



EDPS Prior checking Opinion on European Parliament's Growing Talent Training Programme

Brussels, 27 November 2015 (Case 2015-0636)

1. Proceedings

On 31 July 2015, the European Data Protection Supervisor ("EDPS") received a notification for prior checking from the Data Protection Officer ("DPO") of the European Parliament ("EP") regarding the Growing Talent Training Programme ("GT programme").

The EDPS notes that the EP had in the past carried out a pilot of a previous incarnation of this project, which was not notified to the DPO in accordance with Article 25 of the Regulation. Neither was the pilot of this project notified to the EDPS in accordance with Article 27 of the Regulation. The EDPS was informed that the notification to the DPO on the GT programme is still in preparation pending integration of EDPS recommendations on the prior check notification.

According to Article 27(4) of Regulation 45/2001 (the "Regulation") this Opinion must be delivered within a period of two months, not counting suspensions for requests for further information, in other words, 30 November 2015.¹

2. Facts

Data subjects and purpose

The Directorate for Human Resources Development of the EP's DG Personnel plans to launch a talent development programme ("Growing Talent"), in which staff members (AD or AST officials in certain grades), who have initially been short-listed on the basis of the number of points received during the evaluation procedure and then selected based on evaluation of the performance and conduct, could follow a training programme that combines classroom courses, practical assignments and other development exercises. The GT programme consists of 5 talent development training programmes which focus on specific job profile development or skills development, in line with the strategic needs of the EP. They are: 'Emerging Talent', 'Aspiring Managers', 'Key Specialist Translators', 'Law-makers' and 'Team Leaders', and are implemented in various DGs and aimed at specific target groups. The time schedule for training and on-the-job programme components of the 2015 edition is a period of 16 months. This initiative would be renewed in the future.

¹ The case was suspended for information from 13 August 2015 to 30 September 2015. The EDPS sent a draft Opinion to the EP for comments on 6 November 2015. The EP replied on 19 November 2015.

Through this programme, the EP wants to increase the performance and efficiency of the institution, encourage a culture of excellence in the institution and prepare its staff members for key functions to the institutions (posts for heads of units, team leaders, specialists).

Procedure

This initiative is composed of different phases: (1) checking the admissibility to the programme of the participants based on the objective criteria of merit points awarded in recent years, followed by the selection of candidates; (2) development interviews and the establishment of a Personal Development Plan per participant; (3) an opening and closing session for training, presence-based training, follow-up sessions, development activities and team work on a key project for the institution.

The personal data will be used for the admissibility and selection of the participants to the Growing Talent programme as well as for the assessment and progress of their development.

According to the notification and its annexes, the processing operation starts with the extraction of the list of all eligible officials who have received the required number of merit points awarded over a set number of years. On this basis, a staff member of Staff Management and Careers Unit of DG Personnel (responsible for processing the attribution of the 3rd merit point in the evaluation procedure) draws up initial draft lists in relation to the staff of each DG and submits each one to the relevant Director for Resources (or to a DG's Head of Unit for Personnel, in the absence of a Director for Resources).

Each DG (Director of Resources / Head of Unit for Personnel, in agreement with the Director-General) is then requested to make a selection for the final lists of proposed eligible candidates for each of the programmes implemented in the DG for determined target groups. Within each of these target groups, DGs should shortlist the candidates according to 3 orders of priority, depending on the number of merit points awarded over a set number of years. Each DG can select only a set number of candidates for each of the programmes. Only the candidates from the draft lists can be finally selected. DGs cannot put forward additional candidates. The selection from the draft lists is to be carried out following the order of priority that has been determined. Priority 1 candidates need to be considered first. If the internal evaluation of priority 1 candidates does not deliver a suitable candidate in line with the spirit of the programme, priority 2 candidates can be considered and so on. The internal evaluation of candidates carried out by DGs includes adequate consideration of the behavioural selection criteria, the candidate's motivation and commitment and the candidate's suitability for specific job profiles.

