



**Opinion on a notification for prior checking received from the Data Protection Officer of the European Communities Personnel Selection Office (EPSO) on the "Selection of temporary staff with a view to recruitment by the European institutions or by Community bodies, offices and agencies"**

Brussels, 2 May 2006 (Case 2005-365)

**1. Procedure**

On 20 July 2004 the European Data Protection Supervisor (EDPS) wrote to the Data Protection Officers 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 the basis of the inventories received from the Data Protection Officers, the EDPS identified priority topics, including staff evaluation. On 10 November 2005, the EDPS asked all the DPOs to update their inventories. The acting Data Protection Officer of the European Commission drew up a list of cases that should be subject to ex post checking, and in particular the case of "*the selection of temporary staff with a view to 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)).

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "selection of temporary staff with a view to 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 to a lack of resources. That is why the Commission's DPO has submitted to the EDPS a notification on EPSO's behalf.

Questions were put to the acting Data Protection Officer of the European Commission in e-mails dated 13 January and 17 March 2006. Replies were given on 10 April 2006.

On 18 April the DPO asked for the deadline to be extended until 27 April (9 days).

## 2. 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 2002<sup>1</sup>. The way in which EPSO is organised and operates was laid down in a second decision (Decision 2002/621/EC). In accordance with Article 12(3) of the Conditions of Employment of Other Servants of the European Communities (hereafter "CEOS"), EPSO must provide assistance to the Community institutions, bodies, offices and agencies with a view to the selection of temporary staff, which is the case here.

Temporary staff are recruited to work in highly specialised areas and fields not covered by competitions. Under Article 12(3), EPSO must ensure the transparency of selection procedures for temporary staff engaged under Article 2(a), (b) and (d)<sup>2</sup>. *De jure*, the procedure for recruiting temporary staff can therefore be applied to these three categories. However, as EPSO is not primarily competent, in that it acts only if requested by the institutions, it is not possible to indicate for which of these three categories of temporary staff the institutions will request EPSO's assistance. It should be noted that, *de facto*, since the Office was set up only the procedures for selecting type 2(a) temporary staff have been conducted exclusively for the Commission, as the other institutions have not asked for EPSO's assistance (with the exception of EPSO's assistance in a selection procedure for the OHIM). Given the highly specialised nature of the profiles sought, the number of applicants under these selection procedures is limited. EPSO is responsible only for selecting temporary staff, as the institutions continue to be competent for recruitment.

In the case of the Commission, a Directorate-General (DG) that wishes to recruit temporary staff must seek prior authorisation from the Personnel and Administration DG. This DG then checks that, owing to the nature of the post, it cannot be filled by a successful candidate on a waiting list. Once the DG has the authorisation, it publishes the vacancy. It is circulated among the Permanent Representations of the Member States to the EU which, in turn, pass on the information by whatever means they think fit. The vacancy is also published on EPSO's Internet site.

Applications are made on paper, not on-line. There are no technical reasons for not being able to apply on-line for selection procedures for temporary staff for the institutions. However, in practice, applications are never made on-line under these procedures. A personal file is put together for each applicant who submits an application on paper; this file contains the official application form with identification details such as surname, first name, date of birth, sex, nationality, private address, and the standard European CV with supporting documents relating to qualifications and professional experience. The evaluation sheets for the application file and the interview and any correspondence are all put into the applicants' personal files.

---

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

<sup>2</sup> Article 2 CEOS states that temporary staff means "(a) staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to each institution and which the budgetary authorities have classified as temporary; (b) staff engaged to fill temporarily a permanent post included in the list of posts appended to the section of the budget relating to each institution; and (d) staff engaged to fill temporarily a permanent post paid from research and investment appropriations and included in the list of posts appended to the budget relating to the institution concerned."

The institution concerned sends the applicant an acknowledgement of receipt of the application together with a notice on personal data protection. This notice states the identity of the controller, the purposes for which the data are processed, the intended recipients, the right of access to and the right to rectify the data, the data concerned, the legal basis, the date as of which data are to be processed, the length of time they are stored and the right to have recourse at any time to the EDPS.

After the closing date for applications, the institution concerned sends EPSO all the applications in paper form. These include the documents relating to the applicants' application files (official application form and CV where appropriate) received directly by the department or DG that asked for the selection procedure to be organised. When the institution concerned sends EPSO the files the applicants are entered in the NAC database management system. The following details are entered in the NAC: surname, first name, date of birth, nationality, sex, address, e-mail address, fax and telephone numbers (the last three are optional), preferred language and field chosen (if there is one). The data are then split, according to the procedure described below, into two separate groups of applicants: those who have been pre-selected on the basis of their CV, and those who have not.

In order to carry out the duties conferred upon it, EPSO must set up a Selection Board which has three members: a Chairman, a representative of the institution concerned and a member of staff. The Selection Board may also call upon the assistance of assessors, especially when the vacancy notice is for a highly technical field. There are two stages in the selection procedure: once the Selection Board has pre-selected applicants on the basis of their application files, the applicants who best fit the profile sought are invited for an interview. After the interviews, the Selection Board draws up a list of applicants found to be the most suitable. EPSO gives this list of suitable applicants to the institution which asked for the selection procedure to be organised. EPSO is responsible for informing applicants individually of the sequence of events during the selection process.

It is for each Selection Board appointed to decide how to verify applicants' skills at the selection interview, depending on the nature of the posts to be filled. Accordingly, notices of vacancies for temporary staff are published only so as to inform applicants of the requirements to be met in order to fill the posts, and do not stipulate how interviews are to be conducted.

Applicants' files are not sent after pre-selection on the basis of the applicants' files, but only once the Selection Board has held the interviews. In this way, at the end of the selection procedure, only the files of applicants who pass the selection interview are sent to the

institution that asked for the selection procedure to be organised. Applicants' files contain the official application form, copies of qualifications and documents proving professional experience. EPSO keeps a copy of the files for ten years.

In the case of the selection of temporary staff, not only the Selection Board but also the institution that asked for the procedure to be organised has access to the data of successful applicants. Within the institution concerned (the DG or department in the case of the Commission), only the Head of Human Resources has access to the data. Within EPSO, the staff responsible for managing the selection procedure for temporary staff may also have access to applicants' personal data, for the sole purpose of organising the selection procedure.

Applicants can indicate any changes to their personal data by mail. Initially, applicants were allowed to verify their personal details exclusively on EPSO premises, but as this seemed restrictive and potentially discriminatory in that it took no account of the great fact that the great majority of applicants for this kind of selection were at some distance from EPSO, the system has been replaced and applicants are now entitled to a certified true copy of their personal data as recorded by EPSO, on a written request accompanied by a copy of an identity card. This change has been incorporated in the new wording of the confidentiality notice sent to applicants.

According to EPSO, Selection Board proceedings are secret in accordance with Article 6 to Annex III to the Staff Regulations. In this respect, it should be noted that applicants can obtain only the overall mark given by the Selection Board from the selection interview, as is the case under the procedures for selecting permanent staff.

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 on which the competent authority takes the final decision on the request to block or erase data (administrative decision by EPSO or, in the event of a dispute, decision by the European Data Protection Supervisor or the competent court). The same maximum time-limit is applied for data in paper form.

Data in paper form are stored on CD ROM for archiving on EPSO premises, in a secure area accessible only by magnetic card. The data in electronic form are stored in a database at the Commission's Data Centre in Luxembourg. Copies of files are stored for ten years. The same time-limit applies both for applicants who are selected and for applicants who are selected but not chosen after the interview.

