

Summary of the Commissioner's Opinion in the form of a Decision regarding the Data Protection Impact Assessment submitted by the Ministry of Defense regarding distance education in accordance with the provisions of article 58(3)(a) and (c) of the General Data Protection Regulation (hereinafter "the Regulation") (Amendments) Regulations A. Background: The Ministry of Education, Culture, Sports and Youth (hereinafter "the Ministry of Education") submitted to the Office of the Commissioner, as its prescribed obligation under the Acts on the Operation of Public Secondary Schools (Amendments) Regulations of 2020 / K.D.P 448/2020 (Regulation 6A) and on the Operation of Public Primary Education Schools of 2020/ K.D.P 449/2020 (Regulation 7) (both hereinafter "the Regulations") in which are defined: "It is further understood that the competent Authority issues, after carrying out an impact assessment regarding data protection in accordance with Article 35 paragraph 1 of Regulation (EU) 2016/679 and the previous consultation with the Commissioner for Personal Data Protection, binding Directives in which the purpose, the technological means and their use for the implementation of distance education, the process and the manner are defined and regulated in accordance with the provisions of Regulation (EU) 2016/679 participation of educational officers and students in it, the collection, processing and storage period of personal data of students and educational officers and organizational, technical and physical security measures to ensure the protection of personal data of participants in the educational process, as well as any other necessary detail", Data Protection Impact Assessment (hereinafter "the DPA") regarding Distance Education with the letter dated 10/11/2020. Due to the extraordinary nature and the urgency of the imposed new measures, there was not the necessary time for the YPPAN to draw up the EAPD in a timely manner. For this reason, it was deemed necessary for the Commissioner to issue relevant Instructions dated 6/5/2020 as well as Orders dated 15/5/2020 based on her findings on the basis of on-site sample checks she carried out in High Schools throughout Cyprus. With the Instructions and Orders to the Ministry of Education, the Commissioner provided specific guidance for imposed actions or measures to collect and process personal data of both students and Office 1 educational officers, especially during the conduct of classes in real time through the Microsoft TEAMS platform to be legal and proportionate to ensure the protection of their personal data and, by extension, the protection of their dignity and privacy. In the Instructions to the Ministry of Health (date 6/5/2020), among others, instructions were given regarding the following: (a) Any collection, use, disclosure, transmission, storage and any other form of processing of personal data including simple or biometric data that resulting from technical or other processing, e.g. the voice, can only be processed with strict observance of data protection principles (see article 5 of the GDPR) and the conditions that make any processing lawful depending on the

type of data (see articles 6 and 9). (b) Transparency occupies a prominent position in the entire legislative edifice of the protection of personal data and is of double importance in the sense that lawful and correct information to data subjects about the processing of their data facilitates the exercise of their rights and maintain control of their data at every stage of processing. (c) Issuance of written instructions to teachers and school units and definition of contact links for coordination and uniform implementation of distance education. (d) Submission of directions and advice from the Ministry's YPD team, as the materially competent body for every issue related to the protection of personal data and communication with my Office. (e) Education / training and continuous support of teachers (help desk – telephone support center) for the correct and safe use of the applications. f) Carrying out an impact assessment as a mandatory measure. With the Decision / Orders to the Ministry of Internal Affairs dated 15/5/2020, orders were given to the YPPAN regarding the following, among others: (a) In the absence of a legislative basis, given that until then (May 2020) distance education had not been institutionalized, i.e. legally framed, the direct transmission of audio-only material from classroom deliveries to a group of students without a physical presence in the school unit was a continuation of conventional / traditional 2 education, which falls within the framework of the employment relationship regulated primarily by primary and secondary rules of law, which form the legal basis for the said data processing. (b) The taking of images and/or visual material of students physically present in the classroom or of students without physical presence is not permitted and is not made legal as contrary to the fundamental principles of legal processing of personal data and lacking a legal basis. (c) Ensure the implementation of a uniform and unified distance education policy by all school units as follows- (d) Issue simplified and detailed written instructions for the correct and safe use of the tools, settings and in general of the TEAMS platform. (e) Provide training and education to all users of the platform to ensure the correct and safe use of the platform, its tools and settings in order to avoid security incidents as much as possible. (f) Inform all platform users about the collection and processing of their data. (It is not sufficient to refer to links to policies of the Microsoft contractor company.). On 2/10/2020, the Regulations were published in the Official Gazette of the Republic as amended in order to institutionalize the distance education framework after prior consultation with the Office of the Commissioner. As a result of the amendment of the Regulations in October 2020, the concept of distance education was introduced and all forms of modern and asynchronous, universal or a combination of a mixed or hybrid system of live and distance education were instituted, and in this way the framework of the ex distance education which is activated and implemented EXCEPTIONS in cases of emergency or force majeure as mandated by, for example, pandemic periods. The Regulations, as amended, constitute the legal tool for the legal

