

Document 1.1.2 -2

ANALYSIS OF THE LAWS ON EDUCATION

Component 1

Activity 1.1.2

FINAL VERSION



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INTRODUCTION

Striving to meet the basic goal of the project “Support to the Directorate for Personal Data Protection”- to assist in the strengthening the operational capacities of the Directorate for Personal Data Protection, the emphasis in this legal analysis is on analyzing of sector oriented legislation (laws, by-laws), relating to protection of personal data in the Education sector, in order to determine the level of harmonization and alignment of national legislation in the area of education, with provisions of Law on personal data protection, and also, in sense of European data protection self-regulation practice.

The legal analysis consist of four main parts:

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- **Primary education**
- **Secondary education**
- **Higher education**
- **Education of adult**

Considering the specific goals established for the purposes of this legal analysis (which, inter alia, should determine the level of legislation alignment in the area of education, with the provisions of Law on personal data protection and by-laws), it is prepared on the basis of the following indicators:

- Purpose of personal data processing;
- Records of personal data;
- Period of personal data storage;
- Giving personal data to users;
- Privacy and protection in respect of a third person;
- Subsidiary application of the Law on protection of personal data.

In the preparation of the legal analysis, were taken into consideration suggestions and opinions of the Directorate for Personal Data Protection, as competent authority performing state control over the legality of actions taken during the processing of personal data and their protection, as well as cognizance that occurred in executive inspection by authorized persons of the legality of personal data processing in education institutions in the country.

PRIMARY EDUCATION



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INTRODUCTION

Primary education, as an integral part of the overall educational system in the country, is regulated by several laws¹ and by-laws², but, in terms of personal data protection, and in accordance with the purposes and requirements of particular legal analysis, the following acts are considered as most important: Law on primary education; Rulebook of form and content of pedagogical documentation and records in primary school, as well as their guidance and Rulebook of keeping records of completed validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education.

Law on primary education, enacted in 2008³, regulates the compulsory primary education, as well as function of primary education as part of the unique educational system.

Rulebook of form and content of pedagogical documentation and records in primary school, as well as their guidance, enacted in 2009⁴, regulate form and content of pedagogical documentation and records in primary school, as well as the manner of their guidance.

Rulebook of keeping records for completed validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education, enacted in 1996⁵, prescribes the manner, content and form pattern of keeping records for completed validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education.

¹ Law on primary education; Law on Office for education development; Law on state examination center; Law on education inspection; Law on textbooks for primary and secondary education; Law of student standard.

² Rulebook of form and content of pedagogical documentation and records in primary school, as well as their guidance; Rulebook of keeping records for completed validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of elementary education; Rulebook of criteria and the way of realization of primary music and primary ballet education; Rulebook of criteria and the way of realization of primary education of students with disabilities; Rulebook of conditions for participation in preschool and primary education and education of children and students with disabilities in psycho-physical development; Rulebook of verification manner of primary school and the content, form and manner of keeping registers; Rulebook of manner and procedure for passing the exam for teacher, associate and educator; Rulebook of the form, content and the manner of records ruling for professors and assistants in primary school;

³ Official Gazette n.103/08, 19.08.2008

⁴ Official Gazette n.41/09, 25.03.2009

⁵ Official Gazette n.27/96, 05.06.1996



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1. Current situation

1.1. Law on primary education

Regarding the Law on primary education, in terms of personal data processing, it can be concluded that it's a solid starting legal basis to ensure compliance and implementation of policies and principles of personal data processing, and, in addition, it suggest further detailed elaboration with specific By-laws. But, in order to increase the legal certainty of personal data subjects, especially for the fact that personal data are sensitive category associated with the identity of the subject, it is highly recommended, above mentioned principles to be regulated, at first, with basic law act in general manner and then with its provisions to be prescribed their further detailed elaboration with By-laws.

Seen from the perspective of the established indicators, in terms of certain provisions of primary education (related to the personal data processing), we can conclude the following:

Article 15a⁶

For the primary education function, Ministry has integrated database containing data for: student records, student evaluations, student absences from school; personal data for teachers, psychologists, educators and other staff in primary schools; absences of teachers, psychologists, educators and other staff in primary schools, curricula, annual work programs, textbooks used in teaching, school buildings and other facilities used to deliver the teaching and financial data for schools. The data referred to in paragraph 1 of this Article, primary school brings in an integrated database continuously.

Conclusion:

In the article 15a is determined specific, clear objective for personal data collecting and processing;

There are no precisely stipulated concrete personal data which will be collected within the individual documents of the integrated database, nor it is planed to be done with By-law;

There is no determined period of personal data (contained in integrated base ruled by the ministry) storage, nor it is planned that to be done with By-law;

It is not envisaged the possibility of providing/giving this integrated database to users⁷;

⁶ Law amending the Law on primary education, Official Gazette n.116/10, 01.09.2010



It is not determined their further regulation with By-laws.

Article 46

Paragraph 2-When the child is enroll in the first grade, parent is obliged to submit a medicine confirmation for received mandatory vaccinations for the child, issued by the competent medical institution.

Conclusion;

There is no determined specific, clear objective for personal data collecting and processing;

It is not determined period of mentioned personal data storage, nor it is planned to be done with By-law;

It is not envisaged the possibility of providing/giving those personal data to users;

It is not determined their further regulation with By-laws.

Article 50

Paragraph 1-The parent has the right to enroll the child in primary school in the area where he lives or where he is resident.

Paragraph 2-The parent can enroll the child in another school in the same or another district if it has the consent of the school in which child is enrolled.

Paragraph 3-The list of children from the area of enrollment in primary school are derived from relevant departments in local government, authorized for keeping records of their permanent and temporary residents.

Paragraph 4-The list contains the child's name and birth year.

Conclusion;

⁷ This should be considered as a serious drawback, considering the fact that surveillance has shown that there are examples in everyday practice of giving personal data to users.



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It is not determined specific, clear objective for personal data processing contained in the list of children from the area of enrollment in primary school, although it can be indirectly determined⁸;

It is not determined period of personal data (contained in the list of children from the area of enrollment in primary school) storage, nor it is planned to be done with By-law;

It is determined giving of personal data (contained in the list of children from the area of enrollment in primary school), prepared by the relevant local government authorities for keeping records of permanent and temporary residents, to users (primary schools)⁹;

It is not determined their further regulation with By-laws.

Pedagogical documentation and records

Article 98

Primary school collects, processes, stores, mediate, and uses data contained in the pedagogical documentation and records in accordance with this Law and the Law on personal data protection.

Article 99

Paragraph 1-Pedagogical documentation under this law include: General ledger of students; evident sheets for student's success; student identification card; certificate and transcript.

Paragraph 2-General ledger of students is a document of permanent value.

Article 103-The form and content of pedagogical documentation and records, as well as the manner of their conduct, should be prescribed by the Minister.

Conclusion;

Established legal basis for collecting and processing of personal data in pedagogical documentation and records¹⁰;

⁸ Article 50 paragraph 1 and 2

⁹ Article 50 paragraph 3

¹⁰ Article 98



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It is not determined specific, clear objective for personal data processing contained in pedagogical documentation and records;

Indirectly determined period of personal data storage only for General ledger of students¹¹, while for the other documents included in the pedagogical documentation and records, period of storage it's not determined;

It is not envisaged the possibility of providing/giving those personal data to users;

Stipulated detailed prescribing of the form and content of pedagogical documentation and records, as well as the manner of their keeping with By-laws by minister.

Validation and equivalence of certificates obtained abroad

Article 150

Paragraph 1-The citizens, who completed primary education or completed a separate grade of primary education abroad, has the right to request a certificate of recognition or validation, or recognition of equivalence in accordance with this law, unless international agreements not otherwise specified.

Paragraph 2-Foreingh citizens or stateless persons, have the right to seek validation or recognition of equivalence obtained abroad.

Article 151

Paragraph 3-Validation or recognition of equivalence of certificate obtained abroad is performed by the ministry.

Article 160-Ministry keeps the documentation of performed validation, or equivalence and rule records for it.

Article 161-The form and content of patterns for validation or equivalence and the manner of keeping records is specified by the Minister.

Conclusion:

It is not determined specific, clear objective for personal data which are collecting in process of validation and equivalence of certificates obtained abroad¹²;

¹¹ Article 99 paragraph 2



Established legal basis for collecting and processing of personal data in process of validation and equivalence of certificates obtained abroad¹³;

It is not determined period of personal data storage;

It is not envisaged the possibility of providing/giving those personal data to users;

Determined duty for the ministry, in a role of controller, to keep records for documentation of the performed validation or equivalence¹⁴;

Provided detailed prescribing of form and content of the patterns for validation or equivalence and the manner of their ruling with By-law¹⁵;

Determined subsidiary usage of provisions of Law on personal data protection¹⁶;

The law contained no provision concerning the confidentiality and protection of personal data in relation to a third party;

The inspection in some primary schools show that, they run Electronic management informational system (EMIS), but this activity has not determined legal basis in Law on primary education. It is also concluded, that in those electronic records, primary schools envisage to collect more personal data, than it is necessary for fulfilling determined goal¹⁷. Also, among them, there are personal data which are treated by Law on personal data protection as special category of personal data¹⁸, which can't be collected and processed without determined legal basis or prior approval of the personal data subject.

¹² Article 151 and Article 152

¹³ Article 151 paragraph 3

¹⁴ Article 160

¹⁵ Article 161

¹⁶ Article 98

¹⁷ Those are the following personal data: in part of electronic records with personal data of employees: marital status, disability, blood group, children of employ; In part of electronic records with personal data of parents: unique identification number, ethnicity and religious affiliation, place and date of birth, blood group; In part of electronic records with data of students: unique identification number, religious affiliation, blood group and special needs

¹⁸ Data for unique identification number, blood group, disability, special needs.



