

Opinion on a notification for Prior Checking received from the Data Protection Officer (DPO) of the European Commission regarding the Management of Recruitment Files for Temporary Agents at the Joint Research Centre (JRC)

Brussels, 9 March 2011 (Case 2008-0143)

1. Proceedings

On 5 March 2008, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) at the European Commission a notification (DPO - 2172) for prior checking via e-mail related to the "management of recruitment files for temporary agents at the Joint Research Centre (JRC)".

The following documents were also enclosed:

- Selection of Temporary agents - procedure flow chart;
- Sample of letters for selection of Temporary Staff for Directorate-General (AD and AST);
- Internal circulation Fiche;
- Invitation letter to selected candidate;
- Request for medical visit;
- Request for security clearance(for ISPRA site);
- Acknowledgement of receipt;
- Negative Letters I, II, III;
- First day - arriving at the JRC;
- Accommodation Form(for ISPRA site);
- Declaration concerning the personal reliability screening "Sicherheitsbeprüfungen" (for Karlsruhe site), including information of the Ministry of the Environment Baden-Württemberg concerning personal reliability screening according to the Atomic Energy Act (for Karlsruhe site);
- Professional experience form;
- Legal entities sheet;
- Financial identification sheet;
- Contribution to travel and subsistence expenses (for ISPRA site);
- Contract of Employment;
- Privacy Statement - Management of recruitment files for temporary agents at the JRC.

The EDPS requested further information on 10 April 2008. The replies were received on 22 April 2008. Supplementary information was requested on 8 May 2008. Renewed requests to provide answers were made on 4 September 2008 and on 19 November 2008. On 8 October 2008, a note relating to a coordinated answer with DG Admin was sent to the EDPS. No

further information was provided by JRC to the EPDS. The EDPS decided to conduct an inspection at JRC from 13 till 15 December 2010. This inspection partly concerned various recruitment procedures at JRC (see Case 2010-0834). On 13 December 2010, during the inspection, the EDPS inspectors received a reply to the requests made in 2008. It was decided that this information would be taken on board in the inspection report of the EDPS, but that the opinion would be adopted separately from the inspection report. The draft opinion was sent for comments on 17 February 2011 and these were received on 3 March 2011.

2. The facts

2.1. The scope of the Notification: the notification concerns the selection and recruitment of JRC's temporary agent staff referred to in Title II of the Conditions of Employment of other servants of the European Communities (“*CEOS*”). Indeed, where it proves impossible to fill a vacant post following the procedure regarding the recruitment of officials (transfers and laureates of open competitions), the recruitment of a temporary agent may be envisaged. The main **purpose** of the processing is the constitution and management of Temporary Agent (“*TA*”) recruitment files. The recruitment files collect all the information needed in order to start, process and finalize the recruitment procedure, which, at different stages, involves DG JRC Institutes/Directorates (Management Support Units –“*MSUs*”), the Human Resources Unit of the Resource Management Directorate and the candidates concerned.

2.2. The selection process

All JRC sites are processing personal data with regard to the selection phase for temporary agents. The recruitment phase for all JRC sites is managed by the HR unit in Ispra. The only exception relates to ITU, Germany for the security-related procedures.

The principal steps of the above-mentioned recruitment process are as follows:

1. A job description must already exist in SYSPER 2. A temporary agent recruitment is a result of an unsuccessful internal and external recruitment phase.
2. An open call for a defined period of time (in EN, FR and DE) is foreseen through the EPSO website.
3. Selection process: An “admission to interview” (based on eligibility criteria) sheet is filled in for all candidates. The relevant Unit head in collaboration with the action leader establishes a list of suitable candidates. The interview organisation is managed by the JRC Institutes/Directorates MSUs. The final report (including evaluation sheets for each candidate) is finalised by the selection panel. It is possible that a reserve list is created. The MSU checks the file and sends it to the relevant Institute/Directorate Director for signature. MSUs send the complete file (with the Professional Hazards Sheet) for processing to the HR unit.
The MSUs send negative letters to the non-selected candidates. Reserve list candidates are informed after the successful entry into service of the selected candidate.
4. File verification is done solely by the Human Resources unit. During the verification phase, it may be necessary that the HR unit consult the MSUs in order to clarify certain details of the file.
5. Constitution and finalisation of the file.
On 19/01/10 the Commission decided to amend the Commission Decision C(2007) 5730 of 30 November 2007 on the exercise of powers conferred by the Staff Regulations on the Appointing Authority and by the CEOS on the Authority Responsible for Concluding Contracts of Employment with specific regard to

temporary agent staff recruited in accordance with article 2d of the afore-said CEOS with the JRC. In particular, the JRC and DG HR now share powers of contracting authority - the steps are described below:

- The HR unit prepares and sends the full file to DG HR.B.2.
 - DG HR.B.2 checks the file, prepares the grading, the draft offer letter and returns to the HR unit.
 - The HR unit signs and sends the offer letter to the selected candidate and relevant services.
 - The HR unit sends to DG HR.B.2 the selected candidate's reply on the preferred starting date and confirms the starting date to the candidate by e-mail with copy to DG HR.B.2.
 - DG HR.B.2 encodes the relevant personal data in SYSPER 2, prepares the contract, signs it and sends the original to the HR unit for a second signature.
 - The HR unit signs and distributes the contract to the selected candidate and sends a copy to the relevant services.
6. Entry into service of the selected temporary agent.

