

Opinion on the notification for prior checking from the Data Protection Officer of the European Maritime Safety Agency regarding the "Recruitment of permanent, temporary and contract agents"

Brussels, 7 January 2008 (case 2007-566)

1. Proceedings

On 17 September 2007, the European Data Protection Supervisor (**EDPS**) received from the Data Protection Officer (**DPO**) of the European Maritime Safety Agency (**EMSA**) a notification for prior checking relating to the processing of personal data for the purpose of recruitment of permanent, temporary and contract agents.

The notification was accompanied by the following two documents:

- Guidelines on recruitment of temporary agents - external procedures,
- Decision of the Administrative Board of the European Maritime Safety Agency of 24 November 2006 on the general implementing provisions on the procedure governing the engagement and the use of contract staff at the European Maritime Safety Agency.

On 24 October 2007, the EDPS sent a request for additional information to the DPO. The replies provided on 5 and 11 December 2007 were accompanied by the following two documents:

- Service Level Agreement between the European Personnel Selection Office and Regulatory Agencies signed on 14 May 2007,
- Note of the EMSA Executive Director concerning signature of the EPSO SLA dated of 22 October 2007.

The draft opinion was sent to the DPO for comments on 20 December 2007 and these were received on 3 January 2008.

2. Facts

2.1. Context

The purpose of the processing in question is the organisation of the selection procedure at the EMSA, including the management of the applications for permanent, temporary and contractual posts at the various stages of the selection, as well as the management of the "EMSA reserve lists for similar vacancies".

The selection of **temporary agents** is carried out exclusively by EMSA itself who can publish an (external) call for applications provided that the position cannot be filled internally and that there is no reserve list for a similar vacancy.

The selection of **permanent and contractual agents** can be carried out either by EMSA (starting with a publication of a vacancy notice) or by using the EPSO database. The latter possibility is meant to be used for recruitment of new officials and contract agents who have successfully completed the respective selection procedure organised by EPSO¹. The access to the EPSO databases - e-Reserve List (eRL) and Contract Agents Database (CARL) - is being granted in the recently signed EPSO Service Level Agreement. Nevertheless, according to the information provided, EMSA has not yet used this service with respect to the recruitment of new officials.

The controller is the Head of the "Administration" Unit A, the delegated controller the Head of the "Human Resources Section" of the Unit A.

2.2. Description of the respective selection procedures

Selection of permanent and temporary agents: According to the information provided, the selection of (established) permanent and temporary agents follows the same principles and starts with a publication of a call for applications by EMSA. The applications submitted following this call are registered by the Human Resources Sector within the Resources Unit of EMSA (**HR Sector**) who also sends an acknowledgement of receipt to all applicants.

No later than three weeks after the submission deadline, the HR Sector provides a list of applicants, an initial screening table and the applications to the members of the Selection Board. The **screening table** contains elements against which the application are to be evaluated (nationality, diploma, duration of the professional experience in case of temporary agents; category and grade in case of permanent agents; respect of the deadline for submission of the application in case of both).

The **Selection Board** is nominated by the Appointing Authority for each single selection procedure and is - in principle - composed by EMSA staff members (Head of the Unit concerned and at least two other members having at least equivalent grade to that of the post to be filled). "External assessors" (staff of other EU institutions or agencies) can be invited to participate as a member of the Selection Board (in particular as regards selection of senior management staff or in case of selection requiring specific knowledge). All members of the Selection Board shall respect the confidentiality of the procedure.

A coordination meeting of the Selection Board takes place during which a **list of the most suitable candidates to be interviewed** is being drawn, as well as the evaluation grid, structure of the interview and structure and - in case of recruitment of temporary agents - content of the possible written test is being set out.

Following the interviews and the possible written tests, a **final short-list** of suitable candidates is being drawn by the Selection Board and submitted to the Appointing Authority. The Appointing Authority may decide to set up another interview to which it may invite even candidates that were not short-listed by the Selection Board.

Finally, the Appointing Authority either decides to appoint a candidate or to close the procedure without offering the post to any candidate. Once the final decision has been taken, all the candidates are informed about the outcome of their application.

¹ These selection procedures have already been subjected to a prior checking - cf. EDPS opinion **2004-236** dated of 24 February 2006 (permanent staff) and EDPS opinion **2005-366** dated of 14 November 2006 (contract staff).

