

## **Opinion on the prior checking notification received from the Data Protection Officer (DPO) of the European Parliament in connection with the case ‘Anonymous survey aimed at employees of the European Parliament with a disability’**

Brussels, 18 December 2013 (Case 2013-0656)

### **1. Background**

On 13 June 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Parliament (the Parliament) a notification relating to the processing of personal data in the context of an ‘anonymous survey aimed at employees of the European Parliament with a disability’.

The notification follows the DPO’s consulting of the EDPS on the need for prior checking under Article 27(3) of Regulation (EC) No 45/2001 (the Regulation), following which the EDPS invited the Parliament to submit notification of this processing operation under Article 27(2)(a) of the Regulation (Case 2013-0500).

The following were enclosed with the notification:

- the Decision of the Bureau of the European Parliament of 22 June 2005 on the Code of Good Practice for the Employment of People with Disabilities;
- the draft questionnaire;
- the UN Convention on the Rights of Persons with Disabilities;
- a data protection statement.

The draft opinion was sent to the Parliament on 9 August 2013. The Parliament submitted its comments on 4 November 2013. In the context of the response received, the EDPS decided to suspend the investigation in order to clarify the response of the data controller.

### **2. The facts**

According to the Parliament’s notification, **the purpose** of this anonymous, voluntary survey is to collect information on employees of the Parliament with a disability, in order to assess the effectiveness of the decisions taken to facilitate the integration of these individuals within the institution.

The **data subjects** are the individuals who responded to the survey.

Under the procedure to be adopted by the Parliament, the survey is anonymous (since responses to the survey are received via a link to the Parliament’s intranet, no e-mail addresses will be collected) and its purpose is not to process data which would enable individuals to be identified but rather to produce a statistical report (aggregated results).

Moreover, the Parliament emphasises that respondents will be advised in the questionnaire to answer the open-ended questions in the questionnaire in general terms only.

As far as **retention** of the data is concerned, the questionnaires will be kept for one year, i.e. the period required by the unit to complete its analysis (particularly in the context of its resources). The results will be retained in aggregated form for statistical purposes.

As regards **rights of access** for the purposes of rectification, blocking, erasure or objection, given the anonymous nature of the questionnaire, the Parliament states that it is not practically possible to grant such rights to the data subjects concerned (since it is not possible to identify these individuals and consequently to allow them access to their data).

The final report containing the aggregated results of the analysis of the questionnaires will be sent to the management of the Equality and Diversity Unit and to the political bodies of the Parliament:

- the Chairperson of the High-level Group on Gender Equality and Diversity;
- the Bureau;
- the Parliament's Disability Intergroup;
- the Parliament's DGs.

The report may also be sent to specific institutions, depending on the degree of collaboration in this matter.

The data subjects will be **informed** through a data protection statement appended to the questionnaire. This statement was supplied with the notification.

The data will be stored electronically and on paper.

As far as **security** is concerned, the Parliament plans to store the questionnaires in the unit's locked archives and on the unit's secure drive, to which only the unit's authorised personnel have access. The security of the Parliament's data network is the responsibility of DG ITEC.

### **3. Legal aspects**

#### **3.1. Prior checking**

This opinion on prior checking relates to the processing of personal data in the context of a survey aimed at **employees of the European Parliament with a disability**. The data are processed by a European institution in the exercise of activities which fall within the scope of Community law (Article 3(1) of the Regulation).

Although this survey is described by the Parliament as anonymous, given the nature of the data which will be collected (the data are linked to the disability of the individuals concerned and, amongst other things, to the adjustments made to the workplace on their behalf, or if the disability is visible and few people working for the Parliament have such a disability), the EDPS considers that the data subjects are likely to be identifiable in accordance with Article 2(a) of the Regulation.

The personal data are processed, at least in part, by automatic means (Article 3(2) of the Regulation). Consequently, the Regulation applies.

Article 27(1) of the Regulation cites for prior checking by the EDPS: *'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 the processing operations which are likely to present such risks. Article 27(2)(a) states that the processing of data relating to health falls within this category.

Indeed, as emphasised in the consultation, as far as the questionnaire is concerned, processing of the responses can be deemed to constitute processing of data relating to health, since these data contain references to the data subjects' disability.

The EDPS wishes to point out that it has already investigated a processing operation by the European Parliament with characteristics similar to those described in this case (Case 2012-0770).<sup>1</sup> However, in that case, the EDPS had emphasised that the processing of personal data relating to health had not been carried out in a structured way and affected only a very small proportion of the responses to the questionnaire. Conversely, in the case currently being investigated, the whole of the questionnaire relates to data relating to health and, therefore, to the processing thereof. Consequently, the EDPS believes that the processing operation in question must be subjected to prior checking under Article 27(2)(a) of the Regulation.

