the selection of temporary staff and of contract staff, both of which are the subject of separate notifications.

In principle, checks by the European Data Protection Supervisor should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was put in place, the check necessarily has to be performed *ex post*. However, this does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

The formal notification was received by e-mail on 23 November 2005. Further information was requested by e-mail on 5 December 2005 and on 8 December 2005. Pursuant to Article 27(4) of Regulation (EC) No 45/2001, the two-month period within which the European Data Protection Supervisor must deliver an opinion was suspended. Replies were sent by e-mail on 22 December 2005, implying a suspension of 17 days. The European Data Protection Supervisor should therefore have delivered an opinion by 10 February 2006 (ie 24 January plus the 17-day suspension).

However, after a telephone call from the Data Protection Officer on 9 February 2006 on issues that could influence the forthcoming opinion of the EDPS it was decided that the period within which the opinion should be delivered would be extended by two weeks. The EDPS will deliver an opinion by 24 February 2006 at the latest.

3.2 Legal basis and lawfulness of the processing operation

The legal basis for the data processing operation in question is to be found in:

- the Staff Regulations of officials of the European Communities and in particular Annex III thereto,
- Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman, of 25 July 2002, establishing a European Communities Personnel Selection Office.

The legal basis provided in Article 7(2)(b) of Annex III to the Staff Regulations of Officials of the European Communities states that EPSO's tasks are *to provide, "at the request of individual institutions, technical support for internal competitions organised by them."* This means that all the recommendations made by the European Data Protection Supervisor in this opinion are applicable *mutatis mutandis* to internal competitions organised by the institutions for which EPSO provides technical support.

The provision of technical support for internal competitions organised by an institution is a diminishing task for EPSO, as the attestation and certification procedures introduced by the reform in the new Staff Regulations, which entered into force on 1 May 2004, are intended to replace all the former competition procedures for changing category within the institutions. Only internal competitions started before 1 May 2004 received technical support from EPSO until they were completed. According to information given by the controller, all these internal competitions within the meaning of Article 7(2)(b) of Annex III to the Staff Regulations have

been completed. However, some reserve lists are still valid. This means that appeals could still be made, and that EPSO could be called upon again. Accordingly, the obligations incumbent upon EPSO pursuant to Regulation (EC) No 45/2001 continue to apply to this residual category of competition for which EPSO provided technical support.

As well as the legal basis, the lawfulness of the processing must also be considered. Article 5(a) of Regulation (EC) No 45/2001 provides that processing shall be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities... or in the legitimate exercise of official authority vested in the Community institution...*".

The procedures for recruiting staff for the European institutions which involve collecting and processing personal data relating to applicants applying to the European civil service fall within the legitimate exercise of official authority vested in the institutions. The legal basis provided by the Staff Regulations supports the lawfulness of the processing.

3.3 The controller and the processor

Pursuant to Article 2(d) of the Regulation, the controller is "the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data.". The controller is responsible for ensuring that the obligations provided for in the Regulation are met (on information to be given to the data subject, ensuring the rights of the person concerned, the choice of processor, notification of the data protection officer, etc.). The processor is the "natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller" (Article 2(e)).

Under Regulation (EC) No 45/2001, EPSO must be considered to be the controller in this case, in the context of open competitions. The Selection Board and their assessors (companies responsible for proposing tests under a service contract, translators, markers or interpreters) together with the external company responsible for the internal network and for the computer system storage and hosting environment (covered by a service contract) must all be considered to be processors which that process personal data on behalf of EPSO.

As a consequence, the role of these various processors is to help EPSO organise competitions to select highly qualified staff for the European institutions. However, EPSO itself must be considered to be a processor, when providing technical support for internal competitions organised by the institutions. This is supported by the fact that the processing operation is based, *inter alia*, on Article 7(2)(b) of Annex III to the Staff Regulations, which stipulates that the European Personnel Selection Office shall provide, at the request of individual institutions, technical support for internal competitions organised by them. However, such instances are growing rarer owing to the fact that internal competitions are disappearing (see section 3.2 above).

In such circumstances, the role of EPSO is to help an institution, on request, to organise an internal competition to recruit people with the requisite abilities. The obligations incumbent upon processors should have been applied and could be examined in the event of legal proceedings.

