



Opinion on a notification for prior checking received from the Data Protection Officer of the Committee of the Regions on the management of spontaneous applications for a non-paid internship (study period) at the institution

Brussels, 27 October 2005 (Case 2005-215)

1. Proceedings

On 29 August 2005, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer of the Committee of the Regions a notification for *ex-post* prior checking relating to the management of spontaneous applications for a non-paid internship (study period) at the institution.

On 14 September 2005 the EDPS requested the Committee of the Regions DPO some complementary information. The answer was received on 15 September 2005. Further information was requested on 23 September 2005, and the response was received the same day. Finally, certain questions have been addressed on 10 October 2005, and the answer was received the same day.

2. Examination of the matter

2.1. The facts

Each year the Committee of the Regions (CoR) receives a significant number of applications for a short (non-paid) study period, a limited number of which can be granted. There are no deadlines for applications.

The personal data collected in this framework are stored in a central database, used both for administrative management of the applications and for the evaluation and analysis thereof. The processing in this framework implies operations such as collecting, storing, consulting, distributing and ensuring the administrative follow-up of data.

The purpose of the processing, then, is the management of the applications administratively (confirming receipt of the application, informing applicants of the outcome of their application, etc.), and the facilitation of the evaluation and analysis of the requests.

The data subjects of this processing activity are any person applying for a non-paid study period at the CoR. The data collected in the framework of an application for a study period concern personal data as follows: name, first name, gender, nationality, date and place of birth,

contact data (e-mail address, address, telephone number), academic and/or professional credentials (completed and/or ongoing studies, previous employment and/or traineeship experience) and other relevant information (language skills, IT skills, etc.). Indeed, the data received depends on the information contained in the applicants' spontaneous application. Although the CoR Internet pages indicate the required information (recent CV, contextual and personal reasons for applying, the requested timeframe and the service to which one would prefer to be assigned), it may be that the information provided goes beyond that. In such case, the "unnecessary" information is neither used for the selection process, nor for any other purpose. Furthermore, the DPO was expressly asked if a photo of the candidate was required *a priori* (before the recruitment is made), being the answer negative.

In the case under analysis, a difference is made concerning (1) the data regarding applicants for a study period, and (2) the data regarding persons recruited for a study period.

In case (1), the data gathered in this framework will be passively stored in a database until the end of the year following the year to which the application relates, albeit for administrative (i.e. correspondence with applicants) and statistical purposes only. Beyond that timeframe, data will be maintained in the database in an anonymous format, for statistical purposes only.

Paper documents received from the applicants for a study period will be stored until the end of the year following the year to which the application relates, after what they will be destroyed.

In case (2), the personal data concerning persons effectively recruited for a study period will be kept in the Traineeship Office's archives until the end of the year following the year during which the study period was completed. They will be stored in the Staff Unit's archives thereafter, for historical and/or statistical purposes only.

Apart from that, and in order to keep record of all beneficiaries of a study period at the Committee of the Regions and to allow the delivery of internship certifications upon request, the Traineeship Office will only maintain the following data regarding persons recruited for a study period (and related directly to the study period) in a separate file: name, first name and nationality of the trainee; start and end date of the study period; unit and internship advisor.

The notification form to the EDPS expresses that applicants will be informed of their rights regarding the personal data processed in the framework of the Committee of the Regions' internship programme by way of a specific privacy statement on the Committee of the Regions Internet website (purpose and nature of the processing, the right to access and to rectify information concerning them, time limits for storing data, etc.), published along with further general and procedural information regarding internships at the Committee of the Regions.

However, after having checked the Committee of the Regions website, the EDPS noted that these mechanisms had not been implemented. By e-mail dated 14 September 2005 complementary information concerning how candidates were being informed was asked. The answer received in this regard is the following:

" 1. In principle, a new traineeship application procedure (including an on-line application form, etc.) will be made operational as of October 1st 2005. To that effect, an entire new set of texts has been prepared informing the public about the CoR internship programme, both as far as paid traineeship and non-paid study periods are concerned (purpose of the programme, eligibility criteria, selection procedure, etc.). These documents include a specific privacy

statement, informing potential applicants of their rights in the field of the protection of personal data. It is foreseen to publish all these documents on the CoR website as of September 30th.

