

Opinion on a notification for Prior Checking received from the Data Protection Officer of European Parliament on Trainee Recruitment

Brussels, 31 July 2007 (Case 2007-208)

1. Proceedings

On 27 March 2007, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer at the European Parliament a notification for prior checking relating to the processing of personal data for the purposes of trainee recruitment. Also included in the documentation was a copy of the Notification sent by DG PERS to the DPO, the Application for paid traineeship in both English and French, and the Internal Rules Governing Traineeships and Study Visits in the Secretariat of the European Parliament (Internal Rules) in both English and French.

The EDPS requested further information on the 2 April 2007. This was provided on 19 April 2007. Further information was sought on 20 April 2007 and was provided on 21 May 2007. The draft Opinion was sent to the European Parliament for comment on 6 July 2007 and these were received on 30 July 2007

2. Examination of the matter

2.1 The facts

The purpose of the processing is to recruit trainees to contribute to the European education and vocational training of citizens and give them an insight into the way the Institution functions.

Parliament offers several options for traineeships within its Secretariat, to provide opportunities for vocational training and for learning more about what the European Parliament is and does. The traineeships may be paid or unpaid and include a general option and a journalism option.

Admissions procedure for paid and unpaid traineeships (journalism and general)

- Applicants submit their applications online, using the appropriate application form. Supporting documents such as the identity card and evidence of qualifications and experience, are only requested if a candidate is selected for a traineeship.
- The application form and internal rules provide information on the recruitment process, including the controller, the purposes of the processing, the recipients of the personal data (i.e. other Community institutions and the Advisory Committee on Traineeships), the existence of a right of access and rectification and possible other sources of data such as the letter of recommendation/reference.

- DG PERS considers the admissibility of applications on the basis of the general conditions governing admission laid down in Article 5 of the Internal Rules and of the specific conditions governing admission to the various traineeship options laid down in Articles 18 and 21. For each traineeship period, it forwards all the relevant information on every admissible application, by electronic or other means, to the directors-general and heads of autonomous administrative units in the Secretariat, taking account of the candidates' requests for assignment.
- The directors-general and heads of autonomous administrative units in the Secretariat consider the applications on the basis of the applicants' merits and of specific needs in connection with their units' planned activities and ability to accommodate trainees. For each proposed application, they indicate the department to which the applicant would be assigned and the name and contact details of the supervisor, together with the supervisor's choice of topic on which the trainee would work. They inform DG PERS of their selections, listing applicants in order of priority; if candidates are of equal merit, the department will seek a balance in their geographical origin and a balance between men and women. The European Parliament has an equal opportunities policy and takes positive action with regard to the recruitment of trainees with disabilities, as laid down in the revised Code of Conduct on the employment of disabled persons, adopted by the Bureau on 22 June 2005.
- The competent authority draws up the list of applicants thus proposed in the light of the total number of traineeships authorised under Article 3.2.5. At the end of each selection procedure, DG PERS informs the Committee of the number of applications received, the number of admissible applications and the outcome of the selections made.
- The results of the selection procedure will not be published.

Categories of personal data processed in the trainee recruitment procedure include data related to the health of the data subject (disability), data used to evaluate personal aspects of data subject, personal identification numbers, data concerning the physical characteristics of persons (photograph taken and stored for security), concerning the data subject's private sphere, concerning the data subject's career, concerning recruitment and contracts and personal contact details.

For unsuccessful candidates, their personal data are held for two years after the procedures are completed. This retention period is derived from the length of time during which a complaint may be brought to the European Ombudsman¹. For successful candidates, the personal data are held indefinitely. Trainees have approached Parliament for copies of their trainee certificate up to 20 years after their traineeship is complete.

At the end of a traineeship each candidate must draw up a traineeship report and their supervisor draws up an evaluation report. Both these reports are forwarded to DG PERS who will, on the basis of the report, issue the trainee with a trainee certificate with information on the duration of the traineeship, the department to which the trainee was assigned, the name of the supervisor and the nature of the work performed. The data subjects are made aware that an evaluation of their traineeship will be made by their supervisor and that they have a general right of access to personal data.

