

**Opinion on a notification for Prior Checking received from the Deputy Data Protection Officer of the European Commission on the "Management of personal data of Auxiliary Conference Interpreters (ACI) stored in Signalétique (application of the central database CORALIN)"**

Brussels, 22 December 2006 (Case 2006-364)

**1. Proceedings**

On 11 July 2006, the European Data Protection Supervisor (EDPS) received from the Deputy Data Protection Officer of the European Commission a prior checking notification on the "Management of personal data of Auxiliary Conference Interpreters (ACI) stored in *Signalétique* (application of the central database CORALIN)" at DG Interpretation (SCIC) of the European Commission.

On 11 August 2006, the EDPS made a request for further information, to which he received the responses on 8 September 2006. On 26 September 2006 and on 17 October 2006 the EDPS made further information request. To the question of 26 September 2006 he received the responses on 19 October 2006, and for the remaining question he received the response on 3 November 2006.

On 14 November 2006, the EDPS extended the deadline to issue the opinion for one more month because the responses received highlighted aspects which added complexity to the case.

On 13 December 2006 the EDPS suspended the prior checking procedure for a period of 8 days to allow the DPO to comment on the draft and to provide further information if necessary.

**2. Examination of the matter**

**2.1. The facts**

Introduction

Freelance interpreters routinely work alongside staff interpreters in meetings served by the interpreting services of the European institutions.<sup>1</sup> Auxiliary conference interpreters (hereinafter as: ACIs or freelance interpreters) need to pass an accreditation procedure before being placed on the Joint list of the EU institutions. Once they are on the Joint list they can be offered contracts by the EU institutions and bodies. The broader frame of the accreditation procedure of ACIs is the agreement concluded on 28 July 1999, on the one side by the

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<sup>1</sup> [http://europa.eu/interpretation/accreditation\\_en.htm](http://europa.eu/interpretation/accreditation_en.htm)

European Commission, the Parliament and the Court of Justice and on the other side by the International Association of Conference Interpreters (AIIC)<sup>2</sup> on the working conditions and financial terms for session auxiliary conference interpreters (SAI) and freelance interpreters (FLI) (contract conference interpreters) recruited by the institutions of the European Union (hereinafter as: "Agreement"). The Agreement<sup>3</sup> takes into regard Article 78 and 90 of the Conditions of employment of other servants of the European Communities (CEOS).

### The *Signaletique* database as a general framework

The vast majority of data concerning ACIs are registered in the so-called *Signaletique* database via the application form for taking an inter-institutional accreditation test. The application *Signaletique* is an inter-institutional database and it collects and subsequently processes personal data of ACIs in accordance with the operational requirements of the different interpreting services. It is one of the applications of the central human resource database CORALIN, maintained by DG Interpretation (SCIC) and it has multiple purposes: inviting candidates to tests, recruiting freelance interpreters, assigning freelance interpreters to meetings, paying freelance interpreters.

As to accredited ACIs, the *Signaletique* database contains the following personal data on accredited freelance interpreters who are already on the Joint List: title, photo, surname, first name, street and number, post code, town or city, country, telephone numbers (mobile, private<sup>4</sup>, office, etc), fax number, email address, date of birth, place of birth, present nationality, second nationality (if any-optional), active and passive languages, statute and starting date as an ACI, SCIC and EP matricule numbers, mail, category (1= experienced, 2= beginners) and number of days worked, higher and post-university education; professional experience, including prior participation on tests and long -term stays abroad (optional); physical disabilities, if any, in order for DG Interpretation to make any necessary supplementary arrangements; professional domicile, police file; tests, pension; bank; divers (contact name, cuid, available to be affected in meeting, passport number).

The number of days worked as a freelance interpreter counts towards the classification of ACIs whether they will be recognised as a beginner or an experienced interpreter.<sup>5</sup> The Memo on the implementation of Annex 1 to the Agreement<sup>6</sup> specifies the supporting documents which can be submitted as evidence for the number of days worked as a conference interpreter.

The "police file" contains a recent extract (original) of the police file or certificate of good conduct (original) as established for entry to the Civil Service by the authorities of the country (not applicable to UK and Irish nationals residents in their countries); a certified copy of the

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<sup>2</sup> Representing the associations recognised as representative of the conference interpreting profession within the meaning of the call for expression of interest (CEI).

<sup>3</sup> The Agreement entered into force on 1 September 1999.

<sup>4</sup> The private telephone number of interpreters is claimed to be necessary for Unit SCIC.C.2 for the programming and planning of interpretation.

