



Opinion on a notification for Prior Checking received from the Data Protection Officer of European Centre for the Development of Vocational Training (Cedefop) on Trainee Recruitment

Brussels, 5 December 2008 (Case 2008-196)

1. Proceedings

On 31 March 2008, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer at the Cedefop a notification for prior checking relating to the processing of personal data for the purposes of trainee recruitment. Also included in the documentation was a copy of the "Extract from rules governing in-service training periods at Cedefop".

The EDPS requested further information on the 21 April 2008. This was provided on 24 June 2008. A further set of questions was sent on 16 July 2008. The answers were provided on 24 July. The new traineeship rules were asked for on 1 August. In the absence of any response, the draft Opinion was sent to the Cedefop for comments on 12 November 2008 and these were received on 4 December 2008.

2. The facts

The *purpose* of the processing operation is to recruit trainees and give them a general idea of the objectives and problems associated with the development of initial and continuing professional training within the framework of European Institutions. It also aims to provide the trainees with practical knowledge of the working of Cedefop departments and to enable them to acquire personal experience by means of the contacts made in the course of their everyday work.

CEDEFOP offers 5 months traineeships, twice a year.

The *data subjects* concerned by the processing operation are the applicants for a traineeship at the Cedefop.

Trainees are selected from among nationals of the Member States of the European Communities. However, a limited number of nationals of non-member countries may be accepted.

In-service training at Cedefop is open to candidates who have not already benefited from in-service training in another European institution or body¹ and:

¹ Exceptions may be made only in the event of a training period which takes place consecutively in more than two bodies of the EU, as part of a well-defined comparative research project involving in particular the decentralised agencies.

- (a) who have completed by the closing date for applications a course of university education and obtained a full degree or its equivalent (for minimum national education requirements, or
- (b) are public sector employees, provided they have a university degree or equivalent diploma or have been engaged in advisory duties for at least three years.

Except in the case of a properly justified derogation, the age limit for training placements is 30.

Applicants must have a thorough knowledge of one Community language and a satisfactory knowledge of another Community language. Applicants from non-member countries must have a good knowledge of one Cedefop working language (EN, FR, DE, EL); knowledge of other Community languages is considered an advantage.

Successful applicants are selected on the basis of qualifications and/or experience; an appropriate geographical distribution will be maintained. Candidates should offer as wide a range of academic disciplines as possible in order to provide Cedefop with a large choice of specialisations. Priority is given to applicants on the basis of the results obtained during their studies. Applications will also be considered from those:

- who have completed or started a course on European integration;
- who hold public sector posts which require a thorough knowledge of Community activities.

On the basis of the criteria described above, the Cedefop administration draws up the list of candidates to be considered and sends it to the Cedefop departments for the final selection.

Applicants submit their applications online using the appropriate application form. Therefore part of the procedure is an *automated* processing operation. Except in duly justified cases (e.g. disability) no hard-copy applications are accepted. Supporting documents such as the scanned copy of the candidate's university degree and Curriculum Vitae (preferably using the European format) must accompany the application. The correspondence with selected applicants and the grant payments of the trainees are *manual* processing operations.

For unsuccessful candidates at the first attempt, they may nonetheless reapply for a subsequent training period. It is necessary to submit a fresh application.

At the end of a traineeship each trainee receives a traineeship certificate and an assessment report about his/her performance is drawn up by his/her supervisor (or another competent person).

Categories of personal data processed in the trainee recruitment procedure include data related to health (disabled trainees may receive a supplement to their grant), data used to evaluate personal aspects of data subject such as his/her ability (information on academic background, professional experience, training and language skills), concerning a possible previous traineeship in another EU institution or agency and personal contact details. A photograph of the person concerned might also be collected on voluntary basis (through the European format Curriculum Vitae for instance).

If a candidate is selected for an internship, he/she also might provide the Cedefop with travelling expenses data in order to be reimbursed and proof of social security cover. No bank account details are collected as the grant is paid by cheque.

After the selection process has been closed the data of the applicants (selected or not) are kept for *a conservation period* of five years. The assessment report is also kept for 5 years. A copy of the certificate is kept as part of the records log in case a former trainee request the Cedefop to re-issue the certificate.

The data are *transferred* to staff members involved in the trainee selection procedure: heads of the Area and designated staff within the Area, human resources staff for the purpose of correspondence with the applicants and for the grant payment.