The Advisory Committee on Traineeships receives a copy of the reports completed by students and a copy of the assessments drawn up by their supervisors. These are used by the

¹ Article 2(4) of the *Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties*, adopted on 9 March 1994 and as amended by Parliament's decision of 14 March 2002.

Advisory Committee to monitor the quality, content and conduct of traineeships and establish a structure for receiving trainees. The Advisory Committee forwards the results of this analysis and makes recommendations to the Secretary General.

Data collected during the trainee procedures are used for payment of allowances and expenses to trainees and applicants and may be used for analysis and recommendations on the trainee procedure.

For general or journalism traineeships, the applicant is given information through statements on the application form and through the *"Internal Rules Governing Traineeships and Study Visits in the Secretariat of the European Parliament"*. The information provided to the applicant includes:-

- the identity of the controller;
- the purposes for which the data are intended;
- the categories of recipients of the data;
- information on how false statements or omissions may affect the application; and
- the origins of data not directly received from the data subject.

Security Measures

(.....)

2.2 Legal aspects

2.3 Prior checking

Regulation (EC) 45/2001 of the European Parliament and of the Council on the protection of personal data by Community institutions and bodies and on the free movement of such data (hereinafter Regulation 45/2001) applies to the processing of personal data by Community institutions and bodies.

Personal data are defined as any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity. The trainee recruitment procedure processes the data referred to above related to applicants for a traineeship. The data therefore qualify as personal data according to Article 2(a) of Regulation 45/2001.

The processing of personal data is carried out by a Community institution in activities which fall within the scope of Community law

Regulation 45/2001 shall apply to the processing of personal data wholly or partly by automatic means and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system. In this case the processing is carried out both on computer and in a structured paper filing system.

Regulation 45/2001 therefore applies.

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. This list includes Article 27(2)(b) "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency or conduct*".

The recruitment of trainees evaluates personal aspects of the candidates in order to assess their competences as trainees. Therefore the recruitment of trainees falls to be prior checked.

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. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

The notification of the DPO was received on 27 March 2007. The case was suspended when further information was sought on 2 April 2007 and a response was received on 19 April 2007. The case was suspended a second time when further information was requested on 20 April 2007 and a response was received on 21 May 2007. Finally the case was suspended pending comments from the DPO on 6 July 2007 and these were received on 30 July 2007. According to Article 27(4) the present opinion must be delivered within a period of two months, that is no later than 8 September 2007 (72 day of suspension plus August).

2.4 Lawfulness of the processing

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data legitimate. One of the criteria provided in Article 5(a) is that the "*processing is necessary for 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*".

Article 6 of the "*Internal Rules Governing Traineeships and Study Visits in the Secretariat of the European Parliament*"² provides the legal basis for the recruitment of trainees for general and journalism traineeships, including the traineeship for people with a disability. Article 4 of these rules governs the role of the Advisory Committee on traineeships.

The EDPS is convinced that the processing is necessary for performance of a task carried out in the public interest on the basis of the Internal Rules and is therefore legitimate under Article 5(a) of Regulation 45/2001.

2.5 Processing of special categories of data

Article 10(1) of Regulation 45/2001 states that "*The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and of data concerning health or sex life, are prohibited*".

However, Article 10(2) states that article 10(1) will not apply in a stipulated set of circumstances. One of these is when the processing is necessary for the purposes of complying with the specific rights and obligations in the field of employment law. In this

case the personal data collected on the applicant's disability are used to ensure that the applicant is provided with suitable accommodation during their traineeship.

This is in accordance with Article 3 of the *Code of Practice for the employment of people with disabilities*³. As such it is necessary for DG PERS to collect this information for the purposes of complying with a specific obligation in the field of employment law and as such is in accordance with the provisions of Article 10 of Regulation 45/2001.

2.6 Data Quality

According to Article 4(1)(c) of Regulation 45/2001 "*personal data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed*". After careful examination, the EDPS is of the opinion that the data listed in the notification and collected from the data subject for the purposes of the trainee recruitment comply with the criteria set out in Article 4(1)(c).

