



Opinion on a notification for prior checking received from the Data Protection Officer of the Committee of the Regions on the management of applications for paid traineeships

Brussels, 27 October 2005 (Case 2005-214)

1. Proceedings

On 29 August 2005, the European Data Protection Supervisor (EDPS) received a notification from the Data Protection Officer of the Committee of the Regions for an ex-post prior checking relating to the management of applications for paid traineeships at the Committee of the Regions (CoR).

The dossier on the collection of traineeship applications consists of the formal notification to the EDPS and the Decision on traineeships. On 20 September 2005, two more documents were sent, which were published on the CoR's website on 30 September 2005: the first one modifies the application procedure for traineeships from 1 October 2005 onwards and the second one, called "Specific Privacy Statement", concerns the subjects' rights.

Additional information was requested by e-mail on 19 September 2005 for which a reply was received on 21 September 2005. Furthermore, more questions were sent on 23 September 2005 and the answers were given by e-mail on 26 September 2005.

2. Examination of the matter

2.1. The facts

Each year the Committee of the Regions collects applications for five-month paid traineeships within the services of the institution. Application forms and supporting documents have only been sent to the CoR in paper format until the 30 September 2005. From 1 October 2005 onwards, applications are only sent through the on-line application form. In such case, only the pre-selected applicants are invited to send supporting documents in paper format.

There are deadlines for applications and fixed periods for the traineeship to take place: applications for spring traineeship must be submitted between 1 April and 30 September of the preceding year and applications for the autumn traineeship between 1 October and 31 March of the same year.

The processing in this framework implies operations such as collection, organisation, storage, consultation and distribution of data, with the purpose of facilitating the internal selection procedure of trainees recruited by the CoR.

The data subject of this processing activity is any person applying for a paid traineeship at the CoR. The categories of data collected in the framework of a traineeship application are the following: personal data (name, first name, gender, nationality, date and place of birth), contact data (email address, address, telephone number), academic and/or professional data (completed and/or ongoing studies, and/or traineeship experience) and other relevant information (language skills, IT skills).

Upon submission of successful applications, the candidates receive an automatic acknowledgment of receipt. They also receive their unique identification or file-number as well as their personal password, so that they are able to check at any time the status of their on-line application.

The applications are stored by the Traineeship Office of the CoR. The data sent in paper format are locked in secure offices of the Traineeship Office, whereas data via the on-line application form are stored in a central database with restricted access codes.

In terms of the conservation of data collected, a difference is made between the data regarding applicants for a traineeship (pre-selected applicants) and the data regarding applicants recruited for a traineeship (selected applicants).

As regards the pre-selected applicants, the data collected through the on-line application form are passively stored in the database for one year after the end of the traineeship period to which the application relates for administrative (i.e. correspondence with applicants) and statistical purposes only. Beyond that timeframe, data are maintained in the database in an anonymous format, for statistical purposes only. Paper documents received from pre-selected applicants, are stored in the Staff Unit's archives for one year after the end of the relevant traineeship period and after that they are destroyed. Furthermore, although trainees must in principle be less than thirty years old at the beginning of their traineeship, a derogation to the age limit can be granted at the applicant's request. In such case, the applicant must send a specific written request to the Traineeship Office, setting out the appropriate justification for such an exemption. These requests sent in paper format, are stored in the Staff Unit's archives and they are destroyed one year after the end of the relevant traineeship period.

In respect of the selected applicants, their data are stored in the database and in the Staff Unit's archives (on-line application and supporting documents) for a year after completion of the traineeship in question. In order to keep record of all trainees recruited by CoR services in the past, their data are stored in the database in an anonymous format for historical and statistical purposes. Moreover, in order to allow the delivery of internship certifications upon request, data related only directly to the traineeship are maintained in a separate file by the Traineeship Office: name, first name and nationality of the trainee; start and end date of the traineeship; unit and traineeship advisor, amount of the traineeship grant.