obligation of the YPPAN, i.e. the legal basis for providing and/or ensuring, in particular during these critical periods, distance education for the students of all public schools of Primary and Secondary Education, in accordance with the provisions of article 6(1)(c) of the Regulation and in compliance with all its provisions and in particular the basic principles of legal collection and processing of personal data. 3 / comments and Enforced actions within the The YPPAN prepared the EAPD, which it submitted for the purposes of prior consultation to the Commissioner's Office, subject to the following provisions, to my Office on 10/11/2020. (a) The Regulations K.D.P 448/2020, K.D.P 449/2020, (See par. 1.1 and 1.4 above), (b) The Directives and Orders I issued (See par. 1.6 .1 and 1.6.2 above), (c) The provisions of articles 35 and 36 of the Regulation (particularly within the broader context of the provisions of article 36(5). (d) The provisions of article 58(3)(a) and (c) of the Regulation. B. Findings of the schedule of the Regulations of this Decision: Comment 1: The visualization of the course during the hybrid type of training/teaching that takes place in real time for the purpose of subsequent monitoring at a later time, was judged to exceed the purpose and is inconsistent with the nature of distance education as an exceptional education. For this reason it is not permissible. Comment 2: According to the EPAD, the companies Cyta and H.S.Data are processors. No processing contract has been signed with Cyta while the contract with H.S.Data does not meet the characteristics of its provisions of article 28 of the Regulation regarding the processing contract. The Ministry of the Interior has an obligation to ensure within the schedule the conclusion of a contract with Cyta and H.S.DATA. Comment 3: According to the EAPD "when creating a Group/Online class, the teacher, using the Search tool, with which by entering only the initials of a student's/teacher's name, relevant names of other users of the platform community are displayed/revealed on a Pan-Cypriot basis , can add people to his group." This issue was one of the issues indicated by the Decision / Orders of the Commissioner dated 15/5/2020. The Ministry of Education should, within the schedule, ensure that the necessary optimizations are made to the system through the necessary parameters so that when creating a group, teachers do not have access to the names of all students and teachers on a 4 Pan-Cypriot basis, but only to the names of the students or educational officers of their school. If the above is not possible, the creation of teams could be assigned to 1 or 2 people in each school, in order to limit the number of people who will have access to the names of students or educational officials on a Pan-Cyprus basis. The Ministry of Internal Affairs and Communications is under an obligation to find a solution to ensure the principle of minimizing personal data (See 5(1)(c) of the Regulation), no later than within the schedule, as per the Provisional of this Decision. Comment 4: Regarding the assessment of the risk that may be caused by the potential transmission of data to third countries through the platform and tools of the

provider company Microsoft, which is based in the USA and its subcontractors in other third countries, the ERA has noted, without however, it should be specifically documented that: "To address the risk, Microsoft has revised the Data Protection Agreement on July 21, 2020, (Microsoft Online Services Data Protection Addendum Last updated July 21, 2020) and has referred the Ministry of Health to a post on its website that confirms that the data is kept in databases of an EU. And in the Data Protection Agreement it undertakes not to transmit, store or process data in countries and/or international organizations outside the EU and in countries covered by an "Adequacy Decision", unless and if the processing act is covered by standard data protection clauses issued by the European Commission . Therefore the probability of the occurrence of the risk is judged as "1 - Unlikely" and therefore the level of risk "Low". The provider of the OFFICE 365 platform (MS TEAMS), a Microsoft company based in the USA, has the capacity to perform the processing both in relation to the personal data related to the accounts of the users of the platform (azure active directory) which are hosted in cloud computing of the company, as well as in relation to the management of the platform tools. After evaluating all the relevant documents, policies and agreements of the company, the Commissioner deemed it necessary to present by the Ministry of Internal Affairs and Communications in the context and for the purposes of ensuring the principle of accountability, (See Article 5(2) of the Regulation) that with regard to all services provided by Microsoft to YPPAN, no personal data is transmitted to destinations outside the EU and EEA, otherwise it should study the decision C-311/18 of the CJEU and any relevant guidance that may be provided by the European Data Protection Board , in order to take the corresponding actions for the correct implementation of the CJEU Decision.

