



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

Ms Pallares ALLUEVA  
Legal Officer  
European Commission  
EACI  
Unit Ressources  
COV2 12/148  
B-1049 Brussels

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Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

Dear Ms Pallares Allueva,

I am contacting you with regards to your notification on the processing operations relating to "Study on staff satisfaction at the EACI" (Case 2012-0527) at the Executive Agency for Competitiveness and Innovation (EACI).

You submitted the case for prior-checking considering that the processing falls within the remits of the general Article 27.1 seeing that some data may be sensitive insofar as the survey concerns how the data subject subjectively assesses his or her hierarchy and the EACI. Furthermore, the processing operation was submitted for prior checking under Article 27.2(a) that is processing of data relating to health and to suspected offences, offences, criminal convictions or security measures.

After having examined the data processing operations described in the prior checking notification and after having received the requested additional information from the EACI, we have reached the conclusion that, for the reasons described below, **the processing covering the study on staff satisfaction at EACI is not subject to prior checking.**

#### Purpose

The purpose of the data processing is to gather feedback from the staff members of the EACI about their opinion of their workplace. The goal is to assess the working environment of the EACI from the perspective of its staff members and to address possible areas of improvement through feedback. This is done through an automated survey available online that the data subjects<sup>1</sup> are invited to fill in.

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<sup>1</sup> This term includes temporary (including public officials) and contractual agents (statutory staff) of the EACI.

### Legal basis

According to the information received, the legal basis of the processing is based on the Director's duty to adopt the measures relating to personnel management in accordance with Article 11 of the Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes. Paragraph (6) of this article states that the Director shall be responsible for all other matters relating to personnel management within the executive agency. Regarding the lawfulness of the processing, the EDPS considers this basis as sufficient with regard to Article 5 (a) of the Regulation. The possibility to conduct staff satisfaction surveys is covered by the lawfulness of the processing operation based on Article 5(a) of the Regulation. The Agency also bases the processing operation on Article 5(d) (unambiguous consent) as the data subjects are free to take part or not in the survey and to answer to the questions or not. The questions are not compulsory. Therefore, we recognise this legal basis as an additional ground for processing.

### Processing of personal data

The notification refers to the fact that "*some personal data is collected i.e., function group, unit, gender, seniority, however specific identification i.e., name or personal number is not requested as this survey is anonymous.*" The notification also states that "*the data subject is not identified but can eventually be identifiable*".

Based on the additional information received from the EACI, it was stated that there is no possibility to identify the individual filling in the survey as this is an automated processing operation by the Interactive Policy Making (IPM) tool (used by the European Commission services)<sup>2</sup>, that no internet protocol address is being collected and that each submitted survey receives a random treatment number.

Although the EDPS understands that the ultimate goal of the processing operation by the EACI is not to identify the data subjects, the EDPS considers that, through the use of the IPM tool, there is a processing of personal data in the sense of Article 2 of Regulation 45/2001. Indeed, the processing operation is processing of personal data ('*any information relating to an identified or identifiable natural person*' – Article 2(a) of the Regulation), which may include operations such as collection, storage, consultation and erasure performed on personal data. Therefore, even if for the EACI, the data subjects are not directly identified, they are identifiable.

As further explained, the Head of HR will only get access to aggregated raw data and no access to the individual survey replies are possible with this tool (IPM is used across the Commission for creating and managing the questionnaires). The EACI clarified that the IPM tool does not store internet protocol addresses either and therefore there is no possibility to identify from which personal computer a particular respondent sent his/her answers. Based on the aggregated results from the IPM tools, the Head of HR will draft a general report on job satisfaction at the EACI.

The EDPS considers that the use of the terminology "aggregated raw data" is misleading. If data are aggregated, they should no longer be considered as raw data. Should only be considered as raw data answers and questionnaires which are provided by the data subjects. Therefore, the EDPS recommends that the EACI modifies this term in its documents relating to the processing operations. Based on the explanations given, the use of the term "aggregated data" should be preferred.

Furthermore, the way aggregated data are built must also be taken into account when processing the data. In this context, aggregated data should be understood as a set of data that will not allow the individual identification of data subjects (the respondents). Therefore aggregated queries which are too precise. i.e. queries on all respondents, who are male and assistants from a specific unit, being employed for less than a specific time should be avoided.

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<sup>2</sup> [http://ec.europa.eu/yourvoice/ipm/index\\_en.htm](http://ec.europa.eu/yourvoice/ipm/index_en.htm).

