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Subject: Prior checking notification concerning a screening tool for candidate interpreters

Dear [...],

We refer to the notification for prior checking concerning a screening tool for candidate interpreters submitted to the European Data Protection Supervisor (**EDPS**) by the Data Protection Officer (**DPO**) of the European Parliament on 25 February 2015¹.

Since the processing at stake is in most aspects in compliance with Regulation 45/2001 (**the Regulation**) as further outlined in the EDPS Guidelines on staff recruitment (**the Guidelines**)², we will only address the existing practices which do not seem to be fully compliant in this respect.

I. Facts

The inter-institutional accreditation of Auxiliary Conference Interpreters (ACIs) for the Parliament, the Commission and the Court of Justice consists of various steps. The notification covers one of these steps, i.e. pre-selection tests through an online screening tool³.

¹ Questions were raised on 6 March 2015 to which the DPO replied on 19 March 2015. The draft Opinion was sent to the DPO for comments on 27 April 2015. The EDPS received a reply on 30 April 2015.

² EDPS Guidelines on the processing of personal data in the field of staff recruitment: https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf.

³ The process involves a previous step and a subsequent step, which are both managed by the Commission:
- previous step: registration and first selection of candidates by a screening committee (i.e. verification of the eligibility criteria) - Commission notification to DPO 3128.1;

This set of data processing operations for this step of the procedure is managed by the Parliament and is currently on a testing phase.

The pre-selection tests are computer based. They are done virtually by means of an application developed and maintained by an external company (Eworx)⁴. The data themselves are stored in servers of the Parliament and are not accessible to the external company. The tests consist of a pre-recorded speech to be interpreted online by the candidate. The interpretation is assessed by an evaluation board, which is composed of staff interpreters for the interpreting services of the Parliament, the Commission and the Court of Justice. The pre-selection leads to the drawing up of a list of the candidates admitted to the next phase of the ACI accreditation.

II. Legal analysis and recommendations

1. Prior checking

The processing is subject to prior checking under Article 27(2)(b) of the Regulation (evaluation of personal aspects relating to candidates).

2. Lawfulness

The lawfulness of the processing can be found in Article 5(a) combined with Recital 27 of the Regulation.

The Guidelines for Inter-institutional Accreditation Tests (the "**Accreditation Guidelines**")⁵, is one of the legal bases of the processing⁶. They provide that: "*the Institutions have agreed in principle to introduce a pre-selection test following the selection of candidates by the Screening Committee. The practical parameters of pre-selection are currently under discussion*".

The EDPS recommends amending the Accreditation Guidelines so as to formally include and describe the pre-selection process and reinforce the legal basis in this respect.

Moreover, the Accreditation Guidelines refer to "*Conclusions de la Concertation Technique*" of 24 November 2004 adopted by the Parliament, the Commission, the Court of Justice, together with trade unions and staff associations, and indicate that these conclusions set out the general principles to be adopted to the selection policy for ACI interpreters⁷. These Conclusions should be added to the legal basis mentioned in the notification⁸.

As a broader frame of the accreditation procedure, (i) Article 90 of the CEOS, (ii) the Agreement concluded on 28 July 1999, on the one side by the Commission, the Parliament

- subsequent step: accreditation itself by a selection board - Commission notification to DPO 281.6 and EDPS prior-checking Opinion 2006-0364.

⁴ A standard framework service contract between the EU (represented by the Parliament) and Eworx, a company registered in Greece, was filed with the notification.

⁵ Version of March 2014, provided with the notification.

⁶ The other legal bases are Regulation 1/58 on the official languages of the EU and the operational conclusions of the Executive Committee of Interpretation of 9 July 2012.

⁷ See p. 1 of the Accreditation Guidelines.

⁸ Regulation 1/58 on the official languages of the EU, the Accreditation Guidelines and operational conclusions of the Executive Committee of Interpretation of 10 July 2012.

and the Court of Justice and on the other side by the International Association of Conference Interpreters, could also be added to the legal basis of the processing.

3. Data retention

As candidates can only be tested three times⁹, data from previous tests have to remain in the system for a sufficient long period (20 years) to ensure that this rule is respected.