2.3. Controller

The controller of the processing operations is represented by the Director of Resource Management.

2.4. The data subjects are the candidates for a "temporary agent" position at the JRC.

2.5. The data processed

An application form is in use - supplied by DG HR in EN, FR and DE and has to be filled in by candidates. The following personal data of the candidates are requested: name, surname, date and place of birth, nationality, gender, civil status, private address, knowledge of languages, academic education, professional experience, IT and office skills, criminal convictions, disciplinary measures and disability requiring special arrangements to be made at the tests.

The list of requested documents to selected candidates¹ is as follows:

- recent original of criminal record extract
- recent passport photo
- application form + professional experience form
- updated curriculum vitae (Europass model CV)
- birth certificate
- document proving the candidate's nationality (passport or I.D. card)
- civil status certificate
- residence certificate
- marriage certificate and/or divorce or legal separation judgments, and/or official declaration of partnership recognition (if applicable)
- birth certificate of children (if applicable)

¹ The above mentioned documents are requested only from selected candidates to whom a contract will be offered if the provided documentation demonstrates they have satisfied the eligibility criteria for that specific contract.

- document proving the fulfilment of any obligations imposed on the candidate by the laws concerning military service
- all other diplomas considered relevant
- all previous working contracts/certificates with exact dates and functions in order to establish the relevant grading. Last salary slips (if applicable)²
- professional experience form duly filled in, dated and signed
- Legal Entity form regarding bank account information (except for staff already working in the country of assignment)
- Financial identification form and Bank account (except for staff already working in the country of assignment)
- Reimbursement of travel and subsistence expenses form.

Only for Karlsruhe site:

- an original criminal record extract for each country in which they lived for more than 6 months over the last 10 years is needed
- a "Sicherheitsüberprüfung" form (Declaration concerning the personal reliability screening), which should be filled in and signed in original for an obligatory security check carried out by the competent German authorities (Ministry of Environment) and required for all staff working in nuclear installations. This form contains information such as the names of person; date of birth and place; nationality; personal ID card or passport number; address; name and address of present employer; domicile and stays of more than three months during last ten years. The persons concerned will be requested to give their informed consent to the personal reliability screening and automatic processing and saving of his/her personal data by the Ministry of Environment, state criminal investigation department, state office for the purpose of the protection of the constitution and nuclear plant. The German authorities, after proceeding with the necessary research, will subsequently issue a security clearance as appropriate.

2.6. The recipients

For every recruitment file:

1. A master file collecting all documents pertaining to the recruitment process is available (i.e. candidate's documents, exchange of e-mails, relevant acts) and registered in ARES³ (document management system).
2. A file for transmission to the personal dossier is available and registered in SYSPER 2 via NDP⁴. The same file is previously processed by PMO/06⁵ in order to establish the candidate's individual rights.

² According to the controller, as candidates do not generally have a reference from their current employer, the salary slip is used for the following:

- to verify the candidate's employment status, in order to calculate the amount of work experience as precisely as possible. The grade is dependant on this.

- to evaluate if the employment is full time or not as experience is considered on a "pro rata" basis.

³ ARES is the Commission wide system for the obligatory registration of all external communications and official internal communications.

⁴ NDP stands for "Numérisation Dossiers Personnels" and is managed by DG HR.B1.004.

⁵ Office for administration and payment of individual entitlements.

To the Medical Services and the JRC ISPRA Security Service

In the framework of the recruitment procedure, specific documents have to be provided to the Medical Services (Ispra, Brussels and Luxembourg) and to the JRC Ispra Security Service (except for candidates who will work with the JRC, Karlsruhe site) as follows:

To the Medical Services:

- Request for medical visit
- Workplace exposure sheet (WES).

For Geel: the application form and CV are not forwarded to the medical service.

To the JRC Ispra Security Service:

- Request for nulla osta
- Candidate's CV
- Candidate's passport photo
- Candidate's criminal record extract
- Relevant vacancy notice.

For candidates to work with the JRC Karlsruhe site:

- a criminal record extract for each country in which they lived for more than 6 months over the last 10 years
- "Sicherheitsüberprüfung" form.