3.4 Data quality

Article 4 of Regulation (EC) No 45/2001 sets out a number of obligations regarding the

quality of personal data. Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c)). The processed data described at the beginning of this opinion should be regarded as satisfying these conditions as regards processing. The data required are administrative in nature and are necessary for the proper functioning of the various stages of the procedure for the selection of staff of European institutions by competition. The EDPS considers that Article 4(1)(c) of Regulation (EC) No 45/2001 has been fulfilled in this respect.

The data must also be "*processed fairly and lawfully*" (Article 4(1)(a) of Regulation (EC) No 45/2001). The lawfulness of the processing has already been discussed (see point 3.2 above). As regards fairness, this relates to the information given to the data subjects. See point 3.10 below on this point.

Under Article 4(1)(d) of the Regulation, data must be "*accurate and, where necessary, kept up to date*". The system itself ensures that they are accurate and kept up to date. The data subject has the right to access and the right to rectify data so that the file is as comprehensive as possible. This also makes it possible to ensure the quality of data. See point 3.9 below on the dual rights of access and rectification.

3.5 Data retention

Article 4(1)(e) of Regulation (EC) No 45/2001 sets forth the principle that 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*".

Under the on-line enrolment procedure, data are kept for 12 months after the successful applicant is appointed or until the closure of the reserve list if the person is not recruited. The paper file is archived and stored for a period of 10 years.

The alternative procedure for storing data makes a distinction between persons recruited and persons not recruited (see point 2.6.4). The spin-off effect is that for a person recruited some portions of the application file are stored in the personal file for an unlimited period. Data are thus stored for a long, but unspecified period. The seventh paragraph of Article 26 of the Staff Regulations provides that "an official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them".

In a similar case⁵, the EDPS considered that it was reasonable to fix the storage period at 10 years, starting from the moment when the staff member leaves or after the last pension payment. This would apply to those parts of application files stored in personal files.

This long-term data storage in personal files will have to be accompanied by appropriate guarantees. The data stored are personal. The fact that they are archived for long-term storage does not divest them of their personal nature. For that reason, data stored over a long period must be covered by adequate measures for transmission and storage, like any other personal data. EPSO should make that known to the institutions to which it sends the files.

The EDPS also considers that data of a purely informative nature no longer necessary for administrative reasons (address, telephone number, etc.) can be disposed of after a minimum period of 5 years. The EDPS considers a period of 10 years too long if there is no specific justification for it. It considers that storage for a shorter period which could be a minimum of 5 years would be reasonable and could apply to paper files kept by EPSO for what is

⁵ Case 2004/274 - Staff Appraisal - European Central Bank.

announced as a period of 10 years.

According to the notification, the possibility of the data being stored for statistical, historical or scientific purposes would appear to be ruled out. Some data are nevertheless justified by the fact that EPSO can carry out statistical research on the returns provided by the media to enable it to improve its means of communication if necessary. The fact that EPSO uses only the answer to the question "How did you learn about this competition?" means that no personal data are used. There is in effect no link with the person replying and this is a way of making the data used anonymous.

The same ten-year period is applied to the files of applicants who fail the competition. The number of elements stored depends on how far in the competition the applicants proceeded. Such applicants' on-line data are stored for only 12 months after completion of the competition (regardless of the stage at which applicants failed, but this does not apply to applicants who also applied for other competitions at the same time; in their case, data are stored for 12 months after the completion of the last competition for which they applied).

In connection with the long-term storage resulting from the retention of data that EPSO transfers to the institutions recruiting, the European Data Protection Supervisor recommends that EPSO remind the institutions that such data, like all personal data, must be covered by adequate measures for transmission and storage. The European Data Protection Supervisor also considers it desirable for EPSO to dispose of data of a purely informative nature no longer necessary for administrative reasons after a minimum period of 5 years.

3.6 Change of purpose/Compatible use

Data are entered in the staff databases. The processing operation under review involves no general change to the stated purpose of staff databases, of which selection is only one aspect. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) are fulfilled.

3.7 Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

The data are circulated to various persons within EPSO, between the various sites managing competition tests and the various data storage locations. Data are also passed on to the members of the selection board. Personal data can only be transferred within an institution if they are necessary for the legitimate performance of tasks covered by the competence of the recipient. In this instance, data transfer to all of these recipients is in line with the legitimate performance of the tasks of the various parties.