The final short list of suitable candidates established by the Selection Board for a particular temporary post is being used as a **reserve list for similar vacancies**. It is valid for two years after the closing date for applications and its validity can be extended by a decision of the Appointing Authority. It is used by Head of Unit with similar vacancy to select suitable candidates for an interview. To this aim, the CV and evaluation results of applicants on the particular reserve list for similar vacancies are communicated to the Head and/or Project Officer of the recruiting Unit. In case the outcome of the interview with the Head of Unit is positive, the recruitment is made from the reserve list.

Selection of contractual agents: As indicated above, there are two procedures that can be used for selection of contractual agents and both of them involve a **Selection Committee** composed by three to four members (one member of the HR Unit and two members of the Unit concerned, the possible fourth member shall be from another Unit or a person external to EMSA). The Staff Committee is being informed about each selection procedure and may designate one person as an observer.

In case of the selection procedure **using the EPSO database**, the most suitable candidates appearing on the list already validated by EPSO² are pre-selected by the Selection Committee and invited to the **interview**.

In case of the selection procedure starting with the publication of the **vacancy notice** by EMSA, the submitted applications are evaluated by the Selection Committee for the purpose of admission to the **written tests** organised by EMSA (or EPSO³), as well as the **interview**.

There are two exceptional procedures where no mandatory written tests take place (Article 5 (4) and (5) of the Decision of the EMSA Administrative Board of 24 November 2006):

- recruitment of a contract staff member in function group IV⁴ in the interest of service in case there are no suitable candidates available from the EPSO database,
- recruitment "for a quick replacement" in case there is no list of successful candidates or "*in case of a negative result of the screening of candidates of an established list of successful candidates*". For function groups I and II⁵, practical tests on general aptitudes/skills, such as typing, are to be organised.

On a basis of the results of the above described selection procedure, EMSA establishes a **list of successful candidates** valid for up to 12 months from its establishment, whereby the Authority Authorised to Conclude the Contracts can extend the validity of such list.

2.3. Categories of data processed

According to the information provided in the notification, the following data are being processed in the present case:

² cf. Article 5 (1) (g) of the Commission Decision "General implementing provisions on the procedure governing the engagement and the use of contract staff at the Commission" C(2004)1313 of 7 April 2004

³ cf. Article 82 (2) of the Conditions of Employment of Other Servants of the EC

⁴ cf. Article 2 (1) (d) of the Decision of the EMSA Administrative Board of 24 November 2006: minimum qualification requirements being completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year

⁵ cf. Article 2 (1) (a) and (b) of the Decision of the EMSA Administrative Board of 24 November 2006: minimum qualification requirements for function group I being successful completion of compulsory education, and for function group II a post-secondary education attested by a diploma or secondary education attested by a diploma / certificate of adequate professional training and appropriate professional experience of three years or successful completion of intermediate education plus two years of relevant supplementary specialised training plus five years of appropriate professional experience

- identification data (including data enabling the organisation of the selection): surname (at birth and currently used), name, date of birth, gender, e-mail address, address (street, postcode, town, country), phone number, fax number; as well as any information about disability necessary for the organisation of the selection,
- data enabling verification of the compliance with the admissibility criteria: citizenship, languages, education (degree title, year awarded, name of the awarding body), professional experience,
- results of the pre-selection or written / oral tests (if applicable),
- other information contained in the European CV (photograph, as well as "social, organisational and other skills and competences"),
- declaration of honour stating that the applicant "*enjoys his/her full rights as a citizen*",
- motivation letter,
- copies of certificates and employment transcripts (for those coming to the interviews),
- Legal Entity and Financial Identity Forms (for those invited to the interviews having the right to be reimbursed).

2.4. Information given to data subjects

According to the information provided on 5 December 2007⁶, a following **data protection clause** has been posted at the EMSA Career Opportunity website (www.emsa.europa.eu/end179d006.html):

"Any personal data provided by the Applicant shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movements of such data. It shall be processed solely for the purposes of the recruitment exercise. The Applicant shall have the right of access to his/her personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Applicant have any queries concerning the processing of his/her personal data, (s)he shall address them to the delegated controller of the data, Head of Human Resources section.

The Applicant shall have right of recourse at any time to the European Data Protection Supervisor."

In addition, a separate EMSA Personal Data Protection webpage was created (www.emsa.europa.eu/end179d008.html) that provides for the definitions of the scope of the Regulation 45/2001, personal data, processing of personal data, special categories of data, data subject, (delegated) data controller, as well as information about data protection principles laid down in Article 4 of the Regulation, the rights of the data subject, the DPO (including functional mailbox) and the EDPS are provided.