The proposed lists of eligible candidates are sent to the Staff Management and Careers Unit that will compile all the proposals in order to send the complete consolidated list for decision to the Secretary-General, after a discussion with the Directors-General.

The final decision on the programme participants is made by the Secretary-General at a meeting with all Directors-General. If a proposed candidate is not selected by the Secretary-General, the Director-General should propose another candidate from the list of his/her DG. The Secretary-General sends DGs the final lists of participants, as decided in their meeting and without the detail on points. A copy is sent to the Professional Training Unit.

DGs then communicate to the Professional Training Unit (PTU) in DG Personnel, their commitment to each of the programmes and the name of the HR officer charged with talent management responsibilities.

Once participants have "graduated" from the programmes, the PTU will develop, publicise and promote Growing Talent Alumni. At the end of a talent programme edition, participants would be invited to become part of a pool of alumni, available to apply their expertise, experience and skills gained from the talent programmes on key projects of the EP, such as those in the Parliament Project Portfolio. As such, the Growing Talent Alumni pool could become the backbone of the EP's matrix organisation. The EP's GT Alumni would be communicated by the PTU to the EP's management on a yearly basis. According to the EP, this does not imply any evaluation of the alumni, nor would any performance indicators be used.

The PTU has developed a communication plan to ensure that the GT programmes (background, selection procedure, names of participants, content and structure, objectives and purpose, guidelines on programme components, division of responsibilities, timing and time investment, outcome) are clearly communicated

- to everyone involved (participants, their managers, HR officers, mentors)
- to EP management
- and to EP staff in general,

before, during and after the roll-out of the programmes. According to the EP, this will benefit the transparency, credibility, visibility and reputation of the programmes.

Legal basis and ground for lawfulness

The legal basis for the processing operation is Article 24a of the Staff Regulations. This initiative is within the framework of the EP's administrative work programme. The EP's ground for lawfulness is the free, specific and informed consent of the data subject.

The officials who have been identified for participation in the GT programmes are free to decide whether they wish to participate or not. Following the programme is not a condition for or a guarantee of the evolution of their career. Once selected, the official can at any time refuse to participate or to withdraw from the training. If they decide to participate, they can at any moment decide to interrupt the programme without such a decision causing repercussions for their career.

The EP has stated that given the optional nature of the project, there can be no consequence or repercussion for the official's career.

Nature of the data to be processed

The sources of the personal data are first the RapNot, eRapnot² and Streamline³ applications via Excel tables and BOSstream environment⁴ and then the data subject.

The personal data that will be processed for checking the admissibility and for the selection of participants to the training programmes:

- Merit points awarded further to the evaluation reports of the previous 5 years,

² eRAPNOT is the web-based application for the staff assessment of EP's officials, temporary and GF1 contract staff. It is the single access point to complete, follow up, view and validate staff reports.

³ Streamline ("STaff REsources And Management on-LINE") is a computerised system for the management of human resources. Streamline makes it possible to automate administrative procedures and affords staff facilitated access to their personal data.

⁴ Collaboration environment to upload and share documents in objects and folders with specified users and user groups according to their business role and interactivity with the business data.

- Date of the nomination as official, grade, DG of assignment and job,
- Behavioural attitude of staff as regards 7 key competences for the institution,
- Personal data related to motivation and availability of staff to participate in the training programme.

The interview during the selection procedure is also a chance to correct data held by the data controller.

The personal data will be processed for the assessment and progress of participants' development through the Personal Development Plan - (PDP). The PDP is a development aid that is individual and belongs to the participant. Its aim is to help the participant to identify their own development needs and to monitor the participant's progress:

- data like the objectives and priorities for training and development, competences to develop and identified activities to undertake.

This initiative could include the presence of health-related data like maternity leave or long-term illness, to stop the participation in the programme partly or fully.