Comment 5: The GDPR does not mention the metadata collected during the use of the Microsoft platform and the period of time for which it will be kept by Microsoft. The YPPAN should include in the EAPD any risks related to this matter. Comment 6: The EAPD provides with regard to the Processing of Audiovisual Educational Material for other purposes and the subsequent utilization of the digital educational material in the asynchronous format under normal conditions and not if there are reasons of substantial public interest due to situations of force majeure or emergency that it becomes permissible and legal only with the consent of teachers. In this context, the YPPAN proposed the use of consent as a legal basis for the visualization and transmission of asynchronous type of content/material that includes exclusively the teacher's data and not the children's.

Distance education is an exceptional educational process. Possible subsequent processing does not appear to be consistent with the original purpose and the legal basis of the initial processing cannot cover the subsequent processing. See Petition 50 of the Regulation. In addition to the above comment - As a rule, consent cannot be a valid legal basis where it concerns public

authorities (Ministry of Public Health - Public schools) and employment relationships. In this case, it concerns both cases. It is unlikely that the employee will be able to freely respond to his employer's request for consent unless the employer is able to demonstrate that it is a genuine choice of the employee and that a possible refusal will not have any negative consequence on his employment relationship e.g. criterion and adverse evaluation factor. It is understood that under the circumstances the digital training material in its asynchronous form could be used by the training officer himself, given that it does not include audio or visual material, which can directly or indirectly identify any natural person. Comment 7: Transmitting Student Image "transmitting student image has no legal basis and is prohibited.". 6 The Ministry of Internal Affairs confirmed its compliance with the Decision - My orders dated 15/5/2020. Comment 8: With reference to the transmission of the image of the educational officer during modern teaching / training, either from the classroom based on the hybrid system, or from the private space of the educational officer for the purposes of this assessment, an assessment follows in what concerns the use of the camera, as a suitable and necessary technological tool during modern distance education/teaching. The YPPAN, through the EAPD, overemphasized the usefulness of the camera and its utilization "as a basic tool for communication and immediacy between teacher and student. Through the camera, students can hear and see their teacher explain the concepts being taught, use the classroom board to solve related exercises or demonstrate specific experimental activities, or other supervisory means necessary to teach the lesson and , In conclusion, he ruled that the transmission of the image is necessary exclusively for the conduct of the distance course and for no other purpose, it is a continuation of the contractual relationship between the teacher and YPPAN which has a legal obligation in conditions of substantial public interest due to situations of force majeure or emergency and in compliance with the necessary technical and organizational measures to carry out the specific individual processing.... provides necessary elements of the pedagogical role of the teacher for the conduct of the distance course in order for the course to be of equivalent value to the conventional course and to avoid an imbalance between students in the classroom and those watching from a distance." The assessment of the Ministry of Education and Culture is in principle justified regarding the value given to the quality of the course by the audio-visual material and, in this particular case, the image of the teacher that constitutes the one-way communication to all the students (either in the hybrid form or in the universal distance education / teaching), who will be able to hear and see him while he will only be able to hear them. The transmission of the image of the teacher, i.e. of his course, turns the student from a simple listener into an active spectator and participant in a multiform learning whose main component is the interaction between teacher and student to the greatest

