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Dear Mr Renaudière,

I am writing to you regarding the data processing operations concerning "Youthlink 2" at the European Commission (EDPS case ref.: 2008-484) submitted as notification for prior checking under Articles 27(2)(a) and (b) and 27(3) of Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (hereinafter referred to as "Regulation (EC) No 45/2001" or the "Regulation").

On the basis of the documents received from you on 20 August 2008 and the information provided by the data controller in response to our information requests and during the meeting on 24 September 2009 (main points as summarised below), we have concluded that the data processing operations concerning "Youthlink 2" is **not subject to prior checking** under any of the grounds set forth by Article 27 of Regulation for the reasons explained under Section II.

Below, under Section III, you will find **certain recommendations** that aim at assisting the data controller to comply with the obligations under Regulation (EC) No 45/2001, which, as you know, remains fully applicable despite the fact that the processing operation is not subject to prior checking.

I. Brief overview of the processing operation

The European Commission has created a database called "Youthlink2,"¹ which is the main repository of data (statistical and financial) concerning projects and activities submitted under the "Youth in Action" (YiA) Programme.

Youthlink was created to monitor the implementation of the YiA Programme (European and national level), to assist the inter-agency consultation and exchange of information on national level and to manage the Programme on national level.

I.1 Main actors and their responsibilities: The Youth in Action" (YiA) program of the EU is implemented by four main actors:

1. **The European Commission** (DG Education and Culture), which is ultimately responsible for the running of the Youth in Action Programme. It manages the budget and sets priorities, targets and criteria for the Programme. The Commission guides and monitors the general implementation, follow-up and evaluation of the Programme at European level.

The European Commission also bears overall responsibility for the supervision and coordination of the National Agencies (NAs), which are offices that have been designated and set up by the National Authorities in charge of youth affairs in each Programme Country. The European Commission cooperates closely with the National Agencies and oversees their activities. The European Commission delegates to the Education, Audiovisual and Culture Executive Agency the management of projects at centralised level.

2. **The Education, Audiovisual and Culture Executive Agency (EACEA)** established by decision 2005/56/EC of the European Commission of 14 January 2005 is responsible notably for the implementation of the centralised Actions of the Youth in Action Programme. This executive agency is also responsible for the selection and award of grants under certain Actions of the Programme. The Agency is in charge of the complete life cycle of these projects, from analysing the grant request to monitoring projects on the spot. It is also responsible for launching the specific calls for proposals. Youthlink currently does not contain information about these types of projects.

The Executive Agency and the National Agencies are structures of the Programme fully autonomous within each other. They perform exactly the same tasks and duties with regard to project selection and management. The only difference is that some types of Youth in Action projects are submitted to the Executive Agency in Brussels, some other to the relevant National Agency in a given country.

3. **The National Agencies (NAs):** the implementation of the Youth in Action Programme is mainly decentralised, the aim being to work as closely as possible with the beneficiaries and to adapt to the diversity of national systems and situations in the youth field. Each Programme Country has appointed a National Agency. These National Agencies promote and implement the Programme at national level and act as the link between the European Commission, promoters at national, regional and local level, and the young people themselves. The selection process for grant/financial support applicants is carried out by National Agencies on the basis of common guidelines,

¹ Youthlink was created under Decision 1031/2000/EC of 13/04/2000 establishing the "Youth Programme" [2000-2006] and under Decision 17/19/EC establishing the "Youth in Action" Programme for the period of 2007-2013 as Community actions.

procedures and criteria defined by the European Commission. Some of their tasks are to:

- administer a transparent and equitable selection process for project applications to be funded at decentralised level
- provide effective and efficient administrative processes
- evaluate and monitor the implementation of the Programme
- provide support to project applicants and promoters throughout the project life cycle
- form a functioning network with all National Agencies and the Commission.

4. **The National Authorities** are in charge of the identification and supervision of National Agencies.

