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Brussels, 1 June 2011  
GB/DH/kd D(2011) 1057 C 2011-0214

**Subject: Prior-checking notification, case 2011-0214**

Dear Mr Godinho,

We have examined the documents the Community Plant Variety Office (CPVO) sent to the EDPS concerning the notification for prior checking on the processing of data in connection with the selection of trainees at the CPVO. This data processing is subject to prior checking by the EDPS, since it involves the assessment of personal aspects of candidates - their ability to perform the duties required of a particular post, for example - as set out in Article 27(2)(b) of Regulation (EC) No 45/2001.

The data protection aspect of the selection of trainees is dealt with in the Guidelines<sup>1</sup> which the EDPS has issued concerning staff recruitment procedures within European Union institutions and agencies. On 29 October 2009, the EDPS asked those institutions and agencies which had not yet sent notice about those procedures to compare their respective procedures with that document and to inform the EDPS of any points where they differed in terms of data protection.

In the present case, the letter from the CPVO states that its procedure conforms to the Guidelines and that the CPVO fully applies the recommendations included in the Guidelines. We would like to thank you for the clear and concise cover letter we received from you on this matter.

Following an examination of the various documents supplied by the CPVO, we would however like to express a few comments to make and some recommendations.

We recommend that you ensure properly the right for the data subject to obtain from the controller the **blocking** of data in accordance with Article 15 of the Regulation.

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<sup>1</sup> The Guidelines are available on the EDPS website in the Supervision section, under the heading 'Guidelines'. The EDPS has also published a Joint Opinion, dated 7 May 2009 (case 2009-0287), which can also be found on his website.

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 CPVO 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 considered unlawful, or when data must be blocked for purpose of proof, the CPVO 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. The decision as to whether to block the data should be taken by the CPVO as soon as possible and at the latest within the delay of 15 working days.

Concerning the **retention period** of the unsuccessful candidates and spontaneous application, the EDPS welcomes the fact that the time limits are described in a decision and that the data subject are properly informed about them. This is a good practice. As for the successful candidates, the EDPS takes good note of the fact that the CPVO prefers to keep the data for a shorter period than the one suggested in the Guidelines.

As to the **collection of the criminal record**, we do approve the fact that only the criminal record of the selected candidates is collected and therefore the CPVO is completely in line with the EDPS position on this issue. The retention period of this document is currently under discussion between the Court of Auditors and the EDPS and we will communicate to the CPVO the relevant conclusions of the discussion in due time.

Finally, the EDPS recommends that the right of rectification of the data subject be applied as described in the Guidelines. Factual data (even merits and skills) may be rectified before the deadline for submitting the application. Data related to admissibility criteria cannot be rectified after the closing date of submitting application while identification data may still be rectified at any time during the procedure.

The box 13 a/ (time limit for blocking and erasure of the different categories of data) and 13/ (retention policy) of the notification and the privacy statement (right to correct your data and how long do we keep your data) should be updated according to paragraphs above.

Please inform the EDPS of the measures taken based on the recommendation made in this opinion within a period of 3 months as from the date of the receipt of this letter.

Sincerely yours,

Giovanni BUTTARELLI

Cc: Ms Véronique DOREAU, CPVO Data Protection Officer