<sup>5</sup> Article 2 (conditions of engagement) of the "Agreement on working conditions and financial terms for session auxiliary conference interpreters (SAI) and freelance interpreters (FLI) (contract freelance interpreters) recruited by the institutions of the European Union" states that "*any beginner ACI engaged under the second paragraph of Article 1 shall complete 100 days' work for the institutions before being recognised as an experienced interpreter*". The decision entering into effect on 20 June 2001 adopted by the delegations of the European Parliament, Commission, Court of Justice and International Association of Conference Interpreters agreed on the further interpretation of Article 2 of the Agreement.

<sup>6</sup> A "Memo on the implementation of Annex 1 to the Agreement on working conditions and financial terms for session auxiliary conference interpreters (SAI) and freelance interpreters (FLI) recruited by the institutions of the European Union".

birth certificate; a certified copy of the document proving the nationality (i.e. relevant pages of the passport/international travel document).

In addition, an "observations" field contains data on the length and place of contract outside DG SCIC; and additional address or email; additional information on the languages; various comments on the accreditation, tests or personal characteristics (handicaps).

### The accreditation procedure of ACIs

The European Parliament, the European Commission and the European Court of Justice each have an interpretation service but selection of freelance interpreters is carried out jointly.<sup>7</sup> Professional accreditation tests for freelance interpreters are organised by an "inter-institutional" test office, based in DG SCIC of the European Commission.

There are two main possible scenarios for being accredited to the European institutions as freelance interpreters:

1) An ACI from the 25 member states of the EU and from Bulgaria, Romania, Turkey, Croatia, Russia can only enter the joint EU list of accredited freelance interpreters by way of an inter-institutional test. If they pass the test (see below), their name and contact details are entered into the joint EU database of accredited freelance interpreters,<sup>8</sup> and they are available for recruitment by the institutions. Recruitment means contracts being offered by the institutions. After the first recruitment ACIs are subject to quality control<sup>9</sup>.

2) At the time when the ACI lists of institutions were merged (final date 15/11/2004), a number of ACI were accepted upon recommendation by the European Parliament. This possibility is now open for countries other than mentioned in the paragraph above.

An ACI may have entered the Joint List upon recommendation from EP or CoJ but have not worked for SCIC before. In this case, he/she is flagged in the system which means that upon the first assignment, senior colleagues will listen and provide feedback to the Head of Unit (HoU). Upon sufficient feedback, the HoU will confirm in writing the quality of the ACI and in the event of a positive conclusion, the ACI can get a SCIC agreement following approval of "Group de travail Interinstitutionnel" (GTI)<sup>10</sup>. In this case, the ACI will be "deflagged". In case of negative feedback the accreditation will be changed to a partial accreditation (meaning accreditation only to the original institution). The ACI can see all changes on their personal datasheet and is also informed by their HoU.

If the ACI has only partial accreditation, the HoU from another institution may decide to recruit the ACI and initiate reporting procedure as described above. If the feedback is positive the ACI will be given full accreditation. Should the result be negative, the accreditation stays partial. ACIs are informed of this procedure.

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<sup>7</sup> [http://scis.cec.eu.int/europa/display.jsp?id=c\\_6328](http://scis.cec.eu.int/europa/display.jsp?id=c_6328)

<sup>8</sup> [http://europa.eu/interpretation/index\\_en.htm](http://europa.eu/interpretation/index_en.htm)

<sup>9</sup> Opinion of 21 March 2006 on a notification for prior checking on SERIF ("Système d'Enregistrement de Rapports sur les Interprètes Freelance") (Case 2006-1). Available at: [http://www.edps.europa.eu/12\\_en\\_opinions.htm](http://www.edps.europa.eu/12_en_opinions.htm).

<sup>10</sup> The GTI consists of +/- 10 Heads of Interpretation Unit from the institutions. Their mandate is to treat all issues concerning inter-institutional co-operation related to ACIs.

The information on the DG SCIC website ([http://europa.eu/interpretation/accreditation\\_en.htm](http://europa.eu/interpretation/accreditation_en.htm))<sup>11</sup> describes the accreditation as a freelance interpreter.

Professional accreditation tests for freelance interpreters are meant to evaluate the professional qualities of the candidates and their capability of working as conference interpreters for the European Institutions.

The eligibility criteria concerning education, qualification and experience for the accreditation test are available on the website of DG Interpretation. Candidates should fill in an on-line application form and submit copies of their CV, degrees and/or diplomas and relevant proof of sufficient experience.

