



Opinion on a notification for Prior Checking received from the Data Protection Officer of European Central Bank (ECB) regarding Training Evaluation

Brussels, 1 July 2009 (Case 2009-220)

1. Proceedings

On 31 March 2009, the European Data Protection Supervisor (EDPS) received a notification for prior checking (Notification) under Article 27 by email from the Data Protection Officer (DPO) of the European Central Bank (ECB) on Training Evaluation.

On 30 April 2009, the European Data Protection Supervisor (EDPS) made a request for further information. The EDPS received a reply to this request on 13 May 2009. On 18 May 2009 the EDPS requested complementary information from the ECB and received the written answers to his questions on 19 May 2009. On 15 June 2009 the EDPS sent the draft opinion to the ECB Data Protection Officer (DPO) for comments which were received on 01 July 2009.

2. The facts

According to the Notification the data relate to the request for feedback from training participants on the relevance and quality of the training they attended. Such training activities can be one-off seminars (one or two days), courses which take place for a period of several weeks or months (such as language training) and courses organised outside the ECB premises. In other words the processing relates to evaluation of in-house training courses that are delivered by external consultants and evaluation of external training activities attended by ECB staff members at an external institution. It was also stated that there has been one case so far whereby a staff member delivered in-house training. The **purpose** is to ensure good and constant quality management as well as to control the content of training delivered to ECB staff members.

The **data subjects** include the following: (i) the ECB staff, the ESCB/IO colleagues secondees and interns as training participants and (ii) The ECB consultants, third persons providing the training.

The **data collected** are name, contact details and reasons for participation of participants, and the name of trainer. As regards the evaluation of the trainers, participants are requested to provide feedback as to whether the trainer was knowledgeable on the subject, was motivating and provided insight, enabled appropriate level of individual participation in the class and kept participants engaged and held their interest. Other questions relate to whether the course material is helpful, whether the pace of the course was appropriate and whether the class

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exercises were effective. All evaluation forms provide some open space for comments on what participants found most helpful, what recommendations for improvements they have and whether the course should continue. Participants can also make suggestions about which other training courses should be offered.

According to the Notification, the **recipients** of the data are the training team of the DG-H and the DG-H management. In particular with regard to DG-H Management, only DG-H Senior Management is a potential recipient i.e. the Director General and the Deputy Director General and the Head of Division of HR Policies and Staff Relations Division.

The **information** which is provided to the data subjects according to the notification is described as follows: A brochure is distributed to trainers, whereby all issues related to the training, such as the evaluation forms, are mentioned. In particular it is stated in the brochure that *"At the seminar opening of the training administrator, participants will be asked to submit the on-line evaluation form after the completion of the training. This task will be in their training activities in ISIS and the training administrator will follow-up the completion of this task. The feedback report will be provided to you at least twice a year. If you would like to receive these reports after each individual training session-please email or phone your main contact person in the training team and this will be managed"*. As it was further described in the aforementioned responses of the ECB to the EDPS's questions, in the opening of every training activity, participants and trainers are provided information by a training administrator. The training administrator introduces himself/herself, introduces the trainer, explains briefly the seminar content and refers to the evaluation form. He/she then explains that this information will be collected and provided to the trainer on an anonymous basis.

As far as the trainers at external institutions are concerned, no **information** under Articles 11 and 12 of the Regulation (EC) 45/2001 is given to them. As it is stated, the feedback for trainers at external institutions is not used in a structured manner by the ECB. It was also commented that at the end of each training period external institutions usually request evaluation of trainers by participants and therefore trainers should perceive such evaluation as a normal practice.

