



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

## AUDIT REPORT ON REMOTELY PROCTORED TESTING BY THE EUROPEAN PERSONNEL SELECTION OFFICE (EPSO)

Brussels, 24 and 25 April 2023

EDPS case number 2023-0041

### Executive Summary

#### *Introduction*

The European Data Protection Supervisor (EDPS) is the independent supervisory authority established by Article 52 of Regulation (EU) 2018/1725 ('EUDPR')<sup>1</sup> responsible for:

- Monitoring and ensuring the application of the provisions of the EUDPR and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a EU institution or body;
- Advising EU institutions, bodies, offices and agencies (EUIs) as well as data subjects on all matters concerning the processing of personal data.

To these ends, the EDPS fulfils the duties provided for in Article 57 EUDPR and exercises the powers granted in Article 58 EUDPR. Among his powers to investigate, the EDPS can carry out investigations in the form of data protection audits. The power to audit is one of the tools established to monitor and ensure compliance with the EUDPR.

This audit is part of the EDPS annual audit plan for 2023 and should be viewed as the final stage before formal action under Article 58 EUDPR. The formal Decision was communicated to the Director of the European Personnel Selection Office (EPSO) by means of an Announcement Letter dated 13 March 2023. The fieldwork was carried out on 24 and 25 April 2023 at the EPSO premises in Brussels<sup>2</sup>. Further contacts with EPSO have taken place concerning the minutes, agreed on 27 June 2023 and the last item of evidence was received by the EDPS on 24 October 2023.

This audit fits into the EDPS Strategy 2020-2024.<sup>3</sup> The Strategy underlines that one should make a distinction between measures introduced by EUIs during the COVID-19

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1 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98,

2 L-107, B-1049 Brussels, Belgium.

3 [https://edps.europa.eu/sites/default/files/publication/20-06-30\\_edps\\_shaping\\_safer\\_digital\\_future\\_en.pdf](https://edps.europa.eu/sites/default/files/publication/20-06-30_edps_shaping_safer_digital_future_en.pdf)

crisis that have naturally developed from the ones that were only accelerated due to extraordinary circumstances; the latter should be recognised as temporary and discarded when the crisis is over.<sup>4</sup> Under the Strategy, the EDPS also committed to request from EUIs that intend to deploy new technologies to clearly explain the impact of these technologies and their risks on individuals and groups.<sup>5</sup>

### *Scope of the audit*

The audit focuses on the main legal data protection aspects of **remotely proctored testing using external service providers**. Selection of new EU officials is the display window of the EU vis-à-vis the external world. EPSO, as a public administration in charge of dealing with the personal data of a very large number of candidates, should lead by example and show that EUIs comply with fundamental rights, including privacy and data protection, when it comes to designing new selection methods. In this spirit, the audit is designed to ensure that EPSO:

- conduct an in-depth necessity and proportionality assessment of the use of remotely delivered testing and the processing operations it entails;
- conduct a careful assessment of the risks raised by the use of live and automated remote proctoring (including the use of artificial intelligence - 'AI') and notably by transfers of personal data to third countries it generates<sup>6</sup>;
- be in control of the whole processing, make informed choices and adapt its requirements vis-à-vis the processor(s) accordingly;
- ensure that organisational measures are taken so that data protection principles are embedded by design.

The EDPS intends to **accompany the EUDPR compliance process** and to point out infringements, as the case may be. This audit is also a means for raising awareness on the crucial role of the Data Protection Officer (DPO)/Data Protection Coordinator (DPC) functions in EPSO's operational activities, most of which require that data be processed.

### *Key findings of the audit*

The shift to remotely proctored testing and the adoption of a new competition model (with, as main novelty, the removal of the assessment centre)<sup>7</sup> are almost concomitant. While the removal of the assessment centre has no impact from a data protection of view, remote testing profoundly changes the processing of personal data in open competitions. As further outlined in this report, the 'remote' aspect increases the impact on the right to privacy and the protection of personal data of candidates. Remote testing operated by EPSO originated in the COVID-19 pandemic and has later on been integrated in the communication about the new model of competition.<sup>8</sup> While the move to the new competition model is well documented and reflected in the minutes of the Management Board meetings of EPSO, this is not the case of fully remotely proctored testing.

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<sup>4</sup> EDPS Strategy, p. 12.

<sup>5</sup> EDPS Strategy, p. 14.

<sup>6</sup> [Strategy for Union institutions, offices, bodies and agencies to comply with the 'Schrems II' Ruling, 29 October 2020](#). In a letter sent by the EDPS to EUI's Heads of Administration after the first reporting exercise on transfers by EUIs on 3 June 2021, e-recruitment was identified as a high-risk type of transfer.

<sup>7</sup> <https://eu-careers.europa.eu/en/introducing-faster-leaner-and-more-accessible-competition-model> (last consulted on 8 November 2023).

<sup>8</sup> <https://eu-careers.europa.eu/en/introducing-faster-leaner-and-more-accessible-competition-model> (last consulted on 8 November 2023).

The audit report summarises the findings identified during the data protection audit.

Remote testing might have advantages in terms of geographical diversity and time-efficiency. It might be cheaper and “greener” as well. Following the documents received during the audit, though, the effectiveness of the fully remote testing compared to onsite testing has not been measured by EPSO. The **overarching recommendation** of the EDPS to EPSO is thus to pause and **take the time to assess carefully the use of fully remote testing** (including the use of AI).

The other **major findings** are as follows:

- EPSO has not carefully assessed the **necessity/proportionality** of the use of remotely proctored testing as the only means for testing candidates after the COVID-19 pandemic, in view of the objectives pursued by EPSO with open competitions, i.e. select people on the broadest geographical basis possible, attract people from the broadest diversity, ensure equal opportunities and fairness, protect test content and avoid fraud;
- EPSO is **not in control** of the processing operations conducted on its behalf by its processor Prometric and by the latter’s sub-processors, which resulted amongst other in transfers of candidate data to third countries without any transfer tool;
- The **DPC function** in place until 2021 for EPSO under the remit of DG HR proved to be ineffective and the DPC function created only for EPSO in 2021 does not benefit from sufficient organisational support.

#### *Recommendations and follow up to the audit*

Since the on-site audit took place, the EDPS has learned that EPSO has abolished live proctoring methods, introduced automated proctoring in September 2023 and is currently reappraising this testing method as well as exploring other possible solutions.<sup>9</sup> Therefore, **the recommendations** made in the report **aim to enlighten future choices** of EPSO rather than correct infringements which might only be relevant to the competition model of the past.

In view of the above, EPSO should demonstrate that (i) ongoing competitions are put in compliance with the recommendations made in this Report within three months of receipt and that (ii) these recommendations are duly implemented in any new testing methods. The EDPS reserves the right to investigate the matter and, if need be, to exercise powers listed in Article 58 of the Regulation.

17 January 2024

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<sup>9</sup> See information note ‘Reappraising automated proctoring for a better candidate experience’, published on 16 October 2023 on EPSO website: <https://eu-careers.europa.eu/en/epso-reappraising-automated-proctoring-better-candidate-experience> (last consulted on 8 November 2023). Printout filed as Doc. II.33. During the onsite audit, EPSO had already showed willingness to reverting to physical testing centres as a back-up possibility in well-defined circumstances.