Recipients of the data

For the data related to the admissibility and the selection of participants:

- Head of Staff Management and Careers Unit, head of Staff Reports sector and the file managers of this sector,
- HR Directorates of the DGs, only for the data relating to the staff assigned in their DG
- Directors-General, only for the data relating to the staff assigned in their DG
- Secretary-General as the final decision-maker
- Head of Professional Training Unit and the staff members in charge of GT.

For the data related to the assessment and progress of participants' development:

- HR Directorates of the DGs, only for the data relating to the staff assigned in their DG
- Head of Professional Training Unit and the staff members in charge of GT

The Professional Training Unit, the trainers and local career advisor may help the participant prepare the PDP, but will not receive nor store it. The participant will choose whether to show the PDP to the trainers of the GT in order to adapt their training programme to the needs of the participant.

The names of all the participants and the programme in which they have participated (the GT Alumni) will be public inside the EP (similarly to the certification procedure) and communicated to the Directors of Resource, who can then inform their management teams.

The transfers to the internal auditor, Legal Service, EDPS, European Ombudsman or Civil Service Tribunal, are considered by the EP as legitimate in order to allow the functions of supervision, opinion and judicial oversight.

Information to the data subjects

General information on the talent development project will be made available to all staff on the EP's intranet. A communication to the participants of the Growing Talent is foreseen and will include a privacy statement. The EDPS received a copy of the information note to all officials and the privacy statement.

Data subjects' rights

The participating officials can exercise their right of access and rectification by addressing their request to the controller by filling in a special form. They have the right of recourse to the Data Protection Officer of the EP and to the EDPS.

The officials also have the right to block and delete their personal data. The data controller has to reply or decide within 15 working days from the date of the request for blocking or deletion. If the request for blocking or deletion is accepted, it has to be carried out without delay or within 30 working days and the staff member has to be informed. If the request for blocking or deletion is refused, the staff member has to be informed within 15 working days by a motivated letter.

Data retention period

The conservation period for the data has been decided taking into account any possible recourse according to the regulations in force.

Data related to the admissibility and the selection of the participants will be stored for one year from the finalisation of the list of participants.

Data related to the assessment and progress of participants' development will be stored for the duration of the GT programmes (18 months) and one year after its closure, in order to allow the follow up of the progress made by the participants. The data will be kept for a maximum of 2.5 years from the start of the training programme, after which they will be destroyed by the relevant services.

Processing for historical, statistical or scientific purposes

The names of the participants of the training will be kept in order to make statistical analyses on the follow-up of the participants' career (e.g. nomination to the post of head of unit or team leader for the participants to the programme Aspiring Managers and Team Leaders). Their participation in the GT programmes will be recorded and stored in Streamline application for the whole duration of their career as official of the EP.

Processors

The EP will select one or several trainers on the basis of two existing framework contracts. One basis will be the existing framework contract for the provision of staff training and related consultancy services to the European Union institutions, bodies and agencies (lead contracting authority responsible for the FWC: European Commission). Another basis will be the existing framework service contract for the training services for the staff of the European institutions, offices, other bodies and EU agencies who may hold or may be called on to hold managerial posts and for coaching services (lead contracting authority responsible for the FWC: EPSO/EUSA).

The other contracting parties to the framework contract and the framework services contract are all based in the European Union. The framework contract and the framework services contract include the standard Commission's data protection clauses in the special (Article I.9) and general conditions (Article II.20) for the framework contract and in the general conditions (Article II.6) for the framework services contract, as well as the confidentiality clause with the obligation of confidentiality for the contractor's staff (Article II.9 and Article II.5 respectively).

The EP will then sign a specific contract or a written order form with the selected trainer(s) as an addendum to the existing framework contract or framework services contract. This order or specific contract will be legally autonomous; the EP will be responsible for its own order forms or specific contracts.

Data storage and security

The processing operation is partly automated. [...]