Requests for medical examinations are submitted as soon as the selected candidate confirms his/her interest in the proposed job. Requests for nulla ostas are submitted as soon as the selected candidate provides his/her criminal record extract.

Based on the above-mentioned documents, the Medical Service and the JRC Ispra Security Service/German Competent Authority issue the medical aptitude and the nulla osta respectively.

The JRC ISPRA Welcome Desk (or equivalent service on the other sites) receives personal data of candidates recruited on the occasion of the entry into service.

According to the notification and information received, data are not transferred to third countries.

2.7 Manual and/or automatic processing

* As regards manual processing:

1. Where an ad-hoc call for interest is published, the relevant application form is available for both AD and AST positions.

Templates are available for “admission to interview” and selection panel report.

2. Templates for the management of the paper version of the file are available as follows:

At HR level:

- Internal circulation fiche
- Letters to selected candidates

- Request for medical visit
- Request for nulla osta
- Request for "codice fiscale" (except other sites, staff already working with the JRC, Ispra site and candidates already resident in Italy)
- Acknowledgment of receipt of Staff Regulations and Commission Decision C(2004) 1313 on general implementing provisions concerning the criteria applicable to classification in grade and step on appointment of engagement
- Contract of employment of selected candidate and corresponding accompanying letter
- Programme of first day of work (Ispra site only)
- Form to request a flat (Ispra site only).

* As regards automatic processing:

- A spreadsheet detailing all recruitment steps is available for the exclusive use of the file managers.

2.8 Conservation period

The information provided by the HR unit states that the recruitment files are stored for 10 years to allow for consultation in accordance with Commission SEC(2007)970 of 4 July 2007 (Common Commission level retention list for European Commission files). The EDPS, in his comments on the draft Common Retention List⁶, has approved this kind of retention period. As to the selection file, the Common Retention List refers to a period of 5 years for temporary staff.

Personal data of recruited candidates in SYSPER2 are stored according to the retention policy of SYSPER2 which is the following: *"The data is stored, as a general rule, until the end of activity within the Commission. Certain data is preserved beyond the period of activity, insofar as this data is in relation to rights or obligations which remain. The personal data on an external candidate is suppressed after the expiry of the period of possible complaint admissibility"*. The relevant correspondence is registered in ARES. It was also stated that for non-selected candidates, the files are deleted - there is no storage.

Regarding the time limit to block/erase data, the following text is provided in the privacy statement: *"In case you wish to verify the personal data stored on your behalf by the responsible controller, have the data modified, corrected, blocked or deleted, an e-mail message should be written by the relevant candidate to the functional mailbox address jrc-recruitment-data-protection@ec.europa.eu. The changes will be done within 14 days from the corresponding request"*.

2.9 Information to data subjects

The notification states that the data subjects will be informed by a Privacy Statement the first time they, as candidates, are contacted by e-mail or letter. The Privacy Statement has been provided to the EDPS, together with the notification. It contains: the description of the processing operation; what personal information is collected, for what purpose and through which technical means; the identity of the controller and of the processors; the categories of recipients of the data; the security measures to protect the data; the right of access to and

⁶ Cf. letter of 7 May 2007, file 2007-222, on EDPS website, Supervision / administrative measures.

rectification of the personal data; the conservation period; the contact information and the right to have recourse to the EDPS.

A list of so-called "extracts of criminal records" for all the Member States in the languages of origin has been prepared and was provided to the EDPS in the framework of the inspection.

The call for a temporary agent is announced on the EPSO website with links being made to the JRC corporate website and recruiting Institute website. The Privacy Statement will be visible from both JRC websites.

2.10 Right of access and rectification.

The notification states that the procedure is foreseen in the Privacy Statement.

The Privacy Statement contains a paragraph on "*how can you verify, modify or delete your information?*" which includes a contact information functional Mail Box. Moreover, the notification also foresees that personal data of recruited candidates are stored in SYSPER2 and NDP, which may be consulted at anytime as provided for in Article 92 of the "Conditions of employment of other servants of the European Communities", which shall apply by analogy Article 26, paragraph 7 of the "Staff Regulations of Officials of the European Communities". Duly motivated requests (addressed to the following Functional *mailbox jrc-recruitment-data-protection@ec.europa.eu*) submitted by the relevant candidate with regard to the verifications, modifications and/or deletion of personal data, shall be evaluated. Action will be taken within 14 days from the corresponding request.

Any person to whom the Conditions of employment apply may submit to the relevant authority a request to take a decision relating to him in accordance with the Article 46 of the above-mentioned CEOS.

2.11. Security

[...]