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1.2. Rulebook for form and content of pedagogical documentation and records in primary school, as well as their guidance

This By-law largely fulfilled the legal requirement for prescription of form, content and manner of pedagogical documentation and records by the authorized Minister.

Seen from the perspective of the established indicators, in terms of certain provisions of this rulebook (related to the personal data processing), we can conclude the following:

Article 1

This rulebook prescribes the form and content of pedagogical documentation and records in primary school, as well as the manner of their guidance.

Conclusion:

It is not determined specific, clear objective for personal data contained in pedagogical documentation and records;

With article, it is clearly determined the subject of this rulebook, this provision has determined legal basis in the Law on primary education¹⁹.

Article 2

Paragraph 1-Pedagogical documentation in accordance with the Law on primary education include: general ledger of students; class diary; evident sheets for student's success; student identification card; certificate and transcript.

Conclusion:

With this provision, it is determined content of pedagogical documentation and records, it is legally based in Law on primary education²⁰.

In Article 3,4,5,6,7,8,9,10,11,12,13 and 14 of this rulebook, are strictly listed personal data which are collected in every single document of pedagogical documentation and records. Also, patterns for personal data processing are part of this rulebook. This satisfies the legal requirement for precise

¹⁹ Article 103 Law on primary education

²⁰ Article 99 paragraph 1 Law on primary education



determination of the personal data which will be processed in particular case, that is one of the assumptions to increase the legal security of personal data subjects.

It is not envisaged the possibility of providing/giving those personal data to users;

Article 17

Storage period of documents contained in pedagogical documentation of primary schools is as follows: general ledger of students is a document of permanent value; class diary for group teaching in primary music school, class diary for individual teaching in primary music school and transcript are kept at least one year after completing of primary education of the student in that particular primary school.

Conclusion:

In article 17, its determined the storage period of general ledger of students, class diary for group teaching in primary music school, class diary for individual teaching in primary music school and transcript, which means for all the documents contained in pedagogical documentation²¹.

The law contained no provision concerning the confidentiality and protection of personal data in relation to a third party.

1.3. Rulebook of keeping records of completed validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education

This By-law largely fulfilled the legal requirement all questions concerning form, content and manner of records ruling for validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education, to be prescribed by the authorized Minister.

Seen from the perspective of the established indicators, in terms of certain provisions of this rulebook (related to the personal data processing), we can conclude the following:

Article 1

This Rulebook prescribes the manner, form and content of patterns for keeping records of completed validation and equivalence of certificates acquired abroad, for completed primary school or separate grade of primary school.

²¹The exception is the certificate and student ID, which are documents that belong to the subject of personal data and therefore the period of storage it is not determined.



Conclusion;

With this article, it is clearly determined the subject of this rulebook, this provision has determined legal basis in the Law on primary education²²;

It is not determined specific, clear objective for personal data contained in the process of done validation and equivalence of certificates acquired abroad.

In Article 2 of this rulebook are strictly listed categories of personal data which are collected as a part of documentation for validation and equivalence of certificates acquired abroad. This satisfies the legal requirement for precise determination of the personal data which will be processed in particular case, that is one of the assumptions to increase the legal security of personal data.

Article 3-Documentation for validation and equivalence of certificates acquired abroad has permanent valued, and it is kept separated from the other documentation.

Conclusion;

In Article 3 is determined period of storage of documentation for validation and equivalence of certificates acquired abroad, for completed primary education or separate grade of primary education;

It is not envisaged the possibility of providing/giving those personal data to users;

The law contained no provision concerning the confidentiality and protection of personal data in relation to a third party.

²² Article 161 Law on primary education





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SECONDARY EDUCATION



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INTRODUCTION

Secondary education, as an integral part of the overall educational system in the country, is regulated by several laws²³ and by-laws²⁴, but, in terms of personal data protection, and in accordance with the purposes and requirements of particular legal analysis, the following acts are considered as most important: Law on secondary education; Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools; Rulebook of keeping records for completed validation and equivalence of secondary education certificates and diplomas acquired abroad; Rulebook on monitoring, verification, assessment, taking exams and advancement of students in secondary schools; Rulebook of taking an exams and evaluating the results of students achieved in school graduation exam at gymnasium education and Rulebook of organizing and implementation of external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, as well as form and content of the report²⁵.

Law on secondary education, enacted in 1995²⁶, regulates the organization, operation and management of secondary education as part of overall educational system.

²³ Law on secondary education; Law on state examination center; Law on textbooks for primary and secondary education; Law for establishing National agency for European educational programs and mobility.

²⁴ Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools; Rulebook of keeping records for completed validation and equivalence of secondary education certificates and diplomas acquired abroad; Rulebook of organizing and implementation of external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, as well as form and content of the report; Rulebook on monitoring, verification, assessment, taking exams and advancement of students in secondary schools; Rulebook of taking an exams and evaluating the results students achieved in school graduation exam at gymnasium education; Rulebook on admission, storage, allocation and return of textbooks in primary and secondary schools; Rulebook on conditions and manner of taking the professional exam for teachers and associates in public secondary schools; Rulebook on the form, content and manner of guidance the professional record of teacher and associate at secondary school; Rulebook on verification of secondary school and the manner of keeping registers; Rulebook for normative of the arrangement of working time of teachers and associates in public secondary schools; Rulebook of the manner of taking and evaluating the results of examinations of students final exam in secondary four years vocational education; Rulebook of the manner of taking and evaluating the results of examinations of students in secondary school graduation art education; Rulebook of examination and assessment of students outcomes on state graduation exams in the gymnasium, vocational and art secondary education; Rules for International graduation exam.

²⁵ Highlighted legal acts are considered as essential in the analysis of secondary education in terms of personal data protection for several reasons: namely, Law on secondary education is basic law in this area, while those rulebooks are taken into due consideration because they regulate different types of records and databases and basic principles of data protection are most apparent in those acts.

²⁶ Official Gazette n.44/95, 20.09.1995



Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools, enacted in 2009²⁷, prescribes the manner of guidance, form and content of pedagogical documentation and records in secondary schools.

Rulebook of keeping records for completed validation and equivalence of certificates and diplomas for secondary education acquired abroad, enacted in 1996²⁸, prescribes the manner, form and content of patterns for keeping records of completed validation and equivalence of certificates and diplomas from secondary education acquired abroad.

Rulebook on monitoring, verification, assessment, taking exams and advancement of students in secondary schools, enacted in 2002²⁹, regulates the manner of monitoring, checking and evaluating, taking exams and advancement of students in secondary school.

Rulebook of taking an exams and evaluating the results of students achieved in school graduation exam at gymnasium education, enacted in 2010³⁰, regulates the manner and procedures for taking exams and evaluating the results of examinations of final school graduation exam in gymnasium education.

Rulebook of organizing and implementation of external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, as well as form and content of the report, enacted in 2010³¹, regulates a way of organizing and conducting external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, as well as form and content the report.

2. Current situation

2.1. Law on secondary education

²⁷ Official Gazette n. 41/09, 25.03.2009

²⁸ Official Gazette n. 27/96, 05.06.1996

²⁹ Official Gazette n. 39/02, 11.06.2002

³⁰ Official Gazette n. 78/10, 10.06.2010

³¹ Official Gazette n. 115/10, 31.08.2010



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Regarding the Law on secondary education (and having in mind personal data protection) it can be concluded that it's a solid starting legal basis to ensure compliance and implementation of policies and principles of personal data processing, and, in addition, it suggest further detailed elaboration with specific By-laws. But, in order to increase the legal certainty of personal data subjects, especially for the fact that personal data are sensitive category associated with the identity of a physical person, it is highly recommended, above mentioned principles to be regulated, at first, with basic law act in general manner and then with its provisions to be prescribed their further detailed elaboration with By-laws.

Seen from the perspective of the established indicators, in terms of certain provisions of secondary education (related to the personal data processing), we can conclude the following:

Pedagogical records and documentation

Article 84

Paragraph 3-Secondary schools are obligated to lead pedagogical records.

Article 85

Paragraph 1-Pedagogical documentation, under this law, covers: general ledger of students; general ledger of final exam; general ledger of graduation exam; general ledger of international graduation exam; general ledger of secondary specialized education and diary of class; diploma; certificate; certificate of vocational training; certificate of working training; student book/card and transcript.

Paragraph 2-The general ledger of students, general ledger of final exam, general ledger of graduation exam, general ledger of international graduation exam and general ledger of secondary specialized education are documents of permanent value.

Article 88-Detailed regulations regarding the manner of running, form and content of pedagogical documentation and records, should be provided by the Minister.

Conclusion;

Established a legal basis for collection and processing of personal data contained in pedagogical records and documentation³²;

In article 85 paragraph 1, it is determined a content of pedagogical records and documentation;

³² Article 84 paragraph 3

Not determined specific, clear objective for personal data processing, contained in pedagogical records and documentation;

In law provisions, is determined period of storage of personal data, indirectly, only for the following documents: general ledger of students, general ledger of final exam, general ledger of graduation exam, general ledger of international graduation exam and general ledger of secondary specialized education, while for the others documents contained in pedagogical records and documentation, there is no determined period of storage of personal data³³;

Envisaged a detailed prescribing the manner of form and content of pedagogical documentation and records, with by-laws³⁴;

Not envisaged the possibility of providing/giving those personal data to users;

Validation and equivalence of certificates acquired abroad

Article 89

Paragraph 1-The citizens who completed secondary education or separate grade of secondary education abroad, has the right to request validation or recognition of equivalence in accordance with this Law, unless it is not otherwise regulated with international agreements.

Paragraph 2-Foreign citizen and stateless person has the right to request validation or recognition of equivalence of certificate acquired abroad.

Article 90

Paragraph 1-Under validation means recognition of a certificate acquired abroad, and equivalent means flattening of the certificate acquired abroad with certificate acquired in the Beneficiary country.

Paragraph 2-Validation or recognition of equivalency certificate acquired abroad is in the authority of the Ministry.