3. Legal aspects

3.1 Prior-checking

The purpose of the notified processing operation is to select the participants in the training programmes by the EP on the basis of the objective criterion of the number of merit points and following an evaluation of the performance and conduct (motivation and behaviour at work and at the interview) of eligible officials and their potential and suitability for specific job profiles. The processing therefore falls within the scope of Regulation (EC) No 45/2001. Since the processing intends to evaluate the ability of persons wanting to participate in the programmes, it is subject to prior checking by the EDPS under Article 27(2)(b) of the Regulation.

3.2 Lawfulness of the processing

The legal basis for the processing can be found in the legal provisions indicated in the facts.

The GT programme processing operation falls within the framework of the training policy of the institution concerned. The processing operation first starts by the EP extracting a list of eligible potential candidates for the GT programme. The DGs then, on the basis of this list, start the internal evaluation of candidates inviting the candidates for interviews. The Secretary-General makes the final selection of the participants and the PTU organises trainings for the participants.

The initial phase of the processing can be considered as necessary to identify the potential candidates to whom the training can be offered. This respective processing of personal data is necessary for the performance of a public interest task, namely the training of EU staff members through learning and development actions. Thus, this part of the processing is lawful in accordance with Article 5(a) and Recital 27 of the Regulation.

The EP bases all phases of the processing on Article 5(d) of the Regulation (unambiguous consent). The EDPS considers that the subsequent phases of the processing can be based on consent.

The GT programme is voluntary and it is clearly presented as such to all the officials beforehand and the officials when invited to participate. The EDPS stresses that this free choice should apply to the whole process of the subsequent phases, including the interview between the official and his/her hierarchical superior in the internal evaluation of candidates, the sharing of the PDP and the follow-up after the participation in the programme. The notification⁵ and the **privacy statement should make clear that consent covers the whole process of the subsequent phases** including the internal evaluation of candidates, the sharing of the PDP and the follow-up after the participation in the programme.

⁵ See point 8 and 12 of the notification.

The EDPS takes note of the EP's statement but would nevertheless like to repeat that no negative consequences can affect the data subject if he/she decides not to participate or withdraws consent for further processing.

3.3. Processing of special categories of data

Processing of data concerning health is prohibited unless it could be justified on grounds mentioned in Article 10(2) or (3) of the Regulation. These data may be processed in case it is necessary to comply with the controller's obligation in the field of employment law.

In the framework of the GT programme, data concerning health may be processed, namely in the case of the inability to participate partly or fully in the programme due to health reasons (e.g. maternity or long-term illness).

The EDPS understands that absences from the training need to be justified⁶. The EDPS also understands that for learning managed through Streamline Learning Management the *"absences due to illness or special leave will be justified automatically through the linking of the data in the 'Streamline Absence Management' database and 'Streamline Learning Management'. No further justification is required. Any absence for reasons other than illness, accident or special leave will have to be justified and approved by your hierarchy."*⁷

The EDPS recommends that this solution similarly be applied to the GT programme so that the reason for the inability to participate partially or fully in the training (maternity, illness) is processed separately by the qualified persons (the medical/special leave departments) and **no information about actual reason is processed within the GT programme.**

3.4 Data quality

Pursuant to Article 4(1)(a), (c) and (d) of Regulation 45/2001, personal data must be processed fairly and lawfully, be adequate, relevant and not excessive in relation to the purpose for which they are collected and further processed, as well as accurate and kept up to date.

The EDPS notes that the data as described in the facts seem to satisfy the conditions of adequacy, relevance and proportionality regarding the purpose of the processing explained above.

Accuracy may have different meanings in the context of the present processing operation.

Firstly, the personal data is initially extracted from the existing databases of the EP and their accuracy is based on the accuracy of the information held in these databases.

Secondly, the personal data are provided by the data subjects themselves during the initial evaluation interview and during the preparation of the PDP.

Considering the optional nature of the procedure, that staff members can participate on a voluntary basis, and that the rights of access and rectification are available to the data subjects, in order to make the information they provide as comprehensive as possible (see section 3.8), it seems that the system itself gives a reasonable guarantee of data quality.

⁶ See Article 24 of the Internal rules on professional training for European Parliament staff.