By completing the questionnaire for the on-line registration, the candidates for the inter-institutional accreditation test should fill in the data fields below. The application form is currently under revision by the DG. The presently on-line available version requires: personal details, language knowledge, higher, post-university education, and "other information" to which the response is either *optional* (such as professional experience acquired as a freelance interpreter (number of days worked); participation on previous professional tests/open competition for interpreters organised by EU institutions; long periods spent abroad and the reason for the stay) or *mandatory* ("If you pass the test, where would you establish your professional domicile?" The Privacy Statement explains that information about the foreseeable domicile is required "in order to provide a basis for future recruitment decisions by the European Institutions.).

The optional fields request data on disability in these terms: "Do you suffer from any physical disability which might cause difficulty in a test? If so, please specify so that the Inter-institutional Test Office can make appropriate arrangements".

The optional fields also request data on the source of learning about the tests, which is intended to help the European Institutions advertise future tests more effectively.

Presently, a sign [\*] indicates which fields are mandatory to fill in. It was indicated to the EDPS that the optional data field will be deleted from the application form.

When sending the form, the ACI should indicate in the box: "I, .... hereby declare that the information I have entered on this application form is true and accurate. I understand that any untruthful statement will cause all related procedures to be declared null and void." Further, it should be ticked if agreed: "I give my consent to the processing of my personal data in accordance with the Privacy Statement" (see below the information contained in the Privacy Statement).

A paper file is put together on the candidates, which contains copies of diplomas, C.V. sent in by the candidate, copies of contracts providing experience as a conference interpreter (if sent in by the candidate). Data contained in the paper file correspond to the ones encoded in the database *Signaletique*. The paper file is needed mainly for the screening committee (consisting of interpreters from the European Commission and European Parliament) - who has no access to the database- in order to assess the eligibility of candidates.

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<sup>11</sup> Last accessed on 27 November 2006.

Data in the paper file can be processed by the team organising the test (unit B4), the screening committee, the jury members (on the accreditation test) and the heads of interpretation unit (DG SCIC directorate A and the head of unit in the European Parliament).

Application is possible at any time. After registering, candidates will be sent an acknowledgement of receipt with a reference number. Tests are scheduled as necessary, there is no fixed programme. As soon as a suitable test is planned, a selection committee will examine the application. Candidates are then notified that

- their application has been accepted and that they are being invited for a test, or
- their language profile is interesting but not a priority. They will therefore not be invited to a test in the near future, however their application remains on file. In this case there is no need to re-apply, or
- their language profile is not in line with the DG's requirements. Consequently, their application has not been accepted.

Information is provided on the web page of DG Interpretation<sup>12</sup> regarding the current interest in language combinations and about the types of tests: interpreting speeches in both consecutive and simultaneous interpreting from the passive languages into the active language(s) in accordance with the language profile offered by the candidates. At least one of the speeches will be on an EU-related topic. Each part of the test is eliminatory. Candidates may also be asked questions on the European Union and its institutions. The controller confirmed that in practice, consecutive and simultaneous interpretation tests are followed by an interview on general knowledge and on knowledge of the European institutions.

The jury consists of staff interpreters of SCIC, EP and the Court of Justice. Accredited freelance interpreters who are on the Joint List can be part of the jury either as jury member or assessors when certain language combinations can not be covered by staff interpreters.

On completion of the test, the panel informs candidates of its decision. This information on the test result is given orally at the time of the test. The result is pass or fail, no scores are given. The chairman of the jury gives general information: positive/negative result and asks the candidate if he/she wants to have more feedback. The information given at this point is mostly intended to guide the candidate for the future: a) if the candidate passed, what does he/she has to concentrate when starting to work in a booth; b) if the candidate failed, what does he /she has to improve in view of a future test.

The candidates who fail on a test receive a letter in which this is confirmed, and in which they are informed of the fact that in principle they can sit for the tests up to a maximum of three times. This "three times" opportunity is a general rule, and there can be exceptions from this in both directions: allowing somebody to sit for more or less than three times for the tests. It is up to the instruction committee to take decision. If a candidate is unsuccessful on the accreditation test but the panel thinks he/she has the potential he/she may be recommended to re-apply for a test.

If candidates are successful their name and contact details will be entered into the joint EU database of accredited freelance interpreters. The Joint List is shared by DG SCIC, EP and the Court of Justice (CoJ). Accreditation means that the name of the ACI is available in the programming and recruitment software of the institutions.

