



Consultation concerning the processing covering the Work life balance for women members of the European Parliament (2012-0770)

The case was submitted by the Data Protection Officer (DPO) of the European Parliament (EP) for consultation on the basis of Article 46 d) of Regulation 45/2001. However, on the basis of the elements provided, the EDPS has decided to consider this request as a consultation on the need for prior-checking (Article 27.3 of Regulation 45/2001). In the consultation, the DPO joined a draft notification (under Article 25 of the Regulation), a questionnaire (the survey) that is intended to be used by the data controller as well as a consent form on the use of personal data in the framework of the processing operations.

The consultation and notification underline that the processing operation could be submitted for prior checking under Article 27.2(a) that is processing of data relating to health.

After having examined the data processing operations described in the prior checking notification and after having received the requested additional information from the data controller, we have reached the conclusion that, for the reasons described below, **the processing covering the Work life balance for women members of the European Parliament is not subject to prior checking.**

Purpose

As it is described, the purpose of the data processing is "*to identify linkage between the work as an MEP and the personal life and to obtain some information on the females MEP's opinion on what could be done from the administration's side in order to facilitate their work in the EP*". This is done through a survey that will be sent to the data subjects who are invited to fill it in and send it back to the data controller.

The data subjects are the female Members of the European Parliament.

The survey will be sent to the data subjects via email and the filled surveys can be sent back using the preferred medium of the data subjects, i.e. via email or through internal mail.

It is also stated that the participation in the survey is voluntary and that the answers to the questions are not compulsory.

The data which will be processed are: the country of election of the MEP; the age range; information about children, persons with disabilities or elderly persons in charge of the MEP; information on conciliation of professional life and personal life (transport, housing, family household, etc.) as well as special facilities for the reconciliation of parliamentary activity and personal life (child care, nursery, permanent or part-time home help for all domestic aspects); the country which furnishes this aid.

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The data will be treated in order to obtain some statistical conclusions on the female MEP's opinion about what could be done from the administration side in order to facilitate their work in the EP.

As explained in the additional information received, the results may be used internally and externally by the Vice-President of the EP and Chairperson of the High Level Group on gender equality and diversity, as well as by EP bodies involved in the survey (this includes the Secretariats of the Bureau and the Quaestors). As stated in the information received, the data will be stored for one year.

Legal basis

The legal basis for the processing is to be found in the EP resolution of 17 November 2011 on gender mainstreaming in the work of the European Parliament (2011/2151 INI)¹. Furthermore, the draft mandate of the High Level group foresees that one of the group's mandate for the 7th legislative term (2007-2013) is "*promoting arrangements which could be of assistance to EP staff, as well as to Members, in combining work and family life*". Finally, the legal basis of the processing is also based on the Decision of the High Level Group on gender equality and diversity of 12 September 2012, which discussed and approved the conduct of the survey.

Regarding the lawfulness of the processing, the EDPS considers the mentioned legal basis as sufficient with regard to Article 5 (a) of the Regulation. As to the necessity of the processing, the EDPS considers that the exercise can be considered as necessary to reach the abovementioned purpose. The data processing operations are also based 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. These are not compulsory. Therefore, we recognise this legal basis as an additional ground for processing.

Processing of personal data

Through the use of the survey, there is a processing of personal data ('*any information relating to an identified or identifiable natural person*' – Article 2(a) of the Regulation), which includes operations such as collection, storage, consultation and erasure performed on personal data.

The EDPS considers that, although the goal of the processing operations is not to identify the data subjects, such identification will remain possible (especially for small countries with few female MEPs). Therefore, identifiability of the data subjects (also by the service in charge of aggregating the data) remains likely. Furthermore, data subjects may also be directly identifiable if they reply with their email address.

The EDPS notes that the processing of some of the answers (two out of the ten) could be considered as processing of personal data related to health as the questions contain reference to the possible care of elderly people/disabled child. The Regulation foresees that (Article 27.1) processing operations likely to present specific risks shall be subject to prior checking and that (Article 27.2.a) processing of data relating to health are likely to present such risks.