3. Legal aspects

3.1. Prior checking

The notification relates to the procedure that takes place within JRC, towards managing the recruitment files for temporary agents. The recruitment procedures collect all the information needed in order to start, process and finalize the recruitment procedure, which, at different stages, involve DG JRC Institutes/Directorates (Management Support Units –MSUs), the Human Resources Unit of the Resource Management and the candidates concerned.

Applicability of Regulation (EC) 45/2001

Regulation (EC) No 45/2001 applies to the "*processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system*" as well as to the processing "*by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law*"⁷. For the reasons described below, all elements that trigger the application of the Regulation are present here.

⁷ See Article 3(2) of Regulation (EC) No 45/2001.

The management of data contained in the applications and personal files for temporary staff posts constitutes a 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 former "Community body" in the exercise of activities which fall within the scope of former "Community law".

Finally, Regulation 45/2001 shall apply to the processing of personal data wholly or partly by automatic means and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system. In this case the processing is carried out both manually and automatically. Regulation 45/2001 therefore applies.

Grounds for prior checking

Article 27(1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*". 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 or her ability, efficiency or conduct*".

The processing operations that occur in the context of managing the recruitment files for temporary agents to be recruited in JRC aim at evaluating the capacity of each candidate for a particular position. In order to carry out such an evaluation, the data controller will perform various assessment activities such as weighing up whether the individual matches the selection criteria, judging his/her performance during the interviews, etc. In sum, taking the above into account, the data processing operations fall within Article 27(2)(b) and must therefore be prior checked by the EDPS.

In addition, Article 27(2)(a) is also applicable for the processing to be subject to prior checking as the selected candidate has to provide an extract of criminal record which may reveal his/her involvement in criminal activity, and also has to provide to the Medical service the request for the medical visit and the Workplace exposure sheet (WES).

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 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.

Deadlines

The notification of the DPO was received on 7 March 2008. 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 1047 days (1032 + 15 days for comments). Consequently, the present opinion must be delivered no later than on 17 March 2011.

3.2. Lawfulness of the processing

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data legitimate. 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 first issue under Article 5(a) is to determine whether there is a specific legal basis for the processing: a Treaty provision or another legal instrument adopted on the basis of the Treaties. The second issue is to determine whether the processing operation is necessary for the performance of a task carried out in the public interest. To address this second issue in the present case, Recital 27 of the Regulation needs to be taken into account, which 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*". Thus, the second issue in the present case is whether the processing is necessary and proportionate for the management and functioning of JRC.

With regard to the first issue, the selection and recruitment procedure for temporary agents is based on the provisions of Title II of the Conditions of employment of other servants of the European Communities and on Commission decisions C (2004) 1313, 1597 (no. 74-2004), 1597 (no. 75-2004)⁸. Thus, specific legal instruments adopted on the basis of the Treaties allow and provide the detailed conditions for the notified processing operations.

With regard to the second issue, the EDPS is also satisfied and does not challenge that the notified processing operation is necessary and proportionate for the management and functioning of JRC. The processing seems to be necessary for performance of a task carried out in the public interest. Indeed, in the case in point, the procedure for selecting temporary staff with a view to their recruitment by the European institutions is considered part of the legitimate exercise of official authority vested in the institutions and, in this case, in JRC. The EDPS agrees that the selection procedure is considered necessary for the management and functioning of the JRC.

Therefore, the EDPS considers that the notified processing operation is lawful under article 5 (a), as long as the recommendations made in this Opinion are followed.

In addition, since the participation in the recruitment procedure is not mandatory, the processing is also lawful under Article 5(d) of the Regulation because "*the data subject has unambiguously given his or her consent*".

The collection of personal data in the declaration concerning the personal reliability screening for the Karlsruhe site ("*Sicherheitsüberprüfung*" form) is based on a legal obligation the nuclear site is subject to (Article 5(b)) as well as on the informed consent of the data subject (Article 5(d)) and is therefore also considered as lawful.

⁸ - Staff Regulations of Officials of the European Communities and Conditions of employment of other servants of the European Communities;
- Commission Decision C(2004) 1313 on general implementing provisions concerning the criteria applicable to classification in grade and step on appointment of engagement;
- Commission Decision C(2004) 1597 (no. 74-2004) on a new policy for the engagement and use of temporary agents;
- Commission Decision C(2004) 1597 (no. 75-2004) on the maximum duration for the recourse to non-permanent staff in commission services.

Regarding all data collected by the JRC Ispra Security Service, in the framework of a request for security clearance for recruitment, a reference is to be made here to the EDPS's Opinion related to ARDOS⁹.

3.3. Processing of special categories of data

Applicable provisions of the Regulation

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, the prohibition is lifted among others where the *"data subject has given his/her express consent to the processing"* (Article 10(2)(a)) or if *"the 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 as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards"* (Article 10(2)(b)).