2.2. Legal aspects

2.2.1. Prior checking

The notification received on 29 August 2005 relates to processing of personal data, that is any information relating to an identified or identifiable natural person, as provided by Article 2(a) of the Regulation (EC) No 45/2001 (hereinafter "the Regulation").

The processing of data is carried out by the Committee of the Regions in the exercise of its activities, as outlined in Article 3 (1) of the Regulation. In view of the fact that the applications and supporting documents collected are stored in a central database and in paper format respectively, both automatic and manual methods are used. It follows that this "mixed" processing operation falls within the scope of the Regulation, as it is provided by Article 3 (2).

According to Article 27 (2) (b) of the Regulation, processing operations intended to evaluate personal aspects relating to data subjects, including their ability, efficiency and conduct, are likely to present specific risks to the rights of data subjects; they shall therefore be subject to prior checking by the EDPS. Indeed, on the facts, the processing operation carried out by the CoR concerns the evaluation of the candidates' ability to work as trainees, in the different units of the CoR.

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. This should not raise a serious problem, as far as any recommendations made by the EDPS may still be adopted accordingly.

The notification of the DPO was received on 29 August 2005. According to Article 27(4) the present opinion must be delivered within a period of two months, that is no later than 30 October 2005. The period was suspended twice for 5 days in total; therefore the Opinion must be delivered no later than 4 November 2005.

2.2.2. Legal basis for and lawfulness of the processing

The legal basis of the processing operation can be found in Decision 1/94 of 9 June 1994, governing in-service training within the Committee of the Regions.

More specifically, Article 2 of the Decision indicates that the purpose of in-service training with the Committee of the Regions is "to give trainees a general idea of the objectives and problems of European integration; to provide them with practical knowledge of the working of Committee of the Regions' departments; to enable them to acquire personal experience via the contacts made in the course of their everyday work; to enable them to develop and put into practice the knowledge they have acquired during their studies or professional careers".

Furthermore, Article 8 of the Decision provides that the trainees who can apply may be "university graduates or holders of equivalent diplomas, awarded after at least three years of study; students who have successfully completed at least four years of university study; public or private sector employees, provided they have a university degree or equivalent diploma, or have been engaged for at least three years in planning or advisory duties".

The legal basis of a processing operation is interlinked with its lawfulness. As it is stated in Article 5 (a) of the Regulation, personal data may be only processed if "processing is necessary for the 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 or in the legitimate exercise of official authority vested in the Community institution or body ... ". On the facts, the collection and further processing of personal data of the traineeship candidates is carried out in the public interest on the basis of Decision 1/94 adopted in the legitimate exercise of an official authority, namely the Traineeship Office, vested in the Committee of the Regions. Hence, the legal basis found in Decision 1/94 supports the lawfulness of the processing operation.

2.2.3. Data Quality

According to Article 4 (1) (c), "data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed ". The data collected in the present case are adequate, relevant and non excessive for the administrative management and selection procedure of the paid traineeship.

The EDPS considers that Article 4(1)(c) of Regulation (EC) 45/2001 is fully respected.

2.2.4. Compatible use / Change of purpose

Article 4 (1) (b) of the Regulation points out that personal data must be "collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes...". Indeed, the data collected are only used for facilitating the internal selection procedure of the trainees to be recruited by the CoR and under no circumstances such data are used for other purposes, including direct marketing purposes. Thus, the original purpose is fully respected.

2.2.5. Conservation of data/ Data retention

It is clear from Article 4 (1) (e) of the Regulation 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. The Community institution or body shall lay down that personal data which are to be stored for longer periods 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".

In the case of pre-selected applicants, the data collected through the on-line application as well as in paper format are stored in the database and in the Staff Unit's archives respectively, for one year after the end of the traineeship period to which the application relates. Taking into account that the pre-selected applicants are not recruited for the traineeship and that there are fixed selection periods, the EDPS considers the present *dies a quo* (end of the traineeship period) not fully justified. A better solution would be to compute the year from the moment the selection period ends or, in practical terms, from the immediate official starting date of the traineeship period.

On the contrary, in the case of selected applicants, the one-year data storage after completion of the traineeship is reasonable as well as the further conservation of a limited number of data, considering that the delivery of internship certifications to the trainees, after the traineeship period, is necessary.

The conservation of data in an anonymous form only for historical purposes is also in line with Article 4(1) of the Regulation.

In the light of the above, the EDPS is of the opinion that a new reasonable time limit should be established for the data retention of the pre-selected applicants in accordance with Article 4 (1) (e) of the Regulation.

2.2.6. Transfer of data

Under Article 7 (1) of the Regulation, "personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient".

The personal data collected in the instant case are solely and exclusively disclosed to the members of staff in charge of the CoR Traineeship Office. The traineeship advisors, within the recruiting services, have limited access to the database (read only). The only elements of the application form which are made available to the traineeship advisors for (pre-) selection purposes concern the nationality, the studies and the language skills of the candidates. Also, the traineeship advisors are not able to consult any personal data without direct relevance to the selection process, such as address, age and gender.

It follows that the stored personal data are only transferred within the CoR, since they are necessary data for the selection process of the traineeship, in accordance with Article 7 (1) of the Regulation.

2.2.7. Processing of personal number or unique identifier

The Article 10 (6) of the Regulation 45/2001 provides that "the EDPS shall determine the conditions under which a personal number or other identifier of general application may be processed by a community institution or body". Here is not the case of establishing the conditions under which the CoR may process a personal number, but just to recognize that the CoR's use of a unique identification number is reasonable because it is a means of facilitating the processing task.

Indeed, upon submission of an application form, the candidates receive an automatic reply by e-mail with their unique identification or file-number as well as their personal password, which are divulged only to the applicant. Thus, the use of this identifier and personal number has no other purpose than to identify the data subject and to enable him/her to check at any time the status of his/her application.

2.2.8. Right of access and rectification

Applicants, in the present case, receive an electronic copy of their application form, along with the receipt confirmation, thus they may at any time access their application form to verify its accuracy. This complies with the right of access, as indicated in Article 13 of the Regulation.

Moreover, where appropriate, applicants can at any time request the Traineeship Office to rectify any inaccurate or incomplete information. The requested modifications are made as soon as possible and no later than two weeks after the request. The right to rectification "without delay" as envisaged in Article 14 of the Regulation is therefore respected.

2.2.9. Information to the data subject

Article 11 of the Regulation states that a data subject must be informed of the processing of data relating to himself/herself and lists a range of compulsory items of information which must be provided (identity of the controller, purposes of processing, recipients, right of access). Insofar as such information is necessary to guarantee the fair processing, additional information has to be supplied regarding legal basis, time-limits and the right to have recourse to the EDPS. In the

present case, Article 11 of the Regulation applies, since data are collected directly from the data subject.

In this regard, the EDPS has carefully examined the two documents sent by the CoR, on application procedure rules for traineeships at the CoR and on data subjects' rights, called "Specific Privacy Statement", both published on the CoR's website on 1 October 2005.

The EDPS is of the opinion that all items cited in Article 11 of the Regulation are mentioned in the CoR documents published on their website, except the right to have recourse to the EDPS, which should be also mentioned.

2.2.10. Security measures

According to Article 22 of the Regulation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other forms of unlawful processing.

After careful analysis by the EDPS of the security measures adopted, the EDPS considers that these measures are adequate in the light of Article 22 of the Regulation.

Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the following important considerations are fully taken into account:

- A change in computing the retention period for the data of the pre-selected applicants is advisable. It is recommended that the conservation period of one year is computed from the official starting date of the traineeship period.
- The right to have recourse to the EDPS should be also mentioned in the information given to applicants.

Done at Brussels, 27 October 2005

Peter HUSTINX
European Data Protection Supervisor