The on-line application form provides with a privacy statement. It contains *information* on the recruitment process, including the controller, the purposes of the processing, the recipients of the personal data, whether replies to the questions are obligatory or voluntary as well as the possible consequences of failure to reply, the existence of a right of access and rectification, the conservation period, the right to have recourse at any time to the EDPS. Concerning the information about the legal basis, the privacy statement states that the processing is necessary for the steps of the traineeship selection.

Once the on-line application has been submitted, there is no possibility for the applicant to directly update and correct data via the on-line application. It is nevertheless possible to *correct/update* data by sending an e-mail to the dedicated traineeship mailbox.

Concerning the *security measures*, electronic CVs are held on a database which access is secure and restricted only to designated staff in the operational areas and services involved in the trainee selection. One IT staff member and one HR other staff member have access to the database.

3. Legal aspects

3.1. Prior checking

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

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

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

Regulation 45/2001 shall apply to the processing of personal data wholly or partly by automatic means and to the processing otherwise than by automatic means of personal data

which form part of a filing system or are intended to form part of a filing system. In this case the processing is carried out both on computer and in a structured paper filing system.

Regulation 45/2001 therefore applies.

Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes Article 27(2)(b) "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency or conduct*".

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

Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. In this case however the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

The notification of the DPO was received on 31 March 2008. The case was suspended when further information was sought for 186 days (days of suspension + comments). According to Article 27(4) the present opinion must be delivered within a period of two months, which is no later than 23 December 2008 (155 day of suspension plus August).

3.2. 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*".

"Extract from the rules governing in-service training periods at Cedefop"(Cedefop decision of 11 September 2003) provides the legal basis for the recruitment of trainees.

The EDPS has been made aware of the fact that new traineeship rules will be adopted soon by the Cedefop but not provided with a copy of the draft. The new rules shall be in compliance with the Regulation 45/2001 and in particular with the recommendations of the case in point.

The EDPS is convinced that the processing is necessary for performance of a task carried out in the public interest on the basis of the Cedefop decision of 11 September 2003 and is therefore legitimate under Article 5(a) of Regulation 45/2001.

3.3 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 training grants for disability foreseen in Cedefop decision of 11 September 2003. As such it is necessary for the Cedefop 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. Secondly, it also can be considered that candidates have given their consent to the processing of that data; thus, the condition of Article 10(2) (a) would be met. Nevertheless the data quality principle should be respected (see above in point 3.4) and access rights to that sensitive data should be limited. (see 3.7 and 3.10).

As to the inclusion of a photograph, this may reveal racial or ethnic origin and therefore, should also be based on consent of the data subject (Article 10.2.a), which is the case here.

3.4 Data Quality

According to Article 4(1)(c) of Regulation 45/2001 "*personal data must be adequate, relevant and not excessive in relation to the purposes for which collected and/or further processed*". After careful examination, the EDPS is of the opinion that, in general, 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). With regard to the proper justification for disability grant, the EDPS would like to draw the controller's attention to the principles in Article 4(1)(c), namely, that the justification requested from trainees should not be excessive for the purposes of determining the need of the disability allowances.

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

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

Article 4(1)(a) also provides that personal data must be "*processed fairly and lawfully*". Lawfulness has already been discussed (see point 3.2) and fairness will be dealt with in relation to information provided to data subjects (see point 3.9)

3.5 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*".

For the record, personal data (application and assessment report) related to successful candidates are kept for five years. The EDPS is satisfied that this retention is necessary in relation to further compatible processing - discharging the budget/lodge a complaint to the European Ombudsman - and is therefore in accordance with the requirements of Article 4(e).

The copy of the traineeship certificate may be kept for a longer period in order for the Cedefop to be able to re-issue the certificate. Nevertheless, a conservation period should be fixed by the Cedefop.

Concerning personal data of unsuccessful candidates, the EDPS is of the opinion that the retention period should be derived from the length of time during which a complaint may be brought to the European Ombudsman, that is to say two years. The EDPS gave some guidelines on the calculation of the starting period for the storage: in the case of *pre-selected* but *not recruited* candidate the EDPS recommended that the starting date for computing the storage period (*dies a quo*) should be the immediate official starting date of the traineeship period (and *not* the end of the traineeship period to which the application relates).²

The EDPS recommends that a shorter conservation period is fixed for the unsuccessful applicants and that a conservation period is established for the copy of the traineeship certificate.

3.6 Compatible use / Change of purpose

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

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

3.7 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*".

During trainee recruitment, personal data related to applicants will be transferred to heads of the Area and designated staff within the Area and to human resources staff for the purpose of correspondence with the applicants and for the grant payment.

The EDPS is satisfied that the personal data transferred during trainee recruitment are necessary for the legitimate performance of tasks covered by the recipients in each case and is thus in accordance with Article 7(1). Nevertheless, the EDPS questions the necessity to transfer all data (disability data for instance, see below) to heads of Area and designated staff within the Area and to human resources staff. Only the data necessary for the legitimate performance of tasks covered by the competence of the recipient (selection of the trainee and payment) should be transferred.

The transfer of disability data can be seen necessary for the tasks of the human resources section or heads of Area but a special criteria (or form) should be developed determining what

² Opinion of 27 October 2005 on a notification for prior checking on the management of applications for paid traineeships (Case 2005-214) and Opinion of 15 December 2005 on a notification for prior checking on the management of applications for paid traineeships (Case 2005-297) Available at: www.edps.europa.eu

data may be exactly transferred to the human resources or heads of Area, in order to meet the necessity requirement in each and every case.

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

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.

3.8 Right of access and rectification

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

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

The privacy statement for on-line traineeship applications states that applicants may send a written request to the Traineeship mailbox to have access to and modify their data. Candidates have the right to update or correct their identification data. Data demonstrating compliance with admissibility criteria may not be updated or corrected after the closing date of the respecting selection procedure. As a principle, this restriction on the right of rectification can be justified under Article 20.1.c. of the Regulation as it can be seen as a necessary measure to safeguard the "rights and freedom of others" (i.e. other applicants in a selection procedure). The EDPS is of the opinion that the rights of the data subject are respected in the processing that occurs as part of the recruitment of trainees.

Nevertheless the EDPS is of the opinion that the right of access and rectification to the assessment report or other administrative documents should also be ensured to the trainees. The EDPS is aware that only factual data are concerned, marks or appreciations could not under any circumstances be open to a right or rectification by the data subject, except in the context of established appeals procedures.

3.9 Information to the data subject

Article 11 of Regulation 45/2001 provides for certain information to be supplied where the data have been obtained from the data subject. Article 12 of Regulation 45/2001 provides for certain information to be supplied where the data have not been obtained from the data subject. During the recruitment of trainees personal data are obtained directly from the data subject on the application form and from their supervisor in the evaluation report at the end of the traineeship. Thus Articles 11 and 12 will both apply to the certification procedure.

For the record, the on-line application form provides with a privacy statement. The EDPS recommends that the privacy statement is amended to include the legal basis: *"Extract from the rules governing in-service training periods at Cedefop"*(Cedefop decision of 11 September 2003).

The EDPS also recommends that the retention policy recommended in 3.5 is made readily available on the website alongside other information provided to applicants.

3.10 Security measures

Article 22(1) of the Regulation requires that "Having regard to the state of art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure the level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing."

No indication exists to believe that Cedefop has not applied the above described security measures, though one further point about data on trainees disability needs to be made. Due to the sensitivity of this information, people in charge of handling that data should be made aware that they are processing sensitive information and they should respect the confidentiality requirement.

Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 provided that the above considerations are fully taken into account, namely:

- The new rules on trainees recruitment should be in compliance with the Regulation 45/2001 and in particular with the recommendations made here below;
- the justification requested from trainees should not be excessive for the purposes of determining the disability allowances;
- a shorter conservation period is fixed for the unsuccessful applicants and that a conservation period is established for the copy of the traineeship certificate;
- a special criteria (or form) should be developed determining what data may be exactly transferred to the human resources or heads of Area;
- the right of access and rectification to the assessment report or other administrative documents should also be ensured to the trainees;
- the privacy statement is amended to include the legal basis: "*Extract from the rules governing in-service training periods at Cedefop*"(Cedefop decision of 11 September 2003);
- the retention policy recommended in 3.5 is made readily available on the website alongside other information provided to applicants;
- people in charge of handling disability related data should be made aware that they are processing sensitive information and they should respect the confidentiality requirement.

Done at Brussels, 5 December 2008

(signed)

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