Further, Article 10(5) provides that *"the processing of data relating to offences, criminal convictions or security measures may 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"*.

Special categories of data collected during the selection and recruitment procedures

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 or in the request of a furnished flat close to the JRC of ISPRA [on a voluntary basis] - medical aptitude certificate);
- 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 - extract of criminal record - security clearance).

Health related data

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 consent is given in order to enable the employer to comply with its specific obligations 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. This last point also applies to the medical aptitude certificate.

⁹ File 2007-380 ARDOS available on the EDPS website, in process.

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.

Additional sensitive data

When an applicant reveals additional sensitive information, without this being specifically requested or on a voluntary basis, it should be considered that the candidate gave his/her consent to the processing of that data, thus the condition of Article 10(2)(a) is met. With that said, it is important to emphasize that a valid consent can only be given by the candidate if JRC does not put pressure on the candidate to provide such optional, additional information. In any event, the data quality principle, in particular, that no excessive or irrelevant information should be collected, must also be taken into account.

Criminal records

According to the notification, an extract of criminal record is collected from successful candidates. Articles 28 of the Staff Regulations and 12(2) of the Conditions of Employment provides that a member of the staff may be engaged only on condition that: “(a) he is a national of one of the Member States ... and enjoys his full rights as a citizen” and that “(c) he produces the appropriate character references as to his suitability for the performance of his duties”¹⁰. This legal instrument provides the basis to process data related to criminal convictions, pursuant to Article 10(5) of the Regulation.

Requests for security clearance at the Karlsruhe site ("Zuverlässigkeitsüberprüfung") may lead to the processing of special categories of data to the extent that the refusal of a security clearance may give an indication of the presence of an offence committed by the person concerned. The EDPS considers that this processing may be authorised on the basis that the processing occurs in order to respect a national legal obligation to which the site is subject (Article 12.b. of the German Atomic Act (*Atomgesetz* and *Atomrechtliche Zuverlässigkeitsüberprüfung*)).

3.4. Data Quality

Adequacy, Relevance and Proportionality

Pursuant to Article 4(1)(c) of Regulation (EC) 45/2001 "*personal data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed*". This is referred to as the data quality principle.

The type of information requested includes a list of requested documents. Only if JRC has information on the education and professional experience as well as on the candidate's suitability for a given job will JRC be able to select the best suited candidate.

Following the exchange of information between the data controller and the EDPS, the original list of information requested to candidates has been changed and complies now with the criteria set out in Article 4(1)(c). The EDPS agrees with most of the current list of requested

¹⁰ In French the Staff regulations read "garanties de moralité".

information. However, after careful examination of the application form, the EDPS considers that some information requested in the application form is not necessary for the processing operation. For instance:

- the EDPS challenges the request relating to "criminal convictions" which appears to be processed at the selection stage. As indicated above, extract of criminal record is collected from successful candidates. It should therefore not be requested at the selection stage for candidates for interview.
- The request of the civil status is not relevant in the selection stage. In the context of selection, asking for the civil status is excessive as it is only relevant for the purpose of establishing the data subject's individual rights.

As to salary slips, during the inspection, the JRC explained the reasons justifying the request for them. The difficulty to provide work certificates, the possibility of forging such certificates were among the reasons to request the first and last salary slips, in order to establish the ranking and grade of the recruited staff. In the light of these explanations, the EDPS accepts the need of requesting the salary slips, but recommends the JRC to clearly explain it in the information given to the data subject. Moreover, the JRC should keep the salary slips only for the period necessary to establish the rights of the recruited person and therefore, only as long as all data are relevant for the employment of the person concerned.

As to the procedure leading to the security clearance/security check and categories of data to be provided to the JRC Security Service, an additional reference is to be made here to the above mentioned EDPS Opinion 2007-380 "ARDOS".

As mentioned above, only an extract of criminal records delivered by the competent authority of the relevant country can be collected. The EDPS is satisfied that a list of so-called "extracts of criminal records" for all the Member States in the languages of origin has been prepared and shall be communicated to all the candidates for the recruitment. Given the numbers of foreign nationals involved, the candidates should also be informed whether the extract of the police records will come from their country of current and/or past residence, and/or their country of nationality.

Otherwise, the EDPS considers that other information complies with Article 4(1)(c) of Regulation (EC) No 45/2001.

Fairness and Lawfulness

Article 4(1)(a) of Regulation (EC) No 45/2001 requires that personal data must be "*processed fairly and lawfully*". Lawfulness has already been discussed (see point 3.2 and fairness will be dealt with in relation to information provided to data subjects (see point 3.9).

