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GB/OL/sn/D(2014)2606 C 2013-0841  
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correspondence

Dear Ms Bagge,

On 11 July 2013, the Data Protection Officer (DPO) of the BEREC Office submitted a notification for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 ("the Regulation"), on the recruitment of temporary agents, contract agents and seconded national experts to EDPS.

As this notification was submitted on an "ex-post" basis, i.e. when the processing was already occurring, the deadline of Article 27(4) does not apply. Given that the EDPS has already issued guidelines on recruitment procedures<sup>1</sup>, this Opinion will only highlight those aspects which differ from the approach recommended in those guidelines. On 26 November 2014, the draft Opinion was sent to BEREC Office's DPO for comments, which were received on 17 December 2014.

**The facts**

Both the notification and the privacy notice refer to the Head of Administration as the controller.

As regards conservation periods, BEREC Office follows the Common Commission-Level Retention List, meaning conservation periods of 10 years for senior and middle managers, 5 years for temporary and contract staff and 2 years for unsolicited applications. The notification also mentions the conservation periods for the personal files of persons recruited (8 years from the extinction of all rights of the person concerned and his/her dependents, but at least 120 years from birth).

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<sup>1</sup> Available on the EDPS website.

BEREC Office published an updated data protection notice on its website. The notice states that *"Candidates are free to give their data on a voluntary basis. However, all data requested in the application documents and during the selection procedure is compulsory. The failure to provide obligatory data will exclude them automatically from the recruitment procedure"*. The statement refers to the Staff Regulations as last amended by Regulation (EC) 23/2005 as the legal basis.

The notice also mentions "OLAF, the Civil Service Tribunal and the European Ombudsman (for investigation purposes), the EDPS" as possible recipients "where appropriate".

## **Legal analysis**

### **Controllershship**

As a reminder, the EDPS considers BEREC Office as a body to be the controller; the Head of Administration can be an appropriate contact point, but final accountability rests with the agency.

### **Conservation**

For the application files of unsuccessful candidates, the EDPS recommends maximum conservation periods of two to three years from the end of the selection and recruitment procedure/the expiry of the reserve list. This is based on Article 4(1)(e) of the Regulation, which establishes that personal data may only 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 were further processed". Following the closure of a selection and recruitment procedure/expiry of a reserve list, possible further uses would be auditing and replying to possible litigation or complaints. For these purposes, two to three years are considered to be sufficient; documents which have to be kept under the Financial Regulation can be kept in accordance with those rules.

BEREC Office is thus **invited to reconsider the existing time limits in this respect or to provide precise justifications** that will be taken into account in the upcoming discussions with the relevant stakeholders.

Concerning the conservation period for personal files, the EDPS voices similar concerns. However, as the management of personal files is considered a different set of processing operations, it is not relevant to further address this here (see below).

### **Information to data subjects**

The data protection notice also includes information on the conservation periods for the personal files of recruited staff members. The EDPS considers the management of personal files to be a distinct set of processing operations<sup>2</sup> from the selection and recruitment procedure. It is therefore not necessary to mention this information here.

The wording of the data protection notice as regards the voluntary/compulsory character of the information to be provided in the application process might be confusing to data subjects. It would be clearer to simply state that the information requested in the application process is mandatory, unless indicated otherwise.

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<sup>2</sup> The management of personal files is not subject to prior-checking, see e.g. case 2013-0793. It should, however, if not done yet, be notified to the DPO under Article 25 of the Regulation.

The reference to the Staff Regulations as a legal basis is no longer up-to-date and **should be updated**. It would be sufficient to simply indicate "as amended" (provided that the provisions in question do not change).

The EDPS expects that BEREC Office will implement the recommendations indicated in bold and will therefore close case 2013-0841.

Yours sincerely,

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Cc: Mr Michele Marco CHIODI, Data Protection Officer, BEREC Office  
Mr Pablo AGUIRREZABAL, HR Officer, BEREC Offic