It should also be made clear that third parties that lend assistance in conducting the selection procedure sign contracts with EPSO. EPSO considers that the institution concerned, which sends EPSO the applications, acts as a processor. EPSO therefore asks the institution for its commitment in writing that the legal provisions on data protection will be fully observed. The representative of the institution who is involved in selecting temporary staff is therefore obliged to exercise the utmost discretion and refrain from communicating any information, in whatever form, to parties not involved in the selection procedure. The representative of the institution concerned must ensure that application files cannot be read, copied, altered, moved or deleted without authorisation before they are forwarded to EPSO or while they are being

transferred. Likewise, compliance with data protection provisions is also required of the other processors, in particular the Selection Board, assessors and the Commission's Data Centre at Luxembourg responsible for storing EPSO data.

### **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 subject of this prior checking concerns only the processing carried out by EPSO.

This processing therefore falls within the scope of Regulation (EC) No 45/2001.

In principle, processing under the registration procedure for the notice of vacancy is manual. The personal files are put together in paper form, but their content is stored in an NAC database, and must therefore be put into an electronic file. Article 3(2) is therefore applicable in this case.

Article 27(1) of Regulation (EC) No 45/2001 makes subject to prior checking by the European Data Protection Supervisor processing operations likely to present specific risks to the rights and freedoms of data subjects. 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 selecting temporary staff 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.

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*. 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. An e-mail requesting additional information was sent on 13 January 2006. 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 10 April 2006, implying a suspension of 88 days. On 18 April the DPO asked for the deadline to be extended until 27 April (i.e. by nine days) so that he could comment on the draft EDPS

opinion. The EDPS will therefore deliver an opinion by 2 May 2006 at the latest (24 January plus 88 days of suspension and a nine-day extension).

### **3.2. Legal basis and lawfulness of the processing operation**

The legal basis for the data processing in question is the CEOS and 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.

In particular, Article 12(3) of the CEOS stipulates that: "The European Communities Personnel Selection Office (hereinafter "the Office") shall, at their request, provide assistance to the different institutions with a view to the selection of temporary staff, in particular by defining the contents of the tests and organising the selection procedures. The Office shall ensure the transparency of selection procedures for temporary staff ...".

As well as the legal basis, the lawfulness of the processing operation must also be considered in relation to the Regulation. Article 5(a) provides that "*Personal data may be processed only if 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.*".

In the case in point, the procedure for selecting temporary staff with a view to their recruitment by the European institutions is part of the legitimate exercise of official authority vested in the institutions. The legal basis provided by the CEOS 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 laid down for in the Regulation are met (information to be given to the data subject, ensuring the rights of the data subject, 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)).

For the record, EPSO considers that the institution concerned, which sends EPSO the applications, acts as a processing department. It should be pointed out that the procedure for selecting temporary staff takes place in three stages. Initially, when the notice of vacancy is published, the institution acts as controller. Thereafter, as soon as EPSO receives all the applications and is responsible for setting up the Selection Board, it acts as "co-controller". When the list of the most suitable applicants has been drawn up EPSO sends it to the institution concerned, which acts as the party responsible for the selection procedure. Furthermore, the fact that EPSO acts as "co-controller" is endorsed by the phrase "provide assistance to different institutions" used in Article 12 CEOS and by the word "jointly" in

Article 2(d) of the Regulation. The Selection Board set up by EPSO and the assessors called upon by the Board must be considered as processors processing personal data on EPSO's behalf.

Consequently, as a "co-controller", EPSO's role is to assist the Community institution that asked it to organise the selection of temporary staff whose profile best corresponds to the posts advertised by the institution. The role of the various processors (Selection Board, assessors) is to help EPSO draw up a short list of the applicants found to be the most suitable.

### **3.4. Data quality**

According to Article 4(1)(c) of the Regulation, personal data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*". In the case in point, the data required are administrative in nature and are necessary for the proper functioning of the procedure for selecting temporary staff. In this respect the EDPS considers that Article 4(1)(c) of Regulation (EC) No 45/2001 has been fulfilled.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (see point 3.2 above). As for fairness, this relates to the information which must be transmitted to the data subject (see section 3.10 below).

