

Opinion on a notification for prior checking received from the Data Protection Officer of the Council on the "Selection procedure for trainees at the General Secretariat of the Council of the European Union"

Brussels, 12 June 2007 (Case 2007-217)

1. Procedure

Notification within the meaning of Article 27(3) of Regulation No 45/2001 concerning the "*Selection procedure for trainees at the General Secretariat of the Council*" case was given by the Data Protection Officer (hereinafter referred to as the "DPO") of the Council of the European Union (hereinafter referred to as "the Council") by letter received on 2 March 2007.

In connection with this notification, questions were put to the Council's DPO by e-mail on 11 May 2007 and replies received on 22 May 2007.

2. The facts

The case relates to a processing operation carried out by the Council's Traineeships Office for the selection of trainees at the General Secretariat of the Council (hereinafter referred to as "the Council"). Selection for the spring and autumn traineeships takes place once a year.

The purpose of the processing operation is

- to create, on an annual basis, a database of applicants wishing to complete a traineeship at the Council
- to carry out a pre-selection of applicants with the help of IT tools making applicants' data accessible on-line to heads of units and departments in the Council, and
- the final selection of trainees by the Traineeships Office.

The processing operation is carried out in accordance with Article 207 of the EC Treaty, Article 23 of the Council's Rules of Procedure, Council Decision 2004/644/EC of 13 September 2004 adopting implementing rules concerning Regulation (EC) No 45/2001 and Decision No 09/06 relating to traineeships organised by the Council. The Decision refers to three types of data subjects: paid trainees, unpaid trainees and national officials. The contact persons designated by the applicants in the event of an emergency are also data subjects. The Traineeships Office proposes to introduce the selection system for paid trainees as of June 2007. The possibility of encoding applications for unpaid traineeships and traineeships reserved for national officials will be available shortly.

An interdepartmental agreement is currently being negotiated (with negotiations having reached the final stage) between EPSO and the Council's Human Resources Directorate. The agreement is entitled "provisional agreement on support services for applications for the selection of trainees at the GSC". The major advantage of this interinstitutional cooperation for the Council is that it can capitalise on EPSO's experience in on-line registration for competitions. The sole aim of the agreement is to guarantee the level of technical service provided by EPSO as well as the smooth functioning of the trainee selection procedure using on-line IT tools. In particular, EPSO, as a technical processor, will make its technical infrastructure (website, servers, databases) available to the Council. To that end, EPSO will adapt some programming components for encoding Council traineeship applications, in particular the on-line registration forms, according to the Council's requests. EPSO may have access to some data exclusively in the context of requests to exercise rights relating to the protection of personal data (access, rectification, blocking, erasure and objection rights) made by applicants and forwarded by the Council or ordered by the EDPS.

Role of the COUNCIL:

Article 10 of the agreement states that it is for the Council, as the controller, to ensure that the data processing complies with the provisions of Regulation No 45/2001. It should, in particular, ensure that the rights of data subjects (rights of access, rectification, blocking, erasure, objection and notification to third parties) are safeguarded. The Council should also ensure that the time-limits agreed for storing personal data, as well as the confidentiality and security of data processing, are observed. When it avails itself of EPSO's processing services, the Council should, where necessary, supply additional instructions in accordance with the agreement. These instructions must comply with the processing notification to the EDPS.

Role of EPSO:

Article 11 of the agreement provides that EPSO, as processor, should process data strictly in accordance with the agreement or any additional instructions given by the controller, in particular with regard to the purposes of the processing operation, the categories of data concerned, the recipients, the time-limits for storing the data, and the means by which the data subject may exercise his rights. EPSO will, within the time-frame laid down, implement justified requests relating to access to and rectification of data, data blocking and erasure, and the exercise of rights of objection and notification to third parties. EPSO undertakes to introduce appropriate technical and organisational measures to ensure the confidentiality and security of the processing operation in accordance with Articles 21 and 22 of Regulation No 45/2001. In particular, EPSO will limit data access solely to staff members responsible for implementing the contract and will, for a period of x years (the time-limit is not indicated in the agreement), keep a record of data access by its staff and staff of the authorised Council departments as well as of amendments and deletions by applicants.