I.2 Personal data are collected for various purposes:

- to identify all applicants requesting an EC grant for a project under the Youth in Action Programme;
- to manage all the selection procedures of project applications under the Youth in Action Programme;
- whereas relevant, to identify participants in granted projects with the aim of fulfilling some obligations related to the implementation of the Programme (invitation to compulsory training and evaluation sessions);
- to establish anonymous statistics about applicants, partner promoters, participants and projects;
- to fulfil the obligations and responsibilities relating to monitoring, evaluation and reporting established in the Decision of the European Parliament and of the Council establishing the Programme;
- to fulfil the obligations relating to the monitoring and steering of the YouthPass implementation (recognition of non-formal learning skills gained by participants during the project);
- to fulfil the obligations and responsibilities relating to monitoring, evaluation and reporting established in the Decision of the European Parliament and of the Council establishing the Programme.

I.3. Categories of concerned data subjects: Individuals **applying or participating** in the Youth in Action programme of the European Commission can become **data subjects**. Generally, "**applicants**" are those legal bodies/organizations/groups of individuals who submit application. These legal bodies/organizations/groups are **distinct from individual "participants"** (young people and youth workers who actually participate in the project without entering into a contractual relation with the European Commission, EACEA or a National Agency). In other words, data subjects are:

- persons authorised to sign the contract on behalf of the applicant,
- persons in charge of a project in the applicant organisation,
- persons in charge of a project in each partner organisation (where relevant),
- volunteers participating in a project (only under Action 2) and
- young people and coach actively participating in the project (only under Action 1.2).

I.4 Types of data: The information collected in YouthLink2 comes from those who introduce an application form and from a subsequent final report form under the YiA Programme. Such information is input in YouthLink2 by the concerned National Agency (NA) or Education, Audiovisual and Culture Executive Agency (EACEA) and it concerns data relating to the applications received in a given country. Data on granted projects are accessible by all NAs,

EACEA and Commission in "read only" mode. This accessible information is the same with what is published about the granted projects.²

In particular, National Agencies store various data in Youthlink: project meta data (type of activity, duration, venue, priorities themes, title and description, etc), data concerning applicants and promoters, data concerning participants, inclusion, budget/payment related data and project life-cycle operations. Similarly, EACEA stores in Youthlink the expressions of interest, projects meta data (project identification, priorities themes, title and description, etc) and data concerning applicants.

II. Applicability of Article 27 of Regulation (EC) No 45/2001

Article 27(1) of the Regulation requires to submit for prior checking by the European Data Protection Supervisor processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. Article 27(2) of the Regulation contains a list of processing operations likely to present specific risk in the above sense.

The notification was submitted for prior checking on two grounds, Article 27(2)(b) and Article 27 (2)(a) of Regulation 45/2001.

II.1. The applicability of Article 27(2)(b) of the Regulation: Article 27(2)(b) subjects to prior checking by the EDPS all processing operations, which intend to evaluate personal aspects relating to the data subject, including his/her ability, efficiency and conduct.

For projects stored in Youthlink, the selection of applications is as follows:

- first, applications are checked against the eligibility criteria³, the selection criteria⁴ and the exclusion criteria⁵
- then those applications which have successfully passed these checks are assessed and ranked according to the award criteria⁶
- once the evaluation, including the verification of financial conditions, is completed, the National Agency (for decentralised Actions) or the Executive Agency (for centralised Actions) decides on the projects to be granted funding, based on the Selection Committee's proposal and the budget available.

² With the only difference, that Youthlink 2 also contains information on the life-cycle of the project.

³ Eligibility criteria: The *eligibility criteria* mainly relate to the project type, the target group and the conditions for submitting a grant request for such a project. If the project does not meet these criteria, it will be rejected without being further evaluated. Although some eligibility criteria are common to all Actions and sub-Actions of the Programme, others apply only to specific Actions or sub-Actions.

⁴ Selection criteria: The selection criteria enable the National Agency (for decentralised Actions) or the Executive Agency (for centralised Actions) to assess the *applicant's financial and operational capacity to complete the proposed project*. These selection criteria apply to all Actions and sub-Actions of the Youth in Action Programme.

