

Opinion on the notification for prior checking received from the Data Protection Officer of the Court of Auditors concerning the "Applications for paid or unpaid traineeships" case

Brussels, 19 September 2008 (Case 2008-391)

1. Procedure

The Data Protection Officer (DPO) of the Court of Auditors gave notification under Article 27(3) of Regulation (EC) No 45/2001 concerning the "*Applications for paid or unpaid traineeships*" case by email on 19 June 2008.

In connection with that notification, questions were put to the DPO by e-mail on 16 July 2008 and replies and additional information were received that same day. The opinion was sent to the DPO for comments on 12 September 2008. Those comments were received on 18 September 2008.

2. The facts

This case concerns processing carried out by the Court of Auditors, which organises periods of in-service training in fields relating to its work. The Court of Auditors recruits two categories of trainee, in-service training at the Court and – a special category – trainees from the national audit bodies of countries acceding to the European Union.

- **Recruitment of trainees for in-service training at the European Court of Auditors**

The aim of recruiting mere trainees is to give a group of interested persons, chosen on the basis of the widest possible geographical distribution, an overview of the process of European integration through everyday experience of the workings of a European institution. Admission to a traineeship does not make trainees officials or other servants of the European Communities and in no way entitles them to be appointed subsequently by a European institution.

In order to be eligible for a period of in-service training, an applicant must:

- be a national one of the Member States of the European Union, except where a derogation has been granted by the Appointing Authority;
- either hold a recognised university-level degree giving access to the Community AD function group or have completed at least four semesters of university studies in a field of interest to the Court;
- wish to obtain practical training related to one of the Court of Auditor's areas of activity;
- have not already benefited from in-service training at the Court;

- guarantee compliance with the principle of the widest possible geographical distribution;
- state that they have a thorough knowledge of one official language of the European Union and a satisfactory knowledge of at least one other official European Union language;
- provide a recent extract from their judicial record.

After receiving the traineeship applications submitted using a standard form available on the Court's internet site, the requesting departments select candidates who match the profiles being sought.

The traineeship is granted for a maximum period of five months. The Appointing Authority may grant derogation to this rule, subject to the availability of budgetary resources and provided a request is submitted at least one month before the beginning of the stage.

During his time at the Court, the trainee is guided and monitored by a training adviser from the department of the court to which he is attached. Rights relating to studies or reports prepared by trainees during their traineeship belong to the European Court of Auditors. The trainee must exercise the utmost discretion with regard to any facts or information that come to his knowledge in the course of the training period. He must follow the instructions given by the head of the unit or division to which he is attached.

The traineeship terminates at the expiry of the period for which it was granted. The Appointing Authority may, however, terminate the traineeship early:

- following a reasoned request from the trainee;
- or following an opinion from the trainee's hierarchical superior in the event of a serious failure of the trainee to perform his/her obligations under the applicable rules.

- **Recruitment at the Court of Auditors of trainees from the national audit bodies of countries acceding to the European Union.**

With a view to helping to prepare the audit structures of countries that are candidates for accession to the European Union, the European Court of Auditors organises in-service training for officials from the national audit bodies of the countries concerned.

This traineeship does not create an employment relationship between the institution and the trainee, who remains throughout the training period in the service of his employer in his country of origin.

The total number of traineeships of this type which the institution can offer depends on the availability of budgetary resources. The national audit bodies interested submit the curriculum vitae of potential candidates. The selection procedure is based on an interview between the candidate and the requesting department at the Court of Auditors. Following the interview, agreement is reached on the departments to which the candidates chosen are to be assigned and specific traineeship proposals are submitted to the Director of Human Resources.

The Human Resources Division makes initial contact with the competent Luxembourg authorities with a view to assisting trainee applicants with the process of obtaining appropriate visas and permits. When these formalities are successfully completed, contacts are made with the national audit body to draw up the contract.

In order to be eligible for a period of in-service training, an applicant must:

- be currently employed by a national audit body of a country declared by the Council to be a candidate for accession; subject to a derogation by the Appointing Authority, persons employed by national audit bodies of other countries may apply;
- be a national of that State;
- wish to obtain practical training in one of the Court's departments;
- state that they have a good knowledge of at least one official language of the Union; a satisfactory knowledge of one of the Court's working languages is considered a major advantage;
- have not already benefited from in-service training at the Court;
- provide proof that they are covered by their own health insurance or that of their employer in respect of illness, accident and invalidity;
- have a passport valid for at least one year after the date of commencement of their traineeship at the Court and provide proof that they are in compliance with the Luxembourg regulations governing stays by non-Community nationals in Luxembourg;
- provide a recent extract from their judicial record.

Traineeships are granted in principle for a period not exceeding five months.