It is worth mentioning that there is a Framework Training Contract which must be signed by the ECB and each Contractor who will provide training. This Contract does not contain any clause about **feedback management**; however, Annex 1 thereto, which is the Request for Proposal that precedes the contract, does include a paragraph on feedback **management**¹. In particular it is stated under the title of Feedback Management that *"The ECB will collect participants' feedback on the seminar content and the trainer/s. The aggregated and anonymous data will be presented to the Contractor on a regular basis to follow up on the feedback. In case of unsatisfying performance of the seminar and/or trainer/s, the ECB will discuss the matter with the Contractor accordingly. If there is a continuous lack of performance, the ECB may discontinue the contractual relationship, engage other suppliers and/or terminate the framework training contract."*

As regards the **rights of the data subjects**, the Notification mentions that no specific procedure applies. It is stated that participants are granted access to their evaluation form upon request. People delivering in-house training are provided with aggregated feedback on the training measure twice a year on an anonymous basis. Upon request participants feedback can be provided after each training course. As far as trainers providing training at an external institution are concerned, they may also have access to the aggregated data upon request. In

¹ Page 6 of the Request for Proposal (RfP).

this case as well, the data will be anonymous or in other words will not contain the participants' names. Both trainers providing in-house training and training at external institutions may state their views on the evaluation in any way.

Automated/ manual processing and storage: The evaluation forms were collected on the basis of hard-copy documents. Since September 2008 feedback is only provided via the ECB's Enterprise Resource Management system (ISIS). With the introduction of the Learning Solution Module of SAP, all evaluation forms have been made available on-line. In addition they may be provided during the training activities of the participants. Participants may complete the form on-line and feedback can be seen only by the responsible training administrator.

With regards to time limits **for blocking and erasure** of the different categories of data on justified legitimate requests from the data subject, no time limit applies. No data is stored for **historical, statistical or scientific purposes**. There is also no proposed transfer of data to third countries or international organisations.

As far as **retention policy** is concerned evaluation forms are kept in accordance with the Retention Policy of the ECB. In the ECB Retention Plan it is foreseen that records relating to the administration of training activities should be kept for a period of five years. It is also stated that a specific period for the evaluation of training and of trainers had not been contemplated as the assumption was that records regarding evaluation were part of the files for the administration of a given training activity. It is also worth mentioning that the life-cycle of a training activity usually runs over a period of approximately four years.

3. Legal analysis

3.1 Prior checking

The evaluation of the work of trainers providing in-house training at the ECB falls within the scope of Regulation (EC) 45/2001 since it involves the processing of personal data, as justified hereunder.

The evaluation of the trainers providing in-house training constitutes processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation). The data processing is performed by a Community body in the exercise of activities which fall within the scope of Community law (Article 3 (1) of the Regulation). The data is processed wholly by automatic means (Article 3 (2) of the Regulation). Therefore, Regulation (EC) 45/2001 is applicable. It must be clarified that the evaluation of trainers of the ECB staff at external institutions does not fall within the scope of Regulation (EC) 45/2001 because as stated by the ECB such evaluation is not used by the ECB in a structured manner. It must also be noted that, as concerns training provided by staff members, Regulation (EC) 45/2001 must be respected but any evaluation aspects are not the object of this prior check².

Grounds for Prior Checking. Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such

² These have been analysed on the opinion of 20 April 2005 on the notification for prior checking relating to the Staff Appraisal procedure (Case 2004-274).

risks. The list includes under paragraph (b), the processing operations intended to evaluate personal aspects related to the data subject, including his or her ability, efficiency and conduct. The processing operations that occur in the context of evaluation of in-house training aim at evaluating individuals. In particular trainees are asked to make assessments of the courses and seminars, which they have attended, by, *inter alia*, evaluating the performance of the trainer. Taking all these into consideration, it is clear that the present data processing operations fall within Article 27 (2) and must therefore be prior checked by the EDPS.

Ex-post prior checking. Since prior checking is designed to address situations that are likely to present certain risks, the opinion of the EDPS should be given prior to the start of the processing operation. In the present case, however, the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

Notification and Due Date for the EDPS Opinion. The Notification was received on 31 March 2009. Pursuant to Article 27(4) of Regulation (EC) No 45/2001, the two-month period within which the EDPS must deliver an opinion was suspended for a total of 14 days to obtain additional information. It was also suspended for 16 days to allow comments on the draft Opinion. The Opinion must therefore be adopted no later than 1 July 2009.

3.2 Lawfulness of the processing

Personal data may only be processed if grounds can be found in article 5 of Regulation (EC) 45/2001.