⁵ Exclusion criteria: Applicants must state that they are not in any of the situations described in Articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities.

⁶ Award criteria: The award criteria are indicators that allow a National/Executive Agency to evaluate the quality of projects submitted for grants. Although some award criteria are common to all Actions and sub-Actions of the Programme, others apply only to specific Actions or sub-Actions.

From the description, therefore, it can be concluded that the selection of beneficiaries for the Youth in Action programmes **does not involve an evaluation of individual conduct or abilities**, rather a check on the proposed *project against predefined criteria* and a check of the financial and operational capacity of the *applicant legal entities or groups*. In addition, such an assessment is carried out in a decentralised way, *not by the data controller* within the European Commission but either by national agencies subject to their respective data protection legislation or by EACEA. It also needs to be noted that certain applicants for grant may be excluded from the benefits on the basis of the information processed in the **Early Warning System (EWS)** of the European Commission. The EWS circulate information among all Commission departments about fund recipients (beneficiaries) who have committed fraud, administrative errors or irregularities. The EWS was already subject to prior checking by the EDPS.⁷

For these reasons, the EDPS **does not find Article 27(2)(b) of the Regulation applicable in the present case.**

II.2. Article 27(2)(a) of the Regulation concerns cases where the processing of data typically involves data relating to health, suspected offences, offences, criminal convictions or security measures.

Personal data collected and processed in Youthlink 2 *mainly concerns*:

- . information about the person authorised to *sign the contract on behalf of the applicant* (family name; first name; position/function);
- . information about the *person in charge of the project* in the *applicant organisation* (family name; first name; position/function; email; telephone; fax);
- . information about the *person in charge* of the project *in each partner organisation*, whereas relevant (family name; first name; position/function; email; telephone; fax);
- . information about *bank details of the applicant* (in most cases these data refer to legal persons; however, if the project is submitted by an informal group of young people, then the bank details may refer to the private account of an individual being part of the group and acting as its legal representative).

In certain cases, namely in the framework of Action 2 (European Voluntary Service) information about the *young people actively participating in the project* (name; gender; age; country of origin) can appear. Certain limited additional information in the “Inclusion” data field can appear on conditions of disadvantage (economic; social; geographical; physical; cultural; health...) for favouring young people with fewer opportunities or disadvantages to participate in the projects. Due to the specific context there are a few possible scenarios, where such data might be retrieved and linked to an identifiable person (see example below).

Article 27(2)(a) covers situations where the main purpose of the processing operation is typically to process health related data in a systematic way. As it was explained to the EDPS, in some limited cases, data on physical handicap of participants in voluntary projects (European Voluntary Service) may appear in the Youthlink application. The example mentioned to the EDPS was that if there is one participant in a project he/she becomes identifiable due to the circumstances.

⁷ Opinion of 6 December 2006 on a notification for prior checking on the Early Warning System (Case 2005-120). Available at: edps.europa.eu

From the available information, it seems to be the case that these health related data are not included systematically in the database.

Therefore, the *specific risk* required for a prior checking does not seem to be present. Although the EDPS does not find Article 27(2)(a) of the Regulation a ground for prior checking the processing activity, the appearance of such data necessitate certain measures to limit the accessibility of such data (see recommendation below in section III.1). It should be ensured that any possibly appearing sensitive data are processed only meeting the conditions of Article 10 of Regulation 45/2001 and the conditions set forth on the national data protection law and measures are taken to ensure that no sensitive data are visible or accessible for those actors whose task does not necessitate such information.

III. Compliance with Regulation (EC) No 45/2001 and Recommendations

Even if the processing operation does not fall under prior checking under Article 27(2) of Regulation (EC) No 45/2001, the obligations under the Regulation imposed on the data controller to ensure the protection of personal data in the context of Youthlink2 are applicable.