Procedure:

The main stages of the processing procedure are as follows:

- ✓ Collection of applications for a Council traineeship during the registration period. At this stage, the on-line application (eCV) consists of the detailed CV, the choice of departments, the letter stating the reasons for the application using an on-line application form (eCV) available on the Internet and other data included in the "registration form";
- ✓ End of the registration period;
- ✓ Eligibility of applications (Traineeships Office);
- ✓ Access to relevant applicants for the departments/units concerned to enable them to make their choice;
- ✓ Pre-selection of traineeship applicants by the different departments/units;
- ✓ Request for additional certificates from pre-selected applicants by post (copy of identity card or passport, proof of diplomas or professional experience);
- ✓ Evaluation of complete file by the Traineeships Office;
- ✓ Selection of trainees and launch of recruitment process.

Traineeship applicants connecting to the Council website by Internet are re-directed to the EPSO website. In the initial phase, they can register, i.e. create their EPSO file or electronic profile, and are then asked to send their CV in electronic format (eCV) and complete the form on-line. All these data will be stored on a secure EPSO database accessible only by those responsible in the Council's Traineeship Office. For pre-selection, these officials in the Traineeships Office may grant consultation rights to heads of the Council departments/units for which traineeship applications have been submitted. This consultation service is provided via the IntraComm network using EPSO's standard eRL (Electronic Reserve List) tool. Although the IntraComm network is shared by several institutions, only heads of the relevant Council units and departments will have access to the applications of potential trainees.

The following data are needed to create the EPSO file:

surname currently used, first name, e-mail address and password.

The on-line form is made up of the following components:

- ❖ personal data identifying the applicant: surname, first name, surname currently used, date of birth, citizenship(s), disability (yes/no), address, town, postcode, country, e-mail address, telephone number, mobile number;
- ❖ reference to whether it is a compulsory traineeship as part of studies, whether the applicant is currently a national official, whether another traineeship has been completed in another EU institution or body (stating which institution and dates of traineeship), or whether the applicant has completed at least the first cycle of a course of university studies by the deadline for the lodging of applications;

- ❖ for paid traineeships, applicants must supply information to demonstrate their motivation to complete a traineeship in the GSC; choice of a maximum of three Council departments and reasons for that choice, traineeship period desired and information on the person to be contacted in the event of an emergency (address, home telephone number and mobile number);
- ❖ information supplied by the applicant in the context of the selection procedure in order to assess whether he meets the skills and qualifications profile set out in the call for expressions of interest: studies (type of education, name and address of establishment, main subjects, dates and qualifications obtained), dissertations, articles, publications, professional experience, IT and language skills.

Processing will be both automated and manual. The encoding of CVs and the on-line form completed and sent by all three categories of data subjects will be processed automatically by automated processing (using the eRL search tool). There will also be a non-automated part as, in order to complete their files, applicants selected by the GSC, in particular paid and unpaid trainees, will have to send the Traineeships Office attestations by post, in particular a copy of their identity card, diplomas obtained and proof of professional experience.

In addition, applicants selected as paid and unpaid trainees will have to submit the following documents before the beginning of their traineeship:

- an extract from their police record or a certificate of good conduct issued in accordance with the national law of which the applicant is a national;
- a copy of diplomas or official certificates;
- a medical certificate to the effect that they are fit to work; and
- a declaration indicating whether the applicant is in receipt of a maintenance grant, an allowance from any other source or remuneration from his employer and, if so, the amount thereof.

The data recipients are as follows:

- heads of the different Council units and directorates responsible for recruiting Council trainees. Personal data such as sex, age and nationality will not be accessible to them during the applicant pre-selection stage. This feature has been confirmed by EPSO's technical team;
- the other EU institutions; the Traineeships Office will send them a list of trainees who have completed a traineeship at the Council in order to ensure that they do not undergo a second traineeship in another institution. The data transmitted will consist of the surname, first name, date of birth, nationality and dates of the beginning and end of the traineeship;
- EPSO, which may have access to some data exclusively in the context of requests to exercise rights relating to the protection of personal data (access, rectification, blocking, erasure and objection rights) made by applicants and forwarded by the Council or ordered by the EDPS.

