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**Subject: Prior-checking Opinion regarding the updated notification for
appointment and engagement procedures at the Translation Centre for the
bodies of the European Union (EDPS case 2016-0377)**

On 14 April 2016, the European Data Protection Supervisor ('EDPS') received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on appointment and engagement procedures from the Data Protection Officer ('DPO') of the Translation Centre for the Bodies of the European Union ('CdT').²

As indicated by the DPO of CdT, this notification replaces the one analysed in EDPS case 2005-0124³. Therefore, this Opinion analyses and highlights only those practices which diverge from the earlier notifications and which do not seem to be in conformity with the principles of the Regulation. In this respect, the EDPS refers to its guidelines concerning the processing operations in the field of staff recruitment ('Guidelines').⁴

Additionally, the EDPS would like to draw your attention to the fact that the recommendations issued in the abovementioned Opinion remain valid.

1. Facts and analysis

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 We have therefore updated our register of notifications accordingly.

⁴ [Guidelines - European Data Protection Supervisor](#)

According to the information received, the scope of the notification has been extended since the processing operation now applies not only to temporary agents, but also to selection and recruitment procedures for other categories of staff, i.e. officials, contractual agents and trainees.

1.1. Information to data subjects

Articles 11 and 12 of the Regulation provide that data subjects must be informed of the processing of data relating to them and list a range of general and additional items. According to the Guidelines, a data protection notice should be posted on the website so that all candidates can be informed of their rights as well as of all necessary information concerning the processing of their data before the selection procedure begins.

The EDPS welcomes the fact that CdT has drafted data protection notices for each category of staff. According to the notification, these notices can be found in the DPO registry as well as on the CdT's intranet and internet websites.

However, the EDPS observes that the link provided in one of the vacancy notices on the CdT website was broken and that it was impossible to access the information.

As to the content of the data protection notice, it is important that all elements listed in both Articles 11 and 12 respectively are clearly and thoroughly indicated. It is in particular important that the notices clearly indicate the mandatory or optional character of the questions in the application form. This information is not included in the privacy notices provided by CdT.

Furthermore, the privacy notices refer to Article 5(d) - unambiguous consent of the data subject - as a grounds for lawfulness of the processing operation, in addition to Article 5(a) - processing necessary for the performance of a task carried out in the public interest on the basis of the Treaties.

In this context, the EDPS would like to draw your attention to the fact that it is not mandatory to mention the grounds for lawfulness in the data protection notice. If, however, CdT wishes to keep the reference to the lawfulness of the processing, the EDPS considers that it is enough to mention Article 5(a). While the recruitment procedure is indeed also lawful under Article 5(d), consent should be used with caution in the employment context. The privacy notices as they stand are therefore somewhat misleading.⁵

The EDPS **recommends** that CdT ensure that the data protection notices are effectively accessible to all candidates before the selection procedure begins, and that they are revised as suggested.

1.2. Conservation period

Pursuant to Article 4(1)(e) of the Regulation, data must not be stored in a form which permits identification of data subjects for longer than is necessary for the purposes for which the data were collected.

According to the notification, the data related to non-recruited candidates, including trainees, are kept for seven years after the expiry of the validity of the reserve list.

This conservation period seems excessive with regard to the purpose of the recruitment procedure. In the Guidelines, the EDPS recommends a conservation period of two years for personal data of unsuccessful candidates. For pre-selected but not recruited trainees, the starting

⁵ Stressing consent here can create expectations by data subjects, e.g. that their data would no longer be processed when they revoke their consent.

date for computing the storage period should be the official starting date of the traineeship period. The controller may need to keep financial documents relating to successful traineeship candidates for a minimum of five years after budgetary discharge.⁶ The EDPS would also like to draw your attention to Article 48 of the Rules of Application⁷ of the Financial Regulation which provide that *“personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes.”*⁸

The EDPS **recommends** that CdT reevaluate the conservation period in light of the above and provide justification for the need to keep the data longer, should it wish to do so.

2. Conclusion

In this Opinion, the EDPS has made recommendations to ensure compliance with the Regulation. Provided that these recommendations are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

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

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

Cc.: Data Protection Officer, CdT

⁶ See the Guidelines, p. 5-6.

⁷ Commission Delegated Regulation (EU) No 1268/2012, OJ L 362, 31.12.2012, p.1, as amended.

⁸ **Article 48**

Keeping of supporting documents by authorising officers
(Article 66(2) of the Financial Regulation)
(...)

The authorising officer shall set up paper based or electronic systems for the keeping of original supporting documents relating to and subsequent to budget implementation and budget implementation measures. The systems shall provide for:

(a) such documents to be numbered;

(b) such documents to be dated;

(c) registers, which may be computerised, to be kept identifying the exact location of such documents;

(d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate;

(e) keeping of documents relating to pre-financing guarantees for the institution and of a log to enable such guarantees to be adequately monitored.

Documents relating to operations not definitively closed shall be kept for longer than provided for in point (d) of the first paragraph, that is to say, until the end of the year following that in which the operations are closed. Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

(O.J. L 362, 31.12.2012, p. 1)