Such data are obviously transferred to Community institutions, bodies, offices and agencies when a successful applicant is put on a reserve list (only the following data are transferred: application form, copies of diplomas and evidence of professional experience) and to the body managing the internal network and the EPSO computer system storage and hosting environment (DG DIGIT). That means that data can be transferred within an institution only if they are necessary for the legitimate performance of tasks covered by the competence of the recipient. Moreover, Article 7(3) of Regulation (EC) No 45/2001 provides that "*the recipient*

shall process the personal data only for the purposes for which they were transmitted". There must be an explicit guarantee that all those receiving and processing data in the context of the selection of permanent staff of the institutions cannot use them for other purposes. The EDPS recommends that in this particular instance data be divulged only to departments in charge of recruitment procedures.

Moreover, although that is not mentioned, the Civil Service Tribunal⁶ may receive copies of items from such files at its request in the event of proceedings before it. In the case of competitions, such proceedings are a frequent occurrence. These transfers are legitimate in this instance since they are necessary for the legitimate performance of tasks covered by the competence of the recipient. However, items are transferred to the Tribunal not by EPSO, but by the Commission Legal Service which is the required intermediary. The Legal Service may come and consult items on file in EPSO premises but may only take copies which it may then forward (as and when requested by the Tribunal). The originals remain with EPSO. These transfers, even though they are indirect, are still legitimate since they remain necessary for the legitimate performance of the tasks of the recipient and of the intermediary.

Data are also transferred to the subcontractor, the firm which organises and sets the tests (EPSO forwards the following identifying elements to the contractor responsible for organising them: surname, first name, date of birth and e-mail address). Such processing needs to be examined in the light of Article 8 ("*Transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC*"). In this instance, such transfers are covered by Article 8(b) insofar as both the recipients establish "*the necessity of having the data transferred and there is no reason to assume that the data subject's legitimate interests might be prejudiced*".

3.8 Processing including an identifying number

For the written tests, EPSO uses a secret number and the applicant's identity is masked. EPSO makes the link between the secret number and the applicant's identity. The use of an identifier is just a means - a legitimate one in this instance - of facilitating the personal data controller's task, and more specifically in EPSO's case, of ensuring applicants' anonymity at all stages of the competition. Such use may, however, have significant consequences. That is why the European legislator made the use of identifying numbers subject to the provisions of Article 10(6) which requires the European Data Protection Supervisor to intervene. In this instance, the use of the personal number may have the consequence of allowing interconnection of data processed in different contexts. This is not the place in which to determine the conditions under which EPSO may process a personal number, but it is appropriate here to emphasise the attention that must be paid to this aspect of the Regulation. In the case in point, EPSO's use of the personal number is reasonable as it is used for the purposes of identifying the person and keeping track of the file. The EDPS considers that this number may be used in the context of selection procedures and more specifically in the management of competition answer papers.

3.9 Rights of access and rectification

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. In the case in point, data subjects have access to their EPSO website application files so that they can complete all the sections

⁶ The European Union Civil Service Tribunal, set up by Council Decision of 2 November 2004 (2004/752/EC, Euratom), is competent instead of the Court of First Instance. The Court of First Instance is the appeal body.

required for the procedure to take its course.

Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification. In the same way that the data subject has a right of access, he or she may also directly change personal data or have them changed, if necessary.

To begin with, applicants have permanent direct access to their EPSO profiles on line, via a username and a password.

The notice of competition also informs applicants that they have the right of access to information concerning them directly and individually. In accordance with this right, EPSO may provide candidates who so request with supplementary information concerning their participation in the competition. Requests will be dealt with in such a manner as to take account of the confidential nature of the proceedings of selection boards and to comply with the rules on the protection of individuals with regard to the processing of personal data.

The information which may be provided in this context is as follows: if the competition has pre-selection tests, applicants can obtain a copy of their answers and a copy of the sheet of correct answers on request. In the case of the written test, they can also obtain a copy of their answer paper on request and the individual assessment sheet showing the selection board's assessment of that test.

However, there is no particular provision in this respect for the oral tests. In practice, applicants who fail at the oral test stage receive all the marks obtained in all the tests, including the oral.

The selection board is bound by the notice of competition published in the Official Journal. Each notice of competition specifies the various areas in which the board is required to assess the applicant's competence in the oral test. Generally these are knowledge specific to the area of the competition, knowledge of the main developments in European unification and Community policies, knowledge of the second Community language indicated by the applicant on the application form and ability to adjust to working in the European civil service in a multicultural environment.