With regard to the right of access for data subjects, it is stated that the procedure will comply with Section 5 of Decision 2004/644/EC of 13 September 2004 on the procedure for data subjects to exercise their rights. In this case, by consulting their EPSO profile each applicant can check their personal data and amend them on-line at any time up to the deadline for registration. It is also possible for applicants already registered to amend their CV up to the deadline for amending CVs, which is also the deadline for registration, i.e. 31 August 2007. After the deadline for registration, only personal data identifying the applicant may be amended by the individual concerned, i.e. address, road or street, postcode, town, country, telephone number, fax number, citizenship, sex and e-mail address. Data relating to the conditions for admission, in particular the CV and the on-line form, may not be amended after the deadline for registration. Data subjects wishing to make such amendments must submit a justified request directly to the Traineeships Office which will then ask EPSO to make the amendment.

For any requests to block or erase data, data subjects must also contact directly those responsible in the Traineeships Office, and EPSO will, in accordance with the agreement, act on the Council's instructions. The agreement states that the reply will be sent within 15 working days as from the date on which the relevant department receives the letter; however, it may send a duly justified holding reply under the conditions provided for in point 4 of the Code of Good Administrative Behaviour on dealing with enquiries (i.e. in the case of documents requested, correspondence, telephone calls and e-mail). The time-limit for blocking or erasing data is a maximum of 10 working days for computerised data, with the period starting only as from the date the competent authority takes the final decision on the request to block or erase data (an administrative decision taken by the EPSO or, in the event of dispute, a decision taken by the EDPS or the competent court). The same maximum time-limit is applied for data in paper form.

With regard to the right to information, an information note will appear on the Council website and applicants must give their consent before registering. The note is entitled "*Specific privacy statement for the trainee selection procedure at the GSC*" and the following information is given: identity of the controller, purposes of the processing, recipients of the data, the obligatory or voluntary nature of the replies, the existence of rights of access and rectification, the legal basis, the time limits for storing the data and the right of recourse to the EDPS. It should be noted, however, that the statement indicates that a purpose of the processing is to assist the Traineeships Office in the selection of trainees by providing it with a validated database of applicants and gives departments responsible for the recruitment of trainees at the General Secretariat of the Council as recipients of the data. With regard to rights of access and rectification, the statement indicates that by consulting their EPSO files, all applicants may at any stage verify their personal data and amend them online, with the exception of the name and date of birth, in which case a formal request must be sent by e-mail to EPSO (epso-PDP@ec.europa.eu). Applicants who have already registered may amend their CV up to the deadline.

However, after the deadline for registration only personal data identifying the applicant may be amended. With regard to the data concerned, the first paragraph mentions that the data needed to create the EPSO profile are stored by EPSO for two years after the database has expired. They may be re-used to register for other selection procedures. If an applicant wishes to delete his EPSO profile, he must send EPSO an e-mail. A confirmation mechanism is activated to check the identity of the applicant making the request for deletion.

The data storage policy adopted by the Council is as follows:

- data relating to applicants not validated by the relevant Council departments and units will be erased no later than one week after the deadline for submitting applications. No information will be kept on paper;
- data concerning validated applications not selected will be stored for two years starting from the deadline for submitting applications. This time limit corresponds to the deadline for any complaints¹ and to the fact that these applications remain valid in the event of the withdrawal of another applicant. No information will be kept;
- in the case of applicants selected for a traineeship, electronic data and a paper version will be stored for two years starting from the date on which the traineeship ends and will then be destroyed. A limited number of data in paper form will be stored for 50 years for the purposes of any attestations that may be requested by the individuals concerned. These data relate to the surname, first name, date of birth, dates when the traineeship was undergone and the Council department/unit in which it was undergone. It has been indicated that some former trainees have asked the Traineeships Office for an attestation before taking their retirement, hence the Traineeships Office's need to store a number of data for 50 years.

Electronic data will be stored at DIGIT's Data Centre in Luxembourg and applicants' paper files will be kept in locked cupboards in the Traineeships Office. Access to the premises is restricted to staff of the Traineeships Office using their staff badges.

