EUROPEAN DATA PROTECTION SUPERVISOR

Decision 66/2025 of the European Data Protection Supervisor (EDPS) authorising the use of contractual clauses between the European Commission and the North Macedonian National Agency for the implementation of the Erasmus+ and European Solidarity Corps Programmes in North Macedonia

(Case 2023-0953)

Summary:

This Decision addresses the request from the European Commission for authorisation by the European Data Protection Supervisor (EDPS) of contractual clauses between the controller and the processor pursuant to Article 48(3)(a) of Regulation (EU) 2018/1725. The request concerns transfers of personal data in the form of remote access to the European Commission's corporate IT tool used for the implementation of the Erasmus+ and European Solidarity Corps Programmes in North Macedonia by the North Macedonian National Agency, The National Agency for European Educational Programmes and Mobility (NAEEPM), as processor and by other sub-processors.

In accordance with Article 57(1)(n) and Article 58(3)(e) of the same Regulation, the EDPS authorises the use of contractual clauses between the European Commission and the North Macedonian National Agency for the implementation of the Erasmus+ and European Solidarity Corps Programmes in North Macedonia.

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1. PROCEEDINGS

1. This Decision concerns the authorisation of contractual clauses to be concluded pursuant to Article 48(3)(a) of Regulation 2018/1725 (the 'Regulation')[1] between the European Commission - Directorate-General for Education, Youth, Sport and Culture (the 'Commission'), and the North Macedonian National Agency, The National Agency for European Educational Programmes and Mobility (NAEEPM) (the 'National Agency'), in the context of transfers of personal data for the implementation of the Erasmus+ and European Solidarity Corps Programmes (the 'Programmes') in North Macedonia.

2. The Commission submitted its request for authorisation of the European Data Protection Supervisor (EDPS) on 8 June 2023. Due to technical issues during the transmission, this request was received by the EDPS only on 15 September 2023. The request was registered by the EDPS under case number C 2023-0953.

3. According to the request for authorisation, the submitted contractual clauses (the 'contractual clauses') and their annexes, including the specific supplementary measures, are intended to provide appropriate safeguards, as well as enforceable data subject rights and effective legal remedies for the concerned data subjects in relation to the transfers to North Macedonia in the context of the Programmes, in line with the requirements laid down in Article 48(3) of the Regulation.

4. On 15 September 2023, the EDPS asked the Commission to provide the relevant transfer impact assessment, which was sent the same day by the Commission.

5. On 19 January 2024, the EDPS asked for clarifications and a review by the Commission of its transfer impact assessment. On 25 March 2024, the Commission provided the requested information and an up-dated transfer impact assessment, including also the assessment on national laws and practices concerning access to data by public authorities.

6. On 31 July 2024, the EDPS requested further clarifications and asked the Commission to up-date the conclusions of the transfer impact assessment and to identify specific supplementary measures for North Macedonia.

7. On 3 October 2024, the Commission provided the requested clarifications and the up-dated transfer impact assessment, as well as the model contribution agreement to be signed with the - National Agency for the implementation of the Programmes and the 2024 Guide for National Agencies implementing the Programmes.[2]

8. On 29 October 2024 and 25 November 2024, the EDPS asked for additional clarifications, to which the Commission replied on 16 and 25 November 2024. The Commission provided further documents on 13 February 2025.

9. In the course of the authorisation process, the Commission eventually provided the following documents to the EDPS in support of its authorisation request for transfers of

[1] Regulation (EU) 2018/1725 of the European Parliament and 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.

[2] Annex VI of the model contribution agreement.

personal data to North Macedonia:

- a note addressed to the EDPS requesting the authorisation of contractual clauses to be concluded pursuant to Article 48(3)(a) of Regulation;
- the contractual clauses to be concluded between the Commission and the National Agency in North Macedonia, including the list of identified supplementary measures to ensure a level of protection of personal data equivalent to what is guaranteed in the European Union (EU);
- the transfer impact assessment for North Macedonia drafted in the light of the EDPB Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data ('EDPB Recommendations 01/2020');
- the European Union model contribution agreement for the implementation of the Erasmus+ Programme and the European Solidarity Corps Programme;
- the 2024 Guide for National Agencies implementing the Erasmus+ and the European Solidarity Corps Programmes (Annex VI to the model contribution agreement);
- the corporate model grant agreement to be concluded between the National Agency and the grant beneficiaries;
- template for agreement between the grant beneficiaries and participants to actions under the Programmes.

10. The EDPS issues this Decision in accordance with Article 57(1)(n) and Article 58(3)(e) of the Regulation.

11. This Decision is addressed to the Commission.

2. FACTS

2.1 The Commission's authorisation request

16. The Commission's authorisation request concerns transfers of personal data in the form of **remote access to the Commission's corporate IT tool** in the context of the Erasmus+ Programme as established by Regulation 2021/817[3] and the European Solidarity Corps Programme as established by Regulation 2021/888.[4] According to the information provided, actions under the Programmes are implemented in indirect management[5] in North Macedonia by the National Agency,[6] acting as a processor.

[3] Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013.

[4] Regulation (EU) 2021/888 of the European Parliament and of the Council of 20 May 2021 establishing the European Solidarity Corps Programme and repealing Regulations (EU) 2018/1475 and (EU) No 375/2014.

[5] Programmes are implemented by bodies referred to in Article 62(1)(c) of the EU Financial Regulation, Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union,

[6] The Commission delegates the budget implementation to National Agencies (one per participating country) located in

17. The relation between the Commission and the **National Agency** is regulated by an annual **contribution agreement**, which is a binding document defining the roles and responsibilities of the parties concerning the delegated tasks and the EU funding received, reporting, supervision, and the processing of personal data (based on standard corporate contractual clauses of the Commission[7]). The model contribution agreement defines the Commission as controller[8] and the National Agency as **processor**[9] for the processing of personal data, within the meaning of the Regulation.