Article 5 of Regulation 45/2001 provides criteria for making processing of personal data lawful. One of the criteria provided in Article 5 (a) is that the "processing is necessary for performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institutions or body". The processing of personal data for performance of tasks carried out in the public interest includes "*the processing necessary for the management and functioning of those institutions and bodies*" (recital 27).

In order to determine whether the processing operations comply with Article 5 (a) of Regulation (EC) 45/2001 the following must be taken into account. The evaluation on the performance of trainers is considered to be a part of the legitimate exercise of official authority vested in the ECB ex Article 5(a) Regulation (EC) 45/2001. In particular, in this case the evaluation of trainers entails a processing of personal data which is supposed to be necessary for the DG-H to manage the personnel by ensuring their proper training.

Upon analysis of the above legal framework, the data processing that takes place in the context of the trainers' evaluation can be considered as lawful.

3.3 Data Quality

According to Article 4 (1) (c) of the Regulation, personal data must be "*adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed*".

As mentioned above, the data categories, which are processed, are related to the participants and to the trainers. In particular the participants provide basic information about themselves such as their names and their contact details, but they evaluate the trainers as well. The information that is provided about trainers is important for the management of the training activities in the ECB so as to ensure a high level of training. The particular data that are provided by a participant with regard to a trainer is closely related to the function of the latter and are relatively limited. Therefore the information that is requested by participants by the relevant aforementioned evaluation forms as presented to the EDPS, appear to meet these requirements; the data processed can be considered as relevant, adequate and not excessive.

The data must be processed "*fairly and lawfully*" (Article 4.1 of the Regulation). The lawfulness of the processing has already been discussed (see section 3.2 above). As regards fairness, this notably relates to the information given to the persons concerned (see section 3.6 below).

Article 4 (1) (d) of the Regulation provides that personal data must be "*accurate and, where necessary, kept up to date*" and that "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*". The matter of accuracy in data which are related to evaluation of a person is not a clear-cut issue. Data collected from the participants on the ability and efficiency of trainers are undoubtedly subjective by nature. With regard to data provided by participants about themselves such as contact details and purposes for participation, there is not any substantive reason to believe that they are inaccurate. In any case, a further guarantee of accuracy is implemented as both participants and trainers may exercise their rights of access and rectification, as will be analysed below, and thus ensure accuracy (see Section 3.5).

3.4 Data retention

Article 4 (1)(e) of the Regulation states that personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

The notification states that evaluation forms are kept in accordance with the retention policy of the ECB; for such kind of documents the ECB retention plan foresees a retention period of five years. In order to assess the particular retention period one must take into consideration the fact that the contracts between ECB and contractors are signed for "*for an initial period of three years with the possibility to extend the contract for one additional year*"³. Given that no particular reasons were provided by ECB for the retention of data for a period longer than the duration of the contract, the EDPS recommends reconsidering the existing policy for evaluation data. In particular, in order to achieve full compatibility with the aforementioned principle, the ECB should take into account the duration of contracts on a case by case basis and thus retain data for a reasonable period of three or four years accordingly.

3.5 Right of access and rectification

Article 13 of Regulation (EC) No 45/2001 establishes a right of access upon request by the data subject. Article 14 of Regulation (EC) No 45/2001 provides the data subject with a right of rectification.

³ see Request for Proposal ("RfP"), Page 1.

The prior checking notification and the supplementary information by the controller refer to the right of access to the personal data by a data subject. As already mentioned, the trainers providing in-house training are provided with aggregated feedback twice a year. Secondly, it is stated that participants' feedback can be provided after each training course upon request. There is no time limit set for dealing with the requests about access but it is mentioned that DG-H responds to any request without delay.

As to the right of rectification, it is mentioned that trainers providing in-house training may state their views on the evaluation made upon them; any way of exercising this right is considered acceptable. Participants are also mentioned to have a right to rectify the data that they have provided in the evaluation form.

The EDPS considers the current practice as compliant with Articles 13 and 14 of the Regulation 45/2001. He is satisfied with the fact that the trainers are provided with the right to rectify their data, which given the particularities of the given case, takes the form of statement of views. In any case, however, this provision is endorsed to the extent that the trainers are informed, as it is mentioned below, about the existence of this right so as to be able to exercise it.