A trainee may be called upon to accompany Court officials on missions to Brussels or, very exceptionally, to other places. During his time at the Court, the trainee is guided and monitored by a training adviser from the department to which he is attached. A programme will be prepared before the traineeship begins and a report will be drawn up when it ends, under the responsibility of the head of the division or unit concerned. Trainees may participate in training initiatives organised by the Court of Auditors. All reports and studies prepared by trainees during their traineeships belong to the court. During their traineeships, trainees may not perform any other remunerated or unremunerated activity, without prejudice to their status as employees of the national audit body in their country of origin. During the traineeship, trainees must exercise the utmost discretion with regard to any facts, reports or information that come to their knowledge and have not yet been made public. This confidentiality obligation applies even after the end of the traineeship. Trainees must not engage in conduct which could tarnish the image of the institution. More specifically, trainees must refrain from making public comments on any matter relating to the Court's activities and from any contact with the bodies audited by the Court, outside the framework of the Court's work.

The traineeship contract may be terminated:

- at the request of the national audit body or the trainee himself, with the prior agreement of his employer;
- at the Court's request, particularly if the trainee fails to execute his contractual obligations;
- following a ruling issued by the national authority, particularly one relating to the right of residence.

Categories of data subjects: mainly students or other persons wishing to acquire practical training in a specific field. Six fields are proposed: audit, budget/accounting, administration/personnel, translation, documentation/library, legal service.

Categories of data: personal data enabling the candidate to be identified (surname, first name, address, e-mail, sex, date and place of birth). Information supplied by applicants so that the Court of Auditors can assess whether they meet the eligibility criteria laid down and published on the Internet site (nationality, level of studies, computer and language knowledge). As

supplementary information, the Court requires a recent extract from the judicial record to be provided by the trainee.

Information provided to data subjects: the traineeship application form to be completed by the applicant contains the following note: "In order to follow up your application, we will need to make an electronic record of your personal data (name, address, etc.). If you would like further information or wish to exercise your rights (e.g. the right of access to this data or the right to make corrections), please contact the secretariat of the Personnel Department (or, where appropriate, any other body with responsibility for data processing)."

Procedures safeguarding the data subject's rights: applicants have the right to access and rectify data concerning them, by addressing a written request to the Personnel Department (see previous paragraph).

Procedures for automated/manual processing:

Traineeship applications reach the Court of Auditors in two forms: paper file (sent by post, this file contains the traineeship application form completed by the applicant, sometimes accompanied by a covering letter, and the CV) or computer file (sent by e-mail to the address recrutement@eca.europa.eu, this file contains the traineeship application form completed by the applicant, sometimes accompanied by a covering letter, and the CV).

Manual processing procedures: the two types of file are processed in the same way: the applications are printed and photocopied for distribution to the Court departments, and classified by month and registration number.

Automated processing procedures: information concerned the applicant (surname, first name, address, e-mail, field chosen for the traineeship, nationality, date of registration of application) is entered in an Excel database.

Data storage medium: the data are stored on various media:

- a paper file is kept in a locked filing cabinet on the premises of the Competition Unit.
- computerised data: Excel table containing certain data concerning applicants (surname, first name, address, e-mail, field chosen for the traineeship, nationality, date of registration of application).

Recipients:

- Appointing Authority
- Members of the Court
- Court departments as part of the trainee selection process.

Data storage: the paper dossiers and electronic files are kept for a period of three years as from the date of receipt of the traineeship application.

Security measures: [...]

3. Legal aspects

3.1. Prior checking

The notification received by e-mail on 19 June 2008 relates to processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)). The data processing in question is carried out by an institution in the exercise of activities which

fall within the scope of Community law (Article 3(1)). Processing is both automated and manual. Specifically, certain data such as information regarding the applicant are processed automatically. The collection of data relating to traineeship applications and supporting documentation 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 (EC) 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 Court of Auditors. Furthermore, since data relating to criminal convictions (extract from judicial record) are also collected in the context of the selection procedure, the processing operation is likely to present risks under Article 27(2)(a). This case therefore falls within the scope of the prior checking procedure.

In principle, checks by the EDPS should be performed before the processing operation is implemented. The checking otherwise necessarily becomes *ex post*. This does not make it any the less desirable that the recommendations issued by the EDPS be implemented.

Official notification was received by letter on 19 June 2008. An e-mail requesting information was sent on 16 July 2008. In accordance with Article 27(4) of the Regulation, the two-month time limit within which the EDPS must deliver an opinion was suspended. The replies were received by e-mail on the same day. The opinion was sent to the DPO for comments on 12 September 2008. Those comments were received on 18 September 2008. The Supervisor will therefore deliver his opinion not later than 26 September 2008. (19 August + 1 + 6 days' suspension + August).

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 Court of Auditors. 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 the Court of Auditor's departments as part of their studies or professional life. The processing operation is therefore lawful.