As a general rule and in the interests of transparency, fair treatment and objectivity, the specific rules set out in notices of competition published in the Official Journal must indicate the various areas in which applicants will be evaluated at the oral test and give a breakdown of the percentage of the overall mark assigned to each area. Otherwise, given that the Court is not in a position to review the content of the oral test, the absence of objective criteria for the conduct of the oral test would give the selection board sovereign status. Only in exceptional cases, where it is objectively impossible to provide such a breakdown for the oral test, will the selection board allocate only a single overall mark.

The "Guide for Selection Boards and Selection Committees" which is given to all those taking part in selection boards points out that selection boards are obliged to set out reasons for their decisions. On page 16 it states that "*the reasons must therefore be stated clearly and exhaustively so that they may be communicated to the candidate and, if necessary, reviewed by the Court*". Further down on the same page, it points out that "*the mark given constitutes an adequate explanation of the comparative assessments*". On page 18 it states (in connection with an appeal) that "*the independence of the Selection Boards and the confidentiality of their work are rendered ineffective because, while Selection Boards are independent, they do not have sovereign status and are not exempt from obligation to state the reasons behind their decisions. It must be possible for the requisite information to be supplied to the Court.*"

These three points, taken in conjunction with the fact that the selection board is bound by the notice of competition published in the OJ, mean that EPSO should be in a position to give a detailed breakdown of the mark given for the oral test, i.e. to give the mark for each section on which the applicant was assessed at the oral, without that interfering in any way with the principle of the secrecy of selection board proceedings, as set out in Article 6 of Annex III to the Staff Regulations, since the marks given would be overall averages. There is certainly no question of revealing marks given by individual members of the board or any information on comparison with other applicants.

Two fundamental points emerge from an analysis of the Court's case law: on the one hand the importance of the secrecy of selection board proceedings, as provided for in Article 6 of Annex III to the Staff Regulations and on the other hand the fact that the Court has no jurisdiction to review the selection board's value judgments unless there is a clear infringement of the rules governing selection board proceedings. These principles are nevertheless entirely compatible with revealing the details of the mark assigned at the oral test.

There seems to be a clear contradiction between the fact that assessments made by the selection board on the written test (overall assessment sheet) can be obtained and the fact that detailed marks for the oral test cannot be obtained if the notice of competition specifies the areas of assessment in the oral test, a provision which ought to be the general rule. There is no fundamental difference between revealing partial marks and revealing an overall mark and there is nothing here to infringe the principle of secrecy of selection board proceedings. Just as the secrecy of selection board proceedings does not prevent access to the individual assessment sheet showing selection board assessments for the written test, it cannot be invoked as a reason for not revealing detailed marks for the oral test.

The applicants' right of access to information concerning them directly and individually must in this instance be more strictly complied with. It enables applicants to see which elements were taken into account for the overall assessment. Access to such data should be offered on the basis of Article 13 of the Regulation, thus not implying any right of rectification. Right of access under Article 13 of the Regulation does not serve the same purpose as under Article 14 of the Regulation (right of rectification). The applicants' right of access enables them to see that the selection board has acted fairly and objectively. Such a right does not interfere in any way with the principle of equal treatment of applicants since it is open to all of them.

The right of rectification, on the other hand, can obviously apply only to factual data. Marks allocated could not under any circumstances be open to a right of rectification by the data subject.

The European Data Protection Supervisor recommends that EPSO indicates, as a general rule, in future notices of competition published in the Official Journal the various areas in which applicants will be assessed and the breakdown by percentage allocated to each area in the overall mark, except where it is objectively impossible to do so for certain extremely specific competitions. EPSO will thus have to inform applicants that this possibility is open to them and that it is covered by the right of access provided for in Article 13 of Regulation No 45/2001 but not by the right of rectification.

The Guide for Selection Boards has to be modified accordingly.

On the other hand, in the area in which the selection board is covered by the principle of secrecy, the right of access does not apply even though personal data are also being processed; that area is

covered by the exception in Article 20(1)(c), the protection of the rights of others, in this instance both the right of selection board members themselves and their need to have their independence reinforced and the right of other applicants to be treated fairly and in like fashion. Article 20(1)(c) states that "*the Community institutions and bodies may restrict the application of (...) Articles 13 to 17 (...) where such restriction constitutes a necessary measure to safeguard the protection of the data subject or of the rights and freedoms of others*".

The EDPS agrees with the exceptions to the right of rectification mentioned in point 2.2.3 (no right to rectify data after the deadline for registration) since that restriction is covered by Article 20(1)(c) of Regulation (EC) No 45/2001, given the need to ensure objective, secure and stable conditions for all applicants as a condition of the fairness of the competition.

