



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

Ms Luminita MOLDOVAN
Internal Control Officer
European Union Agency for Law
Enforcement Training (CEPOL)
1066 Budapest, O utca 27, Hungary.

Brussels, **29 JAN 2018**
WW/EF/sn/D(2017)0232 C 2017-0787
Please use edps@edps.europa.eu for all
correspondence

Subject: Prior-checking Opinion regarding the recruitment of the Executive Director of CEPOL (EDPS case 2017-0787)

Dear Ms Moldovan,

On 1st September 2017, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ("the Regulation") on the recruitment of the Executive Director from the Data Protection Officer (DPO) of the CEPOL.² This is an *ex post* prior checking notification given that the recruitment procedure had already been launched.³

The EDPS has issued *Guidelines concerning the processing of personal data for the processing operations in the field of staff recruitment*⁴ ('EDPS Guidelines'). Therefore, this Opinion analyses and highlights only those practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for the recruitment of the Executive Director at CEPOL.

1. Facts and analysis

This processing operation concerns the recruitment of the Executive Director.

Once the vacancy is published in the Official Journal of the European Union, the candidates send their applications via the European Commission's vacancy website. The Commission also performs an eligibility check of candidates.

¹ OJ L 8, 12.1.2001, p. 1.

² As this is an *ex-post* case, the deadline of two months does not apply. This case has been dealt with on a best-effort basis.

³ As published in the Official Journal of 30.06.2017.

⁴ Guidelines of 10 October 2008. Available on the EDPS website at: https://edps.europa.eu/data-protection/our-work/publications/guidelines/staff-recruitment_en

Following this eligibility check, the Commission forwards the applications to the Selection Committee. This Committee, which is set up by the Management Board, is composed of five members appointed by Member States as well as by the Commission. It invites candidates that have the best profile for the post to attend an assessment centre run by external recruitment consultants.

The applicants are then interviewed by the Selection Committee.

On the basis of the results of the interview as well as of the assessment centre, the Selection Committee shall draw up a list of candidates -at least three- whose profiles best match the requirements of the vacancy notice. Candidates on the shortlist shall be called for an interview this time with the Management Board of CEPOL.

The Management Board will take its decision to appoint the Executive Director taking into consideration the pre-selection as well as the outcome of the interviews. The vote shall take place by secret ballot and the candidate that receives a two-thirds majority in the first ballot shall be elected.⁵

The processing operation is lawful on the basis of Article 5 (a) of the Regulation, given that the processing is necessary for the performance of a task carried out in the public interest. In this regard, Article 23 of the Regulation (EU) 2015/2219 on the European Law Enforcement Training (CEPOL)⁶ provides for the recruitment of an Executive Director by the Management Board following an open and transparent selection procedure.⁷

The categories of data processed are the following: name, gender, age, nationality, address, education, languages, qualification, professional experience, bank account⁸, certificate of good conduct as well as health data.

As to the rights of the data subjects, they receive a privacy statement from CEPOL which states *inter alia* that they have the right of access and rectification but does not provide for a time limit for CEPOL to reply. Even if the notification form states that the time limit to provide access shall be within three months from receipt of the request, this information is not subsequently gathered in the privacy statement. For transparency purposes a time limit for exercising right of access and rectification should be put in the notice to data subjects.

As an improvement, the EDPS suggests that CEPOL include in the privacy statement the time limit to reply to requests for access and rectification.

Concerning the right of rectification, the privacy statement makes a distinction between 'identification data' and 'selection or eligibility data'. While the first can be rectified at any moment during the procedure, the second can only be rectified up to the deadline for applications. The privacy statement does not define what are identification data and their difference from selection or eligibility data.

⁵ If no one receives this two thirds majority in the first ballot a second ballot shall be held at the end of which the candidates with the lowest number of votes shall be excluded. When only two candidates are left rounds of voting shall run until one of them receives the absolute majority.

⁶ Regulation (EU) 2015/2219 of the European Parliament and the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA, OJ L 319/1 of 4.12.2015, OJ L 319/1 of 4.12.2015.

⁷ Article 9(1) (m) of the same Regulation states that the Management Board shall appoint the Executive Director.

⁸ This information is only requested from those candidates invited for an interview.

The EDPS takes the view that the 'selection and eligibility criteria' correspond to what the EDPS Guidelines refer to as 'admissibility criteria'⁹ and thus a clarification could be needed.

As an improvement, the EDPS suggests that CEPOL clarify which are the different kind of data and to establish two different clear-cut timelines for rectification.

Concerning the retention period, the data of the successful candidate will be stored in their personal files for a period of ten years after termination of employment or as of the last pension payment. The data of the non-short listed candidates will be held for two years from the closure of the procedure and following this, the data will be deleted from the platform.

Additionally, there is an administration file of the recruitment procedure, which includes the following data: names of candidates, names of shortlisted candidates, marks received by candidates in the interview phase and results of the recruitment procedure. The EDPS finds the five year retention period excessive for the purposes for which the data are collected and recommends, in line with the above-mentioned EDPS Guidelines¹⁰, a two-year retention period. Unless CEPOL has sound reasons to establish a longer retention, this two year period should be sufficient to meet the purpose of the processing operation as well as further possible processing operations such as, for instance, complaints and audits.

The EDPS recommends that CEPOL establish a two year retention period for administrative files of the recruitment procedure, unless CEPOL has sound reasons to justify a longer retention period.

2. Conclusion

In this Opinion, the EDPS has made a recommendation to ensure compliance with the Regulation, as well as two suggestions for improvement. Provided that the recommendation is implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

1. The EDPS recommends that CEPOL establish a two year retention period for administrative files of the recruitment procedure, unless CEPOL has sound reasons to justify a longer retention period.

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

Yours sincerely,



Wojciech Rafał WIEWIÓROWSKI

Cc.: Ms Joanna PLIOTA, CEPOL Data Protection officer.

⁹ See point 6 of the above-mentioned Guidelines (foonote 4).

¹⁰ Point 4 of the Guidelines (footnote 4).