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correspondence"

**Subject: Prior checking notification of the management of applications for a  
traineeship at the EUISS (Case 2014-0752)**

Dear Mr Missiroli,

On 22 July 2014, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of your Institute a notification for prior checking under Article 27(3) of Regulation (EC) No 45/2001 (the Regulation) on the management of applications for a traineeship at the EUISS. The notification included the Decision of the Director of the EUISS on the rules governing the traineeship programme at the EUISS ("the Rules governing the traineeship programme at the EUISS"), a screenshot of the online application form and the Privacy statement regarding the traineeship programme at the EUISS ("the Privacy statement").

The data protection aspect of the selection and recruitment of staff, including trainees, is dealt with in the Guidelines which the EDPS has issued concerning staff recruitment procedures within EU institutions and agencies<sup>1</sup>. We have analysed the documents and supplementary information you have provided to the EDPS concerning the above notification in the light of the EDPS Guidelines on staff recruitment. The present Opinion will therefore point out only those aspects that do not seem to be in conformity with the principles of the Regulation and with the Guidelines and limit the legal analysis to those practices. In light of the accountability principle guiding his work, the EDPS highlights that the EUISS should apply *all* relevant recommendations made in the Guidelines in the present case.

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<sup>1</sup> The Guidelines are available on EDPS website ([www.edps.europa.eu](http://www.edps.europa.eu)) under the section Supervision/Thematic Guidelines.

The procedure was notified for prior checking under Article 27(2)(b) of the Regulation on 22 July 2014. Additional information was requested from the DPO of the EUISS on 30 July 2014 and received on 8 and 9 September 2014.

### **Legal analysis**

#### **Prior checking:**

The EUISS notified the present processing operations as an ex-ante one.

The Rules governing the traineeship programme at the EUISS were signed in July 2014 and took effect on 16 July 2014. According to the additional information provided by the DPO of EUISS the submitted notification is a true prior checking as this is the first time that these rules will be applied.

The EDPS points out that while the Rules governing the traineeship programme at the EUISS were adopted in July 2014, the processing of personal data in the framework of traineeships is not per se new.

The screenshot of the online application form, annexed to the notification, is from the September 2014 traineeship period, for which decisions on selected candidates were made in May 2014. For traineeships taking place in the first half of 2015 (January 2015 traineeship period), a new application period will open in autumn 2014. The EDPS notes that Article 7(2) of Council Decision 2014/75/CFSP states that researchers and trainees may be recruited on an ad hoc and short-term basis. The EDPS also notes that Titles I and IV of the Staff Regulations of the European Union Institute for Security Studies apply to the recruited trainees. Before the adoption of the Rules governing the traineeship programme at the EUISS, Article 7(2) of Council Decision 2014/75/CFSP and the Staff Regulations could have been considered as the legal basis for traineeships at the EUISS.

The notification relates, therefore, to a processing operation which is already in place, making this an ex-post prior checking. Consequently, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best-effort basis.

#### **Lawfulness of the processing operation:**

The Rules governing the traineeship programme at the EUISS contain a data protection provision in Article 10. This provision is also mentioned in point 7 (Information to data subjects) of the notification. It appears on the Traineeships announcement page and will appear on the online application form as of the January 2015 traineeship period. The data protection provision states that by submitting an application, the applicant consents to the processing of the personal data contained in the application form and the supporting documents enclosed therewith, in the sense of Article 5(d) of the Regulation.

The EDPS considers that Article 5(a) of the Regulation is the appropriate ground for lawfulness of the processing in the present case, since it is a processing which is necessary for the performance of a task carried out in the public interest. This ground for lawfulness should be included in point 11 of the notification and in the Privacy statement.

As to Article 5(d), the EDPS does not consider this provision as a ground to legitimise processing operations. The consent must be "freely given". In an employment relationship, the data subject might fear being treated differently if he does not consent to the data processing. The consent would then not be free.

Having said that, in the context of selection procedures, consent may be used to lift the prohibition on processing certain special categories of data where the data subject supplies information which he/she knows is not obligatory. This is also why the data subject should be informed on whether information is obligatory or voluntary (Article 11(1)(d)). Furthermore, consent concerning sensitive information must be 'express' within the meaning of Article 10(2)(a)<sup>2</sup>.

**Right to information:**

On the basis of Articles 11 and 12, the EUISS should provide all candidates with the necessary information related to the processing of their personal data in view of guaranteeing a fair and transparent processing in respect of the data subjects.

***Retention policy:***

The EUISS will keep at the end of the traineeship programme a limited amount of data (last name, first name) with a report regarding activities of the trainee for archiving and record purposes (e.g. letters of reference). The EDPS was additionally informed that this limited information will be kept for 20 years.

The EDPS was also additionally informed that data of applicants who decline a traineeship are treated the same way as unsuccessful ones i.e. kept for two years from the date that the selection is finalised.

This additional information as regards these retention periods has to be included in the notification and the Privacy statement.

***Time limits to block/erase on justified legitimate request from the data subject:***

The EDPS welcomes the fact that when the data subject contests the accuracy of his/her data, the data will be blocked immediately for a period which is necessary to verify the accuracy. When the data subject requires the blocking of his/her data because the processing is considered as unlawful, or when data must be blocked for the purpose of proof, the EUISS will make a decision on whether or not to block the data as soon as possible, and within a maximum of 15 working days. The EDPS was additionally informed that these time limits apply also to the requests for erasing data.

The additional information on time limits applicable to the requests for erasing data should be included in the notification and the Privacy statement. The decisions on whether or not to block/erase the data have to be duly justified.

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<sup>2</sup> Regarding consent, see Opinion 8/2001 of the Article 29 Working Party on the processing of personal data in the employment context.

## **Conclusions**

Taking into account the notification and documents annexed to it as well as additional information provided by EUISS, the EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the considerations contained in this Opinion are fully taken into account.

The EDPS expects the EUISS to implement the recommendations accordingly and will close the case.

Kind regards,

**(signed)**

Giovanni BUTTARELLI

Cc : Mr Nikos CHATZIMICHALAKIS, Data Protection Officer - EUISS  
Mr Philip WORRE, Documentation and Research Officer - EUISS