

ESMA Specific Privacy Notice – Selections and Recruitments

A specific privacy notice on personal data protection in relation to the selection and recruitment process of temporary agents (TA), contract agents (CA), seconded national experts (SNE) and trainees at ESMA

The European Securities and Markets Authority (ESMA) processes personal data in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000¹ on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([Regulation \(EC\) 45/2001](#)). As laid down in Articles 11 and 12 of the Regulation (EC) 45/2001, ESMA provides candidates with the following information prior to their application:

Identity of the Data Controller:

Executive Director of ESMA

Purposes of the processing operation:

To organise selection procedures with the aim of establishing reserve lists of successful candidates in view of future recruitment or of filling a particular vacant position and to follow the administrative procedure to recruit successful candidates.

Data subjects:

Candidates in the recruitment procedures for temporary, contract agents, national experts and trainees.

Legal basis:

- Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing ESMA, amended by the Decision No 716/2009/EC;
- Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS) in particular Articles 27-34 (SR), 12-15 and 82-84 (CEOS) thereof;
- ESMA Management Board Decision of 11 January 2011 on rules applicable to Seconded National Experts
- ESMA Executive Director Decision of 11 January 2011 on rules governing traineeships at ESMA.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:008:0001:0022:en:PDF>



Lawfulness of the processing:

In accordance with Article 5 (a) of Regulation (EC) 45/2001, the processing of the personal data is necessary for the performance of ESMA tasks carried out in the public interest. In addition, with regard to the data provided in the selection and recruitment procedures on voluntary basis (see section “*Data Concerned*” below), the data subject gives an explicit consent for their processing, which constitutes a complementary ground for lawfulness of data processing, notably with regard to sensitive data.

Data Concerned:

The data of candidates registered for the selection.

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

Categories of data subjects:

1. Identification data:

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

- Basic personal data allowing the applicant to be identified (name, surname, date and place of birth);
- 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 and professional work experience and training;
- Personal motivation for applying for a specific post (letter of motivation).

At the selection phase:

- Assessment of candidates against criteria outlined in the vacancy note (eligibility grid);
- 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, including:

- data related to health (in particular medical certificate/clearance and information 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):

During the selection phase candidates are requested to provide a medical aptitude certificate or to pass a 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 12(d) and 13 of the Conditions of Employment of Other Servants. These provisions require that a candidate may be recruited as a member of the staff only on 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 trainees/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)(a) of the Regulation 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)(b) of the Regulation; 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 provides that a member of the staff may be engaged only on 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.

The collection of the national police report/criminal record/certificate of good conduct is carried out in order to fulfil with the Staff Regulation's requirements. The collection of this document is only required from applicants who have been offered the contract of employment and not to these ones invited only for the interviews and not recruited.

Recipients of the data processed:

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

Recipients within Authority:

- HR staff dealing with recruitment
- Head of Operations Division
- Executive Director of ESMA/Appointing Authority
- Selection Board Members (for the purpose of evaluation and selection)
- ESMA Finance Officers (for reimbursement purposes)
- Data subjects themselves, for the data that concerns them individually.

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

- Internal Auditor and the Court of Auditors (for audit purposes);
- OLAF;
- Court of Justice of the European Union; and
- European Ombudsman.

In the case of a candidate being placed on a reserve list, the information may be passed on to the member of staff and their Head of Division/Unit who requests to recruit a candidate for a similar vacancy.

Date when processing starts:

Date of receipt of application.

Time limits for storage:

Article 4(1)(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.



ESMA will store the applications for varying amounts of time depending on the outcome of each application:

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 for appointment" 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.

Trainees:

The personal data (financial documents) of successful candidates should be kept for minimum of 5 years from the date on which the Authority grants discharge for the budgetary year to which the documents relate for audit purposes.

TAs/CAs/trainees/SNEs:

Supporting documents of recruited staff:

The collection and storage of original supporting documents is not required, but rather copies, certified copies or official certified translations 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 record is returned then to the person immediately after the recruitment.



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.

Right of access and rectification:

As stated in the vacancy notice, data subjects can 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), and not comparative data concerning other applicants.

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); and

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).

More information:

Should candidates have any queries, please address them in writing to the ESMA Data Protection Officer at dpo@esma.europa.eu.

Candidates have the right of recourse at any time to the European Data Protection Supervisor (EDPS) at edps@edps.europa.eu.