



## **Opinion on the notification for prior checking from the European Commission's Data Protection Officer regarding structural trainees**

Brussels, 30 March 2009 (Case 2008-760)

### **1. Procedure**

In an e-mail dated 10 December 2008, the Data Protection Officer (DPO) of the European Commission (Commission) sent the European Data Protection Supervisor (EDPS) a notification regarding structural trainees under Article 27(3) of Regulation (EC) No 45/2001.

Further information was requested on 6 February 2009. Replies were given on 17 March 2009. On 19 March 2009, the EDPS's draft opinion was sent to the DPO for comment. The DPO's comments were received on 26 March 2009.

### **2. The facts**

The legal framework applying to structural trainees is laid down in Chapter IV of Commission Decision C(2006)2033 and Title II of Commission Decision (C-2008)6866 (applicable since 1 January 2009).

Structural trainees are staff from the public administrations of EU and EFTA Member States, candidate countries, non-Member countries and intergovernmental organisations (IGOs) seconded to the Commission for professional training purposes for periods of three to five months (in exceptional cases this may be extended to six months for private office traineeships). They continue to be employed, paid and insured by their employers throughout the period. Since 1 January 2009 structural trainees have been renamed national experts in professional training (NEPTs).

**Data is to be processed** under the joint responsibility of DG ADMIN A.4 and the DGs, which will together select the successful candidates. The data will be recorded in the ECSTP database (on the TARIQA server), for which Unit RELEX A-2 will provide the technical management.

The **purpose** of the processing is to assemble the applications from the Member States and, where applicable, from third countries and international organisations thereby enabling the Commission DGs to select structural trainees and the traineeship to take place.

**The data subjects** are the applicants for structural traineeships at the Commission. They are mainly Member States' nationals selected from the staff of European Union Member States' public administrations. They may also be officials from the administrations of EFTA countries, candidate countries, non-member countries or intergovernmental organisations.

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The **data processing** is both automated and manual. The applications are collected via the Internet in the European Commission Structural Traineeships Programme" (ECSTP). The DGs selection of applicants is a manual procedure and the Commission sets up a paper file for each structural trainee. Once the selection procedure is completed, the successful candidates' data are entered in SIRE by l'ADMIN A.4 and in SYSPER 2 by the DGs.

The data processing comprises the following:

- i. Public administration staff interested in a structural traineeship submit applications to their administration. The number of applications that a Member State may submit per round is limited. Applications are entered into the ECSTP programme by the applicants themselves and are validated by the Permanent Representation of their employers' nationality. Applicants have one month to submit their applications and to make changes to their data in the ECSTP database, after which the page containing the data is closed. The ECSTP home page and the information on it (in particular the privacy statement) remain accessible throughout the selection period.
- ii. DG ADMIN A.4 allows the human resources officers of the DGs concerned to access the data collected in the ECSTP application for a limited period for the purpose of the selection process.
- iii. ADMIN A.4 informs candidates by email whether they have been successful or unsuccessful. The e-mail sent to those who have been selected also includes a list of documents that have to be provided when they arrive. Unsuccessful candidates will, if they so wish, have to reapply for subsequent rounds, as their application details cease to be accessible.
- iv. The Permanent Representations of the nationality of the successful applicants' employers receive from DG ADMIN A.4 a list of their nationals who have been selected and confirmed (i.e. not the full list).
- v. The successful applicants' data are entered into the external human resources database (SIRE). Each structural trainee is given a list of his fellow trainees (name and department) of that selection round drawn up by DG ADMIN A.4. (Trainees are given a form to fill in at the start of their traineeship in which they can state whether or not they wish to appear on the list.)
- vi. DG ADMIN A.4 sends some of the successful candidates' data to the Commission's Security Office in order for the access badge to be prepared (those data are: first name, family name, country of origin, DG, date of birth, dates of the traineeship, number and expiry date of the identity document, photograph).
- vii. At the end of the traineeship the trainee and his chief prepare a traineeship report. On receiving the report, DG ADMIN A.4 sends the trainee a traineeship certificate, which is filed with the report in the trainee's file.