The legal basis for the data processing is the provisions dated 6 December 2005 relating to the recruitment of trainees for periods of in-service training at the European Court of Auditors and the provisions dated 21 June 2004 relating to the recruitment of trainees from the national audit bodies of countries which are candidates for accession to the European Union.

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

Moreover, the data relating to criminal convictions are classified as "special categories of data" under Article 10 of the Regulation. The processing may reveal data relating to criminal convictions (extract from judicial record).

3.3. Processing of special categories of data

This case involves the 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). However, the provisions relating to the recruitment of the two categories of trainee at the Court of Auditors make no reference to the processing of data relating to the extract from the judicial record.

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. In order to provide legal justification for the processing of data relating to the extract from the judicial record, the EDPS recommends that the Court of Auditors incorporate into those two decisions a specific reference to the extract from the judicial record as one of the documents required for admission to a traineeship, thereby complying with the conditions laid down in Article 10(5) of the Regulation.

3.4. 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 are to be regarded as satisfying these conditions. The data required are needed for the evaluation and final selection of applicants for a traineeship at the Court of Auditors. 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 point 3.2 above). The issue of fairness is linked to the information which must be transmitted to the data subject. See section 3.8 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, as the data subject himself provides the data to be processed. Moreover, the data subject has the right to access and rectify data, which helps ensure that they are kept up to date and that the file is as complete as possible. This is a second way of ensuring the quality of data. See point 3.7 below on the dual rights of access and rectification.

3.5. Data storage

The general principle set out in Regulation (EC) 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).

As already mentioned, the paper dossiers and electronic files are kept for a period of three years as from the date of receipt of the traineeship application.

The EDPS considers that the storage period of three years for electronic data and data in paper form is reasonable and not excessive in view of the purpose for which they are collected.

However, the EDPS would like the Court of Auditors to reassess the storage period for non-validated applications and applications validated but not selected, in order to comply with Article 4(1) of the Regulation¹.

3.6. Transfer of data

The processing should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data between or within other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

We are dealing here with a transfer within the same institution, since the Appointing Authority, the members of the Court and the Court's departments are the recipients of the data as part of the trainee selection procedure. Moreover, certain data could be transferred to other institutions such as the European Ombudsman, the Court of Justice and the EDPS in the event of appeals and/or complaints. 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 at the Court of Auditors be reminded to process the data exclusively for the purposes for which they were transmitted.

3.7. 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, the data subjects may exercise their rights of access and rectification by addressing a written request to the personnel department. The EDPS recommends that the right of access to the evaluation carried out after the interview held as part of the process of recruiting trainees from the national audit bodies also be guaranteed.

¹ See EDPS opinion of 12 June 2007 on the "*Selection procedure for trainees at the General Secretariat of the Council of the European Union*", dossier 2007-0217.

Subject to the above comments, the EDPS considers that the conditions laid down in Articles 13 and 14 of Regulation (EC) No 45/2001 are duly met.

3.8. Information provided to the data subject

Articles 11 and 12 of Regulation (EC) 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 of information. 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, the data are collected directly from the data subject and from other persons in the context of the recruitment of trainees from the national audit bodies of countries that are candidates for accession to the European Union.

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 the traineeship application form themselves and provide all of the documentation necessary to receive in-service training at the Court of Auditors. The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) apply since the recruitment of trainees from the national audit bodies is carried out by means of interviews followed by a proposal regarding the department to which the trainee is to be attached.

For the record, the application form to be completed by the candidate contains the following note: "In order to follow up your application, we will need to make an electronic record of your personal data (name, address, etc.). If you would like further information or wish to exercise your rights (e.g. the right of access to this data or the right to make corrections), please contact the secretariat of the Personnel Department (or, where appropriate, any other body with responsibility for data processing)."

In relation to the information set out in this note, the EDPS considers that important elements relating to Articles 11 and 12 are missing, i.e.:

- the purposes of the processing operation
- the recipients of the data
- the categories of data linked to the evaluation
- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply
- the legal basis of the processing
- the time-limits for storing the data
- the right to consult the EDPS at all times.

It is therefore recommended that the missing information mentioned above be added to the note.

3.9. 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 (EC) No 45/2001.

Conclusion:

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

- include in the two decisions governing the recruitment of trainees specific mention of the extract from the judicial record as a document required for admission to a traineeship;
- reassess the storage period for non-validated applications and applications validated but not selected;
- remind recipients at the Court of Auditors to process the data exclusively for the purposes for which they were transmitted;
- guarantee the right of access to the evaluations carried out after the interviews held in the context of the recruitment of trainees from the national audit body;
- complete the information note addressed to data subjects as mentioned in point 3.8.

Done at Brussels, 19 September 2008

(Signed)

Peter HUSTINX
European Data Protection Supervisor