

Opinion on a notification for Prior Checking received from the Data Protection Officer of OLAF regarding their "human resource needs analysis"

Brussels, 23 July 2014 (Case 2014-0012)

1. Proceedings

On 7 January 2014, the European Data Protection Supervisor (**EDPS**) received a notification for prior checking relating to the processing of personal data in the context of a human resources needs analysis from the Data Protection Officer (**DPO**) of the European Anti-fraud Office (**OLAF**).

Questions were raised on 20 January 2014 and 22 May 2014 to which the DPO replied respectively on 16 May and 18 June 2014. The draft opinion was sent to the DPO for comments on 16 July 2014. The EDPS received a reply on 22 July 2014.

2. The facts

As part of its future HR Strategic Plan, OLAF intends to launch an analysis of the current human resources in order to assess the future HR needs taking into account the ideal job profiles that OLAF needs (the "**HR needs analysis**"). In addition to supporting OLAF's HR capacity development, OLAF underlines that the HR needs analysis also responds to a need expressed by staff in DG HR's 2013 staff survey to get more support from the managers in their career development.

Ideal profiles will be established based on the current job descriptions that will be discussed with managers and jobholders during a workshop in order to define job profiles reflecting the needs of the service. Every jobholder will be assigned an ideal profile.

The objectives of the analysis are to:

- identify the missing skills/resources of staff members vis-à-vis the ideal profiles;
- define individual and/or general training plans;
- develop career development plans with staff members;
- identify future talents (management skills, expertise, senior experience);
- forecast mobility (retirement, end of contracts) to elaborate succession plans;
- define specific recruitment needs;
- identify seniors who could train/mentor their colleagues/newcomers;
- assure continuity of the service.

The data for OLAF staff will be collected by Heads of unit and the data for middle management will be collected by the responsible Director.

The data will be gathered by interviewing every jobholder individually and recording their answers on a standard questionnaire with the following entries:

- Unit; seniority in the unit; job title;
- Status; category; age; mother tongue; working conditions (part time, teleworking, etc.);
- Education; previous experience; previous training;
- Compared to ideal profile (experience, knowledge);
- Additional comments (which may include for example a foreseen vacancy of the post in case of coming retirement, end of contract, CCP, etc.) ;
- Training needs identified.

Each Head of unit/Director will summarise the responses from their staff in a spread sheet for his/her respective unit/directorate. According to the notification and its appendixes, the questionnaire and the spread sheet do not include the names of the data subjects. In further correspondence with the EDPS, the DPO indicated that, since the purpose of the processing will be both to develop a plan for HR needs and to define individual actions, it would be more consistent to insert the names of the individuals in these documents and that OLAF would do so.

Both the completed questionnaires and the spread sheet will be submitted to OLAF's HR Unit where they will be analysed. The Heads of unit/Directors will be instructed not to retain any copies of the completed questionnaires or spread sheets and not to use the data thereby gathered to measure productivity or for performance evaluation purposes in the context of the appraisal and promotion exercises.

The conclusion of the HR needs analysis will be used by the HR unit to develop general action plans as well as to define individual training/career development actions, which will be integrated in the HR Strategic Plan. Thus, even though the data gathered in this context will not be used as such for performance purposes, they will feed individual training plans, the follow-up of which is part of the staff appraisal by their line manager.

[...]

OLAF intends to conduct a new HR needs analysis periodically in the future as the need arises.

3. Legal analysis

3.1. Prior checking

Applicability of Regulation No 45/2001 ("the Regulation"): The processing of data constitutes a processing of personal data, as the data collected through the questionnaires and summarised in spread sheets relate to identifiable individuals, even if the names of the individuals were not mentioned. The data processing is performed by OLAF in the exercise of activities which fall within the scope of EU law (Article 3(1) of the Regulation in the light of the Lisbon Treaty). It is done partly through automatic means. Therefore, the Regulation is applicable.

Grounds for prior checking: Article 27(2)(b) of the Regulation subjects to prior checking "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". The comparison between the data subject's profile and the ideal profile corresponding to his/her job description and the further identification of training needs and other career -related plans involves an evaluation of his or her ability.

Deadlines: The notification of the DPO was received on 7 January 2014. According to Article 27(4) the present Opinion must be delivered within a period of two months. The procedure was suspended for a total of 149 days. Consequently, the present Opinion must be delivered no later than on 04 August 2014.

3.2. Lawfulness of the processing

Personal data may only be processed if legal grounds can be found in Article 5 of the Regulation. Under Article 5(a) of the Regulation, personal data may be processed *inter alia* if *the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the [EU] institution or body*".

According to the notification and the privacy statement attached thereto, the HR needs analysis will be the first step of OLAF's future HR Strategic Plan. The HR Strategic Plan, which refers to the HR analysis needs although not in detail, has not yet been adopted by the Director General. The HR needs analysis will help OLAF gain a deeper understanding on the current human resources and define the needs for the future in terms of developing skills by trainings, mentoring and any other appropriate means.

The data processing operations conducted for the HR needs analysis can be considered as necessary for the performance of tasks carried out by OLAF in the public interest on the basis of the Treaty and Article 24a of the Staff Regulations. Recital 27 also includes the processing necessary for the management and functioning of the institution. In order to reinforce the legal basis of the processing, **the decision approving OLAF HR Strategic Plan or another decision of OLAF management should mention explicitly the main lines of the HR needs analysis process (including its purposes and means)**¹.

3.3. Data Quality

Data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed (Article 4(1)(c) of the Regulation).

In this case, the data are collected from the data subjects themselves during an interview with their manager (Head of unit or Director). Moreover, the data subject has the right to access and the right to rectify data, so that the file can be as complete as possible. Finally, OLAF intends repeating the HR needs analysis periodically as the need arises, ensuring that data collected are up-to-date, ensuring data accuracy. These elements contribute to ensuring data quality.

In order to make sure that the questionnaire as filled in by the manager corresponds to the data subject's declarations, the EDPS recommends that **the data subject signs the questionnaire at the end of the interview**.

3.4. Conservation of data

The data should be kept in a form which permits identification of data subjects for not longer than is necessary for the purpose for which the data are collected and/or further processed (Article 4 (1) e) of the Regulation).

According to the notification, OLAF HR unit will keep individual questionnaires during six months and spread sheets during one year after their transmission by the Heads of unit/directors.

¹ According to the information provided by the controller, the HR Strategic Plan refers to the HR analysis needs but not in detail.

In order to eliminate any uncertainty as to the actual conservation duration of the data, **OLAF should provide that Heads of unit/Directors should transmit the questionnaires and spread sheets to OLAF HR unit as soon as possible after the collection of the data.**

3.5. Rights of access and rectification

Right of access and right to rectification are granted (cf. Section 6 of the privacy statement appended to the notification). For the sake of completeness, the EDPS recommends adding an explicit reference to Articles 13 and 14 of the Regulation to the Privacy Statement (see Section 3.6. below).

3.6. Information to the data subject

The notification² and the privacy statement should be amended³ in order to reflect that the questionnaires and the spread sheets will actually **include the names** of the data subjects.

Moreover, in order to ensure fair processing, the statement should clarify that even though the data gathered in the context of the HR needs analysis will not be used as such for performance purposes, they will feed **individual training plans**, the follow-up of which is part of the staff appraisal by their line manager (to be added to the sixth paragraph of the first page of the privacy statement).

In addition, the following **information** required by Article 11 of the Regulation is **missing** in the privacy statement:

- OLAF's organisational entity that is entrusted with the data processing;
- Legal basis of the processing operation: the privacy statement should clearly indicate that the HR needs analysis is part of the HR Strategic Plan adopted by the Director General of OLAF, as well as the date of adoption of the Strategic Plan;
- Conservation periods.

Finally, **the privacy statement should be made available to the data subjects** before the launching of the HR needs analysis (through an individual communication of the privacy statement or by informing the data subjects about the statement's availability on OLAF's intranet).

3.7. Security measures

[...]

Conclusion:

There is no reason to believe that there is a breach of the provisions of the Regulation provided that the following providing the following recommendations are fully taken into account:

² More precisely: Section on automated/manual processing operation.

³ More precisely: 1. Description of the processing (last sentence of the second paragraph); 4. How do we protect and safeguard your information (second sentence of second paragraph).

- Mention explicitly the main lines of the HR needs analysis process (including its purposes and means) in the decision approving OLAF HR Strategic Plan or in another decision of OLAF management;
 - Ask the data subject to sign the questionnaire filled in by his/her manager in order to confirm the accuracy of the data gathered by the manager during the interview intended for gathering information on the data subject's professional status and capabilities;
 - Provide that Heads of unit/Directors will transmit the questionnaires and spread sheets to OLAF HR unit as soon as possible after the collection of the data;
 - Amend the notification and the privacy statement to reflect that the questionnaires and the spread sheets will include the names of the data subjects and to clarify that even though the data gathered in the context of the HR needs analysis will not be used as such for performance purposes, they will feed individual training plans, the follow-up of which is part of the staff appraisal by their line manager;
 - Complete the privacy statement with the following information: OLAF's organisational entity that is entrusted with the data processing; indication that the HR needs analysis is part of the HR Strategic Plan adopted by the Director General of OLAF, as well as the date of adoption of the Strategic Plan; conservation periods;
 - Ensure that the privacy statement will be made available to the data subjects before launching the HR needs analysis;
- [...].

Done at Brussels, 23 July 2014.

(signed)

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