Furthermore, the EMSA Personal Data Protection webpage contains a link to a document entitled **Protection of personal data in relation to recruitment of permanent agents, temporary agents, contract agents and seconded national experts** (www.emsa.europa.eu/Docs/legis/dpo_recruitment.pdf). This document provides for the following information:

- identity of the (delegated) controller (including his postal address),
- purpose of the processing (including the possibility of further processing of CV and evaluation results for recruitment for a similar vacancy from the respective reserve list),
- categories of data processed,

⁶ This change has been introduced as a follow-up to the EDPS opinion **2007-567** dated of 20 November 2007 concerning recruitment of seconded national experts at the EMSA.

- legal basis (as well as information about lawfulness of the processing in terms of Article 5 (a) of the Regulation),
- certain recipients of the data processed,
- existence of the rights of access and rectification, as well as its limitation,
- recourse to the EDPS (including a link to his webpage).

2.5. Rights of access and rectification

According to the information provided on the above mentioned EMSA websites, the requests to access or rectify personal data processed within the selection procedure shall be addressed to the delegated controller of the data (Head of the Human Resources Section of the Unit A).

However, the document entitled Protection of personal data in relation to recruitment of permanent agents, temporary agents, contract agents and seconded national experts states that *"for practical reasons, data may not be updated or corrected after the closing date of the selection procedure"*. In the DPO comments on the draft opinion dated of 3rd January 2008, it has been clarified that this restriction should concern only data demonstrating compliance with the **admissibility criteria**. It should be possible to correct **identification data** even after the closing date for the respective selection procedure.

2.6. Data transfers

The data may be disclosed to the following recipients:

- Human Resources Sector (person(s) in charge of supporting the Selection Committee / Board),
- Members of the Selection Board / Committee,
- Appointing Authority (Executive Director),
- Head and/or the Project Officer of a Unit with a similar vacancy (CV and the evaluation's results of applicants put on the "EMSA reserve list for a similar vacancies"),
- European Ombudsman,
- Civil Service Tribunal,
- IAS,
- EDPS.

2.7. Data retention

For the time being, documents from all recruitment exercises carried out since 2003 are being kept. It is the intention of EMSA to set a time limit. EMSA acknowledges that the time limit shall be seen in accordance with the results of the Working Party on Time Limits and Blocking.

2.8. Security measures

(....)

3. Legal aspects

3.1. Prior checking

Applicability of Regulation (EC) 45/2001: The management of data contained in the applications for permanent, temporary and contractual staff posts constitutes processing of personal data (*"any information relating to an identified or identifiable natural person"* -

Article 2 (a) of the Regulation). The data processing is performed by a Community in the exercise of activities which fall within the scope of Community law (Article 3 (1) of the Regulation). The processing of the data contained in the applications is manual, but the data form a part of a filing system (Article 3 (2) of the Regulation). Therefore, Regulation (EC) 45/2001 is applicable.

Grounds for prior checking: According to Article 27 (1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27 (2) (b): "*processing operations intended to evaluate personal aspects relating to the data subject, including his ability, efficiency and conduct*".

The recruitment procedure is clearly an operation involving the processing of personal data with the aim to evaluate personal aspects of the applicants. Therefore, it is subject to prior checking by the EDPS.

Ex-post prior checking: Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should have been 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.

Deadlines: The notification of the DPO was received on 17 September 2007. According to Article 27 (4) of the Regulation, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 61 days (47 + 14). Consequently, the present opinion must be delivered no later than on 18 January 2008.

3.2. Lawfulness of the processing

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data lawful. One of the criteria provided in Article 5 (a) is that the "*processing is necessary for 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 institutions or body*". The 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*" (recital 27).

The selection procedure is necessary for the management and functioning of the EMSA. According to Article 6 (1) of Regulation (EC) 1406/2002 establishing the EMSA⁷, the Staff Regulations of officials of the European Communities, the Conditions of Employment of other servants of the European Communities, as well as the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency.