The duration of the conservation period can be considered as acceptable. However, in accordance with the data minimisation principle, the Parliament should not keep more data than necessary to ensure that candidates are not tested more than three times. To this end, there is no need to keep all every personal data of the candidates, it is sufficient to keep the data which allow identifying the person (name, surname, gender, birth date and nationality) as well as the date(s) of the previous tests.

4. Information of the candidates

The formal requirements of Article 11 of the Regulation are globally respected. However, some additional clarification is needed as regards:

- the notice: the link between this step of the accreditation procedure and the subsequent steps of the selection procedure should be made clear;
- legal basis: the instruments mentioned here above (point 2) should be added;
- processor: the reference to the external contractor as "*any other entity which the European Parliament may come into contact with during the pre-screening*" and "*other entities contacted by the European Parliament*" is too vague; the privacy notice should expressly mention:
 - 1) the recourse to an external contractor acting as processor in the meaning of Article 23 of the Regulation;
 - 2) the role of the processor (development and maintenance of an application for computer based tests with no access to the candidates' data);
- recipients: the notice should mention that:
 - 1) the recorded speeches are accessible to an evaluation board composed of staff interpreters for the interpreting services of the EP, the Commission and the Court of Justice;
 - 2) the list of persons pre-selected for the following step of the procedure is available to DG Interpretation of the Commission, the Directorate of Interpretation of the Court of Justice and DG Interpretation of the Parliament;

In addition, the privacy statement must be made available to the candidates before they register (for ex.: link from the application form). It must also remain available after registration (for ex.: link in the email confirming the registration, posting on the internet).

5. External contractor (processor)

Article I.14 of the contract with the external contractor on data protection complies with the requirements of Article 23 of the Regulation as to the contractor's obligations. However, paragraph 1 of this provision is the source of some confusion between contractors' rights and contractors' obligations (in other words, between the processing of the contractor's data and

⁹ Candidates who have failed three times are no longer eligible (cf. Accreditation Guidelines).

the processing of data generated by the contract)¹⁰. In order to avoid any confusion, if and when the contract is revised, the Parliament should move the third sentence of Article I.14 paragraph 1 to the very end of the provision and put it in a separate paragraph.

6. Security

[...]

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In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the following recommendations are fully taken into account:

1. Include a description of the pre-selection process in the Accreditation Guidelines;
2. Add the following references to the prior checking notification (Section 11 - Legal basis of the processing):
 - *Conclusions de la Concertation technique* of 24 November 2004 adopted by the Parliament, the Commission, the Court of Justice, trade unions and staff associations;
 - Article 90 of the CEOS;
 - Agreement of 28 July 1999 between the Commission, the Parliament, the Court of Justice and the International Association of Conference Interpreters;
3. Limit the data to be kept regarding unsuccessful ACI candidates to (i) their personal details (name, surname, gender, birth date and nationality) and (ii) the date of their previous tests;
4. Ensure that the privacy statement is made available to the candidates before they register (for ex.: link from the application form) and that it is still available after registration (for ex.: link in the email confirming the registration, posting on the internet);
5. Amend the privacy notice as follows:
 - a) at the beginning of the notice, make a clear link between this step of the accreditation procedure and the subsequent steps;
 - b) add the legal bases mentioned in recommendation 1;
 - c) add a clear reference to the recourse to an external contractor, acting as processor in the meaning of Article 23 of the Regulation, to develop and maintain the application used for computer based tests;
 - d) as regards recipients, add that (i) the recorded speeches are accessible to an evaluation board composed of staff interpreters for the interpreting services of the EP, the Commission and the Court of Justice and that (ii) the list of persons pre-selected for the following step of the procedure is available to the DG Interpretation of the Commission, the Directorate of Interpretation of the Court of Justice and the DG Interpretation of the Parliament;

¹⁰ The first two sentences of the paragraph refer to the contractor's obligations and the third sentence refers to the contractor's rights (to the extent that personal data of its staff are being processed during the performance of the contract).

6. If and when the framework service contract with Eworx is to be amended, move the last sentence of Article I.14 paragraph 1 to the end of the provision and in a separate paragraph;

[...]

The EDPS would like to invite the EP to inform him about the implementation of these recommendations within **three months** after receipt of this letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: [...] Data Protection Officer, European Parliament