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European Commission
BRU-MADO 13/028

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correspondence

Dear Ms Brandtner,

On 16 April 2014, the Data Protection Officer (DPO) of the European Commission submitted a notification for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 concerning the "DG COMP- Development programme for COMP middle managers. Use of a 180° tool of feedback on leadership competencies" at the European Commission, Directorate General Competition. On 7 May 2014, the EDPS requested further information, which was provided on 12 May 2014.

As indicated in the cover note attached to the notification, this processing operation is very similar to others which have already been prior-checked by the EDPS.¹

Upon analysing the documentation submitted, the EDPS has come to the conclusion that the processing operations are indeed very similar to those already prior-checked. For this reason, this Opinion does not contain a full analysis of all data protection aspects, but focuses on pointing out those aspects that require improvement.

The processing operations notified relate to a feedback programme for DG COMP middle managers (reviewees), consisting of a self-assessment and assessment by colleagues (reviewers). The bulk of the processing (generation of the reports, possible debriefing interviews) will be carried out by a contractor. For this purpose, the European Commission intends to use a framework contract for outsourcing between the European School of Administration and a consortium of service providers. This framework contract contains rules on data protection,

¹ EDPS case 2013-1290 is mentioned in the cover note; EDPS cases 2009-0215 and 2012-0590 are also similar.

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specifying inter alia that the processor shall only act on instruction from the controller. In this framework contract, the controller is referred to as the Director of the European School of Administration. The Commission explained that it simply uses the framework contract as a model, that there is no involvement of the European School of Administration in the processing at hand, and that the actual contract to be signed with the providers will refer to DG Competition as the controller.

We especially take note that participation in the programmes is entirely voluntary and that no individual reports, but only group reports, will be made available to DG COMP. None of the data processed will be used for appraisal purposes. This is explicitly mentioned in the privacy statements supplied. The individual reports are generated by the contractor carrying out the programmes and are sent to the reviewee, who may ask for a debriefing with a coach employed by the contractor.² The individual report will only be transferred to this coach if reviewees request this debriefing. These debriefing sessions may lead to a development plan, which will then eventually be discussed between the reviewee and you.

The notification form as submitted indicates you as the controller, and one of your team members as delegate. The EDPS considers the European Commission as an organisation (or an organisational entity forming part of it, but never a person) to be the controller. This is reflected correctly in the model privacy statement included in the supporting documentation. We thus consider this information to simply indicate contact points, without prejudice to the responsibility of the Commission.

Taking note that the contract to be signed with the external provider will contain the appropriate references regarding controllership, there are no formal recommendations to be made. We have therefore decided to **close** case 2014-0446.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Philippe RENAUDIÈRE, Data Protection Officer, European Commission
Mr Mihail ONEA, HRM Officer, COMP.R2.001, European Commission

² The information supplied in the notification seems to be unclear, as the description of the processing provided states both that "the report will be made available to the reviewee (and upon his/her agreement) to the external coach" and that "there is no obligation for the reviewees to share the report with anybody but the coach". The Commission confirmed that the former statement is the correct one.