18. When implementing the actions, the National Agency engages other entities, like contractors or participating **beneficiary organisations** ('beneficiaries') which are considered to be **sub-processors** of personal data under the Regulation by the Commission. Beneficiaries[10] send participants to other participating organisations abroad and receive the EU funding. The beneficiaries' responsibilities are described in the **grant agreements** they sign with the National Agency.

19. The Commission provides an IT tool that the National Agency and the sub-processors must use for the implementation of the Programmes. This IT tool provides the National Agency with remote access, on a need to know basis, to the data relevant to the grant applications / projects it manages. The National Agency's staff can process the data in the IT tool provided by the Commission, but they can also export and process the data locally, subject to the technical and organisational measures included in the contribution agreement concluded with the Commission.

20. The Commission manages access to the data for the users from the National Agency, while the latter governs the access of other users on a need to know basis (beneficiaries, but also other sub-processors, etc.). The access can be given manually by authorised personnel or automatically by the IT system, based on the grant award decisions.

21. Given that the National Agency, as a third country public entity, appears to be in a position to enter into binding legal commitments, the Commission concluded that contractual clauses based on the provisions of Article 48(3)(a) of the Regulation, were an appropriate tool to ensure compliance with Chapter V of the Regulation. These **contractual clauses** will be **attached as an annex to the contribution agreement** in force between the Commission (controller) and the National Agency (processor).

22. The Commission underlined in their request that, as required under Articles 46 and 48(1) of the Regulation, the contractual clauses intend to provide appropriate data protection safeguards for the transfer of personal data to North Macedonia, as well as enforceable

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all EU Member States, EEA countries associated to the Programmes (Norway, Iceland, Liechtenstein), as well as non-EU/EEA countries associated to the Programmes (North Macedonia).

7 These clauses are model provisions for grant agreements adopted by the European Commission.

8 Article I.9 of the Special Conditions of the model contribution agreement.

9 Article II.8 of the General Conditions of the model contribution agreement.

10 According to the information provided, there are several types of participating organisations (beneficiaries), depending on the type of activities of the Programmes:. higher education institutions holding a valid Erasmus Charter for Higher Education; any public or private organisation active in the labour market or in the fields of education, training, and youth, including a public or private, a small, medium or large enterprise, a public body at local, regional or national level; embassies or consular offices of the sending EU Member State or third country associated to the Programmes; social partners or representative of working life, chambers of commerce, professional associations and trade unions; research institutes; foundations; schools or other educational organisations; a non-profit organisation, association, NGO; or a body providing career guidance, professional counselling, and information services.

data subject rights and effective legal remedies.

23. According to the information provided by the Commission, the **purposes** of the remote access to personal data in the Commission's IT tool by the National Agency and further processing operations by the National Agency are to support the implementation of the Programmes. This includes granting the National Agency and its own sub-processors remote access to perform the following processing activities:

- authentication and authorisation to access IT tools with EU Login, EU Access and Secunda+ mechanisms;
- registration and identification of organisations participating in the Programmes' actions managed by the National Agency and manage their data by their National Agency;
- submission of applications and management of grant applications and projects under the Programmes' actions, including publication of grant award decisions, monitoring, evaluation, reporting, auditing and dissemination of project results;
- management of the language training licenses for individual participants involved in mobilities;
- addition of the Accreditation and Quality Label of the European Solidarity Corps[11] of participating organisations to the European Youth Portal;
- general management of the projects funded by the Programmes, including the achievement of the project objectives, the number and type of individual participants as well as budgetary and financial aspects;
- management of participants' personal data for beneficiaries, reporting and accountability;
- management of individual participant surveys and related statistics;
- provide support to future participants in the Programmes and testimonials to the general public with consent of participants, i.e. on a voluntary opt-in basis;
- management of access to work programmes, delegation agreements and annual reports for the National Agency;
- facilitate participation in further studies regarding the Programmes and other EU issues based on consent;
- allow the Erasmus+ Student and Alumni networks or the contactor supporting their activities to contact individual participants to take part in their activities (with consent from participants);
- provide participant feedback on courses followed (with consent from participants);
- manage helpdesk activities, where personal details need to be used to describe an issue with an IT system.

24. The **categories of data subjects** whose personal data are made available via remote access to the Commission's IT tools are*:*

- persons authorised to register their organisation as participating to the Programmes;
- contact persons for registered organisations;
- persons signing the grant agreement for applicants or beneficiaries ;

[11] The European Solidarity Corps Quality Label certifies that an organisation taking part in the Corps is able to provide the necessary conditions for young people to take part in solidarity activities.

- persons coordinating the project in the applicant or beneficiaries or other partner organisations[12];
- persons assessing the applications;
- contact persons for the projects in each applicant/beneficiary and partner organisation;
- persons registered in the Programmes;
- persons participating in the projects;
- representatives of national authorities.

25. The **categories of personal data** made available via remote access to the Commission's IT tools are:

- As regards registered organisation's contact persons, authorised users, legal representatives and the contact persons of the organisations applying for funding or taking part in a project under the Programmes: first and last names, position in the organisation and professional e-mail address. In addition, only for the European Solidarity Corps: name of participants applying or involved in Solidarity Projects are also collected.
- As regards experts evaluating proposals: first and last names and e-mail address.
- As regards contact persons in participating (beneficiary) organisations: first and last names, position, mobile and landline phone numbers and e-mail address.
- As regards National Agency staff: first and last names and position are collected.
- For persons participating in a mobility or European Solidarity Corps projects: the participant ID and registration number, title, first and last names, date of birth, gender, nationality, fewer opportunities/inclusion support information (only an affirmative answer is collected, when it could have an impact on the additional amounts received as part of the grant and for statistics).
- As regards national authorities' staff: EU Login account ID, title, first and last names, department, position, phone number and e-mail address.