3.6 Information to the data subject

Article 11 of Regulation 45/2001 provides for certain information to be supplied where the data have been obtained from the data subject. Article 12 of Regulation 45/2001 provides for certain information to be supplied where the data have not been obtained from the data subject.

Specifically, it is when participants fill in the evaluation forms that they will provide data; on one side the data is about themselves and on the other side the data is about trainers. In the first case, the data are obtained from the data subject, who is the participant, and he/she should thus be provided with the information under Article 11 of Regulation (EC) 45/2001. In the latter case, though, when the data provided by participants is about trainers, the trainers should be treated according to Article 12 of the Regulation (EC) 45/2001 and thus be provided with the foreseen information thereby.

In particular, taking into consideration the current practice of the ECB, it seems that the main source of information for participants and trainers is the information provided at the beginning of a course/seminar. One should not overlook the fact that relevant information is also contained in the "*information & guidelines for trainers*" brochure; this guide is distributed to trainers providing in-house training. The clause about feedback management, which is included in the annex of the contract between the contractor and the ECB, cannot be regarded as a channel of communications as neither of the aforementioned data subjects is a party to this contract.

Under these circumstances, the EDPS considers that there is space for improvement for the channels of communication as well as for the content of the information that needs to be communicated. As far as the communication channels are concerned, the EDPS takes note of the existing practice of delivering information orally during the induction course but does not find it sufficient. The same applies for the relevant information included in the brochure. The latter is distributed to trainers but not to participants as well. It would be advisable for the ECB to use more prominent channel in order to deliver the information to the trainers.

Furthermore, the ECB could ask for the relevant information to be included in each and every contract between the contractor and a trainer. This is because, the proposal for offer and the contract between the ECB and the Contractor, although containing relevant information, are not directly accessible to trainers.

As to the content of the statements the EDPS notices that there is relatively limited information provided. In order to ensure transparency and fairness of the processing in question and to comply with Article 11 and 12 of Regulation 45/2001, the EDPS recommends that the following information is provided to participants and trainers:

- (i) identity of the data controller
- (ii) purposes of the processing operation
- (iii) the recipients of data concerned
- (iv) the existence of the right of access
- (v) the time-limits for storing the data
- (vi) the right to have recourse at any time to the European Data Protection Supervisor

It would also be useful to provide information about the right of rectification, despite its limited scope, so as to clarify the conditions for exercising it.

3.7 Security measures

According to Article 22 of the Regulation (EC) 45/2001, the controller shall implement the appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. These security measures must in particular prevent any unauthorized disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and prevent all other forms of unlawful processing.

According to the information provided by the ECB, the measures currently being applied are as follows:

➤ [...]

Based on the information provided, the measures adopted seem to be adequate in order to ensure confidentiality of the data. As far as the data processing is included as a feature of the ECB's ERP information system, training evaluation processing should be covered under the global security schema of the host system.

As far as paper evaluation forms are concerned, particular attention need to be paid so as to ensure equivalent level of protection with the digital forms.

On the basis of the available information, the EDPS does not see any indication to believe that the ECB institution has not applied the security measures required in Article 22 of the Regulation. Nevertheless, the EDPS would exhort ECB to carry out an assessment on how security measures provided for this particular processing through the ERP information system suit the requisites provided in article 22.2 of Regulation (EC) 45/2001.

4. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations are fully taken into account. In particular, ECB shall:

- Make sure that the following information is given to the data subject:
 - ✓ identity of the data controller
 - ✓ purposes of the processing operation
 - ✓ the recipients of data concerned
 - ✓ the existence of the right of access
 - ✓ the time-limits for storing the data
 - ✓ the right to have recourse at any time to the European Data Protection Supervisor

- As regards the retention of data, the ECB should consider adjusting the existing policy to the duration of the contracts and thus retain the relevant data for a reasonable period of three or four years.

- With regard to security measures, EDPS would suggest that ECB carries out an assessment on how the implemented security measures for this particular processing through the ERP information system suit the requisites provided in article 22.2 of Regulation (EC) 45/2001.

Done at Brussels, 1 July 2009.

(signed)

Giovanni Buttarelli
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