Article 97-Authorized ministry is obligated to keep all the documentation of done validation and equivalence, and, for that purpose, keep records.

³³ Article 85 paragraph 2

³⁴ Article 88



Article 98-Detailed regulations regarding the keeping of records and the form and content of pedagogical documentation and records, should be provided by the Minister.

Conclusion:

Established legal basis for collection and processing of personal data collected in the procedure of validation and equivalence of certificates acquired abroad³⁵;

There is determined legal obligation of the ministry, as a controller, to keep records for documentation of the performed validation or equivalence³⁶;

Envisaged a detailed prescribing of the ruling manner, form and content of the patterns, with by-laws by the minister³⁷;

Not envisaged the possibility of providing/giving those personal data to users;

Not determined period of storage of personal data;

Not determined subsidiary usage of provisions of Law on personal data protection;

In this law, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

2.2. Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools

Seen from the perspective of the established indicators, in terms of certain provisions of this rulebook (related to the personal data processing), we can conclude the following:

Article 1

³⁵ Article 97

³⁶ Article 97

³⁷ Article 98



This rulebook prescribes the manner of keeping, form and content of pedagogical records and documentation in secondary schools.

Article 2

Paragraph 1-Pedagogical documentation covers: general ledger of students; general ledger of state graduation exam; general ledger of school final exam; general ledger of final exam for four-year secondary education; general ledger of final school exam for three-year secondary school; general ledger of international graduation exam; general ledger of secondary specialized education; diploma for passed state graduation exam; diploma for passed school graduation exam; diploma for passed school final exam; diploma for passed final exam for four-year secondary education; diploma for passed final exam for three-year school; diploma for international graduation exam; diploma for specialized education; certificate for professional competence; certificate for working competence; certificate, transcript and student card.

Paragraph 2-Pedagogical records are run in diary of a class.

In articles 3,4,5,6,7,8,9,10,11, 11a,12,13,14,15, are stipulated exact personal data contained in all the document of pedagogical documentation.

Article 18

Paragraph 1-The period of personal data storage is regulated as follows:

general ledger of students, general ledger of state graduation exam, general ledger of school final exam, general ledger of final exam for four-year secondary education, general ledger of final school exam for three-year secondary school, general ledger of international graduation exam and general ledger of secondary specialized education are documents of permanent value.

Paragraph 2-Transcript as a document is kept at least one year after finishing of education of students in particular school and

Paragraph 3-Diary of the class is kept at least one year after finishing of education of students in that particular school.

Conclusion:

With this article, it is clearly determined the subject of this rulebook, this provision has determined legal basis in the Law on secondary education;

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With article 2 paragraph 1 of this rulebook, it is determined content of pedagogical records and documentation;

With article 18 paragraph 1, is determined period of storage of personal data for some of the documents contained in pedagogical records and documentation³⁸;

In article 18 paragraph 2 and 3, determined period of storage of personal data for the other documents contained in pedagogical records and documentation³⁹;

Not determined specific, clear objective for processing of personal data, contained in pedagogical records and documentation;

Not envisaged the possibility of providing/giving those personal data to users;

In this law, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

2.3. Rulebook of keeping records for completed validation and equivalence of secondary education certificates and diplomas acquired abroad

Seen from the perspective of the established indicators, in terms of certain provisions of secondary education (related to the personal data processing), we can conclude the following:

Article 1

This rulebook prescribing the manner, content and form for keeping records of completed validation and equivalence of certificates and diplomas from secondary education acquired abroad.

In article 2 are strictly listed personal data which are collected in every single document of validation and equivalence of certificates acquired abroad. Also, patterns for records and equivalence of certificates acquired abroad are integral part of this rulebook.

Article 3

³⁸ Article 18 paragraph 1

³⁹ Article 18 paragraph 2 and 3



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The documentation for validation and equivalence of certificates and diplomas obtained abroad has permanent value and are kept separate from other documents.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook, this provision has determined legal basis in the Law on secondary education;

In article 3, is determined period of storage of personal data included in documentation for validation and equivalence of certificates and diplomas acquired abroad, indirectly;

Not determined specific, clear objective for personal data processing, contained in documentation of validation and equivalence of certificates and diplomas of secondary education acquired abroad;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

2.4. Rulebook on monitoring, verification, assessment, taking exams and advancement of students in secondary schools

Seen from the perspective of the established indicators, in terms of certain provisions of secondary education (related to the personal data processing), we can conclude the following:

Article 1-This rulebook prescribes the manner of monitoring, checking and evaluating, taking exams and advancement of students in secondary school.

Article 8

Paragraph 3-Assessment for single subject enrolled in teacher pedagogical documentation.

Paragraph 4-For the grades given to students, the teacher shall notify the council of the class at quarters, half and end of school year.

Paragraph 5-The general success of the student at the end of the school year is determined by the class council, and the results met the School Teachers' Council.



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Article 14

Paragraph 1-Secondary school is obligated to notify parents or guardians of students at least twice during a semester, about student's results in learning process. For this purpose, despite the established patterns, secondary school also, uses other forms of informing-consultation, written reports, parent meetings, visiting student in the family and so on.

Paragraph 2-Secondary school organize joint meeting of students, parents and teachers, to introduce them with the student's achieved results, after the school year is finished.

Article 21

Paragraph 3-The students which have to take exams, should submit written request within the term/period determined by school.

Paragraph 4-Along with above mentioned written request, student should also submit the student booklet.

Paragraph 5-Part-time students and those students who take additional exams, despite a written request, accompanied by a certificate of previously completed education.

Article 23

Paragraph 2-The identity of the candidate before the examination is determined by examining board with showing student ID card.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

This provision has determined legal basis in the Law on secondary education⁴⁰;

In relation to personal data processed under this rulebook (the grades the student, the student's overall success at the end of the school year, student attendance, pedagogical measures) envisaged that these documents are recorded, namely that are the documents covered by the pedagogical records and

⁴⁰ Article 56 paragraph 7 and article 66 Law on secondary education



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documentation. In this respect, it should be considered that storage period of personal data is precisely determined⁴¹;

In article 21 of this rulebook, is determined content of written request, submitted by the students which have to take an exam;

In terms of providing the personal data to users, it is prescribed informing parents or guardians about learning outcomes, and the annual success of the student's, as set out in the way of information and time intervals that will be informing⁴²;

Not determined specific, clear objective for personal data processing, prescribed by this rulebook;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

2.5. Rulebook of taking an exams and evaluating the results of students achieved in school graduation exam at gymnasium education

Seen from the perspective of the established indicators, in terms of certain provisions of secondary education (related to the personal data processing), we can conclude the following:

Article 1

This rulebook prescribes the manner and procedures for taking exams and evaluating the student's results achieved in exams of school graduation In gymnasium education.

Article 8-For taking school graduation candidate applies by submitting an application to the school where he is registered not later than 60 days before the June exam period and no later than 30 days before the August examination period-

Article 10

⁴¹ Article 18 paragraph 1, 2 and 3 of Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools

⁴² Article 14 paragraph 1 and 2



Paragraph 1-The applicant submits the application and certificates for completed first, second, third and fourth year of education as evidence of meeting the requirements for passing school graduation, at least three days before the test run.

Paragraph 3-Applicants who pass adjusted school graduation, along with application submit findings and opinion of an appropriate institution for passing a school exam tailored to their needs.

Article 11

Paragraph 1-If a candidate for justified reasons, in accordance with this Rulebook, does not submit an application right on time, school prom committee, based on written evidence to justify the reasons referred to in paragraph 2 of this article, can enable it to report no later than three days before the exam period.

Paragraph 2-As justified reasons for untimely application for taking school graduation exam should be considered the following one: candidate, in a current school year was educated abroad (evidence-verified certificate for completed fourth year); in the application period, the candidate was ill (evidence-certificate from relevant institution); application was sent by mail and was delayed or it was lost (evidence-confirmation for sent recommended shipment)...

Article 16

Paragraph 1-School commission for graduation exam performs the following tasks:

- accepts applications;
- make schedule (list) of candidates on premises.

Article 18

Paragraph 1-Prepares list of candidate's results and delivers it to the president of School graduation commission.

Article 30

Paragraph 9-Testator prepares a report for the entire course of the exam and complete the appropriate forms.

Article 38

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Paragraph 2-The results are published by UMK at least three days after the examination in the relevant subject or defense of the project task.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

Not determined specific, clear objective for personal data processing, prescribed by this rulebook;

In article 8 of this rulebook, not determined which personal data should be stipulated in application for passing school graduation exam;

Article 10 paragraph 1 and 3, as well as in article 39 paragraph 2 of this rulebook, outline documents which should be submitted along with the application for school graduation exam, but, it is not precisely stipulated whether they are taken only for inspection or are withheld/storage, and the period of storage in school;

In Article 11 paragraph 2 of this policy outlines the written evidence of the validity of the reasons for untimely reporting of school matriculation exam, but is not indicated whether they are taken only evidence presented or will be retained, and any period of their storage;

Article 16 paragraph 1 item 11, determinates the competence of School graduation commission to make schedule (list) of candidate upon premises, but in the afore mentioned provision is not stipulated which personal data of students will be contained in mentioned list;

In Article 18, paragraph 1 t.4 determined SGC jurisdiction to prepare a list of candidates with the results and submit it to the President of SGC, but not determined which personal data shall contain the specified list;

In Article 30 paragraph 9 is determined that testator prepare a report on the progress of the examination and fills forms, but it is not determined which personal data will be stated in the above mentioned report and forms;

In Article 38 paragraph 2 of this rulebook, determined obligation for publishing the results in the indicated periods and in determined way, but not determined personal data will be published for that purpose;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

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2.6. Rulebook of organizing and implementation of external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, as well as form and content of the report

Seen from the perspective of the established indicators, in terms of certain provisions of secondary education (related to the personal data processing), we can conclude the following:

Article 1

This rulebook prescribes the manner of organizing and conducting external verification of secondary school students, the manner of formation and operation of the school committee, the secrecy of the material for the external evaluation, the manner and procedure of checking the tests from the school committee, and the form and contents of the report.

