



Opinion on the notification for prior checking received from the Data Protection Officer of the Community Plant Variety Office concerning the certification procedure

Brussels, 19 May 2011 (Case 2011-0055)

1. Procedure

On 17 January 2011 the Data Protection Officer (DPO) of the Community Plant Variety Office (CPVO) submitted a notification under Article 27(3) of Regulation (EC) No 45/2001, concerning the certification procedure at the CPVO together with the following annexes:

- Decision of the President of the CPVO laying down the general provisions implementing the certification procedure, adopted on 1 June 2010;
- Decision of the President of the CPVO on the conservation of personal files, adopted on 1 August 2008;
- Call for applications for the certification procedure corresponding to year 2011;
- Application form for the certification procedure (template);
- Diplomas table EUR 25 (Examples of diplomas classified by length of legal duration);
- Memo on the EAS training program;
- Privacy statement.

The EDPS asked for further information on 4th March 2011. A response received on 23rd March 2011 was accompanied by the revised privacy statement, call for applications for the certification procedure corresponding to year 2011 as well as application form for the certification procedure. A further information request was sent on 25th March 2011 to which a reply was provided on 18th April 2011, also accompanied by the revised privacy statement.

On 27 April 2011 the draft opinion was sent to the DPO for comments which were provided on 18 May 2011 together with the following documents:

- Decision of the President of the CPVO on the period of time during which the Office will keep documents containing personal data submitted to the Office in relation to recruitment procedures or spontaneous applications, adopted on 30 March 2009;
- Internal memo to the attention of the members of the Joint Certification Committee and to the Appointing Authority on the purpose limitation of the transfer of personal data within the certification procedure, adopted on 18 May 2011;
- Privacy statement - revised.

2. The facts

The present Opinion deals with the new certification procedure at the Community Plant Variety Office to be organized annually from 2011 onwards on a basis of the recently adopted

a Decision of the CPVO President laying down the general provisions for implementing the certification procedure¹.

The purpose of the processing is to select officials in grade 5 upwards of function group AST as being suitable for appointment to a job in function group AD by means of evaluating their ability in terms of education, previous professional experience, as well as vocational training.

The certification procedure at the CPVO comprises the following six stages:

- publication of a call for applications and determination of the number of officials authorised to take part in the training program;
- establishment of the list of officials authorised to take part in the training program;
- participation in the training program;
- organisation of written and oral tests and establishment of the list of applicants who have passed the tests, i.e. successfully completed the training program;
- publication of the list of officials who have passed the tests;
- appointment to jobs in function group AD.

The controller is the CPVO, represented here by its Vice-President.

The data subjects are officials from the function group AST with seniority in grade 5 or above of at least three years who have been appointed to a permanent post in the CPVO and who, on the date of publication of the call for applications, are either in active employment, on parental or family leave, or on secondment in the interest of service.

The following **data categories** may be processed within the certification procedure:

- administrative data (name, personnel number, unit, office and telephone number and e-mail address);
- information about language competencies (mother tongue, language chosen for the training and professional situations where language was used);
- priority area (in terms of the targeted AD area, such as administration and support tasks, specialist in the core business / technical aspects, specialist in other areas);
- information about the achieved level of education and training (including diplomas of higher education and trainings attended);
- professional experience (at the CPVO and also external);
- preferred training location;
- signature.

Data are collected from the application form. Furthermore, information about applicants' interest, as well as their potential to perform certain AD duties is collected from the respective career development reports.

The following **information to data subjects** is provided in the privacy statement: identity of the controller, purposes of the processing operation, legal basis of the processing operation, categories of data processed, recipients of the data, storage periods, right of access and rectification, right to have recourse at any time to the EDPS, as well as the possible voluntary nature of certain questions. The privacy statement is made available at the CPVO Intranet under the DPO page (as explicitly mentioned on the application form).

¹ The involvement of the European Administrative School (EAS) and European Personnel Selection Office (EPSO) in the certification procedure has been already addressed in the EDPS opinion 2006-396 of 7 March 2008 on the notification for prior checking regarding the activities of EAS and EPSO in the context of the certification procedure.

Data processed within the processing operations may be disclosed to the following **recipients**:

- Appointing Authority;
- Heads of Unit;
- Human Resources service;
- European Administrative School (EAS);
- Joint Certification Committee, in case of appeal.

Applicants have the **right to access** their data and the **right to rectify, erase and block** their data that can be exercised by sending a written request to the CPVO Human Resources service. According to the information provided in the revised privacy statement, the right to access and update or correct factual and academic data can be exercised even after the deadline for submitting the application. However, the rectification of data relating to merits and skills is possible only until the expiry of the application deadline

The **retention policy** in respect of successful applicants is based on the Decision of the President of the CVPO on the conservation of personal files adopted on 1st September 2008 (hereinafter "Decision on conservation of personal files"). Personal data contained in the following documents are to be kept in personal files for ten years after the end of contract of the respective staff member:

- applications with supporting documents;
- certain vocational training related documents, such as information about training attendance and exam results;
- certification decision.

