

Opinion on the notification for prior checking received from the Data Protection Officer at the Translation Centre for the bodies of the Union relating to the "Selection procedure for staff recruitment (Cdt-DA-5)"

Brussels, 10 April 2006 (Case 2005-124)

1. Procedure

- 1.1. On 20 July 2004 the European Data Protection Supervisor (EDPS) wrote to the Data Protection Officers (DPOs) asking them to prepare an inventory of cases that might be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) No 45/2001 (hereinafter referred to as "the Regulation"). The EDPS requested notification of processing operations subject to prior checking, including those begun before the Supervisor was appointed, for which checking could never be regarded as prior, but which would be subject to "*ex post*" checking.
- 1.2. On the basis of the inventories received from the Data Protection Officers, the EDPS identified priority topics, namely data processing operations in disciplinary files, staff evaluation and medical files.
- 1.3. On 9 November 2005, the EDPS received the notification for prior checking regarding data processing in the context of the "Selection procedure for staff recruitment (Cdt DA 5)".
- 1.4. On 15 November 2005 a request for further information was sent to the DPO at the Translation Centre. The DPO replied on 4 December 2005.
- 1.5. A further request for information was sent on 20 December 2005. The DPO replied to that request on 14 February 2006.
- 1.6. At the request of the DPO the opinion was suspended on 23 March 2006 until 6 April 2006.

2. Examination of the case

2.1. The facts

The Translation Centre's procedures for the selection of temporary staff are laid down in Administrative Decision No 02/2003 on the Translation Centre's procedures for selecting temporary staff, published externally.

Vacancy notices are published on the Centre's website, in the European Commission's Vacancies newssheet, the Intranet and, if necessary, in the local or specialised press. It provides all the information necessary: a description of the job, the qualifications and experience required and any other selection criteria, the time within which a candidate must send a detailed *curriculum vitae* to the Centre and the documents attesting to the experience and the abilities required for the job.

Persons applying for a selection procedure must complete an application form which is available on the Centre's website. The application form states, *inter alia*, that all sections of the form must be completed. The application form contains personal identification data, data concerning any dependents, periods of more than three months spent abroad, language knowledge, computer knowledge, data concerning education and training, data concerning previous employment, a statement concerning the applicant's satisfaction of the conditions of fitness to apply and a photograph of the applicant.

Each applicant is given an identification number for the selection procedure.

In addition, in the course of the selection process other data are collected, such as information provided by the applicant for purposes of the physical organisation of the pre-selection and other tests (street, postcode, place, country, sex, telephone number, fax number, language of correspondence, any disability); information provided by the applicant so that it can be determined whether he meets the admission conditions set in the selection notice (nationality, languages, qualifications, professional experience); the results of the pre-selection tests, the written tests and the interview.

The Translation Centre records some of those data in an Excel file: family name, forename, address, nationality, language knowledge, areas of competence, selection committee mark.

A selection committee is set up for each selection. It is responsible for examining every application on the basis of assessment tables, drawing up the list of applicants chosen to take part in an oral and/or written test, choosing the best applicants on the basis of qualifications, experience and the overall assessment by means of the interview and/or written test. On the conclusion of the selection committee's proceedings, a reserve list is drawn up of the persons considered best able to do the job. In accordance with the budget resources available, the Centre recruits the persons on the reserve list.

The Translation Centre's website has a page of very general information concerning the recruitment procedure. In addition, the application form for temporary staff states the following: "The personal data that the applicant communicates to the Translation Centre for the bodies of the European Union are processed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data. Details of the processing of data are given in the annex entitled "Data protection", which can be consulted at www.cdt.eu.int, under Employment and courses, Job offer(s)". That annex gives information concerning the identity of the person in charge of processing, the purpose of the processing, the data concerned, the nature of the data processed, the legal basis, the recipients of the processed data, the permissibility of the processing, the date on which processing will start and the length of time for which the data will be kept.

It is possible to request, in writing, the correction of any data before the closing date for applications. Thereafter, information concerning professional experience acquired after the closing date for applications is no longer accepted.

An application may be withdrawn at any time.

Applications for courses are received by the Human Resources section of the Administration department which checks that they are acceptable. If they are acceptable the dossiers are sent to the selection committee. It receives (1) the application form and the supporting documents: family name, forename, address, date of birth, family situation, *curriculum vitae*, references, and (2) the Excel file: family name, forename, address, nationality, language knowledge, areas of competence. The selection committee adds the selection committee mark.

In the event of recruitment, the person in charge of the department doing the recruiting, the Human Resources department, the Head of the Administration department and the Authority Empowered to conclude Contracts of Employment receive the applicant's family name, forename and recruitment dossier.

Article 10 of Administrative Decision 2/2003 on the selection procedure provides that "the committee's meetings shall be confidential and secret. No information received during the meetings may be communicated outside the committee. No information concerning the result may be disclosed before the Authority Empowered to conclude Contracts of Employment has been informed of the result of the procedure".

The Internal Audit Services (IAS) and the Court of Auditors may have access to such information in the event of an audit.