3. Legal aspects

3.1. Prior checking

Regulation No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1)). In the case in point, the data processing is carried out by the Council and falls within the scope of Community law since it is part of activities under the first pillar.

¹

Any complaint to the European Ombudsman must be brought within two years starting from the date on which the applicant was informed of the facts regarding which the complaint is brought.

Processing will be both automated and manual. For certain data in particular, such as the CV and the on-line form, collection and processing will be automated. The collection of data relating to a copy of the passport, diplomas and professional attestations forms part of a filing system or is intended to form part of one. Article 3(2) is therefore applicable in this case.

Accordingly, the processing falls within the scope of Regulation No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes processing operations likely to present specific risks to the rights and freedoms of data subjects subject to prior checking by the EDPS. Article 27(2) contains a list of processing operations likely to present such risks, such as "*processing of data relating to health and to suspected offences, offences, criminal convictions or security measures*" (Article 27(2)(a)) and "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" (Article 27(2)(b)). The data in question are indeed personal data intended to evaluate personal aspects relating to the data subject, i.e. their ability to complete a traineeship at the Council. Moreover, given that data relating to criminal convictions and health will also be collected as part of the selection procedure, the processing operation is likely to present risks under Article 27(2)(a). That is why this processing operation falls within the scope of the prior checking procedure.

The processing operation in question will commence on 15 June 2007, which means that checking will be a genuine prior checking.

The formal notification was received through the post on 2 March 2007. An e-mail requesting additional information was sent on 11 May 2007. In accordance with Article 27(4) of the Regulation, the two-month time limit within which the EDPS must deliver an opinion was suspended. Replies were given by e-mail on 22 May 2007. Accordingly, the EDPS will deliver his opinion by 14 June 2007 (4 June plus an 11-day suspension period).

3.2. Lawfulness of the processing

The lawfulness of the processing operation must be examined in the light of Article 5(a) of Regulation No 45/2001, which stipulates that the processing must be "*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*".

The processing operation under consideration involves the collection of data concerning individuals wishing to apply for a traineeship at the Council. The selection procedure for these applicants falls within the scope of 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 and in the legitimate exercise of official authority vested in the Community institution. This task within the meaning of Article 5(a) of the Regulation is in particular intended to provide the applicants concerned with a practical knowledge of the functioning of Council departments as part of their studies or professional life. The processing operation is therefore lawful.

Article 207 of the EC Treaty, Article 23 of the Council's Rules of Procedure and Decision No 09/06 on traineeships organised by the Council form the legal basis for the processing operation.

The legal basis is therefore valid and supports the lawfulness of the processing operation.

Moreover, data relating to criminal convictions and health are described as "special categories of data" in Article 10 of the Regulation and will be analysed under section 3.3.

3.3. Processing of special categories of data

Under Article 10(1) of Regulation No 45/2001, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) or (3).

It should be stressed that since trainees are treated in the same way as Council staff, Article 28(a) and (e) of the Staff Regulations of Officials of the EC applies.

The justification for collecting a medical certificate as well as information relating to a potential disability of the data subject is found in Article 28(e) of the Staff Regulations of Officials, which states that an official may be appointed only on condition that he is physically fit to perform his duties. Collection of such data therefore complies with Article 10(2)(b) of the Regulation, which states that the prohibition of the processing of data concerning health does not apply where *"processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof"*.

It is important to note that those responsible for collecting medical certificates and information relating to disability in the Traineeships Office are not health practitioners. Consequently, the EDPS recommends that these persons be reminded that they are subject to the equivalent professional secrecy in order to ensure compliance with Article 10(3) of the Regulation.

The EDPS welcomes the fact that the heads of the different Council units and departments have no access to data concerning the sex, age and nationality of the data subject during the trainee pre-selection phase. That being so, the EDPS recommends that information relating to the data subject's disability no longer be accessible to the heads of Council units and departments during the applicant pre-selection phase, as it is a sensitive piece of data and on the grounds of non-discrimination.

Moreover, the case in point involves processing of personal data relating to offences and criminal convictions, since the extract from the judicial record required may reveal the situation of the data subject as regards criminal law (i.e. whether the data subject has a criminal record or not).