⁷ See point 4.7 Absences during training of the SLM User Guide.

The lawfulness of the processing has already been discussed in section 3.2 of this Opinion, whereas fairness is linked to the information that must be provided to the data subject (see section 3.7).

3.5. Conservation of data

According to Article 4(1)(e) of Regulation 45/2001, personal data may be kept in a form enabling the identification of data subjects for no longer than necessary for the purposes for which they were collected or further processed.

According to the facts, three different retention periods are applied and they are based on the type of relevant data: a) data related to the admissibility and selection of the participants; b) data related to the assessment and progress of participants' development and c) data relating to the participation in the GT programmes.

On the basis of the information available, the EDPS considers the retention periods for the different types of data, necessary and proportionate in light of Article 4(1)(e) of the Regulation.

The EDPS however wants to make the following comment regarding data relating to the selection procedure itself: the procedure foresees that they will be kept for a period of 1 year from the finalisation of the list of participants. The EDPS considers that a period of one year could be considered as sufficient in order to introduce a complaint against the decision of the selection procedure itself. However, in the light of the two year period during which a complaint can be introduced to the European Ombudsman⁸, **the EDPS would invite the EP to consider aligning its retention period with the period to introduce a complaint to the European Ombudsman.**

3.6 Transfer of data

Articles 7, 8 and 9 of the Regulation set forth certain obligations that apply when data controllers transfer personal data to third parties. The rules differ depending on whether the transfer is made (i) to or within EU institutions or bodies (based on Article 7), (ii) to recipients subject to Directive 95/46 (based on Article 8), or (iii) to other types of recipients (based on Article 9).

The EDPS notes that the transfers to the mentioned EP's services are considered as necessary for the execution of the selection of participants and organisation of the GT programmes.

However, the EDPS stresses that the recipients should be reminded that they are required not to use the data for any other purposes than the tasks carried out in the exercise of their respective competences in order to comply with Article 7(3) of the Regulation.

The transfers based on Article 8 of the Regulation to the processors (GT trainers) which are recipients subject to Directive 95/46 are considered as necessary for the execution of the trainings provided in the GT programmes. The EDPS would still like to point out that should the processor choose a sub-processor (whether one subject or not to Directive 95/46), this should only be possible with the EP's prior approval and that the EP should make sure the same obligations as regards the processing of personal data apply to the sub-processors.

⁸ See Article 2(4) of the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties.

3.7 Right of information

Articles 11 and 12 of the Regulation relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. In the present case, the EDPS notes that the privacy statement contains almost all necessary information in conformity with Articles 11 and 12 of the Regulation, apart from a few precisions.

In the light of the voluntary aspect of this exercise and the need to clearly inform the potential candidates and participants of the GT Programme the EP **should make it clear that consent covers the whole process of the subsequent phases**, including the internal evaluation of candidates, the sharing of the PDP and the follow-up after the participation in the training programme.

The EDPS recommends **also updating the recipients and the data they receive** (Directors-General receive not only the data related to the staff allocated to their DG, but also in the final decision phase the names of all candidates proposed by DGs; delete the mention of SG's Cabinet; for the trainers of GT delete the mention that they would only receive the data related to PDP of participants).

Currently, the privacy statement does not appear to inform the data subjects of any time limits for requests and responses. This information is nevertheless available in the standard form the EP is making available for the exercise of data subject's rights. The EDPS would recommend as good practice that this information is added to the privacy statement for the sake of clarity.

The EDPS welcomes the fact that the EP has prepared an information note for all staff on the GT programme that will be made available on the intranet. This note contains some general information on the processing of personal data in this context. The EDPS, however, notes that the complete privacy statement will be provided only to the participants of the GT programme. In light of this, the EDPS recommends that all candidates be informed about the processing of their data and their rights regarding the processing. Accordingly, **all eligible candidates should receive the privacy statement before the start of the internal evaluation within DGs.**

3.8 Rights of access and rectification

Article 13 of the Regulation provides for the principle of the data subject's right of access to their personal data processed and the procedures for its exercise. Article 14 of the Regulation provides for the data subject's right of rectification. These rights may be restricted in terms of Article 20(1) of the Regulation, in particular when it would be necessary to do so for the protection of rights and freedoms of others, including the evaluators in terms of Article 6 of the Annex III to the Staff Regulations.