possible degree of approximation of the quality criterion of lifelong education, and this makes the transmission of the image important and necessary for at least two reasons (a) the 7 substantial and effective provision of educational services to distance learners through interaction in the course and (b) the provision, as far as possible, of equal opportunities of access to traditional and live teaching between groups of students in physical presence and groups of distance learners. However, in any case, the principle of data minimization that every data controller is obliged to apply mandates and/or imposes that the data collected and processed each time be appropriate, relevant and limited to what is necessary for the purposes for which they are submitted in processing ("data minimization"). In this regard and in the present case where and where according to the nature, purpose or object of the teaching or the lesson the understanding or perception of the lesson requires visual contact of the student with the educational officer or with his activity during the delivery of the lesson which may have one of the following forms, e.g. interview / discussion, narrative / lecture, documentary, dramatization, laboratory / experimental demonstrations, activities / exercises on the board, etc., the teacher

operator will be able to activate and deactivate at his discretion

where and where the camera is needed and focus it only on that point

of the board, video projector or computer monitor that it deems necessary

depending on the requirements of each teaching, until the catalog is issued

by the Ministry of Internal Affairs, (at the latest within the schedule, in which

the educational activities they impose are precisely defined, vs

distance learning / teaching, camera activation and

the reception of visual material and the necessity and proportionality will be justified

them in relation to the intended goal of the specific education

activity.

It is understood that the judgment of each teacher on the activation of the camera

cannot be identified and is not consent under the interpretation

of the term as attributed to the provisions of article 4(11) of the Regulation.

Comment 9: At EAPD the risks of

the Recording and/or disclosure of the image or other data that

is/are viewed when conducting online teaching from

other users or third parties who are in the same space as a user.

The risks are relevant and concern the possibility of recording or

disclosure of the image of the educational officer during distance learning

training, either through the use of invasive software or personal electronics

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neutralize to

satisfactory grade

devices (mobile phone), or with the simple presence of a third person against

distance teaching in the student's physical space.

The technical capabilities of the TEAMS platform make it impossible

ability to record and store audio and video remotely

teaching by the students through the platform meaning that the

this feature is disabled. The associated risks of illegality

processing in the form of dissemination remain and may be product

use of personal electronic devices or invasive software they have

established in the U.S

the students. The proposed measures

treatment by the Ministry of Health, such as the provision of appropriate information with

Guides and awareness of students and their parents could

act as an appropriate measure to mitigate the effects of

risks related to the illegal dissemination of teacher data

operator, were not considered by the Commissioner to be sufficient to operate

deterrents and to

their

residual risks and/or related data breach incidents

of educational officers.

The submission of a relevant complaint to the Office of the Commissioner may function only as a complementary measure and independently of the others meters.

Based on the above, it is deemed necessary to take additional measures from YPPAN with the "form of sanctions of a pedagogical nature" for students who proven to have carried out an illegal dissemination of his data

educational officer. The Ministry of Internal Affairs and Communications was asked to draw up a relevant situation with "form of sanctions of a pedagogical nature" within the schedule.

Comment 10: Due to equipment shortages in some schools, some teachers likely to make use of personal portable ones

computers for the provision of distance education.

Such use entails risks of sharing student data with non-residents authorized persons. The risk does not seem to have been foreseen in the EAPD this for mitigation and compensation purposes.

The YPPAN was called according to the instructions he will prepare for them teachers in matters of secure information management and data (Action 14), including a list of practices / measures that should follow in such cases, such as e.g. the existence up-to-date anti-virus program, non-storage service files on a computer used by other members of his family educational etc.

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Comment 11: The EAPD does not deal with or include special regulations regarding the students and educational officers of the Special

Education, adapted to
special needs of children with
disabilities or with other special educational needs and in the services and the
programs offered by Special Education, in order to ensure
equal access and participation in distance education for all
children in an "ideal" non-discriminatory education.

The Ministry of Education and Culture was asked to draw up guidelines for special education in the context
of distance education with respect for the diversity of each
child, at the latest within the timetable.

C. Conclusion – Dispositive:

The Commissioner deemed distance education legal according to
amendment of the Regulations in the context of Municipal and Medium Public
Education in accordance with Sections A and B of this Decision under
the Condition that the YPPAN will ensure within two months from the latest
date of receipt of this Decision and will proceed with all
necessary actions in accordance with Section B and will inform her
Commissioner regarding all his actions and completion of actions
according to the EAPD.

November 18, 2020