



*Directorate-General for Library,  
Research and Documentation*

## **RESEARCH NOTE**

**Applicability of the rules relating to ‘personal data’ within the meaning of Article 2(a) of Directive 95/46/EC, to a corrected script of an examination**

[...]

**Re:** Decisions of the supervisory authorities and/or case-law on the question of whether data contained in an annotated script of an examination constitute personal data

[...]

*June 2017*

[...]

**SUPERVISORY AUTHORITIES AND/OR COURTS THAT HAVE ALREADY  
RULED ON THE QUESTION OF WHETHER DATA CONTAINED IN AN  
ANNOTATED SCRIPT OF AN EXAMINATION CONSTITUTE PERSONAL DATA**

**I. INTRODUCTION**

1. For the research note [...] to ascertain whether the data contained in an annotated script of an examination are considered at national level in the European Union as constituting personal data, the legal systems of 15 Member States were examined, namely those of **Germany, Belgium, Bulgaria, Croatia, Spain, Estonia, France, Italy, Latvia, Lithuania, Netherlands, Romania, Slovakia, Slovenia, and Sweden.**
2. The legal systems that were not included in the selection for this research note are those [...] of **Austria, Greece, Hungary, Ireland, Poland, Portugal** and the **Czech Republic** and those [...] of **Cyprus, Denmark, Finland, Luxembourg, Malta, Finland** and the **United Kingdom.**
3. During that examination, the administrators involved from the Research and Documentation Directorate were asked to check whether the supervisory authorities and/or the courts in the various legal systems have already ruled on the question of whether the data in question are personal data. Specifically, that check covered the websites of those authorities and the national databases relating to national case-law. The results of the check are presented in the table below, which orders the legal systems depending on whether or not the research was able to identify relevant case-law or practice.

## II. OVERVIEW

NO RELEVANT DECISIONS	RELEVANT DECISIONS
Germany <sup>1</sup> Belgium <sup>2</sup> Croatia Spain Estonia <sup>3</sup> France Italy Latvia Lithuania Netherlands Romania Slovakia Sweden	<p><b>Bulgaria:</b></p> <p>A request for access to a corrected script of an examination, for a competition for magistrates specialised in civil law, submitted by the candidate for that examination, led the competent authority (the Commission for Personal Data Protection) to rule on whether the content of such a copy constitutes ‘personal data’. That commission answered that question in the affirmative in a decision <sup>4</sup> that became final in 2008, thus giving the data subject access to the data requested on the basis of the national law transposing Directive 95/46/EC.</p> <p><b>Slovenia:</b></p> <p>Two opinions delivered by the Information Commissioner on 24 January 2007 <sup>5</sup> and 4 November 2011, <sup>6</sup> the latter relied on the right of access to personal data provided for in the Constitution and in the Law on the baccalaureate and the Regulation on driving licences, in order to establish that a corrected script of an examination is personal data, and that that also applies to the examiner’s annotations.</p>

<sup>1</sup> Details concerning Germany are provided below.

<sup>2</sup> Details concerning Belgium are provided below.

<sup>3</sup> Details concerning Estonia are provided below.

<sup>4</sup> Decision No 42 of 14 November 2007.

<sup>5</sup> Opinion: Seznanitev z lastnimi osebnimi podatki v izpitni poli (Obtaining information on one’s own personal data in an examination paper), No 0712-60/2007/2. Available via the following link: [https://www.ip-rs.si/vop/seznanitev-z-lastnimi-osebni-podatki-v-izpitni-poli-629/?tx\\_jzvopdecisions\\_pi1\[highlightWord\]=izpitne%20pole](https://www.ip-rs.si/vop/seznanitev-z-lastnimi-osebni-podatki-v-izpitni-poli-629/?tx_jzvopdecisions_pi1[highlightWord]=izpitne%20pole).

<sup>6</sup> Opinion: Vpogled v lastne osebne podatke kot prekršek (Consultation of one’s own personal data as an offence), No 0712-1/2011/3022. Available via the following link: [https://www.ip-rs.si/vop/vpogled-v-lastne-osebne-podatke-kot-prekrsek-2100/?tx\\_jzvopdecisions\\_pi1\[highlightWord\]=izpitne%20pole](https://www.ip-rs.si/vop/vpogled-v-lastne-osebne-podatke-kot-prekrsek-2100/?tx_jzvopdecisions_pi1[highlightWord]=izpitne%20pole).

### III. DETAILS RELATING TO MEMBER STATES THAT HAVE NOT GIVEN AN AFFIRMATIVE ANSWER BUT WHICH HAVE SPECIFIC FEATURES THAT MAY BE RELEVANT FOR THIS RESEARCH NOTE

#### A. GERMANY

4. Despite the fact that there is no case-law and there are no decisions on that subject from the competent authorities in Germany, it is worth noting that the Bavarian School Rules<sup>7</sup> provide for a right of access to documentation held by the school administration, in particular documentation from examinations. While that right does not expressly cover corrected scripts, it is based on the right to informational self-determination which is the basis for the right to personal data under German law.

#### B. BELGIUM

5. ‘Examination results’ are considered to come under the concept of ‘personal data’ under Belgian law. It is clear from the instructions published by the Data Protection Authority for the attention of those responsible for processing personal data<sup>8</sup> that examination results fall within the scope of the coding of personal data, which is the subject of a notification to that authority. However, the scope of the concept of ‘examination results’ is not clear under Belgian law since neither the Data Protection Authority nor the case-law has had the opportunity to clarify that concept. It is therefore not possible to indicate to what extent all the data of an annotated examination script are personal data.

#### C. ESTONIA

6. The Estonian Data Protection Inspectorate has taken a position on the question of whether a *third party* may have access to an annotated examination script.<sup>9</sup> In that context, that inspectorate stated that the responses of an examination candidate are subjective information that make it possible to assess the reliability or suitability of the candidate in question, and that the disclosure of such information must be excluded for the purposes of protecting the privacy of that candidate.

<sup>7</sup> Bayerische Schulordnung (Bavarian School Rules), Article 41.

<sup>8</sup> Available via the following link:  
[https://www.privacycommission.be/sites/privacycommission/files/documents/notice\\_codage\\_0.pdf](https://www.privacycommission.be/sites/privacycommission/files/documents/notice_codage_0.pdf).

<sup>9</sup> Decree of the Data Protection Inspectorate in a public information dispute 2.1-3/15/116. 17.08.2015. Available via the following link:  
[https://www.aki.ee/et/sites/www.aki.ee/files/elfinder/article\\_files/20150817%20-%20vaideotsus.pdf](https://www.aki.ee/et/sites/www.aki.ee/files/elfinder/article_files/20150817%20-%20vaideotsus.pdf).

#### **IV. OTHER DETAILS**

7. As far as the Member States for which no relevant information for this note was found, it should be noted, it is true, that the question of candidates' access to corrected scripts of their examinations has been addressed in certain cases. However, that right appears to be based on rules other than those concerning the protection of personal data. It is a case of legislation providing for access to (public) documents by reason of a principle of transparency/access to information (**Spain, France, Latvia, Slovakia, and Sweden**) and providing for the right of the person concerned to defend their interests (**Estonia and Italy**). However, it must be stated in that regard that the research did not cover the existence or otherwise of such a right by reason of rules or practices other than those relating to data protection.

[...]