Accuracy

Article 4(1)(d) provides that personal data must be "*accurate and, where necessary, kept up to date, and every reasonable step must be taken to ensure that the 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*". In so far as most of the personal data supplied during the recruitment process is provided by the data subject, the EDPS is of the opinion that this helps to ensure that the data are accurate and kept up to date during recruitment and also because the Human Resources Unit asks the applicants to inform JRC about any change on his data.

The MSU and Human Resources Unit also request a criminal record which is kept for as long as the personal file is kept. Even if it is legitimate for the JRC to collect this data at the moment of recruitment for transmission to the Ispra Security Service, the data contained in this criminal record can no longer be considered as accurate after the date of reception of the document. On this basis, the JRC should find a system whereby information about crimes that have expunged should be deleted. This may be achieved through the right of access and rectification, as described below under 3.8. Another solution would be a "standard form" stating that the person is suitable for the performance of his duties kept in the file whereas the criminal record would be returned to the person.

3.5. Conservation of data/ Data retention

Pursuant to Article 4(1)(e) of Regulation (EC) No 45/2001 personal data may be kept in a form which permits identification of data subjects for no longer than necessary for the purposes for which the data are collected and/or further processed.

According to the notification, the data for the recruitment files, both paper and electronic versions, are stored for 10 years to allow for consultation in accordance with Commission SEC(2007)970 of 4 July 2007 (Common Commission level retention list for European Commission files). Personal data of recruited candidates in SYSPER2 are stored according to the retention policy of SYSPER2 which is the following: "*The data is stored, as a general rule, until the end of activity within the Commission. Certain data is preserved beyond the period of activity, insofar as this data is in relation to rights or obligations which remain. The personal data on an external candidate is suppressed after the expiry of the period of possible complaint admissibility*". The EDPS recommends that this specific period be also mentioned in the privacy statement. In this respect see point 3.10 below.

Retention period of data from applicants

The EDPS would like to point out the need to differentiate between 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 "*reserve lists for appointment*".

As regards the *recruited applicants* whose data should be stored in their personal file (Article 26 of the Staff Regulations), the EDPS recommends that a data retention period of ten years as of the termination of employment or as of the last pension payment is considered to be reasonable.

In any case, the data should only be kept as long as they are relevant for the career/employment of the person concerned.

As to the *non-recruited applicants*, the EDPS acknowledges that the time-limit for storage of such data shall be set in relation to the time-limits to be established 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 (only for the documents necessary for budgetary and audit purposes)¹¹. In addition, the validity of the respective (reserve) lists shall be duly taken into account. It is worth-noting that in various opinions the EDPS accepted to keep personal data of unsuccessful candidates for two years *following the recruitment*

¹¹ Article 49 provides that "*Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes*".

procedure as that period was derived from the length of time during which a complaint may be brought to the European Ombudsman¹².

The retention period for data relating to the *non-recruited applicants on the "reserve lists for appointment"* is to be determined in terms of the validity and the actual extension of the respective reserve lists.

Retention period of the criminal record

If, after examination of an extract of criminal records, the administration considers that the candidate meets the requirements of the Staff Regulations (whether this record is blank - free of criminal convictions or not) the document should only be kept if the section containing any penal records is illegible. This applies even if this section is blank and should ensure that it is impossible to distinguish between blank and non-blank records. If these requirements are respected, the person in charge of the processing is free to determine the practicalities of this process. For example, the original document could be returned to the data subject, retaining only an attestation similar to the one used for pre-employment medical examinations.

If, after examination of an extract of a non-blank criminal record, the administration considers that the candidate does not meet the requirements of the Staff Regulations and cannot therefore be recruited, the document can be kept in its original version. In this case, the agency can legitimately keep the extract for the time strictly necessary for the fulfilment of the purposes of the processing, including that necessary to justify its decision in case of a complaint or appeal. The EDPS considers that the maximum retention period in this case should be 5 years. In exceptional cases, for example if a judicial procedure is in progress, the retention period could be longer. After the end of the retention period, both paper and electronic records must be destroyed.

Retention period of other special categories of data:

Sensitive data, such as data on disability should be deleted once they are no longer necessary for recruitment or reimbursement purposes or following the date when any follow-up procedure has been completed. However, in the case of successful applicants, such data can be forwarded to the personal file in case special arrangements are required throughout the whole period of employment¹³.

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 legitimate purposes and not further processed in a way incompatible with those purposes*".

Data collected during the recruitment procedure may be used for various reasons (for payment of allowances and expenses to temporary agents for instance) and are transferred into the personal file. Data are retrieved from or entered in the staff databases. The processing being reviewed involves no overall change to the specified purpose of staff databases, the recruitment procedure being merely a part of that purpose. The EDPS is satisfied that these various purposes are compatible with the purposes for which the personal data are obtained; the

¹² EDPS Opinion of 31 July 2007 on the recruitment of translation trainees by the Parliament (case 2007-324) and EDPS Opinion of 31 July 2007 on Trainee Recruitment by the Parliament (case 2007-208).