Data are kept for seven years. The Translation Centre chose that period for the keeping of data because of the provisions of Article 49 of the rules for implementing the provisions of the Financial Regulation, which provides that authorising officers must keep supporting documents for five years. That period may be extended up to seven years in the case of documents relating to operations not definitively closed.

Data kept for statistical purposes are rendered anonymous.

As regards security, application dossiers are kept in locked cupboards and archives are accessible only to staff of the Human Resources (HR) department. Computer files are kept in a space visible only to identified recipients.

2.2. Legal aspects

2.2.1. Prior checking

The management of data relating to the selection procedure for the recruitment of staff involves the collection, recording, organisation, storage, retrieval, consultation, etc., of data of a personal nature. Data processing involves manual procedures, such as the preparation of a hard-copy dossier for each applicant, and automatic procedures, such as the entry of data into an Excel file. Data processing therefore comes within the scope of Regulation (EC) No 45/2001.

Data processing is carried out by a Community body and is carried out for the purpose of activities within the scope of Community law (Article 3(1)).

The purpose of data processing is to fill vacant posts in the staff tables annexed to the budget of the Translation Centre. The persons concerned are applicants for selection as temporary staff.

Article 27(1) of Regulation (EC) No 45/2001 provides that "Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes" shall be subject to prior checking by the European Data Protection Supervisor (EDPS). Article 27(2) lists processing operations that are likely to present such risks.

The data processing in question here is subject to prior checking because it is a processing operation "intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct" as laid down in Article 27(2)(b) of the Regulation. The data processing in question is indeed intended to evaluate the ability of the applicants.

Theoretically, the checking carried out by the European Data Protection Supervisor is carried out before the data processing. In this case, however, because of the appointment of the European Data Protection Supervisor, which took place after the introduction of the system, the checking is inevitably *ex post*. This does not reduce the desirability of the implementation of the recommendations made by the European Data Protection Supervisor.

The prior checking in this case concerns the selection procedure for the recruitment of temporary staff but does not concern the processing of personal data on recruitment itself, or the procedures for the selection of other servants (trainees, etc.).

The Data Protection Officer's notification was received on 9 November 2005. In accordance with Article 27(4) this opinion must be delivered within two months of receipt of the notification. Requests for further information, however, suspended the deadline for 19 + 55 + 14 days. The EDPS must therefore deliver his opinion no later than 13 April 2006.

2.2.2. Legal basis and lawfulness of the processing operation

Processing is carried out on the legal basis of Article 12 of the Conditions of Employment of Other Servants, which provides that "1. The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities".

Administrative Decision 02/2003 on the Translation Centre's procedures for selecting temporary staff, published externally, specifies the legal basis for the recruitment of temporary staff for the agency.

Analysis of the legal basis in relation to the Regulation is combined with analysis of the lawfulness of the processing operation. In fact, Article 5 provides that "Personal data may be processed only if: (a) 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 or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed". Recital 27 of the Regulation provides that processing for the performance of tasks carried out in the public interest by Community institutions and bodies "includes the processing of personal data necessary for the management and functioning of those institutions and bodies".

In this dossier, the legislative acts already mentioned cover the performance of a task carried out in the public interest, such as the assessment of the competence of applicants who are to

fill posts as temporary staff of Community institutions and bodies. The processing is therefore lawful.

2.2.3. Processing of special categories of data

Under Article 10(1) of the Regulation, "the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited", unless legal bases are provided by, *inter alia*, Article 10(2).

In the process of selection, data are collected, such as the information provided by an applicant for the purpose of the physical organisation of the pre-selection and other tests and in particular the possibility of a disability. The latter data must be regarded as data concerning health for the purposes of Article 10. The processing of such data would comply with Article 10(2) because it would be carried out with the consent of the person concerned.

2.2.4. Data quality

Under Article 4(1)(c), personal data must be "adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed".

Persons applying for a selection procedure must complete an application form which is available on the Centre's website. All sections of the form must be completed. The application form includes personal identification data, data concerning any dependents, periods of more than three months spent abroad, data concerning education and training, data concerning language knowledge, previous employment and IT knowledge. The EDPS questions the relevance of data concerning any dependents for the purpose of the recruitment of applicants for temporary posts.

The form also requires the attachment of a photograph of the applicant. Such a request is justified as facilitating the work of the members of the selection committee. The EDPS considers that the attachment of a photograph can in fact be justified as facilitating the work of the committee, but any attachment must be on a voluntary, non-discriminatory basis. This must be stated clearly in the application form.

The Excel form includes the family name, the forename, the address, the nationality, the language knowledge, the areas of competence and the selection committee's mark. Those data would appear to comply with Article 4 of the Regulation.

Finally, data must be "accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified" (Article 4(1)(d) of the Regulation). The procedure itself must guarantee the correctness of the data. This point will be considered later in connection with the possibility for the person concerned of amending those data (2.2.8. Right of access and rectification).

