

Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Asylum Support Office (EASO) regarding the Asylum Intervention Pool

Brussels, 18/09/2014 (Case 2013-1228)

1. Proceedings

On 22 October 2013, the European Data Protection Supervisor (**EDPS**) received a notification for prior checking from the Data Protection Officer (**DPO**) of the European Asylum Support Office (**EASO**) relating to the processing of personal data in context of its Asylum Intervention Pool (**AIP**).

Upon EDPS request, EASO provided subsequent clarifications. The draft Opinion was sent to the DPO for comments on 3 September 2014. The EDPS received a reply on 16 September 2014.

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

2. Relevant facts

Regulation (EU) No 439/2010 of the European Parliament and of the Council 19 May 2010 establishing EASO (**the EASO Regulation**) provides that a Member State subject to particular pressure on their asylum and reception systems may request EASO for deployment of an asylum support team (**AST**) in the territory of that Member State in order to provide technical assistance (interpretation services, information on countries of origin, knowledge of the handling and management of asylum cases)¹. In order to facilitate the deployment of asylum support teams when the need arises, EASO Regulation foresees the creation of an Asylum Intervention Pool (**AIP**)².

(i) Composition of the AIP

The purpose of the AIP is to gather profiles of asylum experts from the Member States who may subsequently be deployed in ASTs. The Decision of EASO Management Board of 19 June 2012 (**the EASO Decision**) defines the various profiles and overall number of experts to be made available by the Member States for the AIP.

¹ Articles 13 and 14 of the EASO Regulation.

² Article 15(1) of the EASO Regulation.

According to EASO Decision³, the profiles of the national experts are determined on the basis of the following criteria:

- basic qualifications:
 - a) work experience in the field of asylum,
 - b) knowledge of English;
- core competences corresponding to at least one of the categories mentioned in EASO Decision⁴;
- other possible optional skills that may be specified by EASO and/or the sending Member State; optional skills may be specified if considered to be particularly useful for the purpose of the determination of a specific asylum team.

Member States contribute to the AIP via a national expert pool on the basis of the profiles defined in EASO Decision⁵. In practice, Member States select experts corresponding to the required profiles, send their names, with corresponding CVs⁶, to EASO electronically for inclusion in the AIP (which includes the names of the experts ranked by profile). The experts' CVs are kept separately.

EASO does not influence the national selection process, as each Member State retains its autonomy as regards the selection of the number and the profiles of the experts (national pool) and the duration of their deployment⁷. However, the overall number of experts to be made available for the AIP by the Member States is not less than 100⁸.

The Member States submit corrections/deletions to their respective lists of experts and related CVs to EASO on a yearly basis.

(ii) Deployment of ASTs

When a Member State requests for deployment of AST, the Executive Director of EASO takes a decision within five days of the request⁹. Once the decision is made, EASO and the requesting Member State agree on an operating plan setting up in detail the conditions for deployment of the AST, including a description of the tasks of the members of the AST as well as the composition of the team¹⁰, taking into account the particular circumstances confronting the requesting Member State.

³ Articles 1-4 of the EASO Decision.

⁴ See Article 3 of EASO Decision: experts on screening for the identification of international protection needs, experts on country of origin information, experts on language analysis, experts on quality management of asylum systems, experts on backlog management, experts on asylum applicants in need of special procedural guarantees, etc.

⁵ Article 15(2) of the EASO Regulation.

⁶ EASO requests the Member States to ask their national experts to use the Europass CV (<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions>).

⁷ Article 16(1) of the EASO Regulation.

⁸ Article 5 of the EASO Decision.

⁹ Article 17(3) of the EASO Regulation.

¹⁰ Article 16(2) and 18 of the EASO Regulation.

Once the operating plan has been agreed, EASO informs the Member States of the number and profiles required for the AST¹¹. Following this call, the Member States nominate a list of suitable experts from their national pool in the AIP who can be made available as soon as possible to join the AST¹². If the need arises, Member States may also nominate experts with specific profiles who are not yet included in the AIP, in which case they enclose their CVs with the nomination.

Then, the Centre for Operational Support (**COS**) of EASO runs a matching process of qualifications and experiences mentioned by the nominated experts in their CVs with the requirements put forward in the call for experts. If more than one expert corresponds to a particular profile, the COS selects the expert that best matches the profile. The outcome of the process is an advice of the COS on deployment of the AST. EASO Executive Director takes the formal decision on the deployment advice, which includes the actual composition of the AST¹³.

3. Legal analysis

3.1. Applicability of Regulation No 45/2001 (the Regulation)

The processing of data constitutes a processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation) of national experts (i) to be included in the AIP and (ii) possibly selected to be deployed in ASTs.

(i) Composition of the AIP

EASO and the Member States are co-controllers of the processing operations in relation to the selection of national experts for inclusion in the AIP: EASO defines the various profiles and overall number of experts to be made available by the Member States for the AIP¹⁴, while the Member States have autonomy to proceed to the actual selection of the national experts included by them in their national expert pool and therefore automatically in the AIP¹⁵.

(ii) Deployment and composition of the ASTs

EASO and the Member States are also co-controllers when it comes to the deployment and composition of the ASTs: the Member States nominate a list of suitable experts to join the AST, while EASO determines the actual composition of the AST.

In view of points (i) and (ii) above, data processing is carried out by EASO in the exercise of activities which fall within the scope of EU law (Article 3(1) of the Regulation in the light of the Lisbon Treaty). The processing of the data is partly done through automatic means. Therefore, the Regulation is applicable.

¹¹ Article 17(5) of the EASO Regulation. In practice, each Member State has a national contact point for communication with EASO on all matters pertaining to the ASTs (Article 19 of EASO Regulation).

¹² Article 16(1) of the EASO Regulation.

¹³ Article 16(2) of the EASO Regulation.

¹⁴ Article 15(1) of the EASO Regulation.

¹⁵ Article 16(1) of the EASO Regulation.

3.2. Grounds for prior Checking

Article 27(2)(b) of the Regulation subjects to prior checking "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

(i) Composition of the AIP

As the Member States are autonomous as to the actual selection of their national experts and the data processing related hereto, EASO does not carry out the data processing operations at this stage of the process. Therefore, there is **no ground for prior-checking** under the Regulation **for this part of the processing**.

(ii) Deployment and composition of the ASTs

According to the information provided by the DPO, once the Member States have nominated their experts for a specific AST, EASO carries out a cross-checking of the nominated expert's CV with the AST's requirements. If more than one expert corresponds to a particular profile defined for the AST, EASO will select the expert that best matches the profile. During this process, the ability of the national experts are evaluated by EASO and therefore Article 27(2)(b) is applicable.

As the experts' selection by EASO is in most aspect in compliance with the Regulation, as outlined in the respective **EDPS Guidelines** on the processing of personal data in the context of public procurement, grants as well as selection and use of external experts¹⁶, this Opinion will only address the aspects of the data processing that do not seem to be fully compliant in this respect.

3.3. Lawfulness of the processing

Personal data may only be processed if grounds can be found in Article 5 of the Regulation. It is notably the case if processing is "*necessary for the performance of a task carried out in the public interest on basis of the Treaties establishing the [European Union] or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the [EU] institution*" (Article 5(a) of the Regulation).

The selection of national experts for inclusion in the AIP and possibly in specific ASTs is provided for in the EASO Regulation (in particular Articles 15-18) and the EASO Decision further enumerate the criteria to be met by national experts to be included in the national pool and therefore in the AIP. By contrast, no legal instrument describes the modalities of selection of the experts by EASO for a specific AST.

¹⁶ EDPS Guidelines on the processing of personal data in the context of public procurement, grants as well as selection and use of external experts of 25 June 2013: https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/13-06-25_Procurement_EN.pdf.

Therefore, EASO should adopt a decision on the selection of experts for deployment in a specific AST. This decision would reflect EASO's practices and describe the different selection steps¹⁷ as well as the selection criteria (such as taking into consideration of the optional skills mentioned by the experts with otherwise equivalent profiles, etc.).

3.4. Information to the data subject

The privacy notice submitted with the notification meets the requirements of Articles 11-12 of the Regulation, provided that the information on the controller and the purpose of the processing is complemented as follows.

Controllers

First, the privacy notice should mention that EASO and the Member States are co-controllers and briefly indicates the tasks allocations between them for the experts' selection both at the stage of the composition of the AIP and of the deployment of the AST.

Second, the privacy notice refers to the Head of the COS as the controller. As far as EAOS is concerned, EASO itself should be the controller, the Head of COS being the organisational entity entrusted with the data processing.

Legal basis

Once EASO will have adopted a decision on the selection process of experts for deployment in AST, reference to such a decision should be made in the privacy notice.

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In view of the above, there is no reason to believe that there is a breach of the provisions of the Regulation providing the recommendations contained in this Opinion are fully taken into account, provided that EASO:

- adopts a decision that would reflect EASO's practice in writing, including the different steps of the experts' selection for deployment of a specific AST, as well as the selection criteria at that stage;
- adapts the privacy notice in order to provide further information regarding the controllers and legal basis of the processing.

Done at Brussels, 18 September 2014

(signed)

Giovanni BUTTARELLI

¹⁷ i.e. call for experts for each individual measure in the operating plan, nominations by Member States following the call, matching process of qualifications and experiences of the nominated experts with the AST's requirements done by the COS, additional selection if more than one expert match a specific profile, COS advice on the deployment of the AST including its composition, approval of the deployment advice by EASO Executive Director.