Article 11

Paragraph 1-As justified reasons for the absence of student at external verification may be: disease or medical treatment of the student (proof-appropriate health certificate from institution); emergencies: natural disasters, accidents or student member of the nuclear family, participating in international competitions.

Paragraph 4-School Committee, for students who for good cause will be further checked externally, has to submit data to the State test center no later than June 15, for students in their final year of secondary education by 5 March.

Article 19

Paragraph 1-School Committee for implementation of external verification no later than December 15 of the current school year to the State Examination Centre in electronic and written is obligated to submit the necessary data for external verification, such as: student data (name, surname, father's name, year of education, class, language of instruction) data for teachers in the school (name, surname, subject and language of that instruction); internal schedule for external evaluation at the school,



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number of tests required for each curriculum that is done external evaluation, by grade, classes and language of instruction.

Paragraph 2-The data referred to in paragraph 1 of this Article shall be entered into the database at the State examination center no later than 31 January.

Article 20

Paragraph 1-School commission publishes results of conducted external evaluation. Prepares and submits the report of external evaluation conducted in school by the State Examination Centre.

Article 30

Paragraph 1-After checking the test material from the external evaluation, school committee prepares a report with the results of each curriculum for which students are questioned.

Paragraph 2-School committee publishes the report on the school bulletin board.

Paragraph 3-The report referred to in paragraph 2 of this Article, the school committee shall submit to the State Examination Centre in written and electronic form, within 15 days from the date of completion of the external inspection.

In article 31 are stipulated exact personal data which are contained in the report of completed external inspection.

Conclusion:

In article 1, clearly determined the subject of this rulebook;

Contained provisions relating to the provision of personal data to, and set out the manner, time, correct personal information provided to use the body to which they give⁴³;

In Article 30 paragraph 1 and 2, and Article 31 of the Rulebook, determined commitment to the school committee to prepare a report with the results of external evaluation conducted and published them in the specified manner, and thus outlines the exact data that is contained in said report;

Not determined specific, clear objective for personal data processing, prescribed by this rulebook;

⁴³ Article 11 paragraph 4, article 19 paragraph 1, article 20 paragraph 1, article 30 paragraph 3



Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International



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In Article 11 paragraph 1 of this policy outlines the evidence that confirms the validity of the reasons for the absence of external verification of the student, but is not indicated whether they are taken only available or will be retained for the storage period in which the school ;

In article 19 paragraph 2 of this rulebook is defined obligation and deadline for the State Examination Centre to indicated to enter data into a database, but it is not determined the period of storage them;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.



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Project implemented by Human Dynamics in association with:
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Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
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HIGHER EDUCATION



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INTRODUCTION

Higher education, as an integral part of the overall educational system in the country, is regulated by several laws⁴⁴ and by-laws⁴⁵, but, in terms of personal data protection, and in accordance with the purposes and requirements of particular legal analysis, the following acts are considered as most important: Law on higher education; Rulebook on the form and manner of conducting (in material and electronic form) and content of the book of enrolled students and the general ledger of graduates; Rulebook for postgraduate studies and obtaining a doctorate of science; Rulebook for manner and procedure for equivalence and recognition of foreign qualifications and the necessary documentation and Rulebook on the content and form of diploma, preparation guide for the Diploma and other public documents.

Law on higher education, enacted in 2008⁴⁶, regulates university autonomy and academic freedom, conditions and procedure for the establishment and termination of higher education institutions, system of security and quality assessment of higher education, the basis for organization, management, development and financing of higher education.

Rulebook on the form and manner of conducting (in material and electronic form) and content of the book of enrolled students and the general ledger of graduates, enacted in 2009⁴⁷, regulates form and content of the conduct (in material and electronic form) and content of the book of enrolled students and the general ledger of graduates of higher education institutions.

Rulebook for postgraduate studies and obtaining a doctorate of science, enacted in 2002⁴⁸, prescribes the joint basis and general conditions for organizing postgraduates studies (VII/2 level of education), as well as the procedure of organizing postgraduate studies as studies for science, or art education

⁴⁴ Law on higher education; Law for establishing National agency for European educational programs and mobility; Law for establishing Macedonian Academic Research Network.

⁴⁵ Rulebook on the form and manner of conducting (in material and electronic form) and content of the book of enrolled students and the general ledger of graduates; Rulebook on the content and form of diploma, preparation guide for the Diploma and other public documents; Rules for postgraduate studies and obtaining a doctorate of science; Rulebook for manner and procedure for equivalence and recognition of foreign qualifications and the necessary documentation; Rulebook for the organization, operation, method of decision making, methodology, procedures for accreditation criteria and standards for accreditation and other issues related to the work of the Accreditation Board of Higher Education; Rulebook for method of keeping records of equivalence and recognition of higher education foreign qualifications; Rulebook for registration of higher education institutions; Rulebook for manner and conditions for organizing practical training for students; Rulebook on requirements to meet prominent expert in the relevant area of practice for performing clinical teaching.

⁴⁶ Official Gazette n.35, 14.03.2008

⁴⁷ Official n.71, 10.06.2009

⁴⁸ Official Gazette n.2, 19.01.2000



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(master), studies for professional development (specialization), the procedure and conditions for acquisition of doctorate of sciences at the faculties and scientific institutes.

Rulebook for manner and procedure for equivalence and recognition of foreign qualifications and the necessary documentation, enacted in 2009⁴⁹, prescribe the manner and procedure of equivalence and recognition of higher education foreign qualifications and the necessary documentation to implement the procedure.

Rulebook on the content and form of diploma, preparation guide for the Diploma and other public documents, enacted in 2009⁵⁰, prescribes the content and form of the preparation guide for the Diploma and other public documents (certificate, card and student ID).

3. Current situation

3.1. Law on higher education

As for the Law of higher education, the general conclusion is that it meets the standards of the legal basis starting in regulation of the issues important to the protection of personal data, and its referring to the further elaboration of the provisions in laws.

Seen from the perspective of the established indicators, in terms of certain provisions of higher education (related to the personal data processing), we can conclude the following:

Article 1

This law regulates university autonomy and academic freedom, conditions and procedure for the establishment and termination of higher education institutions, system of security and quality assessment of higher education, the basis for organization, management, development and financing of higher education.

Conclusion:

In article 1, it is clearly determined the subject of this law;

⁴⁹ Official Gazette n.71, 10.06.2009

⁵⁰ Official Gazette n.06.07.2009



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Not determined specific, clear objective for personal data processing, prescribed in its provisions;

Article 114

Paragraph 5-The final assessment must be recorded in the index or any other document in the application for final assessment.

Article 116

Paragraph 1-A student who performed all obligations under the study program for high school in any cycle of education, the university and the university unit, or independent-college, based on records kept for it, shall issue a diploma. With a diploma certifying that the student has completed a study program from the first, second or third cycle of study and acquire the appropriate professional or scientific name. Integral part of the Diploma is Diploma Supplement.

Paragraph 5-To a student who done all the obligations for improvement or just a part of study program for obtaining education, will be issued certificate for done study program which contains data for the level, nature and content of studies, as well achieved results.

Paragraph 6-Other public documents, under this law, are certificate, student identification card, and they can also contain data in electronic form.

Paragraph 7-The content and form of diploma and instructions for preparation of diploma supplement, as for the other public documents, prescribes the authorized minister.

Conclusion:

This law, precisely define documents in which are collected and proceeded personal data, as well as exact personal data which are collected in them⁵¹;

Not determined period of storage of personal data;

Article 119

Paragraph 1-Higher education institutions are running the following records with personal data of students:

records of applicants for admission and enrolled students;

⁵¹ Article 114 paragraph 5; article 116 paragraph 1, 5 and 6 ; article 129 paragraph 1 and 2 ; article 132 paragraph 5



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A personal record kept for each student from the moment of begging of their studies until the completion of studies or when a student write off;

Report on the examination in which is recorded application for the exam, duration of the exam and achieved result (grade) and records of documents issued for completed studies.

Paragraph 2-Records of paragraph 1 point 1, 2 and 4 of this article cover: name and surname of student (for female students and their maiden surname); sex; date; place and date of birth; country of birth; domicile or residence; identification number of citizen; citizenship; previous acquired education; manner of education; mode of study and other data under the some specific regulations. Records of paragraph 1 point 2 of this article, also contain data for passed exams, for advancement and graduation.

Paragraph 3-Records stipulated in paragraph 1 point 3 contain: name and surname of student (for female students and their maiden surname); sex; un identification number of the citizen; mode of study and first year of study enrollment; date of examination; data on whether taking the exam for the first time or repeat, and grade obtained on the exam.

Paragraph 4-Provisions relating to the manner of conduct, use and storage of personal data from records under this law, are used as well as for conduct of documentation. Documents about previous acquired education, after finished enrollment process, are returned to the students.

Article 129

Paragraph 1-Higher education institutions are leading the registry of enrolled students and general ledger of graduated students and file for each student. The form and manner of conduct (material and electronic) and content of book of enrolled students and general ledger of graduated students, prescribes authorized minister.

Paragraph 2-Book of enrolled students and general ledger of graduated students are documents of permanent value.

Article 132

Paragraph 5-Review committee submit Paper in written form for every candidate. Papers of the Review Committee include assessing the scientific, professional, pedagogical and other achievements of the candidates, it is important to establish the conditions for selecting the appropriate title, as well as proposals for selection of candidates at the appropriate title.



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Paragraph 6-Higher education institution is obligated to publish papers on the Review Committee in the appropriate university bulletin and the website of the university or independent institution of higher education of at least 15 days before the election.

Article 158

Paragraph 1-For equivalence and recognition of foreign higher education qualifications. Is leaded records. The manner of keeping records shall be prescribed by the authorized minister.