Article 4(1)(d) provides that personal data must be "*accurate and, where necessary, kept up to date*". As much of the personal data supplied during the recruitment process is provided by the data subject, the EDPS is of the opinion that this helps to ensure that the data are accurate and kept up to date during recruitment.

The data subjects are made aware that an evaluation of their traineeship will be made by their supervisor and that they have a general right of access to personal data. This also makes it possible to ensure the quality of data.

Article 4(1)(a) also provides that personal data must be "*processed fairly and lawfully*". Lawfulness has already been discussed (see point 2.1.4) and fairness will be dealt with in relation to information provided to data subjects (see point 2.1.12)

2.7 Conservation of data/ Data retention

Article 4(e) of Regulation 45/2001 states that personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

Personal data related to unsuccessful candidates are kept for two years following the recruitment procedure. As stated above, this retention period is derived from the length of time during which a complaint may be brought to the European Ombudsman. The EDPS is satisfied that this retention is necessary in relation to further compatible processing and is therefore in accordance with the requirements of Article 4(e).

Personal data about successful candidates are held "forever". The notification justifies this by stating two reasons:

- to enable Parliament to provide copies of the trainee certificate upon request from the trainee; and
- to enable Parliament to provide copies of any associated documentation which the trainee requests after their traineeship is completed e.g. a copy of a degree certificate.

The EDPS is not convinced that it is appropriate for Parliament to retain the original supporting documentation, such as degree certificates, provided by a trainee beyond the end

³ Bureau Decision of 22 June 2005

of the traineeship. In addition, it might be difficult to return original documents to trainees after they have left the traineeship as DG PERS may not have an up to date address. However, the EDPS recognises that these data may be required should a complaint be made to the Ombudsman during the two years following the end of the traineeship. In addition, the unit needs to keep all financial documents for a minimum of 5 years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate⁴.

With that said, the EDPS specifically calls the attention of DG PERS to a recently added last paragraph to Article 49 of the Implementing Rules of the general Financial Regulation⁵[1], which provides the following: "Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply." This recent amendment was adopted following the recommendations provided in paragraphs 33-47 of the "Opinion of the EDPS of 12 December 2006 on proposals for amending the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules"⁶.

As such the EDPS recommends that a retention policy is developed for Trainee selection which includes the following provisions:

- Any original supporting documentation provided by the selected applicant is returned once the traineeship is completed.
- DG PERS may retain a photocopy or electronic copy of the supporting documentation for up to two years after the traineeship is completed in the event of a complaint to the European Ombudsman.
- All other personal data necessary for discharging the budget may be retained for up to 5 years after the traineeship budget is discharged in accordance with the Financial Regulations
- Once this period is completed, only the data necessary for providing a copy of the trainee certificate i.e. information on the duration of the traineeship, the department to which the trainee was assigned, the name of the supervisor and the nature of the work performed. Any further data needed for statistical purposes must be extracted and the remaining personal data destroyed.

2.8 Compatible use / Change of purpose

Article 4(1)(b) of Regulation 45/2001 provides that personal data must be "*collected for specified, explicit and lawful purposes and not further processed in a way incompatible with those purposes*".

Data collected during the trainee recruitment procedure are used for payment of allowances and expenses to trainees and applicants and are passed to the Advisory Committee for analysis and recommendations on the trainee procedure. Personal data may also be used in the investigation of a complaint by the European Ombudsman. The EDPS is satisfied that these purposes are compatible with the purposes for which the personal data are obtained and are thus in accordance with Article 4(1)(b).

2.9 Transfer of data

⁴ Article 49 of the Financial Regulation

⁶ COM(2006) 213 final and SEC(2006) 866 final, OJ C 94, 28.04.2007, p. 12

Article 7(1) of Regulation 45/2001 states that "*personal data shall only be transferred to other Community Institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

During trainee recruitment for general and journalism traineeships, personal data related to applicants will be transferred to directors-general and heads of autonomous administrative units in the Secretariat as part of the selection process.

In addition, at the end of the traineeship, the trainee reports and supervisor evaluations will be transferred to the Advisory Committee on Traineeships and may be transferred to the European Ombudsman in the event of a complaint about the process.

