



Opinion on a notification for prior checking received from the Data Protection Officer of the Court of Justice on "Job applications and CVs of candidates"

Brussels, 4 July 2005 (Case 2004-284)

1. Proceedings

On 20 July 2004, the European Data Protection Supervisor (EDPS) sent a letter to all DPOs asking them to make an inventory of the cases likely to be subject to prior checking by the EDPS as provided for by Article 27 of Regulation (EC) 45/2001. The EDPS requested notification of all processing operations subject to prior checking, even those that started before the appointment of the EDPS and for which the Article 27 check could never be prior, but which had to be dealt with on an "ex-post" basis.

After receipt and analyses of the inventories, the EDPS identified certain priority themes and chose a number of processing operations subject to ex-post prior checking to be addressed. Staff evaluation is one of these priority themes.

Following the letter sent by the EDPS on 30 November 2004 to inform DPO's about these priority themes, the Data Protection Officer of the Court of Justice notified by e-mail on 2 May 2005 all cases falling within the priority themes of prior checking. This included the notification for the collection of (summer)job and traineeship applications, which falls under the theme of staff evaluation.

The dossier on the collection of job- and traineeship applications consists of the formal notification to the EDPS, the Decisions on summer-jobs and traineeships and a blank copy of the application form for traineeships.

Additional information was requested by telephone on Friday 17 June 2005. The answer followed by e-mail the same day. A second demand for information was made on Wednesday 22 June 2005. The answer was given immediately by telephone.

2. Examination of the matter

2.1. The facts

The European Court of Justice collects the spontaneous applications for jobs (temporary, auxiliary or contractual agents) as well as the applications for summer-jobs and traineeships. The applications are kept in locked cupboards in the Personnel Division. There are three different filing systems, one for each category of application. Applications are collected by name (alphabetically). All cupboards (files) are located in the same closet in the office of the responsible person in the Personnel Division. The Court of Justice acknowledges receipt of all applications.

In the case of spontaneous applications for jobs, the candidates determine themselves which information they send to the Court of Justice.

In the case of summer-jobs, the candidates have to submit an application in which they mention the working period of their choice. They have to attach a CV. Nothing is stated about the categories of information to supply when applying.

In the case of traineeships, a special form needs to be filled out and a CV plus justifying documents need to be attached. The following categories of data have to be provided: administrative data, information about education, language knowledge, goals, requested period and references.

Job applications as temporary, auxiliary or contractual agents are collected for a limited period of time and destroyed afterwards. (For example, the longest kept applications currently date from December 2003.) The purpose of this collection is to have a stock of potential candidates for vacancies which may occur.

Applications for traineeships and summer-jobs are collected in two different files alphabetically. In a first phase, all applications are put into cupboards. Once the deadline for applications is past, a list with the names, education and language knowledge of all candidates is sent to the Heads of Division looking for trainees or students to work in the summer. This is done under closed envelope by internal mail. If a Head of Division is interested in a certain person on the list, he/she has to consult the applications database in the Personnel Division regarding the application of his/her choice. The purpose of this collection is to have a stock of possible candidates for traineeships or summer-jobs.

Once the selection procedure is closed, only the applications of the selected trainees and students are kept. All unsuccessful applications are destroyed shortly after the relevant selection procedures have ended. According to the information in the notification form, data about successful candidates are kept for a few years. However, according to the latest information received, the applications of hired trainees and students are stored for administrative reasons for only the duration of their traineeship or summer-job.

2.2. Legal aspects

2.2.1. Prior checking

Retaining job and traineeship applications is considered as within the scope of Regulation (EC) 45/2001 since it involves the processing of personal data. Processing of personal data otherwise than by automatic means, is covered by the scope of the Regulation, providing that the personal data form part of a filing system. In this case the applications are retained in a paper version and stored in a structured cupboard-system. This processing falls within the scope of the Regulation.

Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks such as "processing operations intended to evaluate certain aspects relating to the data subject,

including his or her ability, efficiency and conduct" (Article 27(2)(b)). The collecting of applications typically qualifies as processing of personal data intending to evaluate personal aspects relating to the data subject and are therefore subject to prior checking.

Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. In this case the procedure to retain the data has already been established. This is not a serious problem as far as any recommendations made by the EDPS may still be adopted accordingly.