Under Article 4(1)(d) of the Regulation, 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". Furthermore, the system itself helps guarantee that data are correct and kept up to date. Moreover, the data subject has the right to access and rectify data, which helps ensure that they are kept up to date and that the file is as complete as possible. This is a second way of ensuring the quality of data. See point 3.9 below on the dual rights of access and rectification.

### **3.5. Data retention**

Under 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*".

It should be remembered that a copy of the files of applicants who are selected and also of applicants who are selected but not chosen after the interview is archived and stored at EPSO for 10 years.

The procedure for storing data makes a distinction between persons recruited and persons not recruited. The spin-off effect for the former is that for a person recruited some portions of the application file are stored in the personal file for an indeterminate period. Data are thus stored for a long, but unspecified period.

In a similar case<sup>3</sup>, the EDPS considered that it was reasonable to set 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.

---

<sup>3</sup> EPSO case 2004/236 – see also Case 2004/274 (Staff appraisal – European Central Bank)

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, even 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.

Furthermore, the EDPS considers a period of 10 years too long if there is no specific justification for it. The EDPS also considers that data of a purely informative nature (such as address, telephone number, etc.) that are no longer necessary for administrative reasons could be disposed of. A shorter storage period of a minimum of 5 years would be desirable both for purely informative data and for paper files stored by EPSO for what is stated as being a period of 10 years.

The possibility of the data being stored for statistical, historical or scientific purposes would appear to be ruled out. However, should EPSO intend to carry out statistical research it is essential that the data used be rendered anonymous.

The same ten-year period is applied to the files of applicants not recruited. The EDPS considers that a ten-year storage period could be justified so as to enable, inter alia, appeals or audits. The EDPS is nevertheless of the opinion that if it were possible to shorten the period for which data on people not recruited are stored this would be more reasonable, given the purposes for which the data were collected.

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 firstly that EPSO remind the institutions that such data, like all personal data, must be covered by adequate measures for transmission and storage. If possible, EPSO should dispose of data of a purely informative nature on applicants who are recruited if they are no longer necessary for administrative reasons after a minimum period of 5 years. Given the purposes for which the data were collected, it would be more reasonable to shorten the storage time for data on applicants not recruited.

### **3.6. Change of purpose/Compatible use**

The processing operation under review has a specific purpose, namely to draw up lists of suitable applicants so as to assist the departments of the European institutions, the Community bodies, offices and agencies in recruiting temporary staff who best correspond to the profile set out in the notice of vacancy.

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) of the Regulation are fulfilled.

### **3.7. Transfer of data**

Under Article 7(1) of the Regulation personal data may only be transferred within or to other Community institutions or bodies if the data are "*necessary for the legitimate performance of the tasks covered by the competence of the recipient*".

In the case in point, the data are first sent to EPSO by the institution concerned so that the selection procedure can be organised. The data are then communicated to the members of the Selection Board and to their assessors by the members of staff responsible for helping them to conduct the selection procedure. This data transfer to all of these recipients is necessary and in line with the legitimate performance of the tasks of the various parties.

At the end of the selection procedure the applicants' files are also transferred to the Community institutions, bodies and agencies that asked for the selection procedure to be organised, and in particular to the Heads of Human Resources. That means that personal 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 no-one receiving and processing data in the context of the selection procedures for temporary staff of the institutions can 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 Tribunal<sup>4</sup> may receive copies of items from such files at its request in the event of proceedings before it. In the case of recruitment, 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 in this case 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.

### **3.8. 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 required for the procedure to take its course.

Article 14 of Regulation (EC) No 45/2001 establishes the data subject's 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 it changed, if necessary.