The EDPS is satisfied that the personal data transferred during and after trainee recruitment are necessary for the legitimate performance of tasks covered by the recipients in each case and is thus in accordance with Article 7(1).

Article 7(3) states that *The recipient shall process the personal data only for the purposes for which they are transmitted*".

The EDPS understands that the purposes for which the various recipients receive the data are laid out in the Internal Rules Governing Traineeships and Study Visits in the Secretariat. However, it would be good practice to ensure that the recipients are reminded when they receive the personal data of candidates that they should not use the data for any further purposes beyond that of trainee recruitment.

2.10 Processing of personal number or unique identifier

Each selected trainee is allocated a personal number. The use of the personal number may have the consequence of allowing interconnection of data processed in different contexts. This is not the place in which to determine the conditions under which the DG PERS may process a personal number (Article 10(6) of the Regulation), but it is appropriate here to emphasise the attention that must be paid to this aspect of the Regulation. In the case in point, the use of the personal number for selected trainees is reasonable as it is used for the purposes of identifying the candidate. The EDPS considers that this number may be used in the context of the recruitment of trainees.

2.11 Right of access and rectification

Article 13 of Regulation 45/2001 provides a right of access to personal data being processed.

Article 14 of Regulation 45/2001 provides a right to rectification without delay of inaccurate or incomplete data.

The application form for general and journalism traineeships, including for those people with a disability, states that applicants may send a written request to the Traineeship Office to have access to and modify their data. The EDPS is of the opinion that the rights of the data subject are respected in the processing that occurs as part of the recruitment of trainees.

2.12 Information to the data subject

Article 11 of Regulation 45/2001 provides for certain information to be supplied where the data have been obtained from the data subject. Article 12 of Regulation 45/2001 provides for certain information to be supplied where the data have not been obtained from the data

subject. During the recruitment of trainees personal data are obtained directly from the data subject on the application form and from their supervisor in the evaluation report at the end of the traineeship. Thus Articles 11 and 12 will both apply to the certification procedure.

For general or journalism traineeships, the applicant is given information through statements on the application form and through the *"Internal Rules Governing Traineeships and Study Visits in the Secretariat of the European Parliament"*. The information provided to the applicant includes:-

- the identity of the controller;
- the purposes for which the data are intended;
- the categories of recipients of the data;
- information on how false statements or omissions may affect the application; and
- the origins of data not directly received from the data subject.

The provision of further information such as the right of recourse to the EDPS or the time periods for the retention of personal data are only required insofar as it is necessary to guarantee fair processing in respect of the data subject. In this case candidates would not necessarily be aware of the existence of the EDPS and would need to be kept informed about how long their personal data may be retained after their traineeship comes to an end.

The EDPS recommends that the application form is amended to include further information that is required on the time limits for retaining the data and the right of recourse to the EDPS.

The EDPS also recommends that the retention policy recommended in 2.7 is made readily available on the website alongside other information provided to applicants.

2.13 Security measures

(.....)

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:

- The EDPS recommends that a retention policy is developed for Trainee selection which includes the following provisions:
 - All original supporting documentation provided by the selected applicant is returned once the traineeship is completed.
 - DG PERS may retain a photocopy or electronic copy of the supporting documentation for up to two years after the traineeship is completed in the event of a complaint to the European Ombudsman.
 - All other personal data necessary for discharging the budget may be retained for up to 5 years after the traineeship budget is discharged in accordance with the Financial Regulations
 - Once this period is completed, only the data necessary for providing a copy of the trainee certificate i.e. information on the duration of the traineeship, the department to which the trainee was assigned, the name of the supervisor and the nature of the work performed. Any further data needed for statistical purposes must be extracted and the remaining personal data destroyed.

- It would be good practice to ensure that recipients are reminded when they receive the personal data of candidates that they should not use the data for any further purposes beyond that of trainee recruitment.
- The EDPS recommends that the application form is amended to include further information on the time limits for retaining the data and the right of recourse to the EDPS.
- The EDPS also recommends that the retention policy recommended in 2.7 is made readily available on the website alongside other information provided to applicants.

Done at Brussels, 31 July 2007

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