The notification of the DPO was received on 2 May 2005. Further requests for information did not suspend the deadline. According to Article 27(4) the present opinion must be delivered within a period of two months following receipt of the notification, which is not later than 4 July 2005, considering that 3 July was a Sunday.

2.2.2. Legal basis and lawfulness of processing

The legal basis of the processing of summer-job applications can be found in the Decision on students ("*Règlementation relative à l'engagement des étudiants*"). Article 1 states that "*a titre exceptionnel et individuel, dans les limites des disponibilités budgétaires, la Cour peut engager des étudiants dans ses services [...]*". For traineeships, Article 1 of the "*décision de la Cour de Justice, portant adoptions des règles relatives aux stages à la Cour*" states almost identically that "*A titre exceptionnel et individuel, la Cour peut accueillir des stagiaires.*"

The legal basis of the processing of other job applications is to be found in Article 12 of the Statute of the Court of Justice, which states that "*Officials and other servants shall be attached to the Court of Justice to enable it to function. [...]*". Article 1 of the conditions of employment of other servants of the European Community illustrates that temporary agents, auxiliaries and contract staff fall under this heading.

The lawfulness of the processing is covered by the performance of a task carried out in the public interest on the basis of legal instruments adopted on the basis of the Treaties establishing the European Communities or in the legitimate exercise of an official authority vested in the Community institution on the basis of Article 5(a) of Regulation 45/2001. As the Court needs to fulfil its task to have highly qualified staff and since part of the staff may be temporary, auxiliary or contract staff as well as trainees or students during the summer, the collection of applications falls within the scope of Article 5(a).

2.2.3. Data Quality

After careful examination, the EDPS is of the opinion that the data collected via the application form for trainees are in accordance with Article 4(1)(c) of Regulation (EC) 45/2001, as all data are relevant for the purpose of selection for which the collection is made. As regards the collection of the application of successful trainees for administrative reasons, the EDPS is of the opinion that Article 4(1)(c) is also complied with.

Spontaneous applications for jobs and applications for summer-jobs are not formalised and may contain other information. These additional data are not requested but given voluntarily

by the data subject who himself/herself makes the judgement as to those data being adequate, relevant and not excessive.

2.2.4. Compatible use and change of purpose

The processing analysed has a specific purpose, namely to assemble a stock of candidates for vacancies which may occur for temporary, auxiliary or contractual staff as well as for existing vacancies for traineeships and summer-jobs for students.

In the second case, after the selection procedure has ended, the purpose of the collection changes. Only the applications of successful candidates are retained for administrative reasons until the traineeship or summer-job has ended. This is fully compatible with the original purpose.

The EDPS is of the opinion that Article 4(1)(b) is complied with.

2.2.5. Transfer of data

In principle, the data contained in the job applications file is only handled by the Personnel Division. However, the purpose of collecting this data is to have a stock of possible candidates in case of need. It is therefore possible that in a given situation, data will be transferred within the institution, for example from the Personnel Division to a Language Division in need of personnel. Consistent with the purpose of this collection, when the occasion arises, the data may be transferred to the relevant Division of the Court under the conditions of Article 7, point 1 of Regulation (EC) 45/2001. This implies that personal data may be transferred within an institution only if it is necessary for the legitimate performance of tasks covered by the competence of the recipient. The EDPS therefore is of the opinion that the data should only be disclosed to the officials empowered to do the selection (eg. Heads of Division).

In the case of traineeships or jobs during the summer, two different phases have to be distinguished. In a first phase, namely until the closing date for applications, all applications are collected and put alphabetically in a cupboard. Next, a list with the names, degree of education and language knowledge is sent only to the Heads of Division by internal mail. If they are interested in having a trainee or a student for the summer, they have to go to the personnel division and check the database with applications. According to Article 7.1, the transfer of data has to be necessary for the legitimate exercise of a task covered by the competence of the recipient. The EDPS is of the opinion that this condition is complied with, since it clearly falls under the competence of a Head of Division to select trainees or students for summer jobs. However, it has to be clear that the Heads of Division can not store the data themselves, nor use them for another purpose than that for which they were collected.

Once the selection procedure is over, all unsuccessful applications are immediately destroyed. Only the data of the successful candidates are retained for the duration of their traineeship or summer-job at the Court of Justice and are not further processed.