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<sup>12</sup> [http://europa.eu/interpretation/accreditation\\_en.htm](http://europa.eu/interpretation/accreditation_en.htm)

Once a freelance interpreter is on the Joint List, "adding of language" tests are organised and evaluated by each institution (EP or SCIC), and the jury consists of staff interpreters and/or accredited freelance interpreters of that institution. The other institutions are invited as observers. Results are accepted on an inter-institutional level. For adding language tests there are no limits for how many times can one sit for them. In practice it is up to the head of interpretation unit to inform the candidates if more years of study are needed.

DG SCIC keeps the test evaluation forms in the ACI/candidate's paper file, because in case of positive result, they are interesting for adding of language test. In the case of a negative result, they are useful if the candidates sit for a new test, so as to see if the problems persist or if the candidates have improved. If the same problems remain, candidates could be advised to wait a bit longer before asking for a new test, or even to consider a different career. Keeping the evaluation forms is helpful in fixing priorities for future tests.

Evaluation forms can be accessed by unit B4 at DG SCIC, the screening committee, jury members on the accreditation tests and the heads of units in DG SCIC directorate A and the head of unit in the European Parliament.

Data on "positive" or "negative" test results are kept in the *Signaletique* database in order to have a "*historique*" of the ACI or the candidate at a glance without having to search for the information in the file itself. Inter-institutional test and language adding test results are indicated in the *Signaletique* database as "positive" or "negative". Examples for "Tests" field in the *Signaletique* module:

- Inter-institutional tests "TFL NEG or TFL POS" and date [TFL stands for "Test freelance"]
- Adding language tests: "LNG NEG or LNG POS", date and indicating in the field of "Observations" if the organiser is the EP or the CoJ [LNG stands for "Language"].

### Information to ACIs

The information on the processing operation in DG SCIC is provided by the inter-institutional pages on EUROPA, in the Privacy Statement, and SCIC WEBCALENDAR data sheet which is used by ACIs who are placed on the Joint List. (It is used by ACIs to show their availability and also by the institutions to offer contract to ACIs.)

The currently available Privacy Statement to the "Application for an Interinstitutional Accreditation Test"<sup>13</sup> contains the following information<sup>14</sup>:

- information on the e-Service run under the responsibility of the controller and about the inter-institutional database,
- the name and title of the controller,
- the list of personal data collected (see above the data required in the questionnaire);
- the legal basis: Staff Regulations of Officials of the European Communities-Conditions of employment of other servants of the European Communities;
- recipients of data: data is transferred only to officials of the three institutions concerned who are responsible for the preparation, programming and holding of inter-institutional freelance tests for interpreters to be employed by institutions, bodies and agencies of the Union; data are not transferred to other recipients except, where necessary for control purposes to the institutions and bodies entitled to receive them in accordance with Regulation (EC) 45/2001 (Court of Auditors, OLAF, budgetary authority, etc). In the case of a successful

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<sup>13</sup> Available at: [http://europa.eu/interpretation/privacy\\_en.htm](http://europa.eu/interpretation/privacy_en.htm)

<sup>14</sup> Available at: [http://europa.eu/interpretation/privacy\\_en.htm](http://europa.eu/interpretation/privacy_en.htm)

accreditation test, access to data is also provided to officials who are responsible for the recruitment, programming and payment of freelance interpreters.

- Security of the database;
- Rights of data subjects: requests to access their own personal data, rectification or erasure of personal data should be made to the Inter-institutional Test Office via the functional mailbox.
- Storage of data: "Unless the candidate specifically requests the removal of his/her data, they are stored in the database for as long as necessary in order to complete the tasks for which they have been collected. After 30 years, the data are transferred to the European Commission's historical archives".
- Contact information (functional mailbox) and recourse to the EDPS at any time.

This currently available Privacy Statement is being amended and a new privacy statement is proposed by the controller, which will be added to the WEBCALENDAR upon approval of the DPO. The draft Privacy Statement applies only to ACIs on the "Joint List" and contains the following fields: name and title of controller; categories of personal data collected and the purposes; legal basis; access to the information and persons to whom it can be disclosed; security of information and reference to Regulation (EC) 45/2001; procedure to verify, modify or delete information; period of data storage. The "appeals" section includes reference to the EDPS in these terms: "*In case of conflict, a complaint may be lodged at any time with the European Data Protection Supervisor, in particular with a view to asserting the ACI's rights with the official responsible for the processing*".

The new draft Privacy Statement does not contain reference to data recipients in the inter-institutional accreditation procedure phase (for other differences between the two privacy statements see below the rights of data subjects and the storage rules).