Article 10(5) of the Regulation provides that processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof. As stated above, processing of this data is justified by Article 28(a) of the Staff Regulations of Officials, which states that an official may be appointed only on condition that he enjoys his full rights as a citizen. The conditions of Article 10(5) of the Regulation are therefore met.

3.4. The controller and the processor

Pursuant to Article 2(d) of the Regulation, the controller is "*the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data*". The controller is responsible for ensuring that the obligations laid down in the Regulation are met (information to be given to the data subject, ensuring the rights of the data subject, choice of processor, notification of the data protection officer, etc.). The processor is the "*natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller*" (Article 2(e)).

In this instance, the Council is contracted with EPSO under an agreement on support services for applications for the selection of trainees at the Council.

The Council is regarded as controller as it is the Council which determines the purposes and means of collecting data concerning the data subjects in compliance with the agreement². The Council is solely responsible for managing the data collected. EPSO, as the technical processor, will make its technical infrastructure (website, servers, databases) available to the Council. EPSO may also, at the Council's request and on behalf of the Council, have access to some data exclusively in the context of requests to exercise rights relating to the protection of personal data (access, rectification, blocking, erasure and objection rights) made by applicants and forwarded by the Council or ordered by the EDPS.

²

Under Article 10 of the agreement, the GSC ensures that the rights of the data subjects are safeguarded and, where necessary, supplies EPSO processing departments with instructions in addition to the agreement.

The Council's and EPSO's respective roles therefore comply with the provisions of Article 2(d) and (e) of the Regulation.

3.5. Data quality

In accordance with Article 4(1)(c) of the Regulation, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed. The processed data described at the beginning of this opinion, and which are both sensitive and non-sensitive, must be regarded as satisfying these conditions. The data required are needed for the evaluation and final selection of applicants for a traineeship at the GSC. The EDPS is satisfied that Article 4(1)(c) of Regulation No 45/2001 is duly complied with in this respect.

The data must also be processed "*fairly and lawfully*" (Article 4(1)(a) of Regulation (EC) No 45/2001). The lawfulness of the processing has already been discussed (see section 3.2 above). The issue of fairness is linked to the information which must be transmitted to the data subject. That point is discussed in section 3.9 below.

Article 4(1)(d) of the Regulation stipulates that "*data must be (...) accurate and, where necessary, kept up to date*". Furthermore, under that Article, "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*". The system itself ensures that data are accurate and kept up-to-date. Data subjects may, by consulting their EPSO profile, check their personal data at any time up to the deadline for registration and amend them on-line in order to make their file as complete as possible. Updating of the data is also guaranteed after the deadline for registration as data subjects may submit a request to the Council's Traineeships Office in the event of changes. See section 3.8 below for rights of access and rectification, which provide a means of ensuring accuracy and updating of the relevant data.

3.6. Data storage

The general principle set out in Regulation No 45/2001 is that 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*" (Article 4(1)(e) of the Regulation).

For the record, the data storage policy adopted by the Council is as follows:

- (i) electronic data and data in paper form relating to applicants not validated by the relevant Council departments and units will be erased no later than one week after the deadline for submitting applications;
- (ii) data concerning validated applications not selected will be stored for two years starting from the deadline for submitting applications, for the purposes of complaints and in case another applicant withdraws;

(iii) in the case of applicants selected for a traineeship, electronic data and a paper version will be stored for two years starting from the date on which the traineeship ends and will then be destroyed. A limited number of data in paper form will be stored for 50 years for the purposes of any attestations that may be requested by the individuals concerned.

The EDPS welcomes the fact that data relating to non-validated applicants will be erased no later than one week after the deadline for submitting applications.

The EDPS considers that the time-limit of two years for data relating to applicants who have been validated but not selected is not excessive in the light of possible complaints before the European Ombudsman.

With regard to applicants selected and admitted to a traineeship, the EDPS considers that the storage time-limit of two years for electronic data and data in paper form is reasonable and not excessive in view of the purpose for which they are collected. Also, given that the Traineeships Office categorically confirms the need to store a limited number of data in paper form for a period of 50 year, the EDPS does not regard the time-limit as excessive in view of the purpose for which the data are further processed, i.e. for issuing attestations to the data subjects.