The management of structural trainees involves processing the following **categories of data**:

- ❖ Data obtained via the application form (ECSTP)
  - Identification and contact data: first name, family name, nationality, gender, data and place of birth, security clearance up to SECRET certified by the national security authority, home address, telephone number, e-mail address;

- Data on state of health: any physical disability that might require special arrangements;
  - Particulars of a contact in case of emergency: first name, family name, address, telephone number, e-mail address;
  - Information regarding the applicant's professional experience, education and language skills;
  - Name of the DG in which the applicant wishes to work, starting date (1st or 16th of the month) and preferred length of the traineeship;
  - Applicant's user name and password (chosen by the applicant, not visible in the database).
- ❖ Data obtained on the trainee's arrival (kept on paper)
    - Banking forms: legal and financial identity form (to enable reimbursement of any mission expenses incurred by the trainee);
    - Copy of an identity document;
    - Copy of a declaration that the trainee is remunerated and provided with health insurance by the employer;
    - Copy of an information sheet (first name, family name, nationality, address and contact particulars, department of employment, and training advisor);
    - Acknowledgement of receipt of the applicable regulations;
    - Form regarding inclusion on the list of trainees.
- ❖ Data entered in SIRE:
    - Identification data: first name, family name, date of birth, nationality, personnel number, and address and contact particulars where appropriate;
    - Information regarding the trainee's knowledge and skills, including languages;
    - Data regarding the traineeship: length, DG.
- ❖ Data entered in SYSPER 2:
    - data imported directly from SIRE (identification and career data);
    - data entered by the DG (trainee's employment in a specific post).

The notification specifies that the data may be communicated to the following **recipients**:

- ❖ Commission human resources officers.
- ❖ heads of unit concerned by the selection process, whose access is authorised by the human resources officers (to access database and select candidates);
- ❖ Permanent Representation of the applicant's employer's nationality (for validation of the application of an official who is one of its nationals);
- ❖ the Commission's Security Office for the preparation of the access badge.

The data are **stored** on various media: the ECSTP/TARIQA server, SIRE, and SYSPER 2. The data are **stored** in the ECSTP database for one year. Some of the structural trainees' personal data are entered in the SIRE and SYSPER 2 databases and will be stored there for up to 40 years.

ADMIN A.4 stores successful applicants' files in paper form for five years, in case, for example, the late reception of traineeship reports leads to delayed dispatch of traineeship certificates, and/or if trainees so request. Applications which have been rejected or rejected after validation are stored in electronic form for one year and in paper form for six months.

Data may be stored for more than one year **for statistical purposes** only. An electronic list of the number of trainees per country, their gender and the year but containing no names is compiled regularly.

Data subjects are **informed** (by Decision C(2008) 6886) of the procedure applying to the structural trainees. A privacy statement is posted online on the ECSTP application and remains on the home page even after the deadline for submitting applications.

Applicants may change the personal data entered in the ECSTP at any time during the month allowed for submitting applications. Once that period is over, applicants may ask for their data to be rectified by contacting DG ADMIN's mailbox: ADMIN-STRUCTURAL-TRAINEESHIP@ec.europa.eu. They are also informed that they may exercise their right of recourse to the EDPS at any time.

The notification states that **any request** received by ADMIN A.4 **for data to be blocked or erased** will be answered within 15 working days from the date on which the letter is received by the relevant department; however, the latter may send a duly reasoned holding reply in accordance with point 4 of the Code of Good Administrative Behaviour. The deadline for blocking or erasing data is 15 working days from the date of the competent authority's final decision (decision by DG ADMIN A.4 or, in the event of a dispute, a decision by the EDPS or the appropriate court or tribunal).

The DPO's notification details the **security measures** that are implemented to protect data. [...]

### **3. Legal aspects**

#### **3.1. Prior checking**

The prior check relates to the Commission's processing of personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001 (hereinafter "the Regulation") in connection with the selection of structural trainees. The processing includes the collection, consultation and storage of data.

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) of the Regulation). Structural trainees' data will be processed both automatically and manually. Article 3(2) is therefore applicable in this case.

This processing falls therefore within the scope of Regulation (EC) No 45/2001.

Article 27(1) of the Regulation requires prior checking by the EDPS of 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 lists the processing operations likely to present such risks.

Article 27(2)(b) makes data processing operations intended to evaluate personal aspects relating to the data subject (including his or her ability, efficiency and conduct) subject to prior checking by the EDPS; this is the case here, as processing is designed to select candidates for a Commission traineeship on the basis of information regarding their ability and experience.

Moreover, under Article 27(2)(a) of the Regulation the processing of data relating to health is also subject to prior checking by the EDPS, a provision which may be applicable here given that the Commission obtains health-related information from the application form, namely whether the applicant suffers from any disability that may require special arrangements. In principle, checks by the EDPS should be performed before the processing operation is implemented. Otherwise, the check is necessarily *ex post*. This does not make it any the less desirable that the recommendations issued by the EDPS be implemented.

The DPO's notification was received on 10 December 2008. In accordance with Article 27(4), this opinion must be delivered within a period of two months of that date. Taking into account the 46-day suspension for additional information and comment, the opinion of the EDPS has to be delivered no later than 30 March 2009.

### **3.2. Legal basis and lawfulness of the processing operation**

The lawfulness of the processing operation should be scrutinised in the light of Article 5(a) of the Regulation, which provides that the processing operation may be carried out only if "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities ... or in the legitimate exercise of official authority vested in the Community institution ...*".