For the record, applicants can indicate any changes to their personal data by mail. Applicants are also entitled to a certified true copy of their personal data as recorded by EPSO, by submitting a written request accompanied by a copy of their identity card so as to guarantee the identity of the person making the request. This change has been incorporated in the new wording of the confidentiality notice sent to applicants.

Should applicants ask EPSO for an evaluation sheet containing the comments of the Selection Board they may be given only the overall mark awarded by the Selection Board for the selection interview. It is for each Selection Board to decide how to verify applicants' skills.

---

<sup>4</sup> 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.

The notice of vacancy published by the institution concerned does not stipulate how interviews are to be conducted.

Moreover, as a general rule and for the sake of transparency, the EDPS advocates that EPSO encourage the Selection Board to establish a detailed breakdown of the marks given for the oral, without in any way encroaching on the principle of confidentiality of the Selection Board's proceedings pursuant to Article 6 of Annex III to the Staff Regulations.

The processing operation under review concerns the selection procedures for temporary staff within the meaning of Article 2(2)(a) CEOS, which concerns a category of highly specialised temporary staff. The EDPS therefore considers that as these are specialised posts, in some instances it might be difficult for the Selection Board to establish a detailed breakdown beforehand of the marks allocated for the oral, as each Selection Board uses different evaluation criteria according to the specialised area of the post.

However, the EDPS is of the opinion that where, for the sake of transparency and objective treatment, the Selection Board does establish beforehand a grid for the breakdown of marks for the oral, data subjects must have access to the details of the marks they were given, and EPSO must inform them of this possibility.

Furthermore, 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 ascertain 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 EDPS recommends that as a general rule when the Selection Board establishes a breakdown indicating the percentage of the overall mark allocated to each subject area on which applicants will be assessed by the Selection Board, EPSO should inform the applicants that they may have access to the details of their individual marks according to this breakdown pursuant to the right of access under Article 13 of Regulation (EC) No 45/2001. This right does not extend to the right to rectification.

### **3.9. 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 the information to be given to the data subject applies in this case inasmuch as applicants personally fill in the data required of them and the data subjects provide the data themselves.

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, in particular from the Selection Board and assessors where required.

For the record, data subjects are informed in this instance via the notice on the protection of personal data. This notice is communicated by the institution that asked for the procedure for the selection of temporary staff to be organised, when the institution acknowledges receipt of the application file. It should be reiterated that as "co-processor" EPSO carries out its obligations via the institution that asked it to organise a selection procedure for temporary staff.

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 a 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 a 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 receipt of the official application form is acknowledged by the institution concerned fully meets the conditions set out in Articles 11 and 12 of Regulation (EC) No 45/2001.

### **3.10. Processing of personal data on behalf of the controller**

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.

In the case in point, EPSO concludes contracts with its processors, the Selection Board, the assessors and the Commission's Data Centre in Luxembourg which is responsible for storing EPSO data. Processors are obliged to guarantee confidentiality and security when processing data subjects' data.

It follows that the service contracts that EPSO concludes with processors comply with Article 23 of Regulation (EC) No 45/2001.

### 3.11. Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on the 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 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;
- divulge data only to departments in charge of recruitment procedures.

#### The period for storing data

- On the one hand, for applicants who are recruited, a shorter storage period of a minimum of 5 years would be recommended, both for purely informative data and for paper files stored by EPSO for what is stated as being a period of 10 years;
- on the other, for applicants who are not recruited, if possible a shorter storage period would be desirable given the purposes for which the data were collected.

#### Applicants' right of access

- When the Selection Board establishes a breakdown indicating the percentage of the overall mark allocated to each subject area on which applicants will be assessed by the Selection Board, EPSO should provide for applicants to have right of access to the details of their marks according to this breakdown pursuant to the right of access under Article 13 of Regulation (EC) No 45/2001, and duly inform data subjects of that right.

Done at Brussels, 2 May 2006

Peter HUSTINX  
European Data Protection Supervisor