3.10 Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and others from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on information to be given to the data subject applies in this case. Inasmuch as the applicant for the competition personally fills in the data required of him or her, the data subject provides the data himself or herself.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also applies in this case, since the information is collected from the different participants in the process (members of selection boards, markers, interpreters, translators).

For the record, data subjects are informed in this instance via the notice on the protection of personal data. That notice appears on every page of the on-line registration form, on the website as a permanent feature and on each applicant's EPSO profile on line; applicants are thus in a position to consult it at any time.

The data subject must be notified of the information specified in Article 11(a) (identity of the controller), (b) (purposes of the processing operation), (c) (recipients or categories of recipients of the data), (d) (whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply) and (e) (existence of the right of access to, and the right to rectify, the data concerning him or her). The same goes for point (f), which stipulates the following: *legal basis of the processing operation, time-limits for storing the data, the right to have recourse at any time to the European Data Protection Supervisor*. It guarantees that processing is carried out completely fairly.

The data subject must be notified of the information specified in Article 12(a) (identity of the controller), (b) (purposes of the processing operation), (c) (categories of data concerned), (d) (recipients or categories of recipients), (e) (existence of the right of access to, and the right to rectify, the data concerning him or her) and (f) (*legal basis of the processing operation, time-limits for storing the data, right to have recourse at any time to the European Data Protection Supervisor*).

All the information provided when applicants register for competitions fully meets the conditions set out in Articles 11 and 12 of Regulation (EC) No 45/2001.

3.11 Automated individual decisions

The first stage of the competition (MCQ) involves automated individual decisions. The results are supplied by computer on automated reading of the tests (note that the Official Journal specifies the number of applicants to be admitted to the second stage). Article 19 of the Regulation is therefore applicable: *"The data subject shall have the right not to be subject to a decision which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or, if necessary, by the European Data Protection Supervisor. In either case, measures to safeguard the data subject's legitimate interests, such as arrangements allowing him or her to put his or her point of view, must be taken."*

The European Data Protection Supervisor obviously authorises this type of processing given the size of the task when there is a very large number of applicants.

The measures to safeguard the data subject's legitimate interests take the form of the applicants' right of access and right to rectify. Applicants have access to the results of this test since they can obtain a copy of their answers and of the correct answers. They must be guaranteed a right to rectify but that can apply only to reporting material errors (reading of the tests by the computer) and not to the substance, i.e. to the pre-established answers fed into the computer to determine whether the applicants' answers are correct or not.

3.12 Processing of personal data on behalf of controllers

Where a processing operation is carried out on its behalf, Article 23 of the Regulation stipulates that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The carrying out of a processing operation by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor must act only on instructions from the controller and that the obligations with regard to confidentiality and security are also incumbent on the processor.

For the record, the service contract signed by EPSO and the firm managing the tests includes a specific data protection clause (see point 2.6.1).

The internal network and the computer system storage and hosting environment are covered by a service contract between the controller and the processor which transposes Article 23, together with Articles 21 and 22, of Regulation (EC) No 45/2001.

In this instance, the service contracts concluded between EPSO and both the processors in charge of managing the tests and the processors responsible for storing EPSO data comply in full with Article 23 of Regulation (EC) No 45/2001.

3.13 Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on security of processing, the controller implements *"appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected"*.

The European Data Protection Supervisor considers that the full set of security measures (see page 10 above) and the other organisational and technical measures taken to ensure maximum processing security are such that they can be regarded as adequate within the meaning of Article 22 of Regulation (EC) No 45/2001.

Conclusion

The processing proposed does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. Specifically, that means that EPSO must:

- remind institutions recruiting (in connection with the long-term storage resulting from the retention of data transferred by EPSO to those institutions) that such data, like all personal data, must be subject to appropriate transmission and storage measures;
- find a suitable way of deleting purely informative data no longer necessary for administrative reasons after a minimum period of 5 years (in the case of files stored by EPSO for 10 years);
- divulge data only to departments in charge of recruitment procedures;
- indicate as a general rule in future notices of competition published in the Official Journal the various areas in which applicants will be assessed at the oral test and the breakdown by percentage allocated to each area in the overall mark, except where it is objectively impossible to do so for certain extremely specific competitions. The guide for selection boards will need to be amended accordingly;
- inform applicants of this possibility which is covered by the right of access provided for in Article 13 of Regulation (EC) No 45/2001.

Done at Brussels, 24 February 2006

Peter HUSTINX
European Data Protection Supervisor