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ASSISTANT SUPERVISOR

Mr Henrik KERSTING  
Head of Unit  
Human Resources Management  
Secretariat-General  
European Commission  
BRU-BERL 07/085

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Dear Mr Kersting,

On 18 November 2013, the Data Protection Officer (DPO) of the European Commission has submitted a notification for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 ("the Regulation") on the "SG - Development programme for SG middle managers. Use of self-perception questionnaire ("PERFORMANSE") and 360° tool of feedback on leadership competencies".

As indicated in the cover note attached to the notification, this processing operation is based on two tools which have already been prior-checked by the EDPS.<sup>1</sup>

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.<sup>2</sup> 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.

We take especially note that participation in the programmes is entirely voluntary and that no individual reports, but only group reports<sup>3</sup>, will be made available to the Secretariat-General. 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 participants, who may ask for a debriefing with an employee of the contractor.

While a meeting between participants and you (or another member of your unit) to discuss personal development needs following the 360° feedback exercise is foreseen, we understand

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<sup>1</sup> Opinion of 20 July 2010 in case 2009-0215 and Opinion of 15 March 2013 in case 2012-0590.

<sup>2</sup> The 360° feedback tool is identical to the tool as prior-checked in case 2009-0215, except for the shorter conservation period (three months instead of six). PERFORMANSE is identical to the processing operation prior-checked in case 2012-0590.

<sup>3</sup> As well as a list of participants in the PERFORMANSE self-perception questionnaire.

that it is completely up to the participants to decide which information (if any) from the results of the exercise they would like to share with you.

As the lawfulness of the processing is based on Article 5(d) of the Regulation (consent), we would like to point out that this consent can be revoked at any time, also while the exercise is underway. When this happens, the exercise as regards this specific participant has to be stopped and any personal data already collected should be deleted. The sentence "*There is no obligation for the participant to share the individual report with anyone but the coach subcontracted to the SG and bound by a confidentiality clause*" in the "data concerned" section of the privacy statement for the 360° feedback exercise could be understood to mean that participants can no longer opt-out once the process has started. **It should be clarified that this is not the case.**

The EDPS considers the Secretariat-General of the European Commission as an organisation to be the controller. Please note that the Regulation in its Article 2(d) defines the controller as the "*the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data*", i.e. always as an organisational entity and not *ad personam*. **This should be clarified in the documentation provided.**

Please inform the EDPS of the measures taken based on the recommendations of this Opinion within a period of 3 months.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Philippe Renaudière, Data Protection Officer, European Commission