26. Based on the information provided by the Commission, no special categories of personal data are to be processed in the context of the authorisation request. Moreover, no onward transfer will take place to other third countries or international organisations.

2.2 The Commission's Transfer Impact Assessment

27. The Commission provided a transfer impact assessment concerning the transfers of personal data from the Commission to the National Agency for the implementation of the decentralised actions of the Programmes.

Description of the transfers

28. The Commission described the data transfers (see above section 2.1.), assessed the respective national laws, practices (including enforceable data subject rights and effective legal remedies for data subjects) in North Macedonia, identified the transfer tool to be used and assessed the supplementary measures needed to ensure appropriate safeguards in accordance with Article 48 of the Regulation. In this context, the document listed the

[12] Pursuant to Article 2 of the model grant agreement participating entities can be beneficiaries, affiliated entities, associated partners, third parties giving in-kind contributions, subcontractors or recipients of financial support to third parties.

technical and organisational measures implemented by the National Agency on the basis of their contribution agreement with the Commission.

29. The Commission underlined that the physical mobility of the participants to the Programmes includes the communication of personal data to the national authorities by the participants before they legally enter and reside in North Macedonia. The Commission stressed that the categories of personal data of the participants to the Programmes and other individuals processed in the Commission IT tools for the implementation of the Programmes (see above section 2.1.) do not go beyond the categories of personal data that must be provided to the national authorities when travelling to North Macedonia. In addition, the Commission highlighted that the National Agency has contractual obligations to implement supplementary technical and organisational measures,[13] and to redirect requests for disclosure of personal data from national authorities to the Commission,[14] which will assess the necessity and proportionality of the request and may refuse the permission to disclose the data. The National Agency is also subject to yearly independent audits assessing compliance with their obligations.

Transfer tool

30. In the absence of an adequacy decision according to Article 47 of the Regulation, the Commission assessed the other possible options to provide for appropriate safeguards under Article 48 of the Regulation.

31. The option of including appropriate safeguards in administrative arrangements between the Commission and the National Agency pursuant to Article 48(3)(b) of the Regulation did not seem appropriate to the Commission due to the non-binding nature of those arrangements. The Commission considered that a non-binding document supplementing the already existing and enforceable data protection clauses in the binding contribution agreement could create legal uncertainty for the data subjects concerned.

32. In the absence of standard data protection clauses adopted pursuant to Article 48(2)(b) of the Regulation, the Commission -based on Article 48(3)(a) of the Regulation- developed contractual clauses by adapting the standard contractual clauses adopted by the Commission for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 ('GDPR SCCs').[15]

33. The contractual clauses will be annexed to the contribution agreement concluded between the Commission and the National Agency. The contribution agreement is a legally binding document, which, according to the model contribution agreement provided by the Commission, includes already the corporate data protection clauses of the Commission[16].

Assessment of the national legislation

[13] Clause 7(6) of the contractual clauses.

[14] Article 6.11 of Annex VI of the model contribution agreement.

[15] Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, C/2021/3972, OJ L 199, 7.6.2021, p. 31.

[16] These clauses are model provisions for grant agreements adopted by the European Commission but they are not the standard contractual clauses between controllers and processors adopted by the Commission Implementing Decision 2021/3701 under Article 29(7) of the Regulation.

34. The Commission conducted an assessment of the data protection legal framework in North Macedonia and of its effectiveness. The assessment established that a new data protection law has been adopted and entered into force in February 2020, regulating in particular data subject rights in a fairly similar way like in the GDPR. According to the country report 2022[17], the North Macedonian law on personal data protection aims at aligning the national law with EU standards, however the Personal Data Protection Agency needed more resources in order to ensure the implementation of the law and to align sectorial legislation (e.g. the electoral law) with the new data protection law.

35. The Commission concluded that while the legal framework in North Macedonia contains elements offering some protection for the rights and freedoms of the data subjects, it does not provide an essentially equivalent level of protection to what is guaranteed under EU law, especially as regards the power to request and access personal data by national intelligence services, judicial authorities and law enforcement authorities.

Supplementary measures

36. The Commission established that considering the specific circumstances of the transfer, in particular the categories of personal data transferred, regular auditing of processors, or access to personal data only on a need-to-know basis, supplementary technical and organisational measures for the access and use of corporate Commission IT tool in place will complement the identified transfer tool. The Commission concluded that the contractual clauses together with the supplementary technical and organisational measures in place for the IT tool used for the implementation of the Programmes constitute appropriate safeguards in the sense of Article 48 of the Regulation, provided that they are effectively implemented by the National Agency.

3. LEGAL ANALYSIS

3.1. Requirements of Article 48(3)(a) of the Regulation

37. In order for the EDPS to grant the authorisation pursuant to Article 48(3)(a) of the Regulation, the following requirements need to be cumulatively fulfilled:

- the Regulation must apply to the transfer in question,
- no Commission adequacy decision exists in relation to North Macedonia,
- the specific purpose limitation for the EU public administration[18] is complied with,
- the controller provided appropriate safeguards with enforceable data subject rights and effective legal remedies for data subjects,
- an EDPS authorisation is required.

3.1.1. Applicability of the Regulation

38. The Regulation is applicable to the transfers in question.

39. The Commission is a Union institution or body (EUI), as defined in Article 3(10) of the

[17] Commission Staff Working Document North Macedonia 2022 Report https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf , SWD(2022) 337 final

[18] Article 47(1) of the Regulation.

Regulation, because it is established as a Union institution by Article 13(1) of the Treaty on the European Union.[19]

40. Personal data (Article 3(1) of the Regulation) such as names, contact details, gender and birth dates, positions of the above mentioned data subjects involved in the implementation of the Programmes, are processed (in the meaning of Article 3(3) of the Regulation) by collecting, storing, organising and making them available in the Commission's IT tool. The processing is carried by the Commission as a controller, in the meaning of Article 3(8) of the Regulation, as they determine the purposes and the means of the processing of personal data.