The notification from the DPO was received on 13 June 2013. Under the terms of Article 27(4), the present opinion must be delivered within two months following receipt of the notification. The Supervisor therefore had to deliver its opinion by 13 August 2013.

### **3.2. Lawfulness of processing**

Personal data may only be processed for the reasons specified in Article 5 of the Regulation.

In this case, the EDPS believes that the processing operation notified for the purposes of prior checking is governed by Article 5(a) and (d) of the Regulation.

As far as the legal basis is concerned, the Parliament refers to the UN Convention on the Rights of Persons with Disabilities, which has been ratified by the EU, and to the Code of Good Practice for the Employment of People with Disabilities (Bureau Decision of 22 June 2005). The EDPS notes that Article 8 of this Code states, amongst other things, the following: *A disability audit, under which directorates-general conduct a survey of their employees, who will declare if they believe that they have a disability, is conducted regularly*. Furthermore, the processing operation is carried out in the public interest and the criterion of necessity has been established. The processing operation therefore meets the conditions of Article 5(a).

Finally, since the processing operation is carried out on the basis of voluntary responses from the individuals concerned, it is also justified by the unambiguous consent given by the data subject in accordance with Article 5(d).

### **3.3. The processing of special categories of data**

Article 10 of the Regulation applies to this processing of data relating to health. However, this processing is permitted on the basis of the exception provided for in Article 10(2)(b), since processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law. Article 10(2)(a) may also apply, since *the data subject has given his or her express consent to such processing*.

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<sup>1</sup> Consultation concerning the processing covering the Work life balance for women members of the European Parliament (2012-0770).

### **3.4. Data quality**

The data to be processed appear to be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed (Article 4(1)(c)).

With regard to the requirement that the data be accurate and, where necessary, kept up to date (Article 4(1)(d)), the EDPS recognises that it is not practically possible to ensure that the data supplied in the questionnaire are kept up to date. However, this could still be possible prior to aggregation of the data. This matter is broached below in respect of the rights of access and rectification available to the data subject.

### **3.5. Retention of data**

As explained in the documents received, the data will be kept for one (1) year, i.e. the period deemed necessary for the unit to complete its analysis (particularly in the context of its resources). After this period, the results will be retained for statistical purposes.

In pursuance of Article 4(1)(e), the ‘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 Parliament therefore makes a distinction between retention of the individual questionnaires (one year) and retention of the aggregated data (no limit). Since the aim of the processing operation is to prepare a final report containing the aggregated results of the analysis of the questionnaires, the individual questionnaires must not be kept for longer than is reasonably necessary. The EDPS notes that the Parliament believed that a retention period of one year was necessary in order to enable it to complete its analysis of the questionnaires for the purposes of extracting aggregated data, and that it therefore deemed this period of one year to be reasonable. As regards the aggregated data which are no longer associated with the questionnaires, the EDPS does not object to these aggregated data being kept for a longer period.

### **3.6. Transfer of data**

As far as the intended recipients of this processing operation are concerned, only Article 7, which provides for the transfer of data within or between Community institutions or bodies, applies in this case.

The EDPS considers that the transfer of aggregated data in this way may be deemed to be necessary for the legitimate performance of tasks covered by the competence of the specified recipients. Indeed, the Code of Good Practice states, amongst other things, that the results of the audit (i.e. the questionnaire) will be reported to DG Personnel.

### **3.7. Rights of access and rectification**

As explained above in connection with data quality, it is difficult to grant the rights of access and rectification provided for in Articles 13 and 14 of the Regulation respectively.

The EDPS acknowledges that Articles 13 and 14 of the Regulation do not apply in the context of Article 20(4) of the Regulation, according to which ‘*Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided*

*that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.'*

### **3.8. Information to be supplied to data subjects**

In the case of the questionnaire, the responses provided all originate from the data subject. In this context, only Article 11 applies.

The EDPS has received the draft data protection statement. This statement contains the information provided for in Article 11 of the Regulation.

However, the EDPS wishes to make it clear, as emphasised above, that the right of access can only be granted to data subjects for the period during which the individual questionnaires are retained and only in cases where the data subjects can be identified through their responses. As explained above, the privacy statement must be amended in this respect.

### **3.9. Security**

In accordance with Articles 22 and 23 of the Regulation, the controller must implement 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.

The safeguards implemented by the Parliament must take into account the risks presented by the purpose of the processing operation. In the specific context of a survey relating to a disability and therefore to the processing of data relating to health, measures designed to limit the collection of these personal data and relating to their security are necessary.

Having analysed in detail the security measures adopted, the EDPS deems these measures to be adequate in the context of Article 22 of the Regulation.

### **Conclusion**

On the basis of the analysis of the information supplied in the notification, the proposed processing operation does not appear to be contrary to the provisions of Regulation (EC) No 45/2001. Consequently, the EDPS has decided to close the case.

**(signed)**

Giovanni Buttarelli