3.7. Transfer of data

The processing should also be scrutinised in the light of Article 7(1) of Regulation No 45/2001. The processing covered by Article 7(1) is the transfer of personal data 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"*.

It is first of all a case of transfer within an institution, as the Council's Traineeships Office transfers data to the Council's heads of unit and directorates. A limited number of data, i.e. the list of trainees who have completed a traineeship at the Council, may also be transferred to other EU institutions in order to ensure that the same trainees do not complete a second traineeship in another institution. Certain data are also transferred to EPSO by the Council in the context of requests to exercise the rights of data subjects (access, rectification, blocking, erasure, opposition) on the Council's instructions. It follows that EPSO, as technical processor, is a data recipient within the EU as it is an interinstitutional body. The transfer therefore complies with Article 7(1) since the data collected are necessary for carrying out the processing and, furthermore, are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

Article 7(3) of Regulation (EC) No 45/2001 provides that *"the recipient shall process the personal data only for the purposes for which they were transmitted"*. The EDPS recommends that recipients within the Council, in other institutions and EPSO be reminded to process the data exclusively for the purposes for which they were transmitted.

With regard to the transfer of certain data to EPSO, the EDPS welcomes the fact that the agreement explicitly states that EPSO should restrict access to the data only to those staff members responsible for implementing the contract. However, the EDPS recommends that it also be made clear to EPSO that the data which it is responsible for processing in the course of its tasks as a processor be stored for as long as necessary, provided that this period does not exceed the two-year time-limit adopted by the Council. This condition should be explicitly stated in Article 11 of the agreement between the Council and EPSO in relation to EPSO's role.

3.8. Right of access and rectification

Article 13 of Regulation No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by the data subject. According to Article 13 of the Regulation, the data subject has the right to obtain, without constraint, from the controller, communication in an intelligible form of the data undergoing processing and of any available information as to their source. Article 14 of the Regulation allows the data subject a right of rectification.

In this case, data subjects may exercise their right of access by consulting their EPSO profile and may check their personal data and amend them on-line at any time up to the deadline for registration.

After the deadline for registration, rights of rectification, blocking, erasure and objection may be exercised by the data subjects in a justified request to the Council's Traineeships Office, which instructs EPSO to implement the requests. The EDPS acknowledges that this restriction on the right of data rectification and erasure does not influence the purpose of the processing operation, i.e. the selection of trainees, but may indeed be necessary to protect the rights and freedoms of others as provided for in Article 20(1)(c) of the Regulation. The EDPS stresses in this respect that the sole purpose of the restriction must be to ensure a fair procedure and objective conditions for all applicants.

The EDPS therefore considers that the conditions laid down in Articles 13 and 14 of Regulation (EC) No 45/2001 are duly met.

However, it is necessary to clarify the rules on blocking and erasure referred to in Article 8 of the agreement with regard to the deadlines for dealing with Council requests for amendments by EPSO. It is also important that the term "EPSO administrative decision" be erased and that the terms "competent department" and "competent authority" in the agreement be properly clarified in the light of the status and tasks of the controller and processor to ensure that this provision of the agreement is in line with the processing operation in question.

3.9. Information to be given to the data subject

Articles 11 and 12 of Regulation No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of compulsory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. In the present case, some of the data are collected directly from the data subject and others from other persons.

The provisions of Article 11 (*Information to be supplied where the data have been obtained from the data subject*) apply here since the data subjects complete their CV and on-line Council traineeship application form themselves.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) also apply here since the data are obtained from the heads of Council units/departments for the purpose of selecting potential trainees and from EPSO in the case of requests forwarded by the Council.

For the record, an information note will appear on the Council website and applicants must give their consent before registering. The note is entitled "*Specific privacy statement for the trainee selection procedure at the GSC*".

With regard to the information given in the statement, the EDPS takes the view that important elements in relation to Article 11 are mentioned but that the text should be improved and supplemented, in terms of the following in particular:

- ❖ the information on the purpose of the processing operation is lacking in clarity,
- ❖ all potential recipients are not stated,
- ❖ the information on rights of access and rectification is ambiguous and
- ❖ the information under "*the data concerned*" in the statement is neither correct nor relevant to the processing operation.