41. There is also a transfer of personal data.

42. While the Regulation does not provide a definition of international transfers, the European Data Protection Board (EDPB)[20] has identified three cumulative criteria to identify an international transfer:

    i. the controller or processor transferring the personal data is subject to EU data protection law for the given processing,

    ii. it makes personal data available to another data controller or processor by means of disclosure or transmission, and

    iii. the receiving data controller or processor is in a country outside the European Economic Area (EEA) or is an international organisation.

43. When it comes to the second condition, a transfer of personal data entails the communication, transmission, disclosure or otherwise making available personal data to a third party, conducted with the knowledge or intention of the sender that the recipient(s) have access to it. It includes "deliberate transfer" of personal data and "permitted access" to personal data, but excludes cases of access happened in the context of illegal actions.

44. The present request concerns transfers of personal data to North Macedonia through remote access provided by the Commission (the controller) to its corporate IT tool for managing the Programmes by the National Agency (the processor) and its sub-processors. These remote accesses are transfers of personal data falling under Chapter V of the Regulation.

3.1.2. Absence of adequacy decision

45. In line with Article 47(1) of the Regulation, personal data may be transferred to a third country or an international organisation where the Commission has decided pursuant to Article 45 of Regulation 2016/679, the General Data Protection Regulation (GDPR)[21], or Article 36 of Directive 2016/680, the Law Enforcement Directive (LED)[22], that the third

[19] Treaty on the European Union (consolidated version 2016) OJ C 202, 7.6.2016, pp. 1–388.

[20] EDPB Guidelines 05/2021 on the interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR.

[21] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

[22] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free

country or an international organisation provides a standard with regard to data protection that is essentially equivalent to that within the EU, and the personal data may be transferred 'solely to allow tasks within the competence of the controller to be carried out'.

46. This is not the case here: as regards North Macedonia, the Commission has not adopted an adequacy decision under Article 45(3) of the GDPR (Regulation (EU) 2016/679), or Article 36(3) of the Law Enforcement Directive (Directive (EU) 2016/680).

3.1.3. Specific purpose limitation for the EU public administration

47. The EDPS takes the view that the specific purpose limitation referred to in Article 47(1) of the Regulation equally applies in this context.[23] This reading is supported by the Schrems II judgment,[24] which makes clear that a transfer subject to appropriate safeguards must benefit from the same level of protection as a transfer under an adequacy decision. For EU institutions, agencies and bodies ('EUIs'), that level of protection includes the purpose limitation under Article 47(1) of the Regulation,[25] otherwise personal data transferred on the basis of appropriate safeguards could be subject to a lesser level of protection than personal data transferred under an adequacy decision. Therefore, even a transfer subject to appropriate safeguards should take place 'solely to allow tasks within the competence of the controller to be carried out.' It is therefore incumbent on the EUI to limit the purposes for which it or its (sub-)processors transfer data out of the EEA to purposes without which the EUI cannot carry out its tasks.

48. In the present case, the EDPS considers that the transfers at stake, i.e. in the form of providing remote access to the National Agency (the processor) and its sub-processors, are carried out solely to allow the implementation of the Commission's Programmes in North Macedonia in accordance with Regulation (EU) 2021/817 establishing the Erasmus+ Programme and Regulation (EU) 375/2014 establishing the European Solidarity Corps Programme.[26] The Regulations refer to the tasks of the Commission carried out in the public interest in the field of education, vocational training, youth and sport pursuant to Article 164 and 165 of the Treaty on the Functioning of the European Union. In addition, as the Programmes enable participants to carry out their activities outside of the EEA boundaries, in Türkiye, North Macedonia, and Serbia, the transfer at stake is necessary for the implementation of the indirectly managed Programmes by the National Agency in North Macedonia.

3.1.4. Provision of appropriate safeguards by the controller; need for EDPS

movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89 (also called "the Law Enforcement Directive" - LED).

[23] See EDPS Decision of 8 March 2024 on its investigation into use of Microsoft 365 by the European Commission, in particular paragraphs 241-243 and 247.

[24] See paras. 92 to 94 and 96 of the judgment of the Court of Justice of 16 July 2020 in case C-311/18, Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems ("Schrems II"), ECLI:EU:C:2020:559.

[25] This reading is also supported by Article 94(1) of the Regulation which clearly imposes a similar purpose limitation condition for transfers of operational data under an adequacy decision (point a) of Article 94(1)) and for transfers of operational data under appropriate safeguards transfer tools (points b) and c) of Article 94(1)).

[26] See supra paragraph 16.

authorisation

49. In the absence of an adequacy decision, controllers and processors may transfer personal data to a third country only if appropriate safeguards are provided, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.[27]

50. Standard data protection clauses adopted by the Commission or by the EDPS and approved by the Commission may provide for such appropriate safeguards.[28] Such safeguards may also be provided, subject to the authorisation from the EDPS, by contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation ("contractual clauses")[29] or in administrative arrangements[30] between public authorities. Where the processor is not an EUI, such safeguards may also be provided by binding corporate rules ("BCRs"), codes of conduct or certification mechanisms pursuant to points (b), (e) and (f) of Article 46(2) of GDPR.[31]

51. The transfer tool relied on must ensure that data subjects, whose personal data are transferred to a third country pursuant to that transfer tool, are afforded a level of protection in that third country that is essentially equivalent to that guaranteed within the EU by EU data protection law, read in the light of the Charter.[32] Standard contractual clauses for transfers (under Article 46 GDPR or Article 48 of the Regulation) mainly contain general appropriate safeguards of a contractual nature[33] that may be applied to transfers to all third countries under the relevant legal basis for processing of personal data.

Need for EDPS authorisation

52. There is also a need for the authorisation by the EDPS since none of the appropriate safeguards listed in Article 48(2) of the Regulation are available to the Commission.