2.2.5. Conservation of data

According to Article 4(1)(e) of the Regulation, "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 the present case, all data are kept for seven years. This is justified, according to the Centre, on the provisions of Article 49 of the detailed rules for the implementation of the Financial Regulation which provides that authorising officers must keep supporting documents for five years. In addition, the Regulation provides that documents relating to operations not definitively closed shall be kept until the end of the year following that in which the operations are closed. Keeping supporting documents relating to the recruitment procedure for seven years is justified not only as regards the applicants recruited, but also as regards those not recruited and for which it is necessary to keep documents in case there is an audit of the selection procedure itself.

The EDPS accordingly approves the Translation Centre's keeping supporting documents for seven years.

Keeping anonymous data for more than seven years for statistical purposes is in accordance with the Regulation.

2.2.6. Transfers of data

Forms of application for temporary posts are received by the Human Resources section of the Administration department which checks that they are acceptable. If they are acceptable, the dossiers are then transferred to the selection committee. That transfer is clearly compatible with Article 7(1) because the data are necessary for the purpose of the legitimate performance of tasks covered by the competence of the recipient. The selection committee can process those data only for the purposes for which they were transferred.

In the context of an audit the data may also be transferred to the Internal Audit Service (IAS) or to the Court of Auditors. Those transfers too comply with Article 7 since they are necessary for the legitimate performance of tasks covered by the competence of the recipient.

2.2.7. Personal identification number

Article 10(6) of the Regulation provides that "the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body". The general conditions under which a personal number or other identifier of general application may be used are not determined in this opinion. On the other hand, the EDPS considers that the use of an identification number in the selection procedure as it appears on the application form must be considered reasonable insofar as it facilitates the identification of the applicant during the procedure. In practice, persons completing application forms are given identification numbers which they must quote in any subsequent contact.

2.2.8. Right of access and rectification

Under Articles 13 and 14 of Regulation (EC) No 45/2001 the persons concerned have the right of access to the personal data concerning them and the right to correct inaccurate or incomplete data.

As indicated above (section 2.1.), Article 10 of Administrative Decision No 02/2003 on the selection procedures provides that "no information concerning the result may be disclosed before the Authority Empowered to conclude Contracts of Employment has been informed of the result of the procedure". That means that once the results of the procedure have been communicated to the authority in question any person may request access to his results. This

provision adequately reconciles compliance with the confidentiality of the selection committee's proceedings and the right of access of the persons concerned, provided that the latter can have sufficiently precise details of their results.

As regards the procedures guaranteeing the right to rectify incorrect or incomplete data, it is possible to request, in writing, rectification of any information before the closing date for applications. Thereafter, information concerning professional experience acquired after the closing date for applications is no longer accepted. This restriction on the changes possible is justified by the fact that the professional experience in question is that acquired before the closing date for applications.

The EDPS endorses the fact that any restriction of the right to rectify should concern only information concerning professional experience acquired after the closing date for applications since that restriction can be based on Article 20 of the Regulation; specifically, it is a restriction necessary to safeguard the rights and freedoms of others (Article 20(1)(c)). He would, however, underline the need for the persons concerned to be informed of the possible right of access and rectification (see "Provision of information to the persons concerned" below).

Furthermore, the EDPS stresses that the right of rectification of the person concerned can apply only to objective and factual data and not to assessments made by members of the selection committee.

2.2.9. Provision of information to the persons concerned

The Regulation provides that the persons concerned must be adequately informed of the processing of their data and lists a series of particulars that must be communicated to them. Those particulars include the identity of the controller, the purposes of the processing, the recipients, the existence of the right of access and the right to rectify, whether replies to the questions are obligatory or voluntary and the possible consequences of failure to reply. Insofar as additional information is necessary in order to ensure fair treatment of the person concerned, the information may also cover the legal basis, the time for which data is kept and the right to bring any matter before the EDPS at any time.

In the present case, Articles 11 and 12 both apply insofar as the data are collected directly from the persons concerned and also from other persons (the selection committee).

The EDPS welcomes the provision of information, on the application form and the Centre's website, concerning the processing of the information in the course of the selection procedure. He would, however, wish to see information in the application form concerning the applicants' rights of access and to rectify and the possible consequences of the failure to complete any section of the application form. In addition, in order to guarantee transparency of treatment, information must be given concerning the possibility of appealing to the EDPS.

2.2.10. Security

The EDPS considers that the security measures described in section 2.1 are adequate in the light of Article 22 of the Regulation.

Conclusion

The proposed processing does not appear to violate the provisions of Regulation (EC) No 45/2001, so long as account is taken of the observations set out above. In particular:

- the relevance of certain data entered in application forms, such as information concerning possible dependents, for the purpose of the recruitment of applicants for temporary posts should be assessed;
- the attachment of a photograph must be voluntary and non-discriminatory. That must be stated clearly in the application form;
- information concerning applicants' rights of access and rectification and on the possible consequences of failing to complete any section must be given in the application form. In addition, information must be given concerning the existence of the right to appeal to the EDPS.

Done at Brussels, 10 April 2006

Peter HUSTINX
European Data Protection Supervisor