¹³ EDPS Opinion of 2 February 2007 on recruitment procedure by the Community Plant Variety Office, (case 2006-351).

recruitment is a part of the human resources management. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) are fulfilled.

3.7. Transfer of data

Articles 7, 8 and 9 of Regulation (EC) No 45/2001 set forth certain obligations that apply when data controllers transfer personal data to third parties. The rules differ depending on whether the transfer is made to (i) Community institutions or bodies (based on Article 7), (ii) to recipients subject to Directive 95/46 (based on Article 8), or (iii) to other types of recipients (based on Article 9).

According to the notification, during the recruitment of temporary agents, data are transferred to:

- DG HR
- PMO.6 (and ultimately registered in ARES (document management system))
- Medical Services (Ispra, Brussels, Luxembourg)
- JRC Ispra Security Service
- German Competent Authority for security checks (for Karlsruhe only)
- JRC Ispra Welcome Desk (or equivalent service on the other sites).

As concerns transfers made to Community institutions and bodies (DG HR, Medical Services, JRC Ispra Welcome Desk and JRC Ispra Security Service), Article 7 of the Regulation applies. Article 7(1) of the Regulation stipulates that "*without prejudice to Articles 4, 5, 6 and 10 personal data shall only be transferred within (...) Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

The EDPS notes that the above referred internal transfers in principle fall within the legitimate performance of the tasks covered by the competence of the respective recipient. Indeed, all the recipients have the competences to perform the task for which the data is transferred: DG HR is competent for the uploading of the information. Medical services have the competence to issue the medical aptitude. Only the data necessary for the performance of such tasks should be transferred to the above mentioned recipients.

It should be noted that those data could also be transferred to the European Ombudsman, the Civil Service Tribunal, the IAS and the EDPS in the framework of complaints or recourses. In that case, Article 7.1 is also complied with. The EDPS recommends that those specific recipients be also mentioned in the privacy statement. In this respect see point 3.9 below.

As to the transfers regarding data sent to the JRC Ispra Security Service, please also refer to the above mentioned EDPS Opinion 2007-380 "ARDOS". The legitimacy and necessity of this transfer will depend on the competence of the JRC ISPRA Security Service.

Article 7(3) states that "*the recipient shall process the personal data only for the purposes for which they are transmitted*". It would be good practice to ensure that the recipients be reminded when they receive the personal data of candidates that they should not use the data for any further purposes beyond that of temporary agents' recruitment.

The procedure also foresees the transfer of the data to the German Competent Authority for security checks (for Karlsruhe only). Therefore, an authority must receive personal data of the

individuals concerned according to the German legislation. This authority in principle is subject to German legislation implementing Directive 95/46/EC, and it is the recipient who is subject to the exercise of public authority under Article 8(a) of the Regulation.

Article 8.a of Regulation 45/2001 applies also in the case of the transfer for the nuclear centres to national security authorities and to the German Ministry for security checks for the Karlsruhe JRC site regarding the declaration concerning the personal reliability screening. This declaration is "to be handed to applicant/operator of the plan - if requested in a sealed envelope - for forwarding to the Ministry of the Environment Baden-Württemberg". The latter has of course to be considered as recipient subject to Directive 95/46/EC and the description of the processing shows clearly that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority. The transmission to the national security authorities is justified by a task carried out by these authorities in the public interest, based on national legislation mentioned above. Nevertheless, the EDPS recommends that the use of the sealed envelope becomes mandatory in order to warranty the security of the processing.

Article 9 does not apply to the current processing, as no additional transfers are foreseen.

3.8. Right of access and rectification

According to Article 13 of Regulation (EC) No 45/2001, the data subject shall have the right to obtain without constraint from the controller, communication in an intelligible form of the data undergoing the 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*".

Moreover, the issue of the right of access and the secrecy of the proceedings of the Selection Committee under Article 6 of the Annex III of the Staff Regulations should also be taken into consideration.

According to the notification and the Privacy Statement, individuals are granted such rights. The Privacy Statement contains a paragraph on "Right of access to, and right to rectify, the data" which include a contact information functional Mail Box.

Moreover, the personal data of recruited candidates are stored in SYSPER2 and NDP, which may be consulted at anytime as provided for in Article 11 of the Conditions of Employment of Other Servants of the Communities (by analogy of Article 26 paragraph 7 of the Staff Regulations of Officials of the European Communities). Duly motivated requests regarding modification and/or deletion of personal data shall be evaluated on a case by case basis. Where accepted, the relevant integrations, modifications and/or deletions will be done within 14 days from the corresponding request.

