

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1171

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 27/09/2013

CASE NUMBER: 2013-1066

INSTITUTION: EBA

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Adam Farkas
Executive Director
European Banking Authority - EBA
Tower 42 (level 18)
25 Old Broad Street
London EC2N 1HQ
United Kingdom

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

EBA Operations Department / Human Resources

3/ NAME OF THE PROCESSING

Recruitment of staff:
Temporary Agents (TAs), Contractual Agents (CAs), Seconded National Experts (SNEs).

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing is the collection, management, monitoring of the use and processing of personal data of applicants at the various stages of the selection procedures. This processing operation is subject to prior-checking [Article 27 paragraph 2. letter (b) of Regulation 45/2001, since it involves an evaluation of applicants' ability to perform the job function for which the selection procedures have been organised.

The goal of the selection procedures is to recruit the most suitable candidate(s), manage the use of the reserve lists and to ensure that all steps of the procedure are carried out according to the EU Staff Regulations and implementing rules, in particular to ensure non-discrimination, equal treatment, impartiality, transparency and confidentiality to all steps

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects: candidates in the recruitment procedures for temporary, contract agents and national experts.

Candidates are free to provide their data on voluntary basis, although failure to respond to any further information requested would exclude the candidate automatically from the recruitment procedure.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

1. Identification data:

At the application phase (CV/motivation letter of the applicant):

Basic personal data allowing the applicant to be identified (name, surname);

Information provided by applicant to allow the practical organisation of pre-selection and other tests, e.g. address (street, postcode, town, country, telephone, fax, email and any disability) ;

Information provided by candidate to verify whenever he/she fulfils the eligibility/admission criteria laid down in the selection procedure, e.g. nationality/languages, degree: year awarded, title, name of the awarding body, professional work experience and training. Nationality is required in the eligibility grid solely for statistical purposes.

Personal motivation for applying for a specific post (letter of motivation).

The Authority does not use the automated application form (on-line) but uses hard copies, and accepts the EU CV and motivation letters received from applicants. The data provided by the applicants are given on a voluntary basis, and not required as a strict requirement, apart from the identification data above.

The additional kind of information like: "reasons for leaving a previous post", "interest and skills not related to work/hobbies", "photograph of applicant" are not mandatory but optional. By adding these kinds of data, the applicant is giving his/her consent for data processing.

At the selection phase:

Assessment of candidates against eligibility and selection criteria outlined in the vacancy note (eligibility grid; selection criteria assessed during the selection process);

Assessment of candidates' performance during the selection process (evaluation of oral and written tests of invited candidates).

2. Special categories of data:

Processing of personal data revealing racial or ethnic Origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited unless an exception can be found in Articles 10 (2) -10 (5) of Regulation 45/2001.

Within the framework of the selection and recruitment procedures certain data belonging to the "special categories of data" might be collected, namely:

- data related to health (in particular if an applicant is fit or not to take up duties at the Authority),
- data regarding criminal records,
- data revealing racial or ethnic origin (communication of a photograph),
- data revealing political opinions, religious or philosophical beliefs, or trade union membership (for instance, spontaneous communication of such data are perceived as "social, organisational and other skills and competences" in the European CV).

Medical clearance (TAs/CAs):

Before appointment candidates are requested to undergo a pre employment medical examination resulting in a medical aptitude certificate. This information, although not medical data in the strict sense, must be considered as data relating to health in terms of Article 10 of the Regulation.

The legal basis for processing medical certificates regarding officials and other servants: Article 28(e) and Article 33 of the Staff Regulations, and Articles 12paragraph 2 (d) and 13 of the Conditions of Employment of Other Servants.

These provisions stipulate that a candidate may be recruited as a member of the staff only on the condition that "he is physically fit to perform his duties".

Medical clearance (trainees/SNEs):

As the Staff Regulations and CEOS are not directly applicable to SNEs, the medical clearance is not requested.

Disability:

When an applicant reveals information on his/her disability, it is considered as if he/she is giving his/her consent to the processing of that data, thus the condition of Article 10(2) letter (a) of the Regulation 45/2001 is met. In addition, this consent is given in order to enable the Authority to comply with its specific obligations in the field of employment law in conformity with Article 10(2) letter (b) of the Regulation 45/2001; namely to adjust the selection procedure to the special needs of such applicant (provide for extra time or specific IT equipment for the test envisaged to take, additional grants or special arrangements regarding the interview).

Criminal records (TAs/CAs):

Articles 28 of the Staff Regulations and 12(2) of the Conditions of Employment provide that a member of the staff may be engaged only on the condition that:

- s/he is a national of one of the Member States and enjoys his full rights as a citizen and
- s/he produces the appropriate character references as to his suitability for the performance of his duties.

This legal instrument provides the basis to process data related to criminal convictions, pursuant to Article 10(5) of the Regulation 45/2001.

The collection of the national police report/criminal record certificate/certificate of good conduct is carried out in accordance with the Staff Regulations' requirements. The submission of this document is required from applicants who have been offered the contract of employment only. Candidates invited to interviews do not provide this document.

Photograph:

The communication of a photograph by an applicant may reveal his/her racial or ethnic origin. It may be justified on the basis that the data subject has given his/her express consent according to Article 10(2) letter (a) of the Regulation 45/2001.

Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership:

Their spontaneous communication may be considered to be justified in terms of Article 10(2) letter (a) of the Regulation 45/2001.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

According to the Article 4(1) letter (c) of Regulation 45/2001, the personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

Applicants applying for a vacant post at the EBA are informed about the data protection rules in the vacancy notice itself.

"EBA will ensure that candidates' personal data are processed as required by Regulation (EC) N045/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data. This applies in particular to the confidentiality and security of such data. "

Moreover, it is planned to publish on EBA website a specific document "Privacy notice for recruitments and selection" (here attached the draft). It is needed to explain the purpose of the processing operation, explain the legal basis for processing the data and clearly define the recipients of the data. In addition, it is necessary to add an indication of time-limits for storing the data and the rights of data subjects.

Information on the data protection practice, the contact details of the EBA Data Protection Officer (DPO) and the link to the EDPS' website will be published on the EBA website. DPO may be consulted at any time by any person and in particular by data subjects in respect of any matter relating to the application of the Regulation.

Moreover, the recruitment rules in the form of EBA recruitment guidelines and Annex 1 on the eligibility conditions will also be published. This currently revised document will include reference to the EC Regulation 45/2001 and the link to EBA's Implementing Rules on Data Protection.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

EBA's Implementing Rules relating to Regulation (EC) No 45/2001 with regards to the processing of personal data lay down the detailed rules pursuant to which a data subject may exercise his/her rights, the procedure for notifying a processing operation and the procedure for obtaining access to the register of processing operations kept by the Data Protection Officer.

As stressed in the vacancy notice, personal data are processed in compliance with the Regulation 45/2001 which means that data subjects may exercise their rights of: Access: Candidates have a right to contact HR and access or rectify their personal data linked with the selection procedure. Candidates are entitled also to access their own evaluation results regarding all stages of selection procedure (pre-selection, interview, written test).
Rectification: The data subjects have a right to update or correct their identification data.

On the other hand, the data demonstrating compliance with the admissibility criteria may not be updated or corrected after the closing date for the respective selection procedure; Blocking: Candidates can ask for blocking their application for a limited period of time, in order for data controller to verify the accuracy, including the completeness of the data. A data subject who has requested and obtained the blocking of data shall be informed thereof by the data controller, about the blocking and unblocking action.

Erasure: Candidates have a right to obtain from data controller the erasure of data (cancellation of the application);

Objection: Candidates have a right to object to the processing of data related to him/her (cancellation of application and appeal procedure against the decision taken).

9/ AUTOMATED / MANUAL PROCESSING OPERATION

1. Manual and partially automated processing operation:

Recruitment applications (CV, eligibility grid and motivation letter per vacancy notice) are to be submitted via email to the special dedicated email address/functional mailbox (vacancies@eba.europa.eu). The access to this mailbox has only a limited number of the HR staff. At the moment EBA does not use online application recruitment tools;

Applications are saved manually on the HR server with restricted access rights. At the same time the applications are also printed out and filed in the recruitment folder in the form of hard copies. A limited number of HR staff in charge of particular selection have access to the recruitment folders;

After the closing date for applications, HR staff pre-screens the received applications against eligibility criteria and completes a screening table (Excel sheet). All documents in relation to the selection panel proceedings are strictly confidential, saved on the HR drive, and the originals are filed in the recruitment folders. No unauthorised persons have access to the copies of these documents;

Applications (CVs and letter of motivation) of applicants are made accessible online exclusively to the Selection panel members in a dedicated confidential electronic folder for the evaluation;

Before receiving the applications and at any stage of the selection procedure, each member of a Selection panel is requested to confirm his/her duty of confidentiality/independence/impartiality and declare absence of conflict of interest with the candidates;

Each member of a Selection panel assesses the candidate's application on the basis of the selection criteria published in the vacancy notice;

After a short listing meeting, the Selection panel agrees on the candidates to be invited to interviews (usually 3 to 4 candidates with highest scores for selection criteria); The interviews are composed of a written test and oral interviews (i) with the Selection panel (ii) and with the Executive Director;

Interview with each candidate is assessed and scored by the panel;

After the interviews, the Selection panel members receive anonymous written tests and assess them anonymously;

All interviewed candidates are informed via email on the results of their performance and receive a letter of intent or information on their placement on the reserve list. Candidates are also informed via email on the closure of this selection procedure. The information on the status of the each selection procedure is also published on the EBA website as on-going, closed or cancelled (<http://www.eba.europa.eu/about-us/careers/temporary-agents>);

The selected candidates are advised to provide their personal data necessary to establish the personal file (extract from a criminal record register, education, work certificates, family information etc.) and undergo the pre-employment medical check-up to determine their physical fitness to perform their duty. As a result, they are invited to sign the contract of employment with the EBA.

10/ STORAGE MEDIA OF DATA

Documents received from the candidates are saved in HR drive and Outlook-folders with access rights limited to the HR-staff.

Data (hard copies of CV, motivation letter and recruitment documentation) are stored on paper during the processing in the office of the responsible HR staff.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

As in line with the Article 5 letter (a) of the Regulation 45/2001, the personal data may be processed if *"processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties ... or other legal instrument adopted"*.

Temporary/Contract Agents, SNEs:

Regulation (EU) No 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing EBA;

Temporary/Contract Agents:

Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS), and in particular Art. 27-34 (SR) in case of permanent staff and Art. 12-15 and Art. 82-84 (CEOS) for other servants.

SNEs

EBA Management Board Decision EBA DC 017 dated 12 January 2011 on Secondment of National Experts.

Since the participation in the recruitment procedure is not mandatory, the processing is also lawful under Article 5 letter d) of the Regulation 45/2001. Because of that, the applicants are informed in the vacancy notice itself to provide only relevant information needed to the evaluation of their application for the cause of recruitment. The data subjects should avoid providing any irrelevant data and should give their consent for processing the data by submitting the application.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

The access rights to the personal data of data subject are restricted to the EBA HR staff.

Recipients within Authority:

HR staff dealing with recruitment
Executive Director of the EBA/Appointing Authority
Selection panel members (for the purpose of evaluation and selection) EBA
Finance Officers (for reimbursement purposes)
Data subjects themselves, for the data that concern them individually.

Recipients outside Authority, if requested (European Union institutional bodies):

Internal Audit Service of the Commission and the Court of Auditors (for audit purposes) OLAF
Court of Justice of the European Union
European Ombudsman

In the case a candidate is placed on a reserve list, the information may be passed on to the Head of Unit/Director who requests to recruit a candidate for a similar vacancy.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Article 4 paragraph 1. letter (e) of Regulation 45/2001 states that 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.