#### Main rules on storage of data, erasure and rectification of data

Upon request of the data subject, data are deleted according to the prior checking notification form. The currently on-line available Privacy Statement allows candidates to access to, rectify and erase their data by sending an email via a functional mailbox. The new draft Privacy Statement concerns only the rights of those ACIs who are placed on the Joint List.

The paper file on ACIs/ candidates and the evaluation forms of ACIs/candidates are stored. Normally, candidates can sit up to three tests often years apart, and if they fail on the first test, their data are not deleted. If candidates do not apply for another test, their paper files are kept for five years and then are sent to the historical archives.

The paper files follow the ACIs as long as the ACI remains on the joint list. Section 6 of the draft Privacy Statement mentions that "*Unless the ACI specifically requests the removal of his/her data, they are stored in the database for as long as is necessary in order to complete the tasks for which they have been collected*". The draft Privacy Statement does not contain the possibility to transfer the data after 30 years to the historical archives of the European Commission (as it is the case with the currently on-line available statement).

The prior checking notification mentions that personal data in the *Signalétique* database are stored and updated as long as the freelance interpreters work for EU institutions. ACIs over 65 years old can work for the institutions. Data are deleted only when an official death certificate is sent. ACIs who start working as permanent officials in an international organisation or elsewhere can request at any time during their life to reconstruct their career. This is the justification given as to why it is not possible to delete ACIs data or their names.

The blocking of data will require 15 days to send a holding reply and 15 additional days to send the final answer.

### Security of processing:

Access rights are linked to user's function and they are updated according to staff mobility. Access to the system is possible with a login and password. Only the data to which the user has access can be viewed by the Information Resource Managers team (list of persons responsible for informatics in the DG).

Audit trail monitors each and every access and data processing in Signalétique. According to the controller these audit trails are under Article 6.2 of Regulation (EC) 45/2001. Storage and investigation rules are to be determined in the general frame of access to the log files of the Institution.

The infrastructure is secured with "cookies" and https protocol.

Database servers are running in the operation IT environment of DG SCIC. Technical and organisational measures are put in place in line with the IT infrastructure of the European Commission to safeguard the secure use of telecommunication networks and terminal equipment.

## **2.2. Legal aspects**

### **2.2.1. Prior checking**

The prior checking notification received on 11 July 2006 relates to processing of personal data ("any information relating to an identified or identifiable natural person"-Article 2(a) of Regulation (EC) 45/2001 (hereinafter as "the Regulation")). The present data processing is carried out by an institution in the exercise of activities which fall within the scope of Community law (Article 3(1) of the Regulation).

Processing under the inter-institutional accreditation procedure is partly manual and partly automated. The manual processing concerns the handling of the paper file put together on the candidate, which processing of personal data obviously forms part of a filing system. The automated processing concerns personal data on candidates to tests and of ACIs store and processed in the inter-institutional database called *Signaletique*. Article 3(2) of the Regulation thus applies in this case.

The present procedure falls therefore within the scope of the Regulation.

Article 27(1) of the Regulation subjects to prior checking by the EDPS processing operations which are likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) contains a list of processing operations which are likely to present such risks.

The name of processing operation submitted for prior checking is "Management of personal data of Auxiliary Conference Interpreters (ACI) stored in *SIGNALÉTIQUE* (application of the central database CORALIN)". Personal data are entered in the *Signaletique* database by various processing operations, (such as the application for the accreditation procedure) and data contained in the database are further processed in the field of human resources management (such as assigning teams of interpreters to meetings).

The notification form explicitly indicates that tests are meant to be covered by the present notification. Indeed, the inter-institutional accreditation test procedure which results in placing Auxiliary Conference Interpreters on the Joint List of the institutions, as an evaluation procedure, falls under the scope of Article 27(2)(b) of the Regulation, because it is "*intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*"

As concerns the already accredited ACIs, the data base is processing a recent extract of the police file or certificate of good conduct, which adds another ground for prior checking under Article 27(2)(a) of the Regulation.

On the contrary, assigning teams of interpreters to meetings is done purely on the basis of their language combinations. This decision in itself does not constitute an evaluation process under Article 27 of the Regulation, and is not subject to prior checking as such<sup>15</sup>.

Besides, there seems to be other processing operations related to the data in the *Signalétique* database (which may also be linked to other applications) which may have evaluation purposes. This is likely to be the case regarding processing operations of competency factors and competency rating<sup>16</sup> or the "classification" procedure. Therefore the EDPS would like to examine any other procedures which evaluate individual conduct, competencies, abilities, and/or the further use of the evaluation data.

As a conclusion, the focus of this opinion concentrates on those identified and detailed processing operations subject themselves to prior checking and their interconnected effects in the database.

Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly, especially because certain documents related to the processing operations are currently under revision.

The notification of the DPO was received on 11 July 2006. According to Article 27(4) the present opinion must be delivered within a period of two months that is not later than the 12 September 2006. The information requests suspended the procedure for a period of 28+ 38 days, which means the opinion should be delivered by 17 November 2006. Because of the extension of the deadline on 14 November 2006 by one more month, and because of the last suspension period of 8 days to allow the DPO to give comments and further information, the opinion must be delivered not later than the 3 January 2007 (this being the first working day after 26 December 2006, which would be the deadline to issue the opinion).

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<sup>15</sup> Some other aspects of data processing, such as the WEBCALENDAR to show ACIs availability or the transfers of data to the ministries of the Member States falls outside of the scope of this analysis.

<sup>16</sup> Part 2.2.1 of the Opinion of 21 March 2006 on a notification for prior checking on SERIF ("Système d'Enregistrement de Rapports sur les Interprètes Freelance") (Case 2006-1) made reference that the reports on freelancers constitute part of a broader evaluation framework of ACIs' professionalism when their competency rating is determined. The EDPS would like to examine this broader evaluation framework.

### **2.2.2. Lawfulness of the processing**

Article 5 (a) of the Regulation stipulates that personal data may be processed if processing is *"necessary for the performance of task carried out in the public interest on the basis of the Treaties establishing the European Communities or other instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body"*. Recital 27 of the Regulation specifies that *"processing of personal data for performance of tasks carried out in the public interest includes the processing necessary for the management and functioning of those institutions and bodies"*. The present processing operation is lawful, because the selection of ACIs is needed for the functioning of the European institutions/bodies and because the day to day activities of the ACIs is performed for the public interest. The notification mentions as legal basis the Staff Regulations of the Officials of the European Communities and related Conditions of Employment of other servants of the European Communities, the general implementing provisions adopted by the European Commission and the Agreement. The lawfulness is confirmed by the appropriate legal basis: the Agreement and Article 78 and 90 of CEOS.

The lawfulness can also be found in Article 5(c) of the Regulation: *"processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subjects prior to entering into a contract"*. As a general rule, to sit for an inter-institutional accreditation test and being placed on the Joint List of the institutions is a pre-condition to be offered contract to the ACIs. That is why Article 5(c) also makes the processing lawful.

### **2.2.3. Processing of special categories of data**

Article 10(1) of the Regulation contains a general prohibition of the processing of personal data concerning health. Exceptions should be narrowly construed. Article 10(2)(a) provides an exception on the basis of the *"express consent"* of the data subject.

For the purpose of making the necessary arrangements for the accreditation test, personal data on physical disabilities are collected, stored and processed in the *Signaletique* database, if submitted by the candidates in the optional data field. The processing of that data complies with Article 10(2)(a) of the Regulation because it is carried out with the consent of the person concerned.

It is the duty of the employer to make it possible for candidates with a physical disability to sit for the accreditation test with equal opportunities, including equal access to employment, like other candidates. This may require collecting sensitive data on disability in order to make certain arrangements by the organiser of the exam. Article 10 (2)(b) of the Regulation therefore applies: *"processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or if necessary, insofar as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards"*.

Where the processing relates to offences, criminal convictions, security measures, it can be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards (Article 10(5) of the Regulation). The *"police file"* may reveal elements relating to the criminal status of the data

subjects. The justification for processing those data is based on Article 82(3)(a) of CEOS and is therefore compliant with Article 10(5) of the Regulation.

#### **2.2.4. Data Quality**

Article 4 of the Regulation sets out a number of obligations regarding the quality of data.

The data must be "processed fairly and lawfully" (Article 4(1)(c) of the Regulation). The lawfulness of the processing has already been discussed (see part 2.2.2 above). As regards fairness, this relates to the information given to the data subjects (see part 2.2.8 below).

Data should be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes" (Article 4(1)(b) of the Regulation). The notification clearly defines the purposes of the *Signaletique* database (inviting candidates to tests, recruiting freelance interpreters, assigning them to meetings paying them and statistics) and those constitute clearly legitimate purposes (see above in part 2.2.2).

"Personal data must be adequate, relevant and not excessive in relation to the purposes for which collected and/or further processed" (Article 4(1)(c) of the Regulation). Although data in the system fulfil those quality requirements, the current revision of the on-line application form should take into regard the adequateness of some data. While drafting the new application form special care should be taken to decide what constitute relevant and adequate data in the concrete stage of the procedure. For example, data on the establishment of professional domicile with the view to providing a basis for future recruitment decisions by the European Institution is not adequate prior to passing the accreditation test and being placed on the Joint List. The choice of ACIs' professional domicile might influence the evaluation process in the course of the accreditation procedure, which may not be fair towards data subjects in certain cases.