In the course of exchanging information with the services of the European Commission, certain issues attracted our attention. Please find below our recommendations to improve the data protection standards in the framework of the processing operation. We would like to receive adequate feedback from the data controller on those items.

III.1 Limiting the possibility to identify individual participants in the projects with disabilities (sensitive data): as mentioned above in section II, in some limited cases disability data to favour participants in the framework of certain programme may become readable by all actors involved in Youthlink.

The data controller should give **due considerations to the possibility to restrict the access to such sensitive data**, and to ensure that data on participants` disability is not accessible to all actors participating in Youthlink, but only for those whose task necessitate such information. For example, in the case of a transnational project involving X and Y member states, the disability related data of participants, should not be viewed by the agency of countries Z and U if accessing such information is not needed for their task. The EDPS requests the data controller to **examine the possibility to customize this sensitive information**.

III.2 Information notices- including competence of data protection authorities

The EDPS welcomes the fact that information notices about the processing activities and its main features are provided at various occasions to the concerned data subjects:

- a privacy statement is displayed on the website of the bodies which are in charge of checking the data (European Commission, Executive and National Agencies)
- informative text is included in each call for proposals,
- informative text is included in the application forms related to each project/action,
- a clause on data protection is included in the grant agreement between the beneficiary of a selected project and the National or Executive agency, etc.

The EDPS is also mentioned in some of these notices as a *forum*, where the beneficiaries may appeal at any time or lodge a complaint in relation to the processing of their personal data.

The EDPS would like to underline the **respective competences he shares with national data protection authorities in relation to the Youthlink2** processing operations. While national data protection authorities are supervising under their national data protection legislation the data processing activities of national agencies and national authorities, complaints can be lodged to the European Data Protection Supervisor against the data processing activities carried out by EACEA or the European Commission. The EDPS considers that **mentioning national data protection authorities in the information notices would be an added value to facilitate the exercise of the rights of the data subjects.**

III.3 Access to Youthlink2 by agencies outside of the EU territory

Apart from transferring data to NAs established in the Member States, data may also be transferred to NAs established in other countries: the EFTA/EEA countries, the candidate countries with a status of Programme Countries: Turkey, the Western Balkan Countries, and Switzerland. The data controller clarified for the question of the EDPS that all data contained in YouthLink can be viewed and extracted by all the National Agencies of the Programme (including those established in third countries i.e. Turkey and EFTA/EEA countries). Western Balkan Countries and Switzerland currently do not have access to these data.

As an example, National Agencies in Turkey or EFTA/EEA countries can currently view and extract data relating, for example, to:

- name, or email of the legal representative of an organisation who has received a grant for project in country X
- name or email of the project contact person of an organisation who has received a grant in country X
- name of a volunteer that will carry out his/her Voluntary Service in country X, etc.

The EDPS would like to receive a more detailed feedback regarding the data protection considerations taken into regard in setting the framework of transferring personal data to national agencies and authorities, which are not subject to Directive 95/46/EC. In this regard, we would like to receive more information as to the legal foundation of those transfers under Article 9 of Regulation (EC) No 45/2001 and under Directive 95/46/EC.

III.4 Security measures

The server of each national agency exchanges data with the central database maintained by the Commission through FTP communication. The EDPS requests the data controller to examine the possibility to enhance the security of this communication channel by implementing for example FTPS connexion or encrypting by other mean the data between the two connexion points.

In order to process the data stored in the national agency or the EACEA server, the employees of these agencies use an application which is provided by the European Commission. Each employee of a national agency uses the same username/password to access their corresponding server. The EDPS requests the data controller to examine the possibility to update this application in order to offer the possibility to national agencies for providing and managing themselves unique username/password to their employees. This measure will greatly facilitate the enforcement of access right policy at national level.

IV. Final remarks

I would appreciate if you could share the above considerations with the data controller. Please inform us in three months time about the follow up measures taken upon our requests and recommendations made in Section III of this document.

Should there be any further consideration to be taken into regard, please do not hesitate to contact us. We remain available for any further consultation on the matter.

Yours sincerely,

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