The processing under consideration involves obtaining data from applicants for professional traineeships at the Commission. The selection procedure for structural trainees falls within the scope of performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities and of legal instruments adopted on those bases, and in the legitimate exercise of official authority vested in the Community institution. The main purpose of that task is to provide the candidates concerned with practical knowledge of the working of Commission departments as part of a training course. The processing operation is therefore lawful.

The legal basis for the processing operation is Commission Decision C(2006)2033, as of 1 January 2009 replaced by Commission Decision (C-2008)6866 laying down rules on the secondment to the Commission of national experts in professional training. The legal basis is valid and supports the lawfulness of the processing.

### **3.3. Processing of special categories of data**

During the processing operation set up by DG ADMIN A.4 health-related personal data may be collected. Under Article 10(1) of the Regulation, the processing of personal data concerning health is prohibited unless it is justified on grounds mentioned in Article 10(2) or (3).

In this case, Article 10(2)(b) applies: "*Paragraph 1 [prohibiting the processing of data relating to health] shall 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 ...*". Article 1d(4) of the Staff Regulations of officials of the European Communities proscribes discrimination in recruitment procedures against persons with disabilities if they can perform the essential functions of the job when reasonable accommodation is made. The Commission adopted general implementing provisions for this Article in Decision C(2004)1318 of 7 April 2004, which requires the European institutions to make reasonable accommodation to the needs of staff with disabilities so that they can do their job properly.

DG ADMIN A.4's processing of health data concerning candidates' disabilities is in line with the requirements of Article 10(2)(b) of the Regulation, in that it is necessary in order for the employer to comply with its obligations in the field of employment law in the legal instruments adopted on the basis of the Treaties.

Moreover, when data are collected in the ECSTP database, candidates are expressly asked for their consent to those data being processed and forwarded to the their national Permanent Representations and to the Commission departments. This is in compliance with the conditions of Article 10(2)(a) of the Regulation.

The EDPS would nevertheless stress that since data relating to disabilities are sensitive, they should be communicated on a strictly "need to know" basis (e.g. to human resources officers required to enforce the provisions on non-discrimination in recruitment procedures, to heads of unit who need to be told that alterations may be necessary in order to accommodate a trainee with a disability).

### **3.4. Data quality**

Article 4 of the Regulation lays down certain obligations as regards the quality of personal data. Personal data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*" (Article 4(1)(c)).

The EDPS considers that the processed data described at the beginning of this opinion are to be regarded as satisfying these conditions in the light of the purposes of the processing operation explained above. The EDPS is satisfied that Article 4(1)(c) of the Regulation has been complied with in this respect.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (see point 3.2 above). The issue of its fairness relates to the information given to the data subject (see point 3.8 below).

Lastly, the data must be "*accurate and, where necessary, kept up to date; 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*" (Article 4(1)(d) of the Regulation). The system itself helps to ensure that data are correct, since the data subjects themselves provide the data to be processed. Moreover, data subjects have rights of access and rectification so that their files are as complete as possible. Those rights provide the second means of ensuring the quality of the data. (See point 3.7 on rights of access and rectification).

### **3.5. Data storage**

Article 4(1)(e) of the Regulation establishes the principle 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*".

The EDPS is satisfied that special data storage procedures were adopted for the applications depending on whether or not they were confirmed. The EDPS considers the periods during which the structural trainees data are stored electronically in the ECSTP and on paper to be reasonable and not excessive, having regard to the purposes for which the data were collected.

The successful candidates' data are entered into the SIRE and SYSPER 2 databases and further stored there for up to 40 years, so that data subjects' career records can be compiled

and the rule regarding the maximum period of appeal for non-permanent Commission staff (6 years over a 12-year period) can be applied. The EDPS does not consider these storage periods to be reasonable or proportionate given that the purpose is to manage trainees' data. He recommends reviewing the length of time that structural trainees' data may be stored in the databases, in order to limit storage to the period necessary for managing the trainees.

Article 4(1) also stipulates that: "*the Community institution or body shall lay down that personal data which are to be stored for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes*".

The EDPS would point out that any data stored for statistical purposes must be made anonymous. Thus the electronic list of the number of trainees broken down by country, year and gender must be produced on the basis of anonymised data.

### **3.6. Transfer of data**

The personal data collected in the processing operation under examination are transferred (i) within or to other Community institutions or bodies (Article 7(1) of the Regulation), (ii) to recipients other than Community institutions and bodies, subject to Directive 95/46/EC (Article 8 of the Regulation), and (iii) recipients, other than Community institutions and bodies, which are not subject to Directive 95/46/EC (Article 9 of the Regulation).

