



EUROPEAN DATA PROTECTION SUPERVISOR

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WW/XK/mt D(2017)2782 **C2013-0541**
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correspondence

Subject: Notification on the selection and recruitment of temporary agents, contract agents and seconded national experts at EIOPA, case 2013-0541

Dear Mr. [...],

We have analysed the updated notification and revised documents you have provided to the European Data Protection Supervisor (EDPS) for prior-checking under Article 27(2)(b) of the Regulation (EC) n° 45/2001 (the Regulation) on the selection and recruitment of temporary agents (TAs), contract agents (CAs) and seconded national experts (SNEs) at the European Insurance and Occupations Pensions Authority (**EIOPA**). In particular, the purpose of the processing is to define eligible candidates from among the applications sent to EIOPA as a response to a job specific vacancy notice and to select through tests and interviews the most appropriate candidates to be put on a reserve list for an eventual offer of employment.

This will be analysed in light of the EDPS Guidelines on the processing operations in the field of staff recruitment ("the Guidelines")¹.

As this is an ex-post case, the deadline of two months for the EDPS to issue his Opinion does not apply.

The EDPS will identify EIOPA's practices which do not seem to be in conformity with the principles of the Regulation and the Guidelines, and then provide EIOPA with relevant recommendations.

¹ https://edps.europa.eu/sites/edp/files/publication/08-10-10_guidelines_staff_recruitment_en.pdf

Legal analysis

1) Information to data subjects

Personal data must be processed fairly². In order to guarantee fairness and transparency, EIOPA should provide all necessary information, as listed under Articles 11 and 12 of the Regulation to data subjects (here: applicants).

i) Legal basis

According to Article 11(f)(i) of the Regulation, the controller shall inform data subjects about the legal basis of the processing operation for which the data are collected.

The privacy statement only refers to Article 5(a) of the Regulation to justify the lawfulness of the processing of personal data while the candidates' manual, lists Articles 12-15 and 82-84 of the Conditions of Employment of other servants of the European Communities.

As to the legal basis for Seconded National Experts (SNEs), it is found in the EIOPA's decision laying down rules on the SNEs³.

The EDPS therefore **recommends that EIOPA indicate the relevant Articles of the CEOS and refer to the SNEs' Decision in the privacy statement accordingly.**

ii) Recipients of data

The notification and the privacy statement both mention a number of possible recipients of personal data, such as the European Ombudsman and the EDPS. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not need to be mentioned in the privacy statement⁴.

iii) Rights of access and rectification

The privacy statement does not seem to inform the data subjects of any time limits for requests and responses. It is good practice to include information on time limits within which a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.). Consequently, the EDPS **recommends that such time limits be added to the privacy statement.**

2) Quality of data

Article 4(1)(c) of the Regulation states that *"personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed."*

The EDPS highlights that the purpose of the collection of the criminal record is to establish if the successful candidate *"enjoys his full rights as a citizen"* and has *"the appropriate character*

² See Article 4(1)(a) of the Regulation.

³ EIOPA-MB-11/033 from 10 November 2011.

⁴ This is an exception to the information obligations in Articles 11 and 12, but not to the rules on transfers in Articles 7 to 9 of the Regulation. In practice, this means that authorities such as the OLAF, the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.

references as to his suitability for the performance of his duties." The content of criminal records differs between the member States. In some member States, they may contain information about the character of an individual or his/her moral behavior that goes beyond the legitimate purpose for collection.

The EDPS therefore **recommends that EIOPA analyse the content of the criminal records on a case-by-case basis, so that only relevant data are processed with regard to the purpose of their collection.**

3) Data retention

According to Article 4(1)(e) of the Regulation, 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."*

The EDPS points out that sensitive data, such as data on disability, should be deleted once they are no longer necessary for recruitment or reimbursement purposes when any follow-up procedure has been completed. Such data can be forwarded to the personal file only for successful applicants and in case special arrangements are required for the duration of their employment.

Conclusion

The EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the recommendations made in this Opinion are fully taken into account.

In light of the accountability principle, the EDPS expects EIOPA to implement the above recommendations accordingly and has therefore decided to **close the case.**

Yours sincerely,

Wojciech Wiewiórowski

Cc. Mr [...], Corporate Support Department (Human Resources Unit)
Ms [...], Data Protection Officer