



Opinion on a notification for prior checking received from the Data Protection Officer of the Committee of the Regions on the management of on-line spontaneous applications for temporary and contract posts

Brussels, 28 October 2005(Case 2005-176)

1. Proceedings

On 29 August 2005, the European Data Protection Supervisor (EDPS) received a notification from the Data Protection Officer of the Committee of the Regions (CoR) for an ex-post prior checking relating to the management of on-line spontaneous applications for temporary and contract posts at the CoR.

The dossier on the collection of job applications consists of the formal notification to the EDPS, a copy of the recruitment procedure, a blank copy of the spontaneous application on-line and a copy of the "Specific Privacy Policy Statement" published on the CoR's website.

A short questionnaire was sent by e-mail on 12 October 2005 for further information. The replies were received on 14 October 2005.

2. Examination of the matter

2.1. The facts

Throughout the year, the Committee of the Regions collects on-line spontaneous applications for temporary and contract staff to be employed in the different units of the institution.

The processing in this framework implies operations such as collection, organisation, storage, consultation and distribution of CVs in order to set up a reserve list of potential temporary or contract staff.

The data subject of this processing activity is any person applying for a position as member of the temporary or contract staff within the Committee of the Regions (job applicant). The categories of data collected in the framework of spontaneous applications are the following: personal data (name, sex, nationality, date of birth), contact data (email address, address, telephone number), academic and professional data (studies and previous employment) and other relevant information (language skills, IT skills). Curriculum vitae (CV) must also be attached to the on-line application in one of the CoR's three working languages (English, French and German).

Upon submission of successful applications, the candidates receive an acknowledgment of receipt and a personal number.

The job applications are treated by three people in the Personnel Unit of the CoR. The data sent via the on-line application form are stored in a database and the CVs are stored in a separated drive. The applications selected on request from the Heads of Units are printed, sent to them and then stored in closed offices. In case applications are sent in paper format, they are also locked in secured offices of the Personnel Unit.

All data are stored and actively processed for a period of two years and afterwards they are immediately destroyed.

2.2. Legal aspects

2.2.1. Prior checking

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

The processing of data is carried out by the Committee of the Regions in the exercise of its activities, as outlined in Article 3 (1) of the Regulation. In view of the fact that the on-line applications and CVs attached are stored in databases and in closed offices, both automatic and manual methods are used. It follows that this "mixed" processing operation falls within the scope of the Regulation, as it is provided by Article 3 (2).

According to Article 27 (2) (b) of the Regulation, processing operations intended to evaluate personal aspects relating to data subjects, including their ability, efficiency and conduct, are likely to present specific risks to the rights of data subjects; they shall therefore be subject to prior checking by the European Data Protection Supervisor. Indeed, on the facts, the processing operation carried out by the CoR concerns the evaluation of the candidates' ability to work as temporary or contractual agents in the different units of the CoR.

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 should not raise 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 29 August 2005. According to Article 27(4) the present opinion must be delivered within a period of two months, that is no later than 30 October 2005. The period was suspended once for 2 days; therefore the Opinion must be delivered no later than 3 November 2005 (considering that the 1st and 2nd November are public holidays in Brussels).

2.2.2. Legal basis for and lawfulness of the processing

The legal basis of the processing operation can be found in the Regulations and rules applicable to officials and other servants of the European communities (hereinafter, "the RAA").

More specifically, Article 12 of the RAA indicates that the engagement of temporary staff "shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities ...".

Furthermore, Article 82 of the RAA provides that "contract staff shall be selected on the broadest possible geographical basis from among nationals of Member States and without distinction as to racial or ethnic origin, political, philosophical or religious beliefs ..."

The legal basis of a processing operation is interlinked with its lawfulness. As it is stated in Article 5 (a) of the Regulation, personal data may be only processed if "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...". On the facts, the collection and further processing of personal data of job applicants is carried out in the public interest on the basis of the RAA and adopted in the legitimate exercise of an official authority, namely the Personnel Unit, vested in the Committee of the Regions. Hence, the legal basis found in the RAA supports the lawfulness of the processing operation.

2.2.3. Data Quality

According to the Article 4 (1) (c), "data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed ". The data collected in the present case are adequate, relevant and non excessive for the administrative management as well as the efficient selection procedure of temporary and contract staff.

After careful examination, 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 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 of temporary and contract staff within the CoR, including the involved administrative follow-up 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

It is clear from Article 4 (1) (e) of the Regulation 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. 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".

On the facts, once the two-year period is expired, all data, collected through the on-line application form and in paper format, are destroyed.

It follows that, the data are conserved for a reasonable period in accordance with Article 4 (1) (e) of the Regulation.

2.2.6. Transfer of data

Under Article 7 (1) of the Regulation, "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".

In this case, the candidates' personal data are only transferred to the Heads of Units on request, from the Personnel Unit. Thus the stored personal data are only transferred within the CoR, since they are necessary data for the selection procedure of temporary or contract staff, in accordance with Article 7 (1) of the Regulation.

2.2.7. Processing of personal number or unique identifier

Article 10 (6) of the Regulation 45/2001 provides that "the EDPS shall determine the conditions under which a personal number or other identifier of general application may be processed by a community institution or body". Here is not the case of establishing the conditions under which the CoR may process a personal number, but just to recognize that the CoR's use of a unique identification number is reasonable because it is a means of facilitating the processing task.

Indeed, upon submission of an application form, the candidates receive their personal number. Thus, the use of this personal number has no other purpose than to identify the data subject and to enable him/her to contact the Recruitment Office.

2.2.8. Right of access and rectification

All personal data are encoded directly and on-line by the applicants, thus they can have access to their data. This complies with the right of access, as indicated in Article 13 of the Regulation.

Moreover, where necessary, applicants can inform the Recruitment Office of any corrections to be made by e-mail. The requested modifications are made one week after the data subject's request is received. The right to rectification "without delay", as envisaged in Article 14 of the Regulation, is therefore respected.

2.2.9. Information to the data subject

According to Article 11 of the Regulation, the controller shall provide a data subject from whom data relating to himself/herself are collected with at least the following information, except where he or she already has it: the identity of the controller, the purposes of the processing operation, the recipients of the data, whether replies to the questions are obligatory or voluntary, the existence of the right of access to and the right to rectify, etc..

In this regard, the EDPS has carefully examined a document enclosed with the notification form, concerning the data subjects' rights. It is called "Specific Privacy Policy Statement" and it is published on the CoR's website, under the title "Personal Data Protection".

The EDPS notices that the legal basis of the processing operation as well as the right to have recourse at any time to the EDPS are not indicated on the CoR's website.

Furthermore, underneath the on-line application form, it is stated that the information will be stored in the Personnel Unit's database according to the "European Union's Privacy laws". It

would be more appropriate to refer to the EP and Council Regulation (EC) 45/2001, as it is already indicated in the "Specific Privacy Policy Statement".

In the light of the above, the EDPS is of the opinion that the data subject should be informed of the above, in compliance with Article 11 of the Regulation.

2.2.10. Security measures

According to Article 22 of the Regulation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

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 the Regulation.

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:

- It is recommended that the legal basis of the processing operation as well as the right to have recourse at any time to the EDPS are indicated on the CoR's website.
- Underneath the on-line application form, it is stated that the information will be stored in the Personnel Unit's database according to the "European Union's Privacy laws". It would be more appropriate to refer to the EP and Council Regulation (EC) 45/2001, as it is already indicated in the "Specific Privacy Policy Statement".

Done at Brussels, 28 October 2005

Peter HUSTINX
European Data Protection Supervisor