Both the regulations and the procedures currently governing traineeships and study periods at the CoR, date from before 2001. Hence, they do not explicitly inform applicants about their rights under regulation 45/2001. Nonetheless, since 2001 the CoR Traineeship Office has in its daily practice generally tried to live up with these rights (for instance: when applicants requested the Traineeship Office to modify personal data in their file, follow-up was ensured).

It may be added that, in addition to the information that will be made available as of September 30th, the rules governing traineeships and study periods are currently being revised. The new version of these rules will be more explicit on the matter of protection of personal data."

The EDPS notes that the mentioned on-line information is currently available on the CoR website.

After the request of further clarifications on 23 September 2005 concerning the method to be implemented, the EDPS was informed that the new on-line application form will be used in the framework of the paid traineeship at the CoR only. Thus, applications for non-paid study periods continue to be sent only by post.

Unlike the procedure for paid traineeships, the one regarding non-paid study periods will not change on October 1st. But the CoR did make use of the opportunity, created by the introduction of a new procedure regarding paid traineeships (and thus the modification of the information available in this regard on the Internet site), to update the information available on the website regarding non-paid study periods as well.

Furthermore, a copy of the "Important Legal notice. Specific Privacy Statement regarding applications for a study period at the Committee of the Regions" was sent. Accordingly, the present Opinion takes into account this document also.

2.2. Legal aspects

2.2.1. Prior checking

The notification received on 29 August 2005 relates to processing of personal data ("*any information relating to an identified or identifiable natural person*") as provided by Article 2(a) of Regulation (EC) No 45/2001 (hereinafter "the Regulation").

The processing activities are carried out in the present case by the CoR in the exercise of its activities, as outlined in Article 3(1) of the Regulation. they also fall within Article 3(2) of the Regulation. The processing of personal data is partly done by automatic means. Applications and supporting documents (notably CV's) are transmitted in paper format, and the processing is mainly being organised manually. Furthermore, the data collected are stored in a central database, which implies an automatic processing.

Under Article 27(2)(b) of the Regulation, processing operations intended to evaluate personal aspects relating to data subjects, including their ability, efficiency and conduct, shall be subject to prior checking by the EDPS.

In the case in point, the processing operation is directly related to an evaluation of the applicants' ability and suitability for a study period at the Committee of the Regions (in particular academic and professional credentials and language skills). The purpose of the processing is the administrative management of the applications (confirming receipt of the application, informing applicants of the outcome of their application, etc.), the facilitation of the evaluation and analysis of requests.

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, however, the processing operation has already been established. This is not a serious problem as far as any recommendations made by the EDPS may still be adopted accordingly.

Even if the CoR will include the Legal Notice applicable for the study periods on the Internet, both the application system and the processing of personal data will not change in this realm. For that reason, the present Opinion is, indeed, an *ex-post* prior checking case.

The notification of the DPO was received on 29 August 2005. According to Article 27(4) the present Opinion must be delivered within a period of two months. That would be no later than 30 October 2005. The period was suspended during one day, therefore, the Opinion must be adopted no later than 3 November 2005 (being the 1st and 2nd of November days of public holidays in Brussels).

2.2.2. Legal basis for and lawfulness of the processing

The processing operation is made on the basis of Decision 163/97 of 16 October 1997, governing un-paid study periods at the Committee of the Regions of the European Union.

The Recital of Decision 163/97 foresees: "*[c]onsidérant qu'il est dans l'intérêt de la construction européenne et, plus particulièrement, du Comité des régions de faire connaître ses activités à des personnes qualifiées du monde universitaire et de la recherche, des administrations nationales, régionales ou locales et qu'il convient par conséquent de prévoir une réglementation permettant d'admettre dans les locaux du Secrétariat général du Comité des régions des personnes en séjour d'étude pour une durée limitée*".

Point 3 of the Decision establishes "*[e]st susceptible d'être admise à effectuer un séjour d'étude au Comité des régions, toute personne possédant un diplôme reconnu de niveau universitaire et équivalent à la licence, et pouvant prouver la nécessité d'approfondir sa connaissance du Comité des régions pour des raisons relevant du domaine professionnel, universitaire ou de la recherche. Peuvent être admis également des fonctionnaires stagiaires nationaux, régionaux ou locaux pour lesquels un programme d'échange est prévu durant leur formation*".

Alongside the legal basis in relation to Regulation (EC) No. 45/2001 the lawfulness of the processing operation must also be considered. Article 5(a) of the Regulation stipulates that personal data may be processed only if: "a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body (...)".

The collection and further processing of personal data of the candidates for a study period is carried out in the public interest and come under the scope of the legitimate exercise of official

authority vested in the Committee of the Regions. The legal basis found in Decision 163/97 supports the lawfulness of the processing operation.

2.2.3. Data Quality

As already mentioned in point 2.1 of the present Opinion, the data collected in the framework of an application for a study period concern only certain categories of personal data.. Apart from that, since there is no specific application form, the applications sent by the candidates 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.

The EDPS is of the opinion that the data collected are in accordance with Article 4(1)(c) of Regulation (EC) 45/2001, since all data are relevant for the purpose of candidate selection for which the collection is made.

2.2.4. Compatible use / Change of purpose

Article 4 (1) (b) of the Regulation points out that personal data must be "collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes...". Indeed, the data collected are only used for facilitating the internal selection procedure for non-paid study periods in the CoR and under no circumstances such data are used for other purposes, including direct marketing purposes. Thus, the original purpose is fully respected.

2.2.5. Conservation of data/ Data retention

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. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes" (Article 4(1)(e) of the Regulation).

The data and time period of conservation of both case (1) and (2), as described in point 2.1 of the present Opinion, are reasonable in the light of the specifications above made, bearing in mind that the system implies an on-going process without deadlines, and therefore Article 4(1)(e) of the Regulation is respected. Furthermore, when data are kept for a longer period, the information is restricted to that necessary for the purpose pointed out in the paragraph above, what results also in respect of Article 4(1)(e) of the Regulation.

2.2.6. Transfer of data

Article 7 of the Regulation stipulates: "(1) Personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient".

The personal data compiled in the framework of the present case are disclosed solely and exclusively to the members of staff in charge of the Committee of the Regions Traineeship Office.

The main elements of the applications (academic and/or professional background of the applicant, linguistic profile, requested timeframe, etc.) are made available to all the Committee of the Regions' services concerned, albeit in an anonymous format, allowing the latter to verify whether any of the requests fits their needs.

When appropriate, and insofar a unit expresses a sincere interest in one of the profiles thus on offer, the Traineeship Office may disclose further personal data regarding the concerned applicant to the internship advisors of the interested unit.

The personal data obtained will not be divulged to any third parties, unless insofar this would be necessary for the purposes indicated above. Under no circumstances will the personal data be divulged for direct marketing purposes.

Thus, personal data is transferred within the institution since it is necessary for the selection of the candidates for the study period, and therefore, Article 7 of the Regulation is respected.

2.2.7. Right of access and rectification

Applicants may, at any time, contact the Committee of the Regions Traineeship Office to verify the accuracy of the data. Where appropriate, applicants can request the Traineeship Office to rectify any inaccurate or incomplete information. The Traineeship Office will make the requested modifications as soon as possible, and in any case, no later than two weeks after the request.

It can be observed, thus, that articles 13 and 14 of the Regulation are respected.

2.2.8. Information to the data subject

The notification form expresses that applicants will be informed of their rights regarding the personal data processed. The text of the "Legal Notice" is currently available on-line. The EDPS has examined it in the light of Article 11 of the Regulation, noting that this rule is respected by the mentioned text.

It has to be pointed out, notwithstanding, that since it is not possible to check whether the applicants have effectively read the website before sending their application, and thus, have been informed, it is advisable that upon the acknowledgement of receipt of the application, a reference be made to the website as far as the obligation to provide information is concerned.

2.2.9. Security measures

After careful analysis by the EDPS of the security measures adopted, the EDPS considers that these measures are adequate in the light of Article 22 of Regulation (EC) 45/2001.

Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations are fully taken into account. In particular, the Committee of the Regions:

- should include, in the confirmation receipt of the application, a reference to the website (or any other mean used) containing the information to the data subject, in order to assure that every candidate be provided with the mentioned information.

Done at Brussels, 27 October 2005

Peter HUSTINX
European Data Protection Supervisor