Article 161

Paragraph 4-The manner and procedure of equivalence and recognition of foreign higher education qualifications, as well as needed documentation shall be prescribed the authorized minister.

Conclusion:

Determined records of personal data which are leaded by higher education institutions, as well as documents contained in prescribed records⁵²;

Accurately set out the personal data collected and processed within the specified records⁵³;

In the said personal data being processed within the records kept by higher education institutions are identified and data that represent a special category of personal data, whereby it is necessary here to indicate that they may be collected and processed only on established legal basis, and based on obtained prior consent from the subject of personal data. In this case, there is no legal basis for processing the said special categories of personal data. It should also be pointed out that such personal information is excessive in relation to the purpose for which they are collected;

Determined that all documents for previous education, after completion of enrollment policy shall be refunded to the student, which is determined indirectly limit the storage of personal data contained in the aforementioned documentation;

Indirectly set the period of keeping the book of enrolled students and the general ledger of graduates⁵⁴;

Not envisaged the possibility of providing/giving those personal data to users;

Not determined subsidiary usage of provisions of Law on personal data protection.

⁵² Article 119 paragraph 1

⁵³ Article 119 paragraph 2 and 3

⁵⁴ Article 129 paragraph 2



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3.2. Rulebook on the form and manner of conducting (in material and electronic form) and content of the book of enrolled students and the general ledger of graduates

Book of enrolled students and ledger of graduated students

Article 1

This rulebook prescribes the form and manner of conduct (in material and electronic) and content of book of enrolled students and general ledger of graduated students in higher education institutions.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook, this provision has determined legal basis in the Law on higher education⁵⁵

Article 2

Paragraph 1-Higher education institution or unit within the institution of higher education, leading registry of students enrolled in the study separately from the first, second and third cycle.

Paragraph 3-Records of article 1 of this rulebook is leaded in unique way for all higher education institutions.

Article 3

Paragraph 1-The book of enrolled students is run in material and electronic form.

Paragraph 2-The book of enrolled students is run on Form n.1 for first cycle of studies; Form n.2 for second cycle of studies and Form n.3 for third cycle of studies.

Article 4

The book of enrolled students of first cycle of studies, on second page contains:...data of students: surname, middle name and name of student, date and place of birth, home address (resident address). Third page contains data for: status of student (regular/part-time student), name of previous acquired

⁵⁵ Article 116 paragraph 7, Law on higher education

education and year of completion, ethnicity, occupation of parent/student, name of study program, duration of study program and number of credits which can be obtained, professional name which is acquired by completing the study program.

Article 5

The book of enrolled students of second cycle of studies, on second page contains: ... surname, middle name and name of student, date and place of birth, home address (resident address). Third page contains: ..name of previous obtained education of second cycle of studies and year of completion, number of total acquired credits in previous education of first and second cycle, ethnicity, occupation of parent/student, name of study program, duration of study program and number of credits which will be obtained when its completed, scientific name which is acquired by completing the study program.

Article 6

The book of enrolled students of third cycle of studies, on second page contains: ... surname, middle name and name of student, date and place of birth, home address (resident address). Third page contains data for: status of student (regular/part-time student), name of previous acquired education and year of completion, ethnicity, occupation of parent/student, name of study program, duration of study program and number of credits which can be obtained, professional name which is acquired by completing the study program.

Article 7

Paragraph 1-Issued diplomas and diploma supplements are kept in the ledger of graduates for the first, second and third cycle studies.

Paragraph 2-Ledger of graduates are leading on Form No.4 for the first cycle of studies, Form No.5 for the second cycle and Form No.6 for the third cycle of studies.

Article 8

Paragraph 1-Ledger of graduated students of the first cycle of studies on the second page contains information about student :.... first name, middle name and name of student, date and place of birth, gender, ethnicity, citizenship. Third page contain data for:..name of study program, professional name which the student has acquired, number and date of diploma, number and date of diploma supplement, GPA, obtained credits, beneficiary of scholarship, signature of the student and date of receipt of the diploma and diploma supplement.



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Article 9

Paragraph 1-Ledger of graduated students of the second cycle of studies on the second page contains information about student :.... first name, middle name and name of student, date and place of birth, gender, ethnicity, citizenship. Third page contain data for:...name of study program, professional name which the student has acquired, number and date of diploma, number and date of diploma supplement, GPA, obtained credits, beneficiary of scholarship, signature of the student and date of receipt of the diploma and diploma supplement.

Article 10

Paragraph 1-Ledger of graduated students of the third cycle of studies on the second page contains information about student :.... first name, middle name and name of student, date and place of birth, gender, ethnicity, citizenship. Third page contain data for:...name of study program, scientific name which the student has acquired, number and date of diploma, number and date of diploma supplement, GPA, obtained credits, number of total acquired credits from first, second and third cycle of studies, beneficiary of scholarship, signature of the student and date of receipt of the diploma and diploma supplement.

Conclusion:

Determined legal basis for collecting and processing of personal data contained in the book of enrolled students⁵⁶;

Determined obligation for higher education institutions or separate units within the higher education institutions, to keep book of enrolled students separately for the first, second and third cycle of studies⁵⁷;

Determined unique form and manner for running the book of enrolled students separately for studies of first, second and third cycle⁵⁸;

In article 4, 5 and 6 of this rulebook, determined content of the book of enrolled students, and precisely stipulated personal data which are collected under the records;

In article 4, 5 and 6 of this rulebook, determined processing of personal data which are treated as special category of personal data;

⁵⁶ Article 129 paragraph 1, Law on higher education

⁵⁷ Article 2 paragraph 1

⁵⁸ Article 2 paragraph 3, article 3 paragraph 1 and 2



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Not determined period of storage of personal data, but it is indirectly done with the provisions of Law on higher education⁵⁹;

Determined legal basis for collecting and processing of personal data contained in the ledger of graduated students of first, second and third cycle of studies⁶⁰;

Determined unique form and manner of running the ledger of graduated students separately for studies of first, second and third cycle⁶¹;

In article 8, 9 and 10 of this rulebook, determined content of the ledger of graduated students of first, second and third cycle, and precisely stipulated personal data which are collected under the records;

In article 8, 9 and 10 of this rulebook, determined processing of personal data which are treated as special category of personal data;

Not determined period of storage of personal data, but it is indirectly done with the provisions of Law on higher education⁶²;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

3.3. Rulebook for postgraduate studies and obtaining a doctorate of science

Article 1

This rulebook regulate the common grounds and general conditions for organizing postgraduate studies (UC/2 level of education) and the procedure for organizing postgraduate studies as science studies or art courses (Master), studies on vocational training (specialization), the procedure and requirements for obtaining a doctorate of science at universities and scientific institutes.

Article 24

⁵⁹ Article 129 paragraph 2, Law on higher education

⁶⁰ Article 129 paragraph 1, Law on higher education

⁶¹ Article 7 paragraph 1 and 2

⁶² Article 129 paragraph 2, Law on higher education



Paragraph 1-The application for preparation of master thesis or specialist thesis, should be submitted to the teaching council, or to the council, through the professional body for postgraduate studies.

Paragraph 2-The application contains the title of the topic, explaining the scientific, artistic and professional viability of the theme, plan the work and review of literature.

Article 28

Paragraph 1-The commission of article 27 prepares a report that provides assessment and explanation of thesis.

Paragraph 2-The report should be submitted to the Teaching council of the faculty, or to the council of scientific institute.

Paragraph 4-For the date of defense of master thesis, the candidate should be notified in written form.

Article 29

Paragraph 1-The defense of the thesis is public and should be published on the notice board of the faculty or the scientific institute, at least 7 days before the defense of the thesis.

Paragraph 2-After the defense of thesis is finished, the authorized commission announces to the public the assessment of the defense of master thesis or specialist thesis.

Paragraph 3-The evaluation is performed by two descriptive marks: not defended master's or specialist work and defended master's or specialist work.

Article 30-The students who successfully completed postgraduate studies and received the scientific degree Master's or specialist degree, receive a diploma.

Article 34

Paragraph 5-Evaluation of works from the previous paragraph of this Article by a committee of appropriate scientific field consists of three members, which forms the teaching faculty of the Scientific Council or the Council of Scientific Institute. Committee papers contain specific grounds for the affirmation of the candidate in the scientific community and his published papers.

Paragraph 6-The review mentioned in the previous paragraph, should be published in the bulletin of university.



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Article 44

Paragraph 2-The application of the candidate for a doctoral dissertation contains a clearly articulated working hypothesis, what material will be used, method of operation and expected results, diploma of science degree program or a specialist in the relevant area, a description of published papers and other prepared works.

Article 48

After accepting the title of the theme for the preparation of a doctoral dissertation by the teaching council, or council, the title of the topic and the names of committee members are published in the Bulletin of the University.

Article 52

Paragraph 1-Candidate submit at least 8 copies of doctoral dissertation, 5 of them are for the commission members, and 1 copy for the faculty/scientific institute, university and national university library, as well as auto-summary of doctoral dissertation in, at least 5 copies. In the auto-summary of doctoral dissertation, the candidate presents the subject of research and achieved results, by putting emphasis on what is his and what his contribution to present science.

Article 54

Paragraph 1-Commission mentioned in the previous article submit report for the doctoral dissertation to the Teaching council or council, not later than four months after its formation.

Paragraph 3-The report of the commission should be published in the bulletin of the university.

Article 55

In the report, the commission should clearly emphasize the scientific contribution of the dissertation and to give a draft-conclusion for acceptance, rejection or necessary amendments of the dissertation.

Article 59

Paragraph 3-The exact day, place of defense, the candidate's name and title of the dissertation are published in daily newspapers at least 7 days prior to the defense.

Article 62



Defense Committee to the teaching council, or council, shall report the results of the defense of a doctoral dissertation.

Article 63

Dean of Faculty or Director of the Scientific Institute, on behalf of the teaching council, or council, shall notify the Rector for the Commission's decision for the defense of the doctoral dissertation, by delivering all data for particular candidate, as well as the procedure by which acquired the right of scientific degree of doctor of Science.