In respect of unsuccessful applicants, the revised privacy statement indicates a data retention period of 2 years. In its comments on the draft Opinion, the CPVO refers to the Decision of the President of the CPVO on the period of time during which the Office will keep documents containing personal data submitted to the Office in relation to recruitment procedures or spontaneous applications, adopted on 30th March 2009 (hereinafter "Decision on retention periods in relation to recruitment procedures and spontaneous applications") and states its intention to apply a similar retention period.

The following **security measures** apply to the certification procedure:

(....)

3. Legal aspects

3.1. Prior checking

The processing of personal data for the purpose of evaluation of AST officials in the framework of the certification procedure at the CPVO falls within the scope of Regulation (EC) No 45/2001. It is subject to prior checking by the EDPS pursuant to its Article 27(2)(b) since it is clearly intended to evaluate the applicants' ability in terms of education, previous professional experience, as well as vocational training.

The notification was received by email on 17 January 2011. According to Article 27(4) of Regulation (EC) No 45/2001, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for 64 days to allow the CPVO to provide additional information and comments on the draft opinion. Therefore, the present Opinion must be delivered no later than 23 May 2011.

3.2. Lawfulness of the processing operation

The certification procedure is based on the Decision of the President of the CVPO laying down the general implementing provisions in relation to Article 45a of the Staff Regulations. The respective processing of personal data also comes within the legitimate exercise of official authority vested in the Office. Thus, the processing is lawful in terms of Article 5(a) of Regulation (EC) No 45/2001.

3.3. Data quality

Pursuant to Article 4(1) (a), (c) and (d) of Regulation (EC) No 45/2001, personal data must be processed fairly and lawfully, be adequate, relevant and not excessive in relation to the purpose they are collected or further processed, as well as accurate.

The accuracy of the data processed is partly ensured by the fact that some data are provided by the respective data subjects. In addition, the invitation to make use of the rights of access and rectification (see point 3.6) helps to ensure that the processed data are accurate and up to date.

Lawfulness of the data processing has been already discussed (see point 3.2), whereas fairness has to be assessed in the context of information provided to data subjects (see point 3.7).

3.4. Data retention

According to Article 4(1)(e) of Regulation (EC) No 45/2001, personal data may be kept in a form enabling 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, the certification applications of successful applicants together with all supporting documents, information about training attendance and exam results, as well as certification decisions are to be kept in the personal files for ten years after the end of service of the respective official, all in accordance with the Decision on conservation of personal files.

The EDPS notes that the revised privacy statement indicates a data retention period of 2 years in respect of certification applications of unsuccessful applicants. In order to ensure legal certainty and fully comply with the requirements of Article 4(1)(e) of Regulation (EC) No 45/2001 the EDPS recommends the revision of the Decision on retention periods in relation to recruitment procedures and spontaneous applications in order to include the certification procedure or the adoption of a new decision on this matter.

3.5. Transfer of data

The internal and inter-institutional data transfers mentioned above are subject to Article 7 of Regulation (EC) No 45/2001. They should be necessary for the legitimate performance of tasks covered by the competence of the particular recipient who can process the data only for the purposes for which they were transmitted.

The EDPS notes that the data transfers within the Office, as well as the transfers of data relating to officials authorised to follow the training program between the Office and the European Administrative School are considered as necessary for the accomplishment of the respective certification procedure. Furthermore, the data transfers to the European Union Civil Service Tribunal in case of a legal action are considered as necessary for the performance of the respective supervisory task.

The internal memo to the attention of the members of the Joint Certification Committee and to the Appointing Authority on the purpose limitation of the transfer of personal data within the certification procedure takes into account the requirements of Article 7(3) of Regulation (EC) No 45/2001 in respect of internal recipients of data.

In order to ensure the full compliance with Article 7(3) of the Regulation, the EDPS recommends that inter-institutional recipients of data are also reminded of their obligation not to use the data received for another purposes than the ones for which they were transmitted.

3.6. Rights of access and rectification

Article 13 and 14 of Regulation (EC) No 45/2001 provide for data subjects' rights of access and rectification with respect to their personal data processed. These rights may be restricted in terms of Article 20(1) of the Regulation, in particular when it would be necessary for the protection of rights and freedoms of others.

As indicated above, access and rectification of data processed within the certification procedure at the CPVO can be granted upon a written request to the Human Resources service. The possibility to rectify (update) data relating to merits and skills is provided only until the expiry of the application deadline in order to ensure the fairness of the selection, i.e. safeguard the protection of rights of other applicants in terms of Article 20(1)(c) of the Regulation.

3.7. Information to be given to the data subject

As indicated above, the revised privacy statement posted on the CPVO Intranet provides for all information as required in terms of Articles 11 and 12 of Regulation (EC) No 45/2001.

3.8. Security measures

(...)

Conclusion

The proposed processing operation does not appear to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that the observations made above are taken into account. This means, in particular, that the CPVO should:

- remind inter-institutional data recipients of their obligation not to use the data received for any other purpose;
- revise the Decision of the President of the CPVO on the period of time during which the Office will keep documents containing personal data submitted to the Office in relation to recruitment procedures or spontaneous applications, adopted on 30th March 2009 so as to include candidates for the certification procedure or adopt a new decision in respect of retention periods for data of unsuccessful applicants in line with point 3.4 of the present Opinion.

Done at Brussels, 19 May 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor