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Subject: EACEA’s notification for prior checking regarding the “Erasmus+ Online Linguistic Support scheme” (case 2014-1154)

On 12 December 2014, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27(2) of Regulation (EC) No. 45/2001¹ (the Regulation) on the processing of personal data relating to the Online Linguistic Support scheme under the Erasmus+ programme of the Education, Audiovisual and Culture Executive Agency (EACEA).

As this is an **ex-post case**, the deadline of two months for the EDPS to issue an Opinion does not apply. This case has been dealt with on a best-effort basis.

Please find below a summary of the facts of the case at hand, as well as the EDPS' legal analysis and recommendations.

1. The Facts

EACEA has developed an online tool called ‘Online Linguistic Support’ (OLS) which is a part of the Erasmus+ programme. This programme is the European Commission’s programme for education, training, youth and sport covering the period 2014-2020. The European Commission is responsible for the overall implementation of the programme while the management of certain parts lies within the remit of EACEA and the National Agencies at national level.

¹ OJ L 8, 12.1.2001, p. 1.

One of the strategic objectives of Erasmus+ is to strengthen language competences through mobility activities so that participants can fully benefit from the experience and ultimately improve their job prospects.

The purpose of OLS is to provide a scheme for measuring progress in language competences prior to and after the mobility period and to provide online language courses.

The OLS platform is steered by a Steering Committee, composed of DG EAC representatives and EACEA representatives. The hosting of the Erasmus+ application including the OLS platform has been outsourced to a service provider, Altissia. EACEA acts as contracting authority with the service provider for the OLS.

In relation to the processing of personal data, the procedure is the following. National Agencies select the mobility participants and their beneficiaries (such as universities) insert into an IT system the necessary data on the individual participants leaving on mobility under Erasmus+. DG EAC is responsible for this system and transfer extracts from these databases to EACEA and its service provider. These extracts include lists with information about National Agencies and the number of licenses allocated per National Agency for the assessment tests. The service provider imports the data into the OLS tool and delivers the required number of licenses to the National Agencies. The National Agencies distribute the licenses for language assessment tests and language courses to the selected participants, by inserting the participants' email addresses in the OLS.

Students selected for mobility receive an email invitation to take the mandatory language test on the OLS website. If a student does not take the language test, this may result in a reduction of the individual mobility grant. This is however a decision by the sending institution. The result of the first language assessment will be communicated electronically to the students and, where relevant, to the sending institutions. These results does not have any automatic impact on the grant nor the mobility as such.

The sending institutions are in charge of distributing accesses for optional language courses among the mobility participants. This decision lies only with the sending institution and is based on the first language assessment. The service provider monitors the uptake of a language course and has implemented a set of reminders and motivation strategies to ensure a maximum completion rate. There are no negative consequences if a student does not use the course licence.

At the end of the mobility all participants have to take a second compulsory language assessment. The result of the assessment will be communicated in the same manner as the first test results, to the participants and, where relevant, to the sending institutions. EACEA has only access to the aggregated data related to the results of language assessments and courses.

2. Legal Analysis

Need for prior-checking

Article 27 of the Regulation subjects a number of 'risky' processing operations to prior checking by the EDPS. The criteria are listed in paragraph 2 of that Article and include among others the processing of health data (point (a)) and processing operations intended to evaluate personal aspects of the data subject (point (b)). Such processing when carried out by an EU

institution or body as controller² is subject to prior checking. It should be noted that there may be situations of ‘joint controllership’, where several entities together are responsible.

OLS is operated by EACEA and its service provider and steered by a Steering Committee composed of representatives from DG EAC and EACEA. The mandatory language assessment prior and after the mobility is carried out by the OLS but it is not followed by any decision made by the EACEA (neither DG EAC) on the basis of the assessment. The result of the assessment, and failure to take the test, are communicated to the sending institutions who take decisions concerning the individual grant award decision, the individual evaluation data and the distribution of accesses for optional language courses among mobility participants.

Against this background, it has to be noted that EACEA *itself* does not carry out an ‘evaluation’ of the students in the sense of Article 27(2)(b) of the Regulation, since they only provide outcome of language assessments to the sending institutions which is a basis for the decisions taken at the national level.

For these reasons, OLS does not trigger Article 27 of the Regulation. It should be noted that the evaluation of the assessment is carried out on the national level and under the supervision of the competent national data protection authority, while EACEA's role is to run the system and to participate in the Steering Committee together with DG EAC where decisions about the OLS is taken (more about controllership below).

That being said, the EDPS still has some comments and recommendations to make in order to ensure that OLS will comply with the Regulation. The analysis below does not cover all aspects of the Regulation, but only those which require improvements or otherwise give rise to comments.

Controllership

EACEA has explained that the specific objectives of the creation of the OLS are two-fold. One relates to the need of the European Commission to be kept informed about the Erasmus+ mobility participants’ language competence improvements. The other objective is to enable DG EAC, EACEA and the National Agencies to monitor the progress in language competence on individual and aggregated level. The platform is steered by a Steering Committee, composed of DG EAC representatives and EACEA representatives. EACEA is therefore not fully autonomous when it comes to designing the modalities of the processing.

The situation is one of joint controllership. **Both EACEA and DG EAC determine the purposes and means of the processing operation within OLS.** In particular, EACEA determines the technical means with the processing and ensuring security.

However, the setup of the system implies that some of the tasks of a controller cannot be fulfilled by EACEA and DG EAC alone since it is the National Agencies that add the personal information in OLS. The accuracy of the data imported by the service provider into the OLS tool is based on the accuracy of the information uploaded in these databases by the National Agencies and Erasmus+ sending institutions and organisations.

For example, Article 4(2) of the Regulation obliges the controller to ensure that the principle of data quality is respected. EACEA can contribute to this by setting up the system in a way that no clearly irrelevant data may be processed and by providing information on its proper use, but the actual uploading of data and amending of data (e.g. email addresses), access to the individual evaluation data, as well as the distribution of accesses for optional language courses among mobility participants, is done by National Agencies/sending institutions. Therefore,

² See Article 2(d) of the Regulation.

EACEA is not responsible for the data quality and for ensuring the data subject's rights in relation to the processing of personal data carried out by the National Agencies mentioned above. This should be clarified in the privacy statement (see below).

Information to data subjects

EACEA has explained that a specific privacy statement is permanently available on the OLS webpage. The privacy statement refer to the EACEA as controller and it is mentioned in the first paragraph that OLS is steered by the European Commission and implemented by EACEA. For the sake of clarity, **the EDPS suggest to add information that DG EAC is part of the steering committee and therefore considered as co-controller** for the personal data processed within OLS. Furthermore, the privacy statement does not clearly distinguish between EACEA's and the National Agencies responsibilities. **The EACEA should therefore clarify the situations that are outside of the EACEA's responsibly.**

Processing on behalf of the controller

As mentioned above, EACEA has outsourced a part of the processing operation to the service provider Altissia, which is established in an EU Member State (Belgium). The Framework Service Contract includes an article which makes reference to the obligation of the processor *"to act only under the supervision of the data controller"*, with regard to, in particular, the purposes of the processing, the categories of data processed, the recipients of data and the means by which data subjects may exercise their rights, as it is required by Article 23(2)(a) of the Regulation

Furthermore, the contract explicitly mentions that the EACEA must be consulted by the external contractor in advance in order to verify if the direct or indirect subcontractor(s) satisfy the requirements of the legislation on data protection. The contract also makes reference the fact that the contractor binds himself to adopt, or to have adopted by its direct or indirect sub-contractors, technical and organizational measures.

In the light of the above, the EDPS considers that EACEA fulfils the obligation under Article 23 of the Regulation.

3. Conclusion

Although the processing operation notified is not subject to prior checking under Article 27 of the notification, the EDPS suggests to improve the privacy statement by adding information about the co-controllership with DG EAC and clarify the situations which are not within the responsibilities of EACEA.

In light of the accountability principle, the EDPS expects the EACEA to implement the above recommendation accordingly and has therefore decided to **close the case**.

Yours sincerely,

(signed)

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