53. In this context, in particular, it should be underlined that standard data protection clauses for transfer of personal data were adopted by the Commission pursuant to Article 46(2)(c) of the GDPR ('GDPR SCCs'). However, so far, no standard data protection clauses for transfers of personal data have been adopted under Article 48(2)(b) or (c) of the Regulation. While the Regulation allows EUIs relying on BCRs, codes of conduct or certification mechanisms adopted pursuant to points (b), (e) and (f) of Article 46(2) of the GDPR, there are no such provisions for standard data protection clauses adopted by the European Commission pursuant to Article 46(2)(b) the GDPR. Therefore, these

[27] Article 48(1) of the Regulation.
[28] Article 48(2)(b) and (c) of the Regulation.
[29] Article 48(3)(a) of the Regulation.
[30] Article 48(3)(b) of the Regulation.
[31] Article 48(2)(d) of the Regulation.
[32] See paragraphs 96 and 103 of the Judgment of the Court of Justice of 16 July 2020 in case C-311/18, , Data Protection Commissioner v. Facebook Ireland LTD and Maximillian Schrems ("Schrems II"), ECLI:EU:C:2020:559, and recitals 65 and 70 and Article 46 of the Regulation.
[33] See paragraph 23 of the EDPB Recommendations 01/2020. The same is valid also for the other transfer tools under Article 46 GDPR / Article 48 of the Regulation, (e.g. BCRs, codes of conduct or contractual clauses).

clauses could not be relied on directly by the Commission for transfers of personal data to third countries under Chapter V of the Regulation.

54. In accordance with the interpretation provided in the *Schrems II*[34] judgment of the Court of Justice of the European Union (the 'Court of Justice'), where the transfer by the EUI or on its behalf relies on transfer tools under Article 48 of the Regulation or Article 46 of the GDPR, supplementary measures may be necessary to ensure an essentially equivalent level of protection, depending on the third country law/practices.

55. EUIs must therefore carry out an individual case-by-case assessment in accordance with the *Schrems II* judgment, to determine whether, in the context of the specific transfer, the third country of destination affords an essentially equivalent level of protection to that guaranteed in the EU. The EUI, where appropriate in collaboration with the data importer in the third country, must carry out this assessment of the effectiveness of the proposed safeguards before any transfer (including by way of remote access) is made or a suspended transfer is resumed. The use of standard data protection clauses or another transfer tool (e.g. contractual clauses, BCRs) does not substitute this individual case-by-case assessment, in accordance with the *Schrems II* judgment.

56. The assessment by the EUI should take into consideration the specific circumstances of the transfer (e.g. categories of transferred data, purposes for which they are transferred and processed in the third country and how) and all the actors participating in the transfer (e.g. controllers, processors and sub-processors processing data in the third country), as identified in the mapping of the transfers. The EUI will also need to factor into this assessment any envisaged onward transfers.[35]

57. Where the required essentially equivalent level of protection for the transferred data is not effectively ensured, because the law or practice of the third country impinges on the effectiveness of the appropriate safeguards contained in the transfer tool, the EUI must implement contractual, technical and organisational measures to effectively supplement the safeguards in the transfer tool, where necessary together with the data importer.

58. This process of assessing the level of protection in the third country and whether supplementary measures are needed, and then identifying effective supplementary measures, is commonly called a 'transfer impact assessment'. The methodology to be used is available in the EDPB Recommendations 01/2020 and, as regards the assessment of access by public authorities for surveillance purposes, in the EDPB Recommendations 02/2020 on European Essential Guarantees.[36]

3.2. Appropriate safeguards requiring EDPS authorisation

3.2.1 Contractual framework governing the processing of personal data in the context of the Programmes

59. The relation between the Commission and the National Agency is regulated by an annual

[34] Judgment of the Court of Justice of 16 July 2020 in case C-311/18, , Data Protection Commissioner v. Facebook Ireland LTD and Maximillian Schrems ("Schrems II"), ECLI:EU:C:2020:559.

[35] See Article 46 of the Regulation and paragraphs 33 and 34 of the EDPB Recommendations 01/2020.

[36] Recommendations 02/2020 on the European Essential Guarantees for surveillance measures

contribution agreement. The model contribution agreement provided by the Commission sets out the 'Special Conditions' and has eight annexes[37] that form an integral part of the agreement.[38] The model contribution agreement establishes[39] that in case of a conflict between the provisions, the Special Conditions take precedence over the annexes. In case of conflict between the General Conditions (Annex II) and other annexes, the General Conditions take precedence over the other annexes.

60. The model contribution agreement defines the Commission as controller[40] and the National Agency as processor[41] for the processing of personal data, in line with the Regulation. Pursuant to Article I.3(g) of the agreement's Special Conditions, the National Agency shall apply appropriate rules and procedures for the protection of personal data in accordance with Article II.8 of the General Conditions (Annex II, the 'General Conditions') and Section 6 of Annex VI, the Guide for National Agencies[42] (the 'Guide'). Article II.8 of the General Conditions sets out the provisions for processing of personal data (i) for the Commission as data controller[43] and (ii) for the National Agency as data processor.[44]

61. Concerning other actors involved in the implementation of the Programmes, the model contribution agreement sets different rules for awarding procurement contracts[45] and grant agreements[46] both requiring compliance with the relevant sections of the Guide[47] and some provisions of the General Conditions of the model contribution agreement. In particular, the National Agency undertakes to ensure that the obligations concerning liability towards third parties, [48] conflicts of interests, [49] confidentiality,[50] communication and visibility[51] as well as on access, financial checks and audits[52] are applicable to all contractors and grant beneficiaries.