As the evaluation of the staff performance during the initial evaluation interview is based upon largely subjective judgements by managers against specified predefined criteria, the data subject's right of rectification in this respect is limited to factual data. Nevertheless, the EDPS would like to point out that the **data subjects must be provided with a possibility to receive feedback about their performance during the initial evaluation interview.** This would then allow the individuals to "rectify" the evaluation data within the respective appeal procedure.

The EDPS would suggest updating the notification to reflect the new fact that since the participants will keep their own PDP, the PTU, the trainers and local career advisor do not receive or store it.

3.9 Processing on behalf of the controller

Article 2(e) of the Regulation 45/2001 states that "*processor' shall mean any natural or legal person, public authority, agency or any other body which process personal data on behalf of the controller*". Article 23 of the Regulation stipulates on one hand, the role of the processor and on the other hand, the obligations of the controller in ensuring sufficient guarantees in respect of the technical and organisational security measures, along with ensuring compliance with those measures.

The EDPS notes that the EP will choose the processor based on two existing interinstitutional framework contracts that include the standard Commission's data protection clauses.

The EDPS would like to stress as it is stated in the Guidelines on staff recruitment that "*in case an external company, covered by the Directive is in charge of carrying out tasks for an agency, the exact tasks between the controller (agency) and the processor-recipient (company) should be set up through a contract or a legal act. Their respective obligations should also be ensured in the light of the confidentiality and security requirements pointed out in Article 23 of the Regulation*".

The EDPS points out that the **rights and obligations of the external contractor in the area of data protection should be clearly distinguished in the contract**. This is not the case in the standard Commission's data protection clauses in the two interinstitutional framework contracts.

This distinction can be made in the separate contract or order form that the EP will conclude with the selected trainers. There should be no confusion between the obligations of the EP with regard to the personal data of the external contractor (its staff) and the obligations of the external contractor towards the EP concerning the processing of personal data which is the object of the contract (data of the participants in the GT trainings)⁹.

The EP should **clarify in the contract whether the processor will keep any of the participants' personal data** and if it is the case, **a retention period should be established**. Furthermore, the EP should **clarify in the contract whether the processor will be responsible for granting access rights to the participants' personal data**. This **information on the retention and access to personal data held by the processor should be indicated in the privacy statement**.

3.10 Security of processing

[...]

Conclusion

⁹ See conclusions of the 2013 EDPS inquiry on measuring compliance with Regulation (EC) 45/2001 in EU institutions (section 3.5.):
https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2014/14-01-24_survey_report_EN.pdf

Based on the information provided, the EDPS has no reason to believe that the procedure breaches the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the EP should;

- clarify in the privacy statement that consent covers the whole process of subsequent phases (3.2 and 3.7);
- apply the same procedure for processing absence as the one used for the Streamline Learning Management (3.3)
- align its conservation period with the period to introduce a complaint to the European Ombudsman (3.5);
- update the recipients of the information (3.7);
- make sure that all staff will receive the privacy statement (3.7);
- provide the data subjects with the possibility to receive feedback (3.8);
- distinguish the data protection rights and obligations in the contract with the external contractor (3.9);
- clarify in the contract whether the processor will keep any of the candidates' personal data, and if so, establish a retention period (3.9);
- clarify in the contract whether the processor will be responsible for granting access rights to the participants' personal data (3.9);
- information on the retention and access to personal data held by the processor should be indicated in the privacy statement (3.9).

To facilitate the follow-up, the EP should therefore inform the EDPS of the measures taken based on the recommendations within a period of 3 months of issuing the Opinion.

Brussels, 27 November 2015

(signed)

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