Furthermore, personal 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). In general, the system and procedure guarantees the quality of the data, because most of the data are provided by the candidate ACIs themselves via the application form. The right to access and the right to rectify data makes the file as complete as possible, and thus makes it possible to ensure the quality of data (for further comments on that see below in part 2.2.7 and 2.2.8).

#### **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 data were collected or for which they are further processed*".

A distinction is made between storing personal data of successful candidates and candidates who did not succeed in the course of the three possible attempts. For individuals being placed on the Joint List data in the application file (including the paper file of supporting documents), the evaluation form of their tests and the corresponding data in the *Signaletique* database are stored for an unlimited period "until necessary in order to complete the tasks for which they have been collected". If an ACI succeeds on the accreditation test, his/her paper

file is stored parallel to the data in the *Signaletique* database for as long as the ACI works for the EU institutions, but even further until an official death certificate is received by the DG. The justification for this long storage period is that ACIs can request at any time the reconstruction of their career, and it is therefore not possible to delete their data or their names.

The EDPS recommends to the controller to reconsider whether it is necessary to keep all personal data in the *Signaletique* database until the end of the ACIs' life for the purpose of reconstructing their career, had they request so. Should it be possible to distinguish between data of purely informative nature no longer necessary for administrative reasons (all changes in address, telephone number, etc) and between data which may be necessary for the reconstruction of the ACIs career (active and passive languages, start as an ACI, etc), it would be a good practice from a data protection perspective to define different rules for the storage period. For example, data of purely informative nature no longer necessary for administrative reasons could be disposed of once the ACI does not work for the institutions within a short time, and should not necessarily be kept until the death certificate is received, unless there is other justification (e.g. pending legal claims) to keep those data for longer period.

Overall, the EDPS considers that the keeping of personal data for this long preservation period for the justification given fulfils the data protection requirements (See part 2.2.8 below on the information to be provided.).

In case ACIs do not succeed on the accreditation test, their paper files are kept for five years and are then sent to the historical archives. The five years storage period is appropriate from data protection perspective.

On the other hand, the dossier contains some ambiguity as to the further use of data for historical or statistical purposes. The notification ruled out the processing of data for historical, statistical or scientific purposes (Article 4(1)(b) and 4(1)(e) of the Regulation). During the exchange of information with the controller, it was made clear that there will be no reference to the "historical archives" in the new Privacy Statement, but as to the candidate's paper file it was stated that those will be sent to the historical archive after 5 years. The EDPS recommends that the controller reconsiders the purpose of keeping the paper file of unsuccessful candidates beyond the storage period of 5 years and to define the rules of storage accordingly. Should, as seems to be the case, the aim be to keep personal data after the 5 years period purely for statistical purposes, data should be made anonymous in line with Article 4(1)(e) of the Regulation.

It should be ensured that in case the new application form (being the current application form under revision) collects information on how candidates learned about the tests in order to help the EU institutions to advertise future tests more effectively, responses are made anonymous.

#### **2.2.6. Transfer of data**

Officials responsible for the preparation, programming and holding of inter-institutional tests for the interpreters can receive personal data. This includes the team organising the test, the screening committee, the jury members on the accreditation tests and the Head of unit in DG SCIC directorate A and of the European Parliament can be recipients of personal data in the paper file of the candidate ACI. Other institutions such as the Court of Auditors, OLAF or the budgetary authority can also become recipients of personal data. Thus personal data is transferred within the Commission and also to other Community institutions. This transfer is

clearly compatible with Article 7(1) of the Regulation because the data are necessary for the legitimate performance of tasks covered by the competence of the recipients.

### **2.2.7. Right of access, rectification, deleting and blocking of data**

Under Articles 13 and 14 of the Regulation, the persons concerned have the right of access to personal data related to them and the right to correct the inaccurate or incomplete personal data.

Candidates for the tests can make a request to access, rectify, or erase their personal data via the functional mailbox to the Inter-institutional Test Office at DG Interpretation. This information is provided in the currently on-line available Privacy Statement. The new privacy statement, however, does not specifically mention those rights of candidate ACIs and only focuses on the rights of ACIs already being placed on the Joint List. This cannot mean the suppression of those rights. As to the information necessary to be provided to data subjects on the exercise of those rights, see part 2.2.8 below.