62. The Guide provides for further detailed provisions and instructions for the National Agency to handle personal data as a processor, in line with the Regulation. The Commission underlined that the Guide is annexed to the contribution agreement and is therefore legally binding to the National Agency. The document defines roles and

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37 The annexes are: Annex I Description of the Action, Annex II General Conditions, Annex III Budget for the Action, Annex IV Financial Identification Form, Annex V Calendar for the use of funds for grant support and quality and impact support, Annex VI Guide for National Agencies, Annex VII Rules on the application of financial corrections and Annex VIII Negative interest avoidance strategy.

38 Article I.11 of the model contribution agreement.

39 Article I.11 of the model contribution agreement.

40 Article I.9 of the Special Conditions of the model contribution agreement.

41 Article II.8 of the General Conditions of the model contribution agreement.

42 Annex VI, the annual Guide for National Agencies Implementing the Erasmus+ and European Solidarity Corps Programmes.

43 Article II.8.1-II.8.3 of the General Conditions of the model contribution agreement (Annex II).

44 Article II.8.4-II.8.6 of the General Conditions of the model contribution agreement (Annex II).

45 Article II.27 of the General Conditions of the model contribution agreement.

46 Article II.28 of the General Conditions of the model contribution agreement.

47 Section 8 on procurement for procurement contracts and for grant agreements sections 4 and 5 on grant administration and management of grant agreements.

48 Article II.4 of the General Conditions of the model contribution agreement.

49 Article II.5 of the General Conditions of the model contribution agreement.

50 Article II.6 of the General Conditions of the model contribution agreement.

51 Article II.9 of the General Conditions of the model contribution agreement.

52 Article II.19 of the General Conditions of the model contribution agreement.

instructions to processors, access to data for personnel and experts, processing of special categories of data, technical and organisational measures, rules for personal data breaches and for the infringement of EU data protection law, duration of the processing of personal data, rules for sub-processing for beneficiaries and other sub-processors, as well as rules on sharing personal data with law enforcement authorities.

3.2.2. Choice of transfer tool: contractual clauses under Article 48(3)(a) of the Regulation

63. As the Programmes enable participants to study in North Macedonia, transfers of personal data from the Commission to the National Agency are necessary for the implementation of the Programmes in line with Chapter V of the Regulation.

64. In the absence of an adequacy decision,[53] the Commission concluded that contractual clauses based on the provisions of Article 48(3)(a) of the Regulation, were identified as the tool providing for appropriate safeguards and ensuring compliance with Chapter V of the Regulation.

65. In the absence of standard data protection clauses, the Commission developed contractual clauses based on the GDPR SCCs pursuant to Article 48(3)(a) of the Regulation. These contractual clauses – submitted to the EDPS - will be annexed to the contribution agreement concluded between the Commission and the National Agency. The contribution agreement is a legally binding document which includes already the 'corporate data protection clauses'[54] of the Commission. The Commission concluded in its transfer impact assessment (see section 2.2. thereto) that the supplementary technical and organisational measures in place for IT tools used for the implementation of the Programmes will complement the contractual clauses, with the aim of providing an essentially equivalent level of protection for the data subjects involved in North Macedonia.

66. The EDPS observes that both the Commission and the National Agency are public authorities, therefore the parties could have included appropriate safeguards in administrative arrangements pursuant to Article 48(3)(b) of the Regulation, instead of contractual clauses under Article 48(3)(a) of the Regulation. However, the Commission considered that a non-binding administrative arrangement supplementing the already existing and enforceable data protection clauses in the binding contribution agreement could create legal uncertainty for the data subjects concerned.

67. In this regard, the EDPS notes that while the Regulation reserves the option to include appropriate safeguards for transfers of personal data in non-binding administrative arrangements only to public authorities under Article 48(3)(b) of the Regulation, the use of contractual clauses pursuant to Article 48(3(a) of the Regulation is allowed to all controllers and processors. In light of the wording of Article 48(3)(a) of the Regulation, the existing legal framework governing the relations between the parties, and considering that the National Agency appears to be in a position to enter into binding contractual

[53] In line with Article 47(1) of the Regulation adopted on the basis of Article 45 of the GDPR.

[54] Provisions on processing of personal data are included in Article II.8 of the General Conditions (Annex II), complemented by more detailed provisions set out in Section 6 of Annex VI, the Guide for National Agencies.

commitments, the EDPS considers that the parties can rely on contractual clauses pursuant to Article 48(3)(a) of the Regulation.

68. The EDPS reiterates that based on the above-mentioned EU standards for transfers of personal data (see section 3.2.), contractual clauses should include a series of guarantees, safeguards and commitments by the EUI and the recipient in North Macedonia to take actions and measures.

3.2.3 Assessment of the contractual clauses

69. As already indicated (see section 3.1.4.), the contractual clauses submitted to authorisation by the EDPS are based on the GDPR SCCs. Pursuant to Article 46(2)(b) of the GDPR these standard data protection clauses provide for appropriate safeguards for transfers to a third country under the GDPR. The Commission made the following amendments to adapt the clauses to the requirements of the Regulation:

i. it changed the specific references to the GDPR to the corresponding provisions under the Regulation;

ii. it added a specific reference under Clause 2(c) that the clauses are without prejudice to customary privileges, immunities and facilities accorded to international organisations by international public law;

iii. it adapted the cross-references in Clause 3(a) for exceptions where data subjects may not invoke and enforce the clauses as third party beneficiaries against the data exporter and/or the data importer;

iv. it deleted Clause 7 'docking clause' allowing third parties to accede the clauses;

v. it replaced references to the competent supervisory authority with references to the EDPS;

vi. it completed Clause 7(7) on sensitive data with the word 'processed';

vii. it changed the reference to the European Union to European Economic Area in Clause 7(8);

viii. it completed Clause 7(8) with a provision that any onward transfer 'shall be justified by an objective of public interest as recognised in EU law' and added the requirements to comply also with data minimisation;