It is clear from the notification that personal data, in particular those in the application form, are transferred within the institution: to the Commission's human resources officers, to the heads of unit involved in the selection process and to the ADMIN A.4 departments administering the trainees' files. Moreover, DG ADMIN A.4 forwards some identification data to the Commission's Security Office. Care must therefore be taken to ensure that the conditions of Article 7(1) of the Regulation are complied with.

In this case, compliance as regards data transfers within the institution is the responsibility of the various Commission departments (human resources officers, heads of unit, ADMIN A.4 staff), which need to access those data in order to select trainees and then to administer their files. The trainees' identification data has also to be sent to the Commission's Security Office for the production of badges to access Commission premises. The transfer of data in these cases is therefore lawful, their purpose being covered by the competences of the recipients. Article 7(1) is therefore duly complied with.

The applicants' data are also sent to the Permanent Representation of the data subject's employer's nationality in order for the application to be validated and then to inform it of the outcome of the selection procedure. This may be the Permanent Representation of a European Union Member State or of a third country. Care must thus be taken to ensure compliance with Articles 8 and 9 of the Regulation.

The transfer of data to the Permanent Representations of European Union Member States is necessary for the performance of a task subject to public authority, i.e. the validation by the relevant country's Permanent Representation of the application of an official who is one of its nationals. The conditions of Article 8 of the Regulation are therefore complied with.

The EDPS notes that the transfer of data to the Permanent Representations of non-member countries of the European Union is intended to enable the recipient, as the competent authority, to validate the application and so qualify the applicant for a traineeship with the controller. He also notes that when an applicant makes his application on the ECSTP website,

his express consent is obtained for the Permanent Representation of his nationality to access his data during the selection process. In the case of those applications from non-member countries received directly by e-mail through the diplomatic mission concerned, the applicant's consent is also obtained by means of the signature on the CV. The conditions of Article 9 of the Regulation are therefore complied with.

Article 7(3) of the Regulation provides that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". Everyone involved in the Commission's selection procedure for structural trainees who receives and processes data, whether in the Commission or in the Permanent Representations, should be informed that the data may not be used for other purposes.

### **3.7. Right of access and rectification**

Article 13 of the Regulation makes provision, and sets out the rules, for a right of access at the request of the data subject. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source.

The privacy statement posted on the ECSTP website, which collects applications, mentions the data subject's right to access his data and gives the e-mail address via which that right may be exercised. This is in compliance with Article 13 of the Regulation. The EDPS draws the Commission's attention to the fact that this right may also apply to the reasons for the rejection of the data subject's application.

With regard to the right of rectification under Article 14 of the Regulation, applicants may modify their data in the ECSTP database within one month of submitting their applications. Once this deadline has passed, the privacy statement posted on the ECSTP website mentions the data subject's right to access his data and gives the e-mail address via which that right may be exercised. This is in compliance with Article 14 of the Regulation.

The EDPS would stress that once the selection procedure is completed, trainees in post must be able to exercise their rights of access and rectification with regard to any data relating to them (data stored in SIRE or SYSPER 2, end of traineeship reports, etc.).

### **3.8. Information to be given to the data subject**

Articles 11 and 12 of the Regulation deal with the information to be supplied 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 case under examination, in which the data are obtained directly from the data subject, Article 11 applies (*Information to be supplied where the data have been obtained from the data subject*). The privacy statement enclosed with the notification contains all the mandatory and optional items listed in Article 11 of the Regulation and is accordingly in compliance with that Article.

The EDPS welcomes the fact that the privacy statement is available on the ECSTP website throughout the selection procedure even after the end of the one-month period for submitting applications. He stresses however that applicants who have been accepted for a traineeship



must be provided with information in accordance with Articles 11 and 12 of the Regulation with regard to the further processing of their data.

### **3.9. Security**

Under Article 22 of the Regulation (Security of processing) "*the controller shall 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*".

From the information provided, the EDPS has no reason to believe that the Commission has not implemented the security measures required under Article 22 of the Regulation.

### **Conclusion**

The proposed processing does not appear to involve any infringement of the provisions of Regulation (EC) No 45/2001 provided that the comments made above are taken into account. This means, in particular, that:

- data relating to disability should be communicated strictly only on a need-to-know basis;
- the length of time that structural trainees' data are stored in the SIRE and SYSPER 2 databases should be reviewed in order to limit storage to the period necessary for managing the trainees;
- all storage of data for statistical purposes must be anonymous;
- everyone involved in the procedure for selecting Commission structural trainees who receives and processes data, whether in the Commission or in the Permanent Representations, should be informed that the data may not be used for other purposes;
- data being processed must be accessible to applicants during the selection procedure as it must be to successful candidates during their traineeship in the institution;
- successful applicants should be informed of the further processing of their data and of their rights in accordance with Articles 11 and 12 of the Regulation.

Done at Brussels, 30 March 2009.

(Signed)

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