Consequently, the legal basis for the selection of the EMSA staff can be found in the following provisions:

⁷ Regulation (EC) 1406/2002 of the European Parliament and the Council of 27 June 2002 establishing a European Maritime Safety Agency as modified by Regulation (EC) 1644/2003 of the European Parliament and the Council of 22 July 2003

- Articles 27 - 34 of the Staff Regulations,
- Articles 12 - 15 of the Conditions of Employment of Other Servants as implemented by the Commission Decision "General implementing provisions on the procedure governing the engagement and the use of contract staff at the Commission" C(2004)1313 of 7 April 2004 as modified by the Commission Decisions C(2004)2862 of 27 July 2004, C(2004)4952 of 17 December 2004 and C(2005)5411 of 16 December 2005, as well as the Guidelines on recruitment of temporary agents - external procedures,
- Articles 82 - 84 of the Conditions of Employment of Other Servants as implemented by the Decision of the EMSA Administrative Board of 24 November 2006 on the general implementing provisions on the procedure governing the engagement and the use of contract staff at the

This legal basis confirms the lawfulness of the processing.

3.3. Processing of special categories of data

The recruitment procedure may involve processing of the following special categories of data:

- health-related data (information about applicant's disability necessary for the organisation of the selection),
- data revealing racial or ethnic origin (spontaneous communication of a photograph),
- data revealing political opinions, religious or philosophical beliefs, or trade union membership (spontaneous communication of such data perceived as "social, organisational and other skills and competences" in the European CV),
- data relating to offences and criminal convictions (declaration that the applicant enjoys his/her full rights as a citizen).

Pursuant to 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"* is prohibited except in specific predefined circumstances. In particular, these special categories of data can be processed in case the *"data subject has given his or her express consent"* (Article 10 (2) (a) of the Regulation) or if it *"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"* (Article 10 (2) (b) of the Regulation).

As regards processing of data concerning the applicant's disability, it should be considered that by communicating this information, the data subject is giving his/her consent to the processing of this type of data in terms of Article 10 (2) (a) of the Regulation. In addition, this information is given in order to enable the controller to comply with its specific obligation in the field of employment law to adjust the selection procedure to the special needs of such applicant (extra time, specific IT equipment for the written tests etc.) in line with Article 10 (2) (b) of the Regulation.

The spontaneous communication of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership should also be considered as authorised in terms of Article 10 (2) (a) of the Regulation. In fact, by communicating this non-requested data, the data subject is providing his/her consent to the processing of these special categories of data.

In addition, according to Article 10 (5) of the Regulation, *"the processing of data relating to offences and criminal convictions may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis*

thereof". The legal basis for processing of such data can be found in Article 28 (a) of the Staff Regulations, Articles 12 (2) (a) and 82 (3) (a) of the Conditions of Employment of Other Servants. The processing of the declaration of honour stating that the applicant *"enjoys his/her full rights as a citizen"* is therefore in full compliance with Article 10 (5) of the Regulation.

3.4. Data Quality

Fairness and lawfulness: The personal data must *"be processed fairly and lawfully"* (Article 4 (1) (a) of the Regulation). Lawfulness have already been discussed (see point 3.2) and fairness will be dealt with in relation to information for data subjects (see point 3.9).

Adequacy, relevance and proportionality: According to Article 4 (1) (c) of the Regulation, the personal data must be *"adequate, relevant and not excessive to the purpose for which they are collected and further processed"*.

The processing of administrative and evaluation data is necessary for the evaluation of applicants during the regular selection procedure and therefore in compliance with Article 4 (1) (c) of the Regulation.

As to the further processing of data collected within the regular selection procedure for the purpose of possible recruitment from the "EMSA reserve list for similar vacancies", the EDPS notes that the evaluation data provided by a Selection Board established for one particular vacancy are communicated to the Head and/or Project Officer with another (albeit similar) vacancy so that he can organise an interview with the suitable applicants and in case of its positive outcome, recruit directly from the reserve list. Such use of evaluation data is compliant with the data quality principles set out in Article 4 (1) (c) of the Regulation (cf. also points 3.6, 3.7 and 3.9).

Accuracy: Article 4 (1) (d) of the Regulation provides that personal data must be *"accurate and when necessary, kept up to date"*. In addition, *"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."*

The selection procedure itself ensures that the data are accurate and kept up to date as much of the personal data supplied during the recruitment process is provided by the data subject and as Human Resources asks the applicants to inform EMSA about any change on his data. Moreover, the use of a screening table grid makes the data as accurate and objective as possible. In addition, the invitation to make use of the rights of access and rectification helps to ensure that the data are accurate and up to date (cf. point 3.8).

3.5. Data retention

Article 4 (1)(e) of the Regulation states that personal data must be *"kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed"*.