Article 65

Paragraph 1-After the promotion, the candidate got his diploma.

Article 67

Paragraph 1-The union of the university run a book of promoted doctors of science, in which, besides names are entered and other personal data, the title of doctoral dissertation, date of promotion.

Paragraph 2-On the basis of records of previous paragraph of this article, the university publishes an annual register of defended doctoral dissertations.

Article 71

Paragraph 1-Following the report mentioned in article 70, the teaching council or council, should deliver its opinion.

Paragraph 2-The above mentioned authorities, their opinion deliver to the university administration, not later the 4 months after the commission formation.

Article 74

Paragraph 1-The commission, assesses the doctoral dissertation and submit reasoned decision to the university administration.

Article 75

Paragraph 1-Decision for confiscation of obtained Doctorate of science, bring university administration.

Paragraph 2-The decision of university administration should be published in university bulletin.



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Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

Not determined legal basis of the subject of this rulebook in the provisions of Law on higher education;

Not determined specific, clear objective for personal data processing, prescribed in its provisions;

Not determined correct personal data which should be contained in the following documents: application for preparation of master or specialist thesis; report of the commission evaluation and explanation of thesis; diploma for completed postgraduate studies and acquired master degree or specialist degree; commission report for defense of doctoral dissertation with defense proposal; report for doctoral dissertation to the teaching council or council; commission report about the results of doctoral dissertation defense, diploma for obtained doctoral degree;

Determined personal data which should be published in daily press⁶³, as well as those which are listed in the book of promoted doctors of science⁶⁴;

Not determined period of storage of personal data prescribed in this rulebook;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

3.4. Rulebook for manner and procedure for equivalence and recognition of foreign qualifications and the necessary documentation

Article 1

This rulebook prescribes the manner and procedure of equivalence and recognition of foreign higher education qualifications and the necessary documentation to implement the procedure.

Article 2

Paragraph 1-The procedure for recognition, or equivalence of foreign higher education qualification is initiated by filing an application for recognition of foreign higher education qualification (hereinafter:

⁶³ Article 59 paragraph 3

⁶⁴ Article 67 paragraph 1



request) by the holder of the foreign higher education qualification, and it submitted to the Information Centre for equivalence and recognition of foreign higher education qualifications (hereinafter text: ICEP) in the Ministry of Education and Science (hereinafter: Ministry).

Paragraph 2-The application should be submitted on the Form, which is integral part of this rulebook.

Paragraph 3-The application from paragraph 1 of this article contains:...personal data of the applicant: name and surname, date of birth, identification number of citizen, place and country of birth, citizenship, nationality, sex (male, female), home address (city and country), e-mail, contact telephone number; data for acquired foreign higher education qualification for which is requested recognition; name of higher education institution; address of higher education institution; mode of study (regular/part-time student, distance learning, joint diploma); obtained degree/title/name; duration of studies according to the study program; date of study enrollment; date of completion of studies; date of issuing the qualification; conditions for obtaining foreign higher education qualification (thesis, dissertation, final exam); data for previous obtained education: A) secondary education, B) higher education; purpose of recognition; applicant statement about the validity of submitted documentation; place and date of submitting the documentation and applicant's signature.

Article 3

Along with the application mentioned in article 2 paragraph 1 of this rulebook, should be submitted the following documents:

- original foreign higher education diploma;
- copy of higher education diploma, certified at notary;
- translation of higher education diploma in macedonian, certified at notary;
- original certificate or diploma supplement;
- copy of certificate/transcript, certificated at notary;
- translation of certificate/transcript in macedonian, certified at notary;
- copy of diploma for previous education;
- plan and program for studies;
- master thesis or doctoral dissertation;



-booklet of specialization (in case of medicine studies);

-proof of payment;

-other documents which are necessary, according to the opinion of the commission, related to the recognition of the foreign higher education qualification.

Article 4

Paragraph 1-Relevant authority proceed check request of the validity of foreign higher education document or for its holder, to the institution that issued that document.

Article 8

Paragraph 1-There is a Minutes for the commission meetings of five scientific areas.

Paragraph 2-Minutes of paragraph 1 of this article include: time and place, names of present members of the committees and name of the applicant, the matter that is handled, positions / titles that offer commissions to the Minister of Higher Education any comments regarding the request.

Article 12

Paragraph 1-The procedure for professional recognition of higher education qualifications acquired abroad shall be initiated at the request of the holder of the foreign document.

Paragraph 2-The request is submitted on a form prescribed by Article 2 of this rulebook.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

The subject of this rulebook has determined legal basis in the provisions of Law on higher education⁶⁵;

Not determined specific, clear objective for personal data processing, prescribed in its provisions;

In article 2 paragraph 3 of this rulebook, strictly determined personal data which are taken into consideration in the process of recognition of foreign higher education qualification;

⁶⁵ Article 157 paragraph 1, Law on higher education

In the above mentioned personal data, there are determined also, some personal data which are treated as special category of personal data. Its necessary to indicate that they may be collected and processed only on established legal basis, and based on obtained prior consent from the subject. In this case, there is no legal basis for processing the said special categories of personal data should also be pointed out that such personal information is excessive in relation to the purpose for which they are collected;

Not determined period of storage of personal data, contained in the request for recognition of foreign higher education qualifications;

In article 3 of this rulebook, strictly numbered the documents which have to be submitted along with the request, and that is in line with the demand for legal security of subjects, but not determined period of storage of numbered documents;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

3.5. Rulebook on the content and form of diploma, preparation guide for the Diploma and other public documents

Article 1

This Rulebook prescribes the content and format of the diploma, instructions for preparation of the diploma supplement and other public documents (certificate, card and student ID).

Article 2

Paragraph 1-University and the unit of a university or high vocational school, issue diploma issued for acquired higher education of first cycle-university studies of first cycle and vocational studies of first cycle.

Paragraph 5-The form of diploma mentioned in article 1 of this rulebook, Is given in the Form No.1, which is integral part of this rulebook.

Article 3



Diploma for completed higher education, contains the following data:...name, middle name and surname of the student, place, municipality, country of birth, previous completed education (university/vocational studies: mode and name of study program and department), total number of obtained credits, average grade, name of obtained professional title (professional title for international use).

Article 4

Paragraph 1-For the acquired higher education of second cycle, higher education institution issued diploma-postgraduate academic studies and integrated studies of first and second cycle.

Paragraph 5-The form of the diploma, as in paragraph 1 of this article, is given as Annex No.2, which is integral part of this rulebook.

Article 5

Diploma for completed higher education, contains the following data:...name, middle name and surname of the student; place/municipality/country of birth; completed previous education (name of study program and department); total number of credits and average grade, name of obtained scientific title (scientific title for international use).

Article 6

Paragraph 1-For the acquired higher education level, the higher education institution issued diploma for higher education of third cycle-doctoral university studies.

Paragraph 5-The form of the diploma, as in paragraph 1 of this article, is given as Annex No.3, which is integral part of this rulebook.

Article 7

Diploma for completed higher education of third cycle-doctoral studies, contains the following data:...name, middle name and surname of the student; place/municipality/country of birth; completed previous education (name of study program and department); total number of credits and average grade, defense of doctoral dissertation (name of the dissertation), name of obtained scientific title (scientific title for international use).

Article 8

Paragraph 1-Along with the diploma, higher education institution, issues and diploma supplement.

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Paragraph 3-The form of diploma supplement, as in paragraph 1 of this article, is given as Annex No.4, which is integral part of this rulebook.

Article 9

Diploma supplement consist the following data:..name, middle name and surname of student; date and place of birth; country of birth, identification number of student; data for acquired qualification; name of obtained qualification; name of study program; field/area of studies; data for level of qualification: kind of qualification (academic/vocational studies); level of qualification; duration of study program;...Second page contains: data for contents and achieved results; skills and competencies of the student; average grade; data for using of prescribed qualification; access to further studies; additional data for student.

Article 10

The guide for preparation of diploma supplement, is given as Annex No.5, which is integral part of this rulebook.

Article 11

Paragraph 1-Higher education institution shall issue a certificate of final part of the curriculum for first, second and third cycle, which contains data about the extent, nature and content of studies, and results achieved.

Paragraph 2-The certificate is integral part of diploma supplement.

Article 12

Paragraph 1-Certificate for studies of first cycle contains:...data for student: name, middle name and surname (for female students and maiden name), unique identification number, date/place/municipality/country of birth, citizenship, data for passed exams, obtained grade, credits, information that student completed all the obligations which arise from study program with average grade and acquired professional title-----.

Paragraph 2-The form of certificate, is given as Annex No.6, which is integral part of this rulebook.

Article 13

Paragraph 1-Certificate for studies of second cycle contains: data for student: name, middle name and surname (for female students and maiden name), unique identification number,



date/place/municipality/country of birth, citizenship, data for passed exams, obtained grade, credits, applicant final written work, data for completely finished study program with average grade---and credits, defended the final exam titled ----, acquired professional/scientific title -----.

Paragraph 2-The form of certificate, is given as Annex No.7, which is integral part of this rulebook.

Article 14

Paragraph 1-Certificate for studies of third cycle contains: data for student: name, middle name and surname (for female students and maiden name), unique identification number, date/place/municipality/country of birth, citizenship, data for passed exams, obtained grade, credits, applicant final written work, data for completely finished study program with average grade---and credits, defended the final exam titled ----, acquired professional/scientific title -----.

Paragraph 2-The form of this certificate, is given as Annex No.8, which is integral part of this rulebook.

Article 15

Paragraph 1-Higher education institution issue index for each student.

Article 16

Paragraph 1-First page contains: data for student: name and surname, unique identification number, name of one of the parents, date/place/municipality of birth, country of birth, citizenship...

Paragraph 2-The form of student card/index, is given as Annex No.8, which is integral part of this rulebook.