ix. it adapted Clause 8 on the use of sub-processors to differentiate between beneficiaries and other sub-processors allowing for general and specific authorisations in parallel;

x. it introduced an additional option for redress mechanism under Clause 10 to offer more flexibility to the data subjects to choose between lodging a complaint with the EDPS or refer the dispute to the competent courts;

xi. it revised and simplified the provisions of Clause 11(c) on the data exporters' liability towards the data subject;

xii. in Clause 11(d), it deleted the reference to liability under Clause 11(c) and replaced in Clause 11(e) the possibility to bring an action in court with a reference to 'claim

compensation for damages' from the parties,

xiii. it simplified Clause 12 on supervision, designating the EDPS as supervisory authority;

xiv. it replaced in Clause 14.1(a)(i) the reference to a 'legally binding' request to 'any' request;

xv. it revised Clause 16 on the governing law indicating Union law as complemented by Belgian law;

xvi. it revised Clause 17 on choice of forum and jurisdiction, indicating the competence of the courts of Brussels over disputes related to the contract, the jurisdiction of the Court of Justice for actions against the Commission as data exporter and the possibility for data subjects to bring an action before courts of the Member State of their residence;

xvii. it filled out Annexes I.A (list of parties) and I.B (description of transfer), Annex II (technical and organisational measures) and deleted Annex III (list of sub-processors).

70. As already indicated, EUIs cannot rely directly on the standard data protection clauses adopted pursuant to GDPR SCCs. However, pursuant to Recital 5 of the Regulation, whenever the Regulation follows the same principles as the GDPR, the two sets of provisions should be interpreted homogeneously under the case law of the Court of Justice, so the Regulation should be understood for EUIs as the equivalent of the GDPR. Since the provisions of Article 48 of the Regulation and Article 46 GDPR follow the same principles, the GDPR SCCs can be a basis for EUI controllers to provide appropriate safeguards under Article 48 of the Regulation.

71. To ensure compliance with the Regulation the GDPR SCCs should first be adapted to the requirements of the Regulation and then can be relied on as contractual clauses for transfers of personal data under Article 48(3)(a) of the Regulation subject to the authorisation of the EDPS.

72. In this context the EDPS **welcomes** the technical changes made to the GDPR SCCs, adapting the legal references, provisions on the supervisory authority, liability towards data subjects, governing law, jurisdiction, as well as adapting cross references under Clause 3. However, it seems that there is a clerical error in Clause 2(a) which refers to appropriate safeguards pursuant to Article 48(2)(b) of the Regulation, while the correct legal basis is Article 48(3)(a) of the Regulation.

73. The EDPS **welcomes** some specific amendments made to the GDPR SCCs. In particular, the EDPS considers as a good practice to include under Clause 2(c) a reference that the clauses are without prejudice to privileges and immunities of the Commission as international organisation. The EDPS is of the view that it contributes to the protection of personal data processed by EUIs or on their behalf, where privileges and immunities (e.g. inviolability of the EUI's archives) are accorded to an EUI by the national legislation of a third country.

74. The EDPS **welcomes** the changes made to Clause 7(8) specifying that onward transfers 'shall be justified by an objective of public interest as recognised in EU law' and

underlining the requirements to comply also with the principle of data minimisation[55]. The EDPS considers that this addition reflects the requirements of Article 47(1) of the Regulation that transfers -including onward transfers- can take place solely to allow tasks within the competence of the controller to be carried out (see section 3.4.2.).

75. The EDPS also **welcomes** the change made in the text of Clause 14.1(a)(i) replacing the reference to a legally binding request to 'any' request, since it allows to cover also non-binding requests of North Macedonian administrative authorities.

76. The EDPS **observes** that the cross references in Clause 3(a) have been adapted to refer to the revised structure of the contractual clauses. However, it seems that there are some clerical errors:

    - Clause 3(a)(iii) pointing to Clause 8(a) (c) (d) and (e) have not been up-dated to reflect the latest version of the text, it should refer to Clause 8(a) (b) (d) and (f).
    - Clause 3(a)(vi) refers to Clause 14.1 (c), (d) and (e), while there is currently no Clause 14.1(e) in the text. This seems to be a clerical error as the paragraph after Clause 14.1 (d) lacks numbering and the text is identical to Clause 15.1 (e) of the GDPR clauses (which is the corresponding paragraph referred under Clause 3(a)(vi) of the GDPR SCCs).

77. In view of the above and in light of all the circumstances of the transfer[56], **the EDPS is of the opinion that the contractual clauses** together with the identified supplementary measures (see below section 3.5.), and the relevant clauses in the main body of the model contribution agreement, **provide for appropriate safeguards** for transfers of personal data to North Macedonia in the context of the Programmes.

78. According to the information provided by the Commission, the contractual clauses will be an annex to the contribution agreement. Pursuant to the model contribution agreement[57] the provisions of the Special Conditions prevail over all the annexes and the General Conditions (Annex II) prevail over the other annexes. The EDPS notes that pursuant to Clause 5, in the event of contradiction between the contractual clauses and the provisions of the related agreement between the Parties, the contractual clauses shall prevail. In this context, **the EDPS understands that the contractual framework (including the model documents for sub-processors) will be amended to ensure the effective application of the contractual clauses and that they prevail over other provisions through the entire chain of processing.**

3.2.4. Effectiveness of the contractual clauses in light of all circumstances of the transfer

79. As regards the effective implementation of the clauses, the Commission concluded in the transfer impact assessment that the legal framework in North Macedonia does not provide an essentially equivalent level of protection to what is guaranteed under EU law. In particular, concerns were raised regarding surveillance of electronic communications by

[55] The EDPS noted a clerical error in the word 'minization'.

[56] Paragraph 113 of the judgment of the Court of Justice of 16 July 2020 in case C-311/18, , Data Protection Commissioner v. Facebook Ireland LTD and Maximillian Schrems ("Schrems II"), ECLI:EU:C:2020:559.

