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Monsieur Gerardus NIJBORG
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Committee (EESC)
99, rue Belliard
1040 Bruxelles

Brussels, 18 December 2009
GB/XK/kl D(2009)1808 C2009-0701

Subject: Prior-checking notification, case 2009-0701

Dear Mr Nijborg,

We have analysed the documents you have provided the EDPS concerning the notification for prior-checking under Article 27(2) of Regulation 45/2001 on the management of applications for a short-term traineeship in the EESC. The processing operation under examination is subject to prior-checking in conformity with Article 27(2)(b) of Regulation 45/2001, since it involves an evaluation of the applicants' ability to perform the functions of a short-term trainee for which the selection and recruitment procedure has been organised. The processing operation in the present case also involves data related to criminal offences (collection of police record), which constitutes an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation.

The procedure related to the short-term traineeship, as well as the data protection practices as presented in the notification, reveals some similarities to other more general processing operations regarding traineeships and staff recruitment. To this regard, we invite you to thoroughly examine the EDPS Guidelines on staff recruitment¹ as well as the EDPS Joint Opinion on "*Staff recruitment procedures carried out by some Community agencies*"². Both documents concern, *inter alia*, the category of trainees and they examine all data protection principles in the light of the provisions of Regulation 45/2001. It follows that the principles laid down in both the EDPS Guidelines and the EDPS Joint Opinion on staff recruitment are applicable in the case of the short-term traineeships carried out by the EESC.

The EDPS shall first underline the EESC's practices which do not seem to be in conformity with the principles of Regulation 45/2001 as well as with the EDPS Guidelines and shall then provide the EESC with the relevant recommendations.

¹ The EDPS Guidelines can be found on the EDPS website under the title "Thematic Guidelines".

² EDPS Opinion issued on 7 May 2009 (case 2009-0287).

1. Lawfulness of the processing

Facts: It was indicated in the notification that the Decision 323/97 A of 11 June 1997 governing the in-service training in the EESC is currently under revision and the new decision will be sent to the EDPS.

Recommendation: A copy of this decision should be sent to the EDPS as soon as it is adopted.

2. Retention of the police record

Facts: The notification and the privacy statement on the EESC website state that successful candidates have to provide a statement from the police to the effect that they have not been convicted of any serious offences. However, there is no information as to the retention period for this police record.

Recommendation: In light of his Guidelines, the EDPS would recommend that the police record should be returned to the data subject immediately after his/her recruitment and a "standard form" which states that the data subject is suitable for the performance of his/her duties and enjoys his/her full rights of citizenship could be stored in the short-term traineeship file.

3. Retention period of the other data processed

Facts: The notification states that the data of unsuccessful candidates are kept until the start of the traineeship period and in the case where no date is indicated, they are kept for one year after receipt. Data of successful candidates are kept for one year after the end of the traineeship period.

The privacy statement on the EESC website indicates that *"the personal data for traineeship candidates and pre-selected candidates will be retained for two months from the official starting date of the traineeship. For candidates undertaking a traineeship, this data will be kept for a year after the end of the traineeship"*.

Recommendation: The information regarding the retention of unsuccessful candidates' data is inconsistent. The EDPS considers that in the case of unsuccessful candidates, there is no reason to keep their data longer than it is necessary for the purposes for which they were collected. In terms of organisation, the EDPS is of the opinion that there should be a specific date when a short-term traineeship should take place according to the EESC's and the candidates' availabilities. Therefore, *keeping the data of unsuccessful candidates until the indicated start of the short-term traineeship* can be justified under Article 4(1) (e) of Regulation 45/2001.

Furthermore, concerning the data retention of successful short-term trainees, the EDPS recommends that the EESC should consider a shorter data retention period, unless you provide some valid justifications in the light of Article 4 (1) (e) of the Regulation.

In this regard, the EDPS recommends that the EESC should make a clear distinction in terms of data retention between short-term traineeships and 5-month traineeships.

4. Transfer of data

Facts: The privacy statement states that "*the data will be communicated exclusively to the EESC traineeship office and to the traineeship advisers who, in the various departments, take part in the selection process*".

Recommendation: In accordance with Article 7 of Regulation 45/2001, the EDPS invites the EESC to establish a specific confidentiality policy and data protection practice for non-disclosure of the data sent to the recipients as well as for non-use of these data for other purposes for which they are transmitted to them.

5. Right of access

Facts: The privacy statement indicates that data subjects have a right to access their personal data.

Recommendation: The EDPS would like to highlight that a candidate for a short-term traineeship should be given access to his/her own evaluation results regarding all stages of the selection procedure with the following exception: access must not be granted to either the comparative results of other applicants or to the individual opinions of the members of any Selection Committee.

6. Privacy statement

Facts: The privacy statement on the EESC website includes most of the elements identified in Articles 11 and 12 of Regulation 45/2001.

Recommendation: However; the EDPS invites the EESC to modify the privacy statement as follows:

- the new Decision on traineeships should be indicated as the legal basis of the short-term traineeship;
- the category of short-term trainees, as data subjects should be clearly defined;
- the data retention periods for both successful and unsuccessful candidates should be clearly stated;
- the right of access to the candidates' personal data including their own evaluation results must be ensured for all stages of the selection procedure.

The EDPS invites you to adopt specific and concrete measures to implement these recommendations regarding the management of applications for the selection and recruitment procedure of short-term trainees within the EESC., To facilitate our follow-up, it would therefore be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter which prove that the recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

Cc: Ms Maria Arsene, Data Protection Officer of EESC