The blocking of data which require 15 days to send a holding reply and 15 more days to send the final answer is appropriate from data protection perspective.

### **2.2.8. Information to the data subject**

The Regulation stipulates the list of information which is to be provided to data subjects in case information is obtained from the data subject (Article 11) and in case data have not been obtained from the data subject (Article 12). In the present case some of the data are obtained directly from the candidates for the accreditation test via the application form, other data is obtained from other sources, such as the jury's evaluation of the freelance's general and specific knowledge. Thus, both Article 11 and Article 12 apply.

The EDPS endorses the present practice of the controller, in cases where optional data fields are included in the application form, that it is clearly indicated for the data subjects that answering the questions is optional, and for reason of fairness a brief explanation is given to the data subjects as to why the optional information is required (Article 11(1)(d) of the Regulation).

If the new Privacy Statement replaces the current on-line Privacy Statement on the accreditation tests, it is necessary that the new draft Privacy Statement provides information also for candidates, not only to ACIs already placed on the Joint List. This is the case regarding the categories of recipients of their data, access to one's own data, rights to rectification and erasure of data.

Candidates, whose application remains on file although they will not be invited for a test in the near future (i.e. those whose language profile is interesting though not a priority at the moment), should receive information about the storage period of their file.

Whenever a candidate sits for a test, the evaluation forms are stored in his/her paper file with the aim of having it taken into regard in the frame of future tests: to check if problems are persisting or to see if the candidates have improved. Thus, their previous evaluation forms themselves may contribute to the overall assessment of the candidates in future tests. Because of this specific evaluation aspect, fairness requires that ACI candidates are informed of the keeping of the evaluation form in their paper file.

The EDPS welcomes that the draft Privacy Statement includes, in addition to the mandatory required information, the legal basis, time-limits for storing data and the right to have recourse to the EDPS.

Nonetheless, the time-limit for storing data should be made more explicit: the new draft Privacy Statement attached to the notification form makes a very general statement: "*Unless the ACI specifically requests the removal of his/her data, they are stored in the database for as long as is necessary in order to complete the tasks for which they have been collected.*" This sentence should be harmonised with the present opinion. That is to say: to make clear that different data storage rules apply to ACIs placed on the Joint List and unsuccessful candidates (see part 2.2.5 above). It should be mentioned that only anonymous data will be processed for statistical purposes (in case it is considered by the controller; see part 2.2.5 above); and in case it is possible to make a distinction between a) data necessary to reconstruct the ACIs career, b) data necessary for administrative purposes and c) purely informative data, not necessary for administrative purposes, the different rules on storage period should be specified (see above in part 2.2.5).

Finally, in order to provide more precise information to the data subjects on the available recourses, the EDPS recommends that a slight revision of the Privacy Statement is made in this respect. The new text could state: "*Complaints, in cases where the conflict is not solved by the Controller and/or the Data Protection Officer, can be addressed at any time to the European Data Protection Supervisor*".

### **2.2.9. Security measures**

After careful analysis by the EDPS of the security measures adopted, the EDPS considers that these measures are adequate in the light of Article 22 of Regulation (EC) 45/2001.

#### **Conclusion:**

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations above are fully taken into account, in particular:

- Special care is taken to decide what constitute relevant and adequate data in the concrete stage of the procedure.
- Where feasible, a distinction would be welcome between different data kept and processed in the database (necessary to reconstruct the ACIs career, data necessary for administrative purposes and purely informative data which is not necessary any more for those purposes) and the respective storage period defined for those data.
- Unsuccessful candidate's paper file and personal data are made anonymous after five years, if the purpose to store those beyond the five years period is purely for statistical use.
- In case the new application form collects information on how candidates learned about the tests in order to help the EU institutions to advertise future tests more effectively, responses are made anonymous.
- The draft Privacy Statement attached to the notification form should provide information also for candidate ACIs on the categories of recipients of their data, access to, rectification and erasure of their own data.

- Candidates whose application remains on file (because they have interesting profile though not a priority) should receive information for how long their file will be stored.
- ACI candidates are informed of the keeping of the evaluation form in their paper file for using it in the frame of future tests.
- The text in the Privacy Statement is revised on the available recourses as suggested by the EDPS.
- The storage period is revised and made more explicit and differentiated (ACI on Joint List- unsuccessful candidate; data necessary to reconstruct the ACIs career- other data, etc) in the new Privacy Statement. It is mentioned that only anonymous data are processed for purely statistical purposes.

Done at Brussels, 22 December 2006

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