As indicated above, no exact time-limits for the storage of the personal files have been established so far. This means that the oldest recruitment files may be stored for about four years by now (since EMSA has been established in 2003).

EMSA is aware of the need to establish a storage period consisting of a certain time after the termination of the service and acknowledges that such a storage period should be set up in accordance with the results of the Working Party on Time Limits and Blocking.

The EDPS would like to point out the need to differentiate between the three different categories of data subjects, namely the recruited applicants, the non-recruited applicants and the non-recruited applicants whose names were put on the "EMSA reserve lists for similar vacancies".

As regards the recruited applicants whose data are ultimately stored in their personal file, the EDPS would like to recall that in a similar case, a data retention period of ten years as of the termination of employment or as of the last pension payment was considered as reasonable⁸.

As to the non-recruited applicants, the EDPS acknowledges that the time-limit for storage of such data shall be set out in relation to the time-limits set out for the possible review of the decision taken in the selection procedure (complaint to the European Ombudsman, appeal with the Civil Service Tribunal), as well as in accordance with Article 49 of the Implementing Rules to the Financial Regulation (audit). In addition, the validity of the respective (reserve) lists (two years for temporary agents, one year for contract agents - both with a possibility of extension) shall be duly taken into account.

3.6. Compatible use/ Change of purpose

Article 4(1) (b) of Regulation 45/2001 provides that personal data must be "*collected for specified, explicit and lawful purposes and not further processed in a way incompatible with those purposes*".

As indicated above, the data collected within one particular selection procedure for temporary agents can be further processed during selections for similar vacancies, whereby the person concerned is clearly informed about such possible use (cf. points 2.4 and 3.9). The EDPS is of the opinion that this further processing is not incompatible with the initial processing and that Article 4 (1) (b) is therefore duly respected.

3.7. Transfer of data

As indicated above, the personal data processed within the selection procedure can be transferred to the following recipients:

- Human Resources Sector (person(s) in charge of supporting the Selection Committee / Board),
- Members of the Selection Board / Committee (including persons coming from other EC institutions and agencies),
- Appointing Authority (Executive Director),
- Head and/or Project Officer of a Unit with a similar vacancy (CV and the evaluation's results of applicants put on the "EMSA reserve list for a similar vacancies"),
- European Ombudsman, Civil Service Tribunal, IAS and EDPS.

Pursuant to Article 7 of the Regulation 45/2001, "*personal data can 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*" (paragraph 1) and that

⁸ cf. the following opinions concerning evaluation of statutory personnel: EDPS **2007-406** of 3 August 2007 (European Ombudsman), EDPS **2006-297** of 19 October 2006 (ECOSOC), EDPS **2005-218** of 15 December 2005 (Commission), EDPS **2004-293** of 28 July 2005 (OHIM), EPDS **2004-281** of 4 July 2005 (ECJ)

"the recipient can process the data only for the purposes for which they were transmitted" (paragraph 3).

The EDPS notes that the above referred internal transfers fall within the legitimate performance of the tasks covered by the competence of the respective recipient. In fact, these data are necessary for the management of both types of the selection procedures at the EMSA (regular and "from the reserve list"), as well as for the performance of the respective supervisory task, including the internal audit. Consequently, Article 7 (1) of the Regulation is being complied with.

However, in order to ensure the full compliance with Article 7 (3) of the Regulation, the EDPS recommends that all recipients are reminded of their obligation not to use the data received for any further purposes than the one for which they were transmitted.

3.8. Right of access and rectification

According to Article 13 (c) of the Regulation, the data subject has *"the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source"*. Article 14 of the Regulation provides the data subject with *"the right to rectify inaccurate or incomplete data"*.

The rights of access and rectification may be restricted in terms of Article 20 (1) of the Regulation, in particular *"where such a restriction constitutes a necessary measure to (...) the protection of the rights and freedoms of others"*.

According to the information provided in above mentioned data protection clauses, the requests to access or rectify personal data processed within the selection procedure shall be addressed to the delegated controller of the data (Head of the Human Resources Section of the Unit A). However, for practical reasons, data may not be updated or corrected after the closing date of the selection procedure.

Right of access: The EDPS would like to underline that - in principle - the data subject shall be granted access to all his personal data processed within the particular selection procedure. In particular, the data subjects shall be given access to his **evaluation results** from all stages of the selection procedure (pre-selection, written and oral), unless the exception of Article 20 (1) (c) Regulation can be applied in the particular case (comparative results, individual opinions of the respective Selection Board / Committee members and/or the Head of Unit with a similar vacancy). In any case, data subjects shall be provided with aggregated results.