(i) Purpose:

With regard to the information relating to the purpose of the processing, the EDPS takes the view that under the planned processing procedure EPSO takes no part in the evaluation and selection of trainees, which is the purpose of the processing. EPSO only acts in the event of requests to amend data on the Council's instructions. It is therefore recommended that the reference to assisting by supplying them with a validated database of applicants be deleted and the purpose of the processing as such be specified.

(ii) Recipients:

With regard to the data recipients, the EDPS recommends that EPSO and the EU institutions be added to the statement as recipients.

(iii) Rights of access and rectification

Under the procedure, after the deadline for registration, rights of access and rectification may be exercised by the data subjects in a justified request not directly to EPSO but to the Council's Traineeships Office, which instructs EPSO to implement the requests. It is therefore recommended that this information be rectified.

(iv) The data concerned:

The EDPS finds the following information under the section on "the data concerned" in the statement to be neither correct nor relevant to the processing operations in question: according to the statement, the data needed to create the EPSO profile are stored by EPSO for two years after the database has expired. They may be re-used to register for other selection procedures. If an applicant wishes to delete his EPSO profile, he must send EPSO an e-mail. A confirmation mechanism is activated to check the identity of applicant making the request for deletion. Under the procedure, the data will be stored by the Traineeships Office and, as already indicated, the applicant must contact the Traineeships Office directly for any amendments to their file. It is therefore recommended that this paragraph be deleted as the time-limit for storage is specifically referred to in the paragraph on the time-limit for storing the data and the applicant must contact the Council and not EPSO for any amendments to his file.

3.10. Processing by a processor

Where a processing operation is carried out on its behalf, Article 23 of Regulation No 45/2001 stipulates that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The carrying out of a processing operation by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor must act only on instructions from the controller and that the obligations with regard to confidentiality and security of personal data processing are also incumbent on the processor.

For the record, the agreement between the Council and EPSO explicitly states that EPSO undertakes to introduce the appropriate technical and organisational measures to ensure the confidentiality and security of processing in accordance with Articles 21 and 22 of Regulation No 45/2001.

That being so, the EDPS is satisfied that the conditions set out in Article 23 of Regulation No 45/2001 are met.

3.11. Security

In accordance with Article 22 of Regulation No 45/2001, the controller is required to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction, accidental loss, or alteration, and prevent all other forms of unlawful processing.

After conducting an in-depth examination of the security measures adopted, the EDPS considers them to be appropriate under Article 22 of Regulation No 45/2001.

Conclusion:

The proposed processing operation does not appear to infringe the provisions of Regulation No 45/2001, subject to the comments made above. This implies, in particular, that the Council should:

- remind those responsible in the Traineeships Office that they are subject to professional secrecy in order to ensure that Article 10(3) of the Regulation is duly complied with;
- ensure that information relating to the data subject's disability is no longer accessible to the heads of Council units and departments during the applicant pre-selection phase;
- remind recipients within the Council, in other institutions and EPSO to process the data exclusively for the purposes for which they were transmitted;
- make it clear to EPSO that the data of the data subjects which it is responsible for processing in the course of its tasks as a processor be stored for as long as necessary provided that this time-limit does not exceed the two-year time-limit adopted by the Council. This condition should be explicitly stated in Article 11 of the agreement between the Council and EPSO in relation to EPSO's role;
- ensure that the rules on blocking and erasure referred to in Article 8 of the agreement be clarified with regard to the deadlines for dealing with requests for amendments forwarded by the Council to EPSO. It is also important that the term "EPSO administrative decision" be erased and that the terms "competent department" and "competent authority" in the agreement be properly clarified in the light of the status and tasks of the controller and processor to ensure that this provision of the agreement is in line with the processing operation in question;
- reconsider the information note by specifying the purpose of the processing operation, adding EPSO and the other EU institutions as recipients, rectifying the information on the rights of access and rectification, and deleting the first paragraph on the data concerned, highlighted by the EDPS.

Done at Brussels, 12 June 2007

Peter HUSTINX
European Data Protection Supervisor