TAs/CAs/SNEs:

Recruited applicants:

The personal data should be stored in personal file (Art. 26 of the Staff Regulations) for period of ten years as of the termination of employment or as of the last pension payment.

Not recruited applicants:

The retention period of data for unsuccessful candidates is three years after the closure of the recruitment procedure. The time-limit for storage of data is set in relation to the time-limits to be established for the possible review of the decision taken in the selection procedure (complaint to the European Ombudsman, appeal with the Civil Service Tribunal), as well as in accordance with Article 49 of the Implementing Rules to the Financial Regulation (for budgetary and audit purposes).

Non recruited applicants whose names were put on the reserve list of applicants:

The data relating to the non-recruited applicants on the "reserve lists" are kept in terms of the validity and the actual extension of the respective reserve lists, and then for the three years following the expiry of the list's validity.

Any further data required for statistical purposes should be kept in an anonymous form in the light of Article 4 paragraph 1. letter (e) of the Regulation 45/2001.

TAs/CAs/SNEs:

Supporting documents of recruited staff:

The collection and storage of original supporting documents is not required, but rather copies, certified copies are collected and filed.

Criminal records/police report/certificate of good conduct:

This kind of document is only required from the recruited staff, and only at the time of the recruitment (due to the legal obligation of Staff Regulations). Once the recruitment is finalised, the document is not kept in the personal file of staff member and it is replaced by a standard form stating that the person is suitable for the performance of his/her duties and enjoys his/her full rights of citizen. The criminal records are kept for two years in the staff member file.

Sensitive data:

The data on disability are deleted once they are no longer necessary for recruitment or reimbursement purposes or following the date when any follow-up procedure has been completed. However, in the case of successful applicants, such data can be forwarded to the personal file in case special arrangements are required throughout the whole period of employment.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

(Please, specify the time limits for every category, if applicable)

According to the EBA Implementing Rules, Article 12:

If the ground for the request of blocking data is the inaccuracy of the data, as referred in paragraph (1) letter (a), the Data Controller shall immediately block the data for the period necessary for verifying the accuracy and completeness of the data. A data subject who has requested and obtained the blocking of data shall be informed thereof by the Data Controller. He or she shall also be informed of the fact that data are to be unblocked at least 15 working days before they are unblocked. The Data Controller shall take a decision as soon as possible and at the latest within 15 working days of receiving a request for data to be blocked. If the request is accepted it shall be acted upon within 30 working days and the data subject notified thereof. Should the request for blocking be rejected, the Data Controller shall have 15 working days within which to inform the data subject by means of a letter stating the grounds for the rejection. In automated filing systems, blocking shall be ensured by technical means. The fact that personal data are blocked shall be indicated in the system in such a way as to make it clear that the data may not be used. Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof, or with the consent of the data subject or for the purpose of protecting the rights of third parties.

According to the EBA Implementing Rules, Article 13: The data subject shall have the right to obtain from the Data Controller the erasure of data if the processing thereof is unlawful. If the request is accepted, it shall be acted upon immediately. If the Data Controller deems the request unjustified, he or she shall have 15 working days within which to inform the data subject by means of a letter stating the grounds for the decision.

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

Not applicable

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Not applicable

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

The selection procedure is a processing operation that:

relates to health and to suspected *offences, offences*, criminal convictions or security measures, and, therefore falls under Article 27 paragraph 2. letter (a) of the Regulation 45/2001;

intends to evaluate personal aspects relating to the data subject, and, therefore falls under Article 27 paragraph 2.letter (b) of the Regulation 45/2001;

processes data Processing operations for the purpose of excluding individuals from a right, benefit or contract, and, therefore falls under Article 27 paragraph 2. letter (d) of the Regulation 45/2001.

17/ COMMENTS

PLACE AND DATE: London, 27/09/2013

DATA PROTECTION OFFICER: Joseph Mifsud

INSTITUTION OR BODY: EBA