

Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Parliament on the recruitment of translation trainees

Brussels, 31 July 2007 (Case 2007-324)

1. Proceedings

On 22 May 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 recruitment of translation trainees. Also included in the documentation was a copy of the Notification sent by the Directorate General for Translation and Publishing) to the DPO, the Application for paid traineeship in both English and French, and the Internal Rules Governing Translation Traineeships in the Secretariat of the European Parliament in both English and French.

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.

DG TRED offers several options for traineeships, 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.

Admissions procedure for paid and unpaid translation traineeships

- Applicants must send their applications, using the appropriate application form and enclosing all the requisite supporting documents, to the Human Resources Unit (HRU) of the Directorate-General for Translation and Publishing (DG T&P).
- 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. various administrative units within the Directorate General), and possible other sources of data such as the letter of recommendation/reference.
- HRU shall consider the admissibility of applications on the basis of the general conditions for admission laid down in Article 4 of the Internal Rules and of the specific conditions governing admission to the various translation traineeship options

laid down in Articles 16 and 19 of the Internal Rules. For each traineeship period, it shall forward all the relevant information on every admissible application to the managers of the various administrative units in DG T&P, taking account of applicants' requests for assignment. This may be done by computer.

- The managers of the various administrative units in the DG T&P shall consider the applications on the basis of the applicants' merits and their unit's ability to accommodate trainees. They shall inform HRU of their selections, listing applicants in order of priority. If applicants are of equal merit, the competent department will seek to ensure that the geographical spread among applicants is as balanced as possible and that a balance is struck between women and men. 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 Good Practice for the Employment of People With Disabilities, adopted by the Bureau on 22 June 2005.
- The competent authority shall adopt the list of applicants thus proposed in the light of the financial resources available.
- The outcome of the selection procedure shall not be published.

Categories of personal data processed in the recruitment of translation trainees include data concerning health (data referring to disability), data used to evaluate personal aspects of data subject, personal identification numbers, concerning the physical characteristics of persons (photograph taken and stored for security purposes), concerning the data subject's private sphere (marital status and dependent children), 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 Ombudsman ¹. For successful candidates, the personal data are held indefinitely.

For translation traineeships, the trainees draw up a traineeship report and their supervisors draw up an evaluation report. Both these reports are forwarded to HRU 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.

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 translation traineeships, the applicant is given information through the *"Internal Rules Governing Translation Traineeships in the Secretariat of the European Parliament"*, which applicants are encouraged to read before submitting an application. 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; and

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.

- the origins of data not directly received from the data subject.

Security aspects

(.....)

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 recruitment procedure for translation trainees 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 translation trainee recruitment procedure adopted by DG T&P 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 22 May 2007. The case was suspended pending comments from the data controller on 6 July 2007 and a response was 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 6 September 2007 (24 days 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"*.

The *"Internal Rules Governing Translation Traineeships in the Secretariat of the European Parliament"*² provide the legal basis for the recruitment of trainees for translations traineeships.

The EDPS is therefore satisfied 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 are provided by

² PE 316.480/rev2

³ Bureau Decision of 22 June 2005

the data subject, the EDPS is of the opinion that this ensures 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 provided by a trainee beyond the end 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 T&P 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.

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

As such 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.

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 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. The EDPS is satisfied that these purposes are compatible with the purposes for which the personal data are obtained and are therefore in accordance with Article 4(1)(b).

2.9 Transfer of data

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"*.

For translation traineeships, HRU will transfer personal data related to applicants to the various administrative units within DG T&P as part of the selection 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 therefore in accordance with the provisions of 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 Translation Traineeships in the Secretariat of the European Parliament. 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 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.

For Translation Traineeships, there would appear to be no information provided to the applicant in either the application form or the internal rules which points the individual to the rights of access and rectification. This is dealt with further below. However, the EDPS is satisfied that the rights of access and rectification are granted to data subjects so long as the recommendations in 2.12 are enacted.

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 recruitment of trainees

For translation traineeships, the applicant is given information through the *"Internal Rules Governing Translation Traineeships in the Secretariat of the European Parliament"*, which applicants are encouraged to read before submitting an application. 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; and
- the origins of data not directly received from the data subject.

Several of the compulsory categories of information stipulated in Article 11 and 12 are not provided to the applicant, neither in the internal rules nor as part of the application form.

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 therefore recommends that the following information is provided to the applicant, either by amending the application form or the internal rules:

- the purpose of analysis of the traineeships and recommendations;
- the right of access and rectification and how that is exercised by the applicant;
- the right of recourse to EDPS; and
- information on time limits for retention of data as stipulated in the retention policy recommended in 2.7.

2.13 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:

- 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 an 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.
- The EDPS recommends that the following information is provided to the applicant, either by amending the application form or the internal rules:
 - the purpose of analysis of the traineeships and recommendations;
 - the right of access and rectification and how that is exercised by the applicant;
 - the right of recourse to EDPS; and
 - information on time limits for retention of data as stipulated in the retention policy recommended in 2.7.
- 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.

Done at Brussels, 31 July 2007

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Assistant Supervisor