Article 17

Paragraph 1-Along with the student card, as integral part of student card, higher education issue student ID.

Paragraph 3-Student ID contains the following personal data:...place for student's photography, name and surname of student, date of birth.

Paragraph 4-The form of student ID, is given as Annex No.10, which is integral part of this rulebook.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

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The subject of this rulebook has determined legal basis in the provisions of Law on higher education⁶⁶;

Not determined clear, concrete objective for personal data processing, prescribed in this rulebook;

In article 3 of this rulebook, strictly determined personal data which are collected in diploma for completed higher education;

In article 5 of this rulebook, strictly determined personal data which are collected in diploma for acquired higher education of second cycle;

In article 7 of this rulebook, strictly determined personal data which are collected In diploma for acquired higher education of third cycle;

In article 9 of this rulebook, strictly determined personal data which are collected in diploma supplement, and, it is important to notify that among them, there are personal data which are treated as category of special personal data;

In article 12 of this rulebook, strictly determined personal data collected in certificate for completed part of study program of first cycle, and, it is important to notify that among them, there are personal data which are treated as category of special personal data;

In article 13 of this rulebook, determined personal data collected in certificate for studies of second cycle, and among them, there are also personal data treated as category of special personal data;

In article 14 of this rulebook, determined personal data collected in certificate for studies of third cycle, and among them, there are also personal data treated as category of special personal data;

In article 16 of this rulebook, determined personal data collected in student's card/index, and among them, there are also personal data treated as category of special personal data;

In article 17, determined personal data contained in student's ID;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

⁶⁶ Article 116 paragraph 1, 5 and 6, Law on higher education





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EDUCATION OF ADULT



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INTRODUCTION

The education system of the country, also include an education of adult, regulated by several legal acts, but, but, in terms of personal data protection, and in accordance with the purposes and requirements of particular legal analysis, the following acts are considered as most important: Law on adult education; Rulebook of name, content and form of certificate of knowledge, skills, abilities and competences acquired by special programs of adult education; Rulebook of content and form of the documentation and records run by institutions for adult education.

Law on adult education, enacted in 2008⁶⁷, prescribes the organization, the structure, financing and management of adult education system.

Rulebook of name, content and form of certificate of knowledge, skills, abilities and competences acquired by special programs of adult education, enacted in 2010⁶⁸, prescribes name, content and form of certificate of knowledge, skills, abilities and competences acquired by special programs of adult education.

Rulebook of content and form of the documentation and records run by institutions for adult education, enacted in 2010⁶⁹, prescribes the content and form of the documentation and records run by institutions for adult education.

4. Current situation

4.1. Law on adult education

This law sets the legal basis for regulation of adult education, while calling for a detailed elaboration of the specific questions with the adoption of by-laws.

Seen from the perspective of the established indicators, in terms of certain provisions of adult education (related to the personal data processing), we can conclude the following:

Article 1

⁶⁷ Official Gazette No.7, 15.01.2008

⁶⁸ Official Gazette No.37, 17.03.2010

⁶⁹ Official Gazette No.37, 17.03.2010



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Paragraph 1-This law regulates the organization, the structure, financing and management of adult education system.

Paragraph 2-The adult education is a part of the overall education system in the country.

Article 24

Paragraph 1-For the knowledge, skills, abilities and competences acquired through the programs for adult education, the candidate obtain certificate.

Paragraph 2-Name, content and form of the certificate, mentioned in paragraph 1 of this article, should be prescribed by the authorized minister, unless otherwise specified by another law.

Article 25

Paragraph 1-Institutions for adult education keep documentation and records.

Paragraph 2-The content and form of documentation and records, as in paragraph 1 of this article, on the proposal of the Center, should be prescribed by the authorized minister.

Article 26

Paragraph 1-The institutions for adult education, are obligated to deliver to the Center, State statistical office, as well as to the municipality, or municipality of city Skopje, all the data for adult education program, data for participants and other information, important for adult education system.

Paragraph 2-The Center prepares annual report and submit it to the authorized ministry and to the Council.

Conclusion:

In article 1, it is clearly determined the subject of this law;

Not determined clear, concrete objective for personal data processing, prescribed in this law;

Determined further detailed regulation of name, form and content of certificate for the knowledge, skills, abilities and competences acquired through the programs for adult education, by the authorized minister;

Determined further regulation of content and form of documentation and records for adult education, with by-law, by the authorized minister;



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Not determined strict personal data which will be collected in certificate for the knowledge, skills, abilities and competences acquired through the programs for adult education, as well as for the documentation and records for adult education;

Not determined period of storage of personal data which are prescribed with this law;

It is envisaged the possibility of providing/giving those personal data to users⁷⁰;

In this law, there is no provision concerning the confidentiality and protection of personal data in relation to a third party;

Not determined subsidiary usage of provisions of Law on personal data protection.

4.2. Rulebook of name, content and form of certificate of knowledge, skills, abilities and competences acquired by special programs of adult education

Article 1

This rulebook prescribes name, content and form of certificate of knowledge, skills, abilities and competences acquired by special programs of adult education.

Article 2

The certificate of knowledge, skills, abilities and competencies shall be named under special programs for adult education.

Article 3

The certificate of knowledge, skills, abilities and competences, is issued by the authorized institution for adult education.

Article 4

Paragraph 1-The certificate of knowledge, skills, abilities and competences contains the following data:...name and surname of participant, date and place of birth, duration of the special program for

⁷⁰ Article 26 paragraph 1

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adult education, obtained competencies according to the special program for adult education, place and date when certificate was issued...

Paragraph 2-The content and form of certificate, is given as Annex No.1, which is integral part of this rulebook.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

The subject of this rulebook has determined legal basis in the provisions of Law on adult education⁷¹;

Not determined clear, concrete objective for personal data processing, prescribed in this rulebook;

In article 4 paragraph 1 of this rulebook, determined personal data collected in certificate of knowledge, skills, abilities and competences acquired by special programs of adult education;

Not determined period of storage of personal data which are prescribed with this rulebook;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

4.3. Rulebook of content and form of the documentation and records run by institutions for adult education

Article 1

This rulebook prescribes the content and form of the documentation and records run by institutions for adult education.

Article 2

For the documentation and records for primary or secondary education of adult, appropriately applied provisions of Rulebook of form and content of pedagogical documentation and records in primary

⁷¹ Article 24 paragraph 2, Law on adult education



school, as well as their guidance⁷², or Rulebook of manner of guidance, form and content of pedagogical records and documentation in secondary schools⁷³.

Article 3

Paragraph 1-The documentation for special programs of adult education consist of general ledger of participants in the programs for adult education.

Paragraph 2-The records for special programs of adult education consist of personal record of participant.

Article 4

Paragraph 3-General ledger of participants in the programs for adult education, on the second page contains the following data:..name and surname of participant, name of participant's mother and father, date/place/municipality/country of birth, citizenship, previous obtained education, date of enrollment in adult education program, name of special program, date of completion of special program, list of program subjects and acquired knowledge, skills, abilities and competencies which participant obtained during the special program, issued certificate for completed special program, participant signature, signature of authorized person...

Paragraph 8-The form No.1 is given as Annex, which is integral part of this rulebook.

Article 5

Paragraph 1-There is a personal record for each participant.

Paragraph 2-First page of the personal record of participant contains the following data:...name and surname of the participant, number of general ledger, date of enrollment and name of special program

Paragraph 3-Second page of the personal record of participant contains the following personal data:..name and surname of the trainer..

Paragraph 5-The form No.2 is given as Annex, which is integral part of this rulebook.

Conclusion:

In article 1, it is clearly determined the subject of this rulebook;

⁷² Official Gazette No.41/09, 64/09, 147/09

⁷³ Official Gazette No.41/09, 64/09, 147/09



The subject of this rulebook has determined legal basis in the provisions of Law on adult education⁷⁴;

Not determined clear, concrete objective for personal data processing, prescribed in this rulebook;

In article 4 paragraph 3 of this rulebook, determined personal data collected in general ledger of participants in the program for adult education;

In article 5 paragraph 2 and 3 of this rulebook, determined personal data collected in personal record of participant in the program for adult education;

Not determined period of storage of personal data which are prescribed with this rulebook;

Not envisaged the possibility of providing/giving those personal data to users;

In this rulebook, there is no provision concerning the confidentiality and protection of personal data in relation to a third party.

⁷⁴ Article 25 paragraph , Law on adult education



RECOMMENDATIONS ON EDUCATION

Vít Zvánovec, Prague, 17 October 2011

Hard and Soft Recommendations

Sources of law cannot be divided in a binary way into binding and non-binding. Quite contrary, law is a scale of instruments with different binding force. Reason for this is that law is not an ultimate goal. It is just a mean—a way to justice. That's why soft law should be respected as well. Law is not just a sum of acts (закони) and by-laws (правилници). Law is how these sources of law reflect in real life, how they are enforced. That's why decisions of public authorities (case-law) are of greater importance than mere acts and by-laws.

Data protection is considered by the European Union of great importance. It is a part of private law, but it should be surveilled by an independent public body. Art. 28 Para 1 Al. 2 of the Directive stipulates: "These authorities shall act with complete independence in exercising the functions entrusted to them." That means that beneficiary's Data Protection Authority (here and after "DPDP") should act even in political sensitive cases to show its complete independence, because quality of public authorities plays a big role in quality of law-in-action.

European law is not mere implementation of EU directives, regulations and decisions of the European Court of Justice. This is just a formal precondition of harmonizing of the beneficiary's law with European law in order to prevent an infringement procedure commenced by the European Commission. But the European law is more than this. It is also set of principles as expressed in human rights instruments and a new way of thinking. This should be taken into account as well. Adaptation on spirit of European law and broad consultation with general public is prevention of problems in the future. Reception of best practice leads towards better policy-making.