[57] Article 11 of the model contribution agreement.

different public authorities. The Commission established that, considering the specific circumstances of the transfer, the existing monitoring mechanisms in place and the technical and organisational measures for the access and use of the corporate Commission IT tool complement the identified transfer tool. The Commission concluded that the contractual clauses together with the supplementary technical and organisational measures in place for the IT tool used for the implementation of the Programmes constitute appropriate safeguards in the sense of Article 48 of the Regulation, provided that they are effectively implemented by the National Agency.

80. The EDPS observes that the 2022 country report of the European Commission for North Macedonia underlined that the continued understaffing in the Personal Data Protection Agency (PDPA) had a serious negative impact on implementation of the law adopted in 2020. undermining the ability to perform their tasks effectively and independently.[58] The 2025 country report of the Commission for North Macedonia[59] concluded that the legal framework for the protection of personal data is still insufficient[60] and the capacities of the data protection agency need to be improved, the adoption of the legislation to fully align with the EU legal framework is still pending. Several factors affected negatively the implementation of the Personal Data Protection Strategy 2025-2030 including lack of budgetary resources of the data protection authority or the need to appoint a director for the authority since January 2025. No progress was noted on coordination, communication and responsiveness to the data protection authority's recommendations, it was not consulted on the amendment of the data protection law either. Awareness raising on the data protection and IT security in the public sector and reporting on data breaches in general also need to be improved. Other independent sources[61] reported significant human rights issues including serious restrictions on freedom of expression and media freedom, including violence and threats of violence against journalists.

81. With regard to access requests by national authorities, the EDPS takes note of the safeguards included in the contractual clauses[62] and the contractual framework[63], namely that such requests should be relayed or notified to the Commission, as well as of the technical and organisational measures in place.

82. In view of the specific circumstances of the transfer and the assessment carried out by the Commission, the EDPS agrees that the contractual clauses do not provide alone appropriate safeguards to ensure an essentially equivalent level of protection to what is guaranteed by EU law and should be complemented with supplementary technical and organisational measures to ensure their effective implementation.

3.2.5. Assessment of the supplementary measures

83. The Commission concluded in the transfer impact assessment that having in mind the special characteristics of the personal data at stake, the following supplementary technical and

[58] See page 26 of Commission Staff Working Document North Macedonia 2022 Report https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf , SWD(2022) 337 final.
[59] Commission Staff Working Document North Macedonia 2025 Report of 4 November 2025 SWD(2025) 753 final.
[60] Page 36.
[61] U.S. Department of State 2024 Country Report on Human Rights Practices in North Macedonia and the Amnesty International Report on Human Rights in North Macedonia.
[62] Clause 14.
[63] Art. 6(11) of Annex VI to the Special Conditions of the model contribution agreement.

organisational measures for the access and use of the corporate IT tool will be added to the contractual clauses to ensure an essentially equivalent level of protection to what is guaranteed under the Regulation.

84. According to the contractual clauses provided, the National Agency shall implement appropriate technical and organisational measures to ensure the security of the data, protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data.

85. Annex II of the Appendix to the contractual clauses lists the specific technical and organisational measures covering the following categories:

- Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, including disaster recovery policies, processes for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing
- Measures for user identification and authorisation
- Measures of pseudonymisation and encryption of personal data
- Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services
- Measures for the protection of data during transmission
- Measures for the protection of data during storage
- Measures for ensuring events logging
- Measures for ensuring system configuration, including default configuration
- Measures for internal IT and IT security governance and management
- Measures for certification/assurance of processes and products as referred to in Article 42 of Regulation (EU) 2016/679
- Measures for ensuring data minimisation
- Measures for ensuring data quality
- Measures for ensuring limited data retention
- Measures for ensuring accountability

Conclusion

86. The EDPS finds that considering the specific circumstances of the transfer the Commission identified adequate supplementary measures to ensure security and authorised access to the Commission's IT tool.

87. As for potential access requests from the North Macedonian government to the National Agency based on the national legislation, the EDPS has carefully considered the provisions of the contractual clauses on the matter[64] and organisational measures in place, as well as the

[64] In particular Clause 13 on local laws and practices affecting compliance with the clauses and clause 14 on obligations

specific circumstances of the transfer. These circumstances include the purpose of the processing (implementation of the Programmes in the public interest as laid down in EU law[65]), the categories of data at stake, and the fact that a significant part of the personal data available on the IT tool are being uploaded by the National Agency or the participating organisations and beneficiaries in North Macedonia,[66] as well as the fact that the North Macedonian authorities obtain participants' personal data through other means (i.e. data that participants must communicate to legally enter and reside in North Macedonia).[67] Taking due account of the above elements, there is no reason to believe that the National Agency would be subject of requests for access by the North Macedonian authorities that would result in a disclosure of personal data processed on the IT tool to these authorities.

88. In view of the above, the EDPS concludes that the contractual clauses, combined with the supplementary measures described above, provide appropriate safeguards to ensure an essentially equivalent level of protection to what is guaranteed in the EU.

4. CONCLUSION - AUTHORISATION

89. Pursuant to Article 57(1)(n) and Article 58(3)(f) of the Regulation, the EDPS **authorises the use of the contractual clauses as a means for providing appropriate safeguards under Article 48(3)(a) of the Regulation.**

5. JUDICIAL REMEDY

90. Pursuant to Article 64 of the Regulation, any action against a decision of the EDPS shall be brought before the Court of Justice of the European Union within two months from the adoption of the present Decision and according to the conditions laid down in Article 263 TFEU.

Done at Brussels, on 18 December 2025

(e-signed)
Wojciech Rafał WIEWIÓROWSKI

of the data importer in case of requests from public authorities for access to data.

[65] See above paragraph 16.

[66] See above paragraphs 24-25.

[67] See above paragraph 29.