However, with regards to the specific case of the survey conducted by the European Parliament, the EDPS notes that several measures have been taken in order to mitigate the risks mentioned in Article 27.2.a of the Regulation that makes him conclude that the processing is not subject to prior checking:

- Firstly, the purpose of the processing is not to process health related data but to obtain some statistical conclusions based on aggregated data;

¹ [http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/11-17/0515/P7_TA-PROV\(2011\)0515_EN.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/11-17/0515/P7_TA-PROV(2011)0515_EN.pdf).

- Secondly, 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 and the data subjects are informed by a privacy statement about the possibility to choose;
- Thirdly, the analysis of the data is conducted on the basis of aggregated data for which retention is foreseen for one year; the individual questionnaires are stored for no longer than the time necessary to aggregate the data;
- Fourthly, the EP is not processing more data than those necessary to identify directly the data subjects (no identification number of the data subject, no name);
- Fifthly, neither individual data nor data that could identify a data subject will be published based on the processed data.

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 of data

As explained in the documents received, the data will be stored for 1 (one) year. The EDPS reminds that, on the basis of Article 4.1.e the "*data should 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*".

As the purpose of the processing is to use the data in an aggregated format in order to obtain some statistical conclusions, the EDPS invites to make a distinction between the storage of the individual questionnaires and the aggregated data. For the retention period of the individual questionnaires, this retention should be very limited; for instance, a period of three months could be reasonably considered as a maximum retention period for the individual questionnaires collected after the end of the deadline for submission of answers by the data subjects. After this short period of retention, these individual questionnaires should be deleted. Regarding the aggregated data, the European Parliament could store them for the proposed time of retention of 1 year. The EDPS invites the European Parliament to set the time limits for retention of the data and to include information on these retention periods in the information provided to the data subjects.

Information

As regards the information to the data subjects, as mentioned above, the EDPS received a draft consent form. The EDPS has the following remarks in order for the current draft to comply with Articles 11 and 12 of Regulation 45/2001.

- The consent form should be renamed as to clarify that it is a document that serves to inform the data subjects in line with Regulation 45/2001 and that it also serves as a consent form. Therefore, the EDPS suggests naming it: "Privacy statement and Consent form to the processing of personal data about work-life balance for women Members of the European Parliament";
- The purpose should be made more visible and matches the explanations given in the draft notification;

- The European Parliament should be mentioned in the document as data controller and must be represented regarding these processing operations by someone playing the relevant role, for instance by an official having managerial tasks;

- The right of access can only be provided to the data subjects for the period of time during which the individual questionnaires are kept and only in the cases where the data subjects can be identified, through their answers. This identifiability will have to be assessed on a case by case basis by the data controller. After the aggregation of data has taken place, it is not possible to provide a right of access or rectification to the data subjects, as their specific data will not be identifiable from the aggregated data. Therefore, the right of access and right of rectification will not apply anymore. The privacy statement should be amended in this regard;

- The time limit for storing data should be clarified in line with the above mentioned comment, i.e. make a clear distinction between the retention of questionnaires and the retention of the aggregated data;

- The EDPS recommends deleting the following sentences: *"Names or identification numbers shall be gathered, but will not be treated as such. Names or identification numbers shall not be transmitted to or used by third party stakeholders. Data will be used for statistical purposes only. However, the data Controller points out that, due to the analysis of the data, it could be possible for a personal identification to occur especially for women elected in the smaller countries or owing to other particular reasons. This is not the purpose of the survey, but a crosscheck of the data allows for this possibility to arise. Unfortunately the data controller is unable to avoid this possible situation without affecting the survey's results. Therefore, I accept that it may be possible to be identified when/if the results are published"*.

Instead, on a basis of the notification and further information provided by the European Parliament , we recommend to amend the privacy statement and consent note along the line of the following statements: "Names or contact details (such as email) may be processed, but will not be treated as such and shall not be transmitted to or used by third party. The data Controller will ensure that no individual answers to the survey will be published based on the collected data. Only aggregated data will be processed by the data controller in order to draw conclusions";

- The EDPS would like to receive the amended privacy statement and consent note.

Brussels, 23 October 2012