2.2.6. Information to be supplied to the data subjects

The Regulation states that a data subject must be informed of the processing of data relating to himself/herself and lists a range of compulsory items of information which must be provided (identity of the controller, purposes of processing, recipients, right of access). Insofar as such information is necessary to guarantee the fair processing, additional information has to be supplied regarding legal basis, time-limits and the right to have recourse to the EDPS. In this instance, Article 11 of the Regulation applies, since data are collected directly from the data subject.

In the case of traineeships at the European Court of Justice, a special form has to be used to apply. The form is available on the website of the Court of Justice (http://curia.eu.int/en/instit/presentationfr/index_cje.htm). General information regarding traineeships is given on the same page. However, no reference is made to data protection legislation. The EDPS is of the opinion that the website of the Court of Justice and/or the application form should make reference to the information to be supplied to the data subject according to obligatory and additional provisions of Article 11 Regulation (EC) 45/2001.

The EDPS is of the opinion that the website also allows the Court of Justice to inform people who intend to send a spontaneous application, about their data protection rights. With regard to the procedure for summer students, an Article could be included in the "*Règlementation relative à l'engagement des étudiants*".

Since the Court of Justice acknowledges receipt of all applications, it is also possible to inform the data subjects again at that stage about the collection of their data as well as about all elements of Articles 11, 13 and 14.

2.2.7. Right of access and rectification

Under Article 13 (c) of Regulation (EC) 45/2001, the data subject has the right to obtain from the controller, at any time and without restraint, communication in an intelligible form of the data undergoing processing. Article 14 gives the data subject the right of rectification. As mentioned above, the data subjects should be properly informed about these rights. Also, a procedure should be established to guarantee both rights.

2.2.8. Retention of data

Regulation (EC) 45/2001 states that data may not be kept in a form which permits identification of the data subject any longer than is necessary for the intended purpose (Article 4(1)(e)).

As regards spontaneous job applications, all dossiers are destroyed periodically after a few years. The purpose of retaining the applications is to have a stock of candidates. The EDPS thinks that the collection for a limited period is justified, but is of the opinion that the reference of a few years is too vague. A determined period has to be established and should be communicated to the data subjects.

As regards the applications for summer-jobs and traineeships, only successful applications remain collected. The collection is done for administrative reasons for the duration of the traineeship or the summer-job. Given this purpose, the EDPS feels that it is important for the Court of Justice to be clear on the period of retention. It cannot be accepted that these applications are kept for a longer period than the duration of the summer-job or traineeship, since a longer period is not necessary for the intended purpose as mentioned in Article 4(1)(e) of the Regulation.

The EDPS is of the opinion that the destruction of unsuccessful applications for traineeships and summer-jobs shortly after the relevant selection procedures have ended is the correct way to proceed in the light of Regulation 45/2001.

2.2.10. Security measures

All files are kept in locked cupboards in one office in the personnel Division. Provided that only a limited number of staff of the Personnel Division has access, the EDPS is of the opinion that security measures are complied with.

Provided that the transfer of the list of candidates for traineeships and summer-jobs to the Heads of Division is done by internal mail using confidential envelopes, the EDPS also considers security measures to be complied with.

Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the following considerations are fully taken into account:

- The data concerning applications should only be transferred to the officials empowered to do the selection (eg. Heads of Division).
- The Heads of Division cannot store the data themselves, nor use them for another purpose than that for which they were collected.
- The website of the Court of Justice and/or the application form should make reference to the information to be supplied to the data subject according to obligatory and additional provisions of Article 11 Regulation (EC) 45/2001. The website also allows the Court of Justice to inform people who intend to send a spontaneous application, about their data protection rights. With regard to the procedure for summer students, an Article about data protection rights should be included in the "*Règlementation relative à l'engagement des étudiants*".
- Since the Court of Justice acknowledges receipt of all applications, it is also possible to inform the data subjects again at that stage about the collection of their data as well as about all elements of Articles 11, 13 and 14.
- It cannot be accepted that successful applications are kept for a longer period than the duration of the summer-job or traineeship, since a longer period is not necessary for the intended purpose as mentioned in Article 4(1)(e) of the Regulation.

- The transfer of the list of candidates for traineeships and summer-jobs to the Heads of Division has to be done by internal mail using confidential envelopes.

Done at Brussels, 4 July 2005

The Assistant Supervisor

Joaquín BAYO DELGADO

Follow-up Note

6 November 2006

All acting measures have been taken by the European Court of Justice on 27 October 2006.

The European Data Protection Supervisor