General awareness

The key element of successful regulation is a very good level of general awareness. Regulation should not be made for profit, but for changing of state of things. Since societies nowadays are very complex and hard to regulate, legislation changes frequently. That's why every piece of laws (acts) and regulations (by-laws) should be provided to general public free of charge and in up-to-date versions.



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The same goes for decisions of public authorities. Since these decisions are always individual, there's a need to make them anonymous. This procedure has its costs and it should be made only on leading cases. Supreme courts' (the Supreme Court, the Supreme Administrative Court, and the Constitutional Court) decisions must not be made anonymous, except for sensitive cases (such as rape etc.).

Better legislation technique

Legislation should be clear and reasonable detailed. For example Art. 98, Art. 98–103 of the Act on Elementary Education or Art. 73 to 77 (ex Art. 84 to 88) of the Act on Secondary Education, Art. 116 Al. 6 ff. of the Act on Universities on students' documents, Art. 132 of the Act on Universities on procedure for selection⁷⁵ are not satisfactory, but on contrary, the Rulebook on the form and content of pedagogical documentation and records in elementary school, as well as the manner of their record, is too much detailed. There are 5 by-laws on data protection in secondary education, although number of legal act should be limited. Soft law instead of too detailed by-laws should be considered.

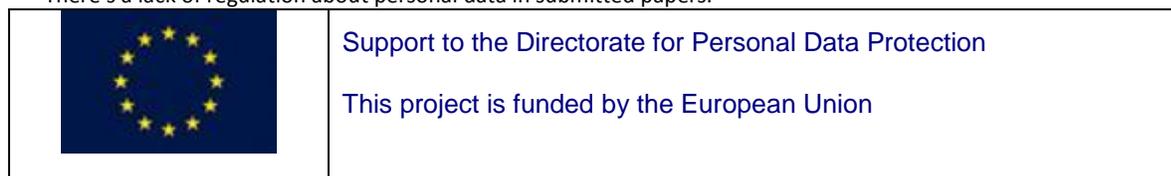
Preparation of new legislation should be more transparent. Key actors should be included from the scratch. A part of the process should be obligatory Privacy Impact Assessment (PIA) – *ex ante* evaluation of data processing (first of all categories of data and retention period) in an explanatory report. Every instrument of data processing should be considered. For example, is a student identification card (ученичка легитимација) really needed? When authors of a bill know well impact on privacy, it is always better than just mere information that data protection is regulated by beneficiary's Act on Data Protection (here and after "LPDP").

It is very important to know exactly which statement is used or discussed. That's why paragraphs (ставови) should be always numbered. Laws and by-laws should be as solid as possible. The best practice is German: Articles (членови) and paragraphs are never renumbered.

General and special regulation

Art. 3 LPDP says: "This law shall be applied to entirely or partly automatic personal data processing and to other processing of the personal data which are part of an existing collection of personal data or are intended to be part of a collection of a personal data." There are some exceptions in Art. 4, 4-a LPDP, but they may be skipped, because for this purpose they are of no importance.

⁷⁵ There's a lack of regulation about personal data in submitted papers.



LPDP therefore regulates almost every data processing in all spheres of life. That's why there's no need to repeat information about the existence of LPDP in regulation of every sector. However, it goes without saying that the material scope of LPDP should be reinforced by the DPDP, such as right for information or right to access.

Relationship between laws and by-laws

Art. 61 of the Law on the Organization and Work of the State Administrative Bodies stipulates: "Acts adopted by these bodies, no rights and obligations could be regulated for citizens and other legal entities, nor could they prescribe competence to other bodies."

Therefore acts should regulate as much as possible and by-laws should be used only for forms and details. Provisions on registry in an act should establish purpose, users, and retention period.

Purpose

Although the basis of education lies in relationship between a pupil and a school or a student and a university, there is administrative surveillance as well. These two relationships have different purposes for processing data. Therefore processing data for different purposes should be clearly separated. Public education as whole is a part of public law. Only in some special cases there is a private law relationship: when a school or a university provides some additional and voluntary services.

In private law everyone may do what is not prohibited. Regulation sets maximal or minimal duties or corresponding rights of the other party. The main title for data processing in private law is consent (in broad sense). On the opposite, in public law situation is different. Public authorities may do only what is allowed by law. Legislation should set optima. The main title for data processing is law.

Purpose should be reasonable narrow. If a purpose is expressed too broadly, it usually means that not too much effort was made in planning of data processing. In such cases purpose serves only as a shield or a cover for undistinguished processing. Sometimes purpose flows indirectly from a text of a stipulation, but it may be better to formulate it expressly.

Purposes of processing data should not integrated into the one, but they should be kept separated. For example, Art. 46 para 2 Act on Elementary Education on vaccination mixed education and health purposes. This should be avoided. See also the chapter Sensitive data.



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Contract v. consent

A contract and a consent in restrictive sense (in the sphere of data protection) should be distinguished. By a “contract” the Directive means personal data which are necessary for fulfilling of the contract. Without them, the contract could not be executed. In most cases, these data are identification data (a name and a domicile).

By a “consent” the Directive means personal data which for fulfilling of the base of the contract are not necessary. They are provided by data subject voluntarily for the sake of consideration, such as payment, additional services and so on. Beneficiary’s acts should clearly distinguish between a contract and a consent.

Retention period

It is derivation of a purpose. Personal data are processed throughout duration of education. After the education ends, there should be the first revision of collected documents. Only those which may be useful for possible legal dispute should not be liquidated.

This second period lasts the same time as statute of limitations (застареност). After all possible claims have ended; all the data about the former pupil or a student should be shred: liquidated or transferred to national archives when an act stipulates to do so. In case of public law, retention period should be explicitly prescribed by law. Where is no purpose, storage (retention) of data is illegal.

These principles are breached by Art. 16 (ex Art. 17) of the Rulebook on the form and content of pedagogical documentation and records in elementary school, as well as the manner of their record which stipulates “at least one year after” instead of “up to one year after”.

Confidentiality

There is a lack of general regulation. Art. 23 Al. 1 LPDP stipulates only: “In order to provide secrecy and protection of the processing of the subject’s personal data, the controller and processor have to apply proper technical and organizational measures for protection of accidental or illegal damaging of the personal data, or their accidental loss, change, unauthorized disclosing or approach, especially when the processing includes transmission of data over a network and protection of any kind of illegal forms of processing.” It is not enough, since Art. 16 of the Directive stipulates: “Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to



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personal data must not process them except on instructions from the controller, unless he is required to do so by law.”

Therefore Art. 23 Al. 1 LPDP should be amended. For doing so Sec. 15 Para 1 of the Czech Data Protection Act might be used: “Employees of the controller or processor, other natural persons who process personal data on the basis of an agreement concluded with the controller or processor and other persons who, in the scope of fulfilling rights and obligations provided by law, come into contact with personal data at the premises of the controller or processor, shall be obliged to maintain confidentiality of personal data and security measures whose publishing would endanger the security of personal data. The obligation to maintain confidentiality shall survive termination of employment or the relevant work.”⁷⁶

Special concepts

Scope of personal data

It is needed to be reminded that even education providers may have personal data. As the ECJ indirectly expressed in *Schecke and Eifert v. Hessen*, CELEX: 62009J0092, entrepreneurs are data subjects when they are individuals (“natural persons”).

Therefore data of education providers, in case they are legal persons, should be treated in similar way as personal data. The best solution is to have a unified registry of all legal entities, including schools or universities.

Sensitive data

They are defined in Art. 8 Para 1 of the Directive and their processing in Art. 8 Para 2–7 of the Directive. The Working Party 29 has developed additional recommendations how to process them. The Opinion 2/2009 on the protection of children’s personal data (General Guidelines and the special case of schools, WP 160), p. 13, stipulates: “All data that might lead to discrimination must be protected by proper security measures, such as processing in separate files, by qualified and designated people, subject to professional secrecy, and other appropriate measures.”⁷⁷

Beneficiary’s legislation should adopt this and set these separate files: disciplinary proceedings, records of violence, medical treatment in school, special education of disabled people, and social aid to poor pupils.

⁷⁶ <http://www.uoou.cz/uoou.aspx?menu=4&submenu=5&lang=en>

⁷⁷ http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp160_en.pdf



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National identification numbers

Art. 8 Para 7 of the Directive says that a national identification number is a kind of sensitive data. It should be used in the public sector only. In the private sector they should not be used if possible or at least strictly limited, because the private sector has no means how to check accuracy of a provided national identification number. The reason for misuse of national identification numbers by the private sector is that the private sector has a problem of identification of its client. In case of need, such as in time of legal dispute, there should be help from the public sector.

Registries

They should be decentralized.⁷⁸ There's no need for that, even of the teachers. A natural data controller for a registry of pupils, students or teachers is a school or a university. Ministry of education should set a data interface for getting data to aggregation purposes. Alternative solution which is, however, not optimal is hashing of identification data. The result is that data are not anonymized,⁷⁹ but only pseudonymized which means lower level of data protection.

Law should clearly stipulate categories of data kept in registries. Art. 98–103 of the Act on Elementary Education and Art. 73 to 77 (ex Art. 84 to 88) of the Act on Secondary Education should be more detailed, including electronic data processing in Art. 100 Para 4 of Act on Elementary Education, Art. 74 Para 4 of the Act on Secondary Education, and usage of data.

Data flow

Collecting of data should be regulated more strictly. Data should be provided only when there is a need for processing them. Bad example is Art. 50 para 3 and 4 Act on Elementary Education: A school receives data about all the children. Direction of providing data should be opposite: from a school to a local authority. Or a school may ask a local authority for data about concrete individuals.

Usage of data by third persons lacks totally any regulation. Disclosure of data should be limited to legal representatives of the pupils, school authorities, school inspectors, health personnel, social workers, and law enforcement agencies.⁸⁰

⁷⁸ Opposite in Art. 15a of the Act on Elementary Education.

⁷⁹ http://www.internetevolution.com/author.asp?section_id=484&doc_id=189185

⁸⁰ Ibid., p. 14.



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