The EDPS has always recommended in his opinions¹⁴ that data subjects should be given access to their evaluation results regarding all stages of the selection procedure (pre-selection, interview and written tests) drafted by the human resources sections of the MSU and selection committee

¹⁴ See notably EDPS Opinion of 20 June 2008 on staff recruitment carried out by the EMCDDA (case 2008-157).

competent for their assessment, unless the exception of Article 20(1)(c) of the Regulation in line with Article 6 of the Annex III to the Staff Regulations are applied. This exception may imply that access should be granted neither to the comparative data concerning other applicants (comparative results), nor to the individual opinions of the members of the Selection Committee. Nevertheless, data subjects should be provided with aggregated results.

As concerns the right of rectification, the EDPS acknowledges that this right can only apply in the case of factual data processed within the selection procedure. In addition, he points out that any limitation to the right of rectification after the closing date of submitting applications should only apply to data related to the admissibility criteria and not to the identification data that can be rectified at any time during the selection procedure¹⁵. The EDPS considers this limitation necessary for the fairness of the selection procedure and justified in terms of Article 20(1)(c) of the Regulation. It is however important that all applicants are informed about the scope of this restriction before the beginning of the processing operation (see below "*right of information*").

In the light of the above, the EDPS recommends that JRC sets up procedures to ensure access to candidates' personal data as described above.

With respect to the data subject's right of blocking data, the EDPS reminds that, in accordance with Article 15 of the Regulation, several situations must be distinguished:

(1) when the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data." Thus, when receiving a request for blocking on this ground, the JRC should immediately block the data for the period necessary for verifying the accuracy and completeness of the data.

(2) when the data subject requires the blocking of his/her data because the processing is unlawful, or when data must be blocked for purpose of proof, the JRC will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. Having considered this, the EDPS recommends that the decision as to whether to block the data is taken by the JRC as soon as possible and at the latest within the delay of 15 working days.

3.9. Information to the data subject

Articles 11 and 12 of Regulation No 45/2001 relate to the information to be given to data subjects in order to ensure transparency and fairness of the processing of personal data. These articles list a series of mandatory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject.

Article 11 of Regulation 45/2001 provides for certain information to be supplied where the data have been obtained from the data subject. Article 12 provides for certain information to be supplied where the data have not been obtained from the data subject. The personal data processed during the selection procedure of temporary agents are provided by the data subject (data contained in the applications), as well as by other subjects (evaluation data provided by the panel members). Consequently, both Articles 11 and 12 of the Regulation are applicable.

¹⁵ EDPS Opinion of 7 January 2008 on the "Recruitment of permanent, temporary and contract agents" by the European Maritime Safety Agency (case 2007-566).

As indicated above, information concerning recruitment related data processing should be provided in the Privacy Statement being given at the first time the candidates are contacted by mail or letter. However, as was discovered during the inspection made at the JRC, such Privacy Statements are not sent to the candidates. Therefore, JRC must ensure that the Privacy Statements are made available or sent to the candidates. Actually, the EDPS recommends that a "*data protection note*" should be posted on the institution's website (or EPSO) so that all candidates can be informed of all their rights as well as of all necessary information concerning the processing of his/her data before the selection procedure begins.

The information provided to the applicant includes: the description of the processing operation, the purpose for which the data are intended, the identity of the controller and of the processors, the categories of data processed, the categories of recipients of the data, the legal basis, the security measures to protect the data, the right of access and rectification to the personal data, the conservation period and the recourse to the EDPS (including a link to his functional mailbox).

In order to ensure full compliance with Articles 11 and 12 of the Regulation, the EDPS recommends:

- that the information about possible recipients be completed indicating the Security service and Medical services and to include a reference to the European Ombudsman, the Civil Service Tribunal, the IAS and the EDPS;
- indicating the existence of the rights of access to assessment reports;
- the information about the time limits for storing the data be completed by the exact retention period of SYSPER2.
- that the statement indicates clearly which question in the application form is mandatory or optional.

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 has no reason to believe that JRC has not implemented 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.

Conclusion:

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

- ensure that salary slips are only kept as long as necessary for the establishment of rights of recruited persons;
- remove, as explained in this Opinion, the request for some information in the application form of candidates (marital status, nationality at birth);
- as to the non-recruited applicants, set out the time-limit for storage of data 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);
- use the sealed envelope in a mandatory way when forwarding to the Ministry of the Environment Baden-Württemberg data of the data subject;
- remind to all recipients of their obligation not to use the data received for any further purposes than the one for which they were transmitted;
- ensure that applicants (both selected and non selected candidates) have access to their file including the assessment notes concerning them drafted by the panel members. This applies without prejudice to the application of Article 20(1) (c) of Regulation 45 /2001;
- amend the privacy policy as recommended in this Opinion.

Done at Brussels, 9 March 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor