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Dear Mr Benisch,

After examining your prior checking notification "customer satisfaction surveys at the European Central Bank", the European Data Protection Supervisor concluded that the case is not subject to prior checking..

The notification was submitted under Article 27(2)(b) of Regulation (EC) 45/2001 which deals with processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.

The data processing described in the notification essentially consists of carrying out customer satisfaction surveys in order to evaluate the performance of the different services of the ECB. For example, ECB's annual internal customer satisfaction surveys seek to assess how satisfied are the bank's "internal customers" with the services of the various "business areas" they use (e.g. how satisfied are the various users within the ECB with the work of ECB's internal translation service).

The purpose of the surveys is not to evaluate individuals, but rather services, much the same way as the purpose of an audit is to evaluate compliance of the work of an organizational unit or a process, rather than to evaluate the performance of individuals.

Indeed, as described in the notification, the ECB already made efforts to minimise the chances that any evaluation of personal aspects of an individual may occur.

First, the survey questions do not collect the survey participants' personal information. Indeed, data are processed anonymously.

Second, the questions also are not phrased with the aim of collecting personal data of individuals working for the specific services under evaluation. For example, comments such as "the translations of XYZ are always full of mistakes" are not sought or encouraged. Indeed, the questions are drafted to trigger more general comments and relate to the performance of the service rather than individuals (e.g. "the quality of translated documents varies, there should be more consistency"). In fact, any "inappropriate" comments, including comments containing sensitive personal data, are removed by a team of three data administrators before the results are sent to the survey owner/organizer.

Based on the foregoing the surveys do not appear to be intended to evaluate personal aspects relating to the data subject, which would lead to the applicability of Article 27(2)(b) of the Regulation.

With that said, as a matter of fact and despite the precautions taken by the ECB, it is always possible that some personal information may be included in the survey results, in particular, those that may be originating in the responses given to open questions.

The EDPS therefore suggests, first, that further steps should be taken to minimize the possibility of such an occurrence. In particular, the participants should be advised not only not to disclose sensitive data regarding third parties (data under Article 10 of the Regulation), but also no personal data or comments on any particular individual's performance at all (e.g. no comments of the kind "the translations of XYZ are always full of mistakes"). If any such information is raised in any response, those should be removed or anonymized. This should be made clear in the data protection notice.

Second, we also suggest that ECB management must clearly and explicitly recognize the limitations of the reliability of the data to inform decisions that may individually affect data subjects, be they individuals specifically commented on or the head of the service ultimately responsible for the performance of his/her team.

For this reason, whereas the survey results can be used, as one factor, to help assess what measures need to be taken to improve the work of specific services, they cannot be directly used for purposes of evaluating personal aspects relating to data subjects. This should be clearly stated on the data protection notice.

This should mean, in practice, that the survey data cannot be relied upon to justify decisions regarding performance appraisal, promotion, or assessing contract renewal, and the survey results should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members.

This does not mean that concerns regarding individual staff members who receive specific negative comments or managers of underperforming services cannot be ultimately held individually accountable. However, these decisions should not be based on the outcome of the survey itself.

Finally, we note that our letter was based on the assumption that your surveys are designed to encourage and collect comments on the performance of the services rather than on the performance of individuals. If this is not the case or you believe that there are other factors

justifying prior checking of the customer satisfaction surveys at the European Central Bank, we are, of course, prepared to review our position, prior check your case, and provide additional recommendations.

I would appreciate if you could share these considerations with the controller. We remain available for any further consultation on the above matters.

Yours sincerely,

(signed)

Giovanni BUTTARELLI