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correspondence

**Subject: Article 27(3) consultation concerning the “Enterprise Portfolio Management Tool” (Case 2014-0173)**

Dear [...],

I refer to the prior checking notification on the above quoted processing operation at the General Secretariat of the Council of the European Union (“**Council**”), which was notified to the European Data Protection Supervisor (“**EDPS**”) on 5 February 2014. The Council’s letter accompanying the notification informed the EDPS that the processing operation was submitted as a consultation pursuant to Article 27(3) of Regulation No 45/2001 (the “**Regulation**”) and should be considered as a notification for prior-checking, would the EDPS assessment conclude that the processing operation was subject to prior checking.

Your notification describes that the Council intends to introduce an electronic system called *Enterprise Portfolio Management Tool* (“**EPM**”). EPM is conceived to manage the planning, implementation and monitoring of projects executed by the Directorate-General A, Directorate for Communication and Information Systems (“**DGA CIS**”), of the Council. The processing includes data concerning the hours spent by each member of the team per working day on a project. It also records absences, planned or not, of the team members, in order to be able to plan ahead the necessary calendar days for the execution of a given project. The data subjects are all officials, other servants and service providers working in DGA CIS.

In more detail, the categories of data processed include:

- identification data: the name, information if internal or external staff, e-mail, unit, sector, office, function, activity status, end of activity date, end of contract date; this

information is partly taken from existing databases (Active directory, Meta-data directory);

- project data: project number, program name, project name, project end date, status, project description, project sponsor, project manager, total planned budget, total man-days, business units impacted, projects life cycle phases including resource planning, value assessment, risk assessment, project % completion (calculated), activity completion (calculated), activity of the next period (calculated);
- time-related data for each staff member or consultant participating in a project or in a recurring activity (maintenance or support operations); time spent on project activities, per working days, holidays, non-working periods, resource availability (calculated). This information is filled in by the data subjects. With regard to non-working periods, the data subjects need to specify if they are absent for “training”, “mission” or “absence” (this category comprises all other absences such as holidays or sick-leave).

Reports will be generated to provide information on project progress, resource consumption, resource availability, portfolio status and timesheets.

According to the notification, the overall strategic objective of the EPM is to increase efficiency and improve planning and monitoring whilst enhancing DGA CIS ability to deliver against its remit and core values by allowing a better prioritisation and optimisation of the IT investments of the GSC, an alignment of its services to the business needs and an improvement of its quality of service with equal or potentially decreasing IT spending budget. The Council informed us that the system is not intended to evaluate staff.

In the notification the Council also indicated that in view of the possibility to monitor the performance of staff, the processing might present certain risks to the rights and freedoms of data subjects within the meaning of Article 27(2)(b) of the Regulation. According to this article, such risk would arise if it would entail "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

After an in-depth examination of the data processing operation as described in the notification and further information received from the DPO of the Council on 13 February 2014 and 20 March 2014, for the reasons described below, the EDPS considers that the data processing that occurs in this context is **not subject to prior checking** under Article 27 of the Regulation.

According to the notification and the additional information received by the Council on 13 February 2014 the purpose of the processing is to increase efficiency and improve planning and monitoring capacity in the Council. The purpose of the information processed is not to evaluate data subjects. The processing may entail however some monitoring of the performance of each project team member and could thus give an indication about the performance of a project team member. For a Head of Unit it would be thus difficult to make abstraction of the information available in EPM when assessing a staff member. Therefore such information might be used –as many other pieces of information on a staff member’s performance in his job– when evaluating a staff member. However, as confirmed by the Council the processing operation is not “intended” to evaluate personal aspects. In view of this, in the EDPS’ view the notification is not subject to prior checking on the basis of Article 27(2)(b) of the Regulation.

This assessment is based on the information received by the Council and the purpose of the processing provided by it. In this respect the EDPS notes that the Council has integrated some of the recommendations of the EDPS made in a case the Council notified concerning the productivity monitoring of staff (Case 2013-0017, notably the possibility to comment on reports and information in EPM and to justify certain figures, etc.). Therefore, should the purpose of the processing change and the Council intends to use the information generated in EPM for the evaluation of staff, the need for prior checking would need to be assessed again.

The notified processing operation is thus not subject to prior checking on the basis of Article 27(2)(b) of the Regulation. As confirmed by the Council also no information on the type of absence other than training or mission needs to be given by the data subjects. Therefore also a notification on the basis of Article 27(2)(a) is not necessary as no medical data is processed. Finally, Article 27(2)(c) of the Regulation is not a ground for prior checking in this case either, as –although different databases feed information into the EPM– other databases used are not linked and there is no interaction between them but simply feed in identification data of the data subjects.

However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position. Similarly, as stated above, in the event of modifications to this data processing, we would kindly ask you to reassess the need for submitting this processing to the EDPS for prior checking.

Without prejudice to the above considerations, the EDPS would like to give some recommendations regarding the processing of personal data in the EPM:

1. The Council mentions as a legal basis notably Article 240 TFEU and Article 23 of the Rules of Procedures of the Council, which are very general references. Furthermore recital 27 of the Regulation states that “*processing of personal data for the performance of tasks carried out in the public interests [..]includes the processing of personal data necessary for the management and functioning of those institutions and bodies*”. The EDPS however welcomes that the Council reinforces the legal basis by a Note to Staff which also integrates the Privacy Statement. This Note provides wide information on the EPM in addition to the necessary information pursuant to Articles 11 and 12 of the Regulation and will be signed by the Director for Communication and Information Systems.
2. In line with the principle of data quality and notably Article 4(1)(c) of the Regulation, to avoid processing excessive data and also in view of the purpose of the processing, the EDPS recommends that only staff members that actually work on IT or other projects and thus are covered by the purpose of the processing should fill in information in the EPM and not automatically all staff of the CIS.
3. Considering that the purpose of the processing operations is not the evaluation of the data subject and in line with the need-to-know principle enshrined in Article 22 of the Regulation the Council should verify whether it is necessary for the Head of Unit to have access to all the detailed time sheets of the staff members of this unit on the various projects, if he is not the project manager at the same time. Access should be limited in this respect to what is necessary to allocate and plan resources, but it should be avoided to generate information in reports or in the system which could be mainly be used for potentially evaluating staff if there is no justification why this is required in view of the declared purpose of the processing.
4. Furthermore, pursuant to Article 4(1)(c) of the Regulation the data processing in the EPM should be limited to personal data which is relevant in view of the purpose of the

processing. In this respect it is questionable if it is necessary to process contact information, office number, etc. of the data subjects.

5. With regard to the time-related data to be filled in by the data subjects, the EDPS welcomes that for absences no reason or type of absence is requested in the forms. This avoids that sensitive data on health are processed in the EPM (e.g. sick leave).
6. The Council intends to retain the personal data for three years after the end of the project. Such time period is in the Council's view necessary to use historical data for better planning and estimation of HR/timing of future projects. The EDPS takes note of this justification.

I would appreciate if you could share this position with the relevant persons in the Council and inform us of the follow up measures taken concerning the above recommendations **within three months** of reception of this letter.

We remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: [...], Data Protection Officer, General Secretariat of the Council