Right of rectification: The EDPS acknowledges that the right of rectification can apply only to the factual data processed during the respective selection procedure.

In addition, the EDPS notes that the limitation of this right after the closing date should apply only to data demonstrating compliance with the **admissibility criteria** (and not to the identification data that can be rectified at any time during the selection procedure). The EDPS agrees that this restriction is necessary to ensure objective, secure and stable conditions for all applicants (fairness of the selection procedure) in terms of Article 20 (1) (c) of the Regulation. In any case, the applicants shall be clearly informed about the scope of this restriction (see point 3.9).

3.9. Information to the person concerned

In order to ensure transparency and fairness of the processing of personal data, Articles 11 and 12 of Regulation 45/2001 provide for certain information to be supplied to the data subjects. The provision of Article 11 is applicable in case *"the data have been obtained from the data subject"*, the provision of Article 12 in case the data have been obtained from another source. The data processed during the selection procedure are provided by the data subject (data contained in the applications), as well as by other subjects (evaluation data provided by the Selection Board / Committee). Consequently, both Articles 11 and 12 of the Regulation are applicable.

As indicated above, information concerning recruitment related data processing are provided in the following two documents:

- data protection clause posted at the EMSA Career Opportunity website (www.emsa.europa.eu/end179d006.html),
- Protection of personal data in relation to recruitment of permanent agents, temporary agents, contract agents and seconded national experts accessible via EMSA Personal Data Protection website (<http://www.emsa.europa.eu/end179d008.html>).

These two documents contain the following information:

- identity of the (delegated) controller (including his postal address),
- purpose of the processing (including the possibility of further processing of CV and evaluation results for recruitment for a similar vacancy from the respective reserve list),
- categories of data processed,
- legal basis,
- certain recipients of the data processed (responsible persons in the Human Resources Sector, Members of the Selection Board / Committee, Executive Director),
- existence of the rights of access and rectification, as well as its limitation,
- recourse to the EDPS (including a link to his webpage).

In order to ensure full compliance with Articles 11 and 12 of the Regulation, the EDPS recommends that the information about possible recipients is completed (in order to include a reference to the European Ombudsman, the Civil Service Tribunal, the IAS and the EDPS), as well as the information about time-limits applicable for storing of the data is being added (once established in accordance with recommendations set out in point 3.5).

In addition, the information about the limitation to the right of rectification after the closing date for the respective selection procedure provided in the document entitled 'Protection of personal data in relation to recruitment of permanent agents, temporary agents and seconded national experts' shall be clarified so that it refers only to the data demonstrating compliance with the admissibility criteria.

Finally, the data protection clause posted at the EMSA Career Opportunity website shall make a direct reference (a direct link) to the more detailed document entitled 'Protection of personal data in relation to recruitment of permanent agents, temporary agents, contract agents and seconded national experts' (accessible for the time being only via the EMSA Personal Data Protection website).

3.10. Security measures

According to Article 22 of Regulation (EC) No 45/2001, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected"*.

These security measures must *"in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing"*.

The EDPS considers that the security measures adopted in the present case are adequate in terms of Article 22 of the Regulation.

4. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided the above considerations are fully taken into account. In particular, the EMSA should:

- set out an appropriate time-limit for the storage of data of recruited and non-recruited applicants (Article 4 (1) (e) of the Regulation);
- remind the data recipients of their obligation not to use the data received for any further purpose than the one for which they were transmitted (Article 7 (3) of the Regulation);
- ensure that the data subject has access to his evaluation results from all stages of the selection procedure, unless the exception of Article 20 (1) (c) Regulation can be applied in the particular case (Article 13 of the Regulation);
- revise the information provided to the data subjects in order to include information about all recipients, the applicable time-limits for storage (once established), as well as clarify the scope of the restriction to the right of rectification (Articles 11 and 12 of the Regulation);
- revise the data protection clause posted at the EMSA Career Opportunity website in order to include a direct reference (a direct link) to the more detailed document entitled 'Protection of personal data in relation to recruitment of permanent agents, temporary agents, contract agents and seconded national experts' (Articles 11 and 12 of the Regulation).

Done at Brussels, 7 January 2008

Peter HUSTINX
European Data Protection Supervisor