Moreover, the EDPS notes that the processing of some of the answers could be, under some conditions, considered as processing of personal data related to health. This would normally require a prior checking opinion from the EDPS under article 27.2.a.

However, in the specific case of the satisfaction survey conducted by the EACI, the EDPS notes that several measures have been taken that makes him conclude that the processing is not subject to prior checking:

- Firstly, the fact that the survey is completely left at the discretion of the data subjects to answer or not, and to answer to any of the questions or not;
- Secondly, the fact that the analysis of the data is conducted on the basis of aggregated data to which access is only provided to EACI for one year, access to individual questionnaire is not granted;
- Thirdly the fact that the EACI is not processing more data than necessary to identify directly the data subjects (no identification number of the data subject, no name, no nationality is asked);
- Fourthly, the analysis of the questionnaires relates to personal data that are aggregated and are part of a report providing a general view on the job satisfaction of the data subjects;
- Fifthly, no individual data will be published based on the report.

Based on this, the EDPS considers that such processing of personal data is not subject to prior-checking.

Nevertheless, although not considered as subject to prior-checking, the EDPS makes the following recommendations, in order to ensure the correct implementation of Regulation 45/2001:

#### Retention

These aggregated data are stored on computer systems (via the online tool IPM) for a maximum period of 1 (one) year.

The retention of the report based on the aggregated data is of two years:

- The *first year* retention of data is in order that a comparison and analysis may be made between the results of the last conducted survey (2009) and those of this survey.
- The *second year* retention of data is in order that the results of this survey (2012) may be compared with the survey which shall be ensued in 2014.

It was also stated by the data controller that for statistical purposes, the EACI will keep the data under an anonymous form for a maximum period of 5 (five) years. The data controller stated that the anonymity of the data shall be ensured by the fact that no identifiable data (e.g., name, personal number) is asked of the data subjects of this survey.

Regarding the retention of the data, the EDPS invites the EACI to ensure that the individual data being processed through the IPM tool should only be kept as long as necessary for the intended processing operation in the respect of Article 4.1.e of the Regulation. If the EDPS accepts the one year retention for the aggregated data, he considers that the non aggregated data stored in the IPM tools should not be kept for longer time than what is necessary to transform these raw data into aggregated data. Therefore, the EDPS invites the EACI to discuss with IPM on how to ensure a limited retention period for these raw data. This would strictly limit the possible identifiability of the data subjects who have answered the survey.

As to the five year retention period for statistical purposes, the non identifiability of the data processed by the EACI should normally already be ensured by the measures taken after the initial processing of the data. The anonymous aspect of the data would then normally be already implemented when the report on analysis of the answers is produced.

### Consent

The EDPS noticed in the first version of the survey that, although the replies to the survey were to be provided on a voluntary basis, most of the specific questions were made compulsory. The EDPS welcomes that during the exchanges of information with the EACI, it was agreed to modify the questions from compulsory to optional and he welcomes to have received a written confirmation from the Head of HR. Therefore, the staff members will be free to reply to all or some of the questions only, thus respecting the voluntary aspect of the survey.

### Privacy statement

The EDPS also welcomes that staff will be provided with a privacy statement at the same time as they receive the link to the survey.

As to the content of the privacy statement (and the notification), the EDPS would like the reference to the legal basis that currently appears on the text (Article 5(a) and 5(d)) to be replaced by the reference to the Director's duty to adopt the measures relating to personnel management in accordance with Article 11 of the Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes.

The EDPS also welcomes that the privacy statement clearly states that the replies to the questions are facultative, hence ensuring the voluntary aspect of the whole exercise.

### Right of access and rectification

Given the use of random treatment number to each answer, it is not possible to provide a right of access or rectification to the staff, as their specific data will not be identifiable by the EACI from the aggregated data provided by the IPM. Therefore the privacy statement should be amended in this regard.

### Conclusion

The EDPS considers that the processing operation in the context of the EACI satisfaction survey is not subject to prior checking but strongly recommends the EACI to:

- request to limit the retention of raw data in the IPM tool to the strict minimum retention needed in the light of the purpose of the processing of the data to transform them into aggregated ones;
- clarify the way the aggregated data are compiled in the processing operation;
- adapt the privacy statement and notification as regards the mention of the legal basis as explained above;
- remove the rights of access and rectification for the reasons explained above.

Yours sincerely,

Giovanni BUTTARELLI

**(signed)**