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C 2014-1146
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Subject: Prior checking notification of 360° Feedback tool for managers - European Parliament (Case 2014-1146)

On 9 December 2014, the Data Protection Officer (DPO) of the European Parliament submitted a notification for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 (the "**Regulation**") on the "360° Feedback tool for managers" (the "**Programme**").

Questions were raised on 12 December and 22 December 2014 to which the DPO replied respectively on 18 December 2014 and 14 January 2015. The draft Opinion was sent to the DPO for comments on 27 February 2015. No comments were received within the deadline which expired on 9 March 2015.

This processing operation is very similar to other notified cases of feedback tools for managers already prior checked by the EDPS¹. For this reason, this Opinion does not contain a full analysis of all data protection aspects, but focuses on pointing out those that require improvement.

¹ Cases 2009-0215, 2013-1290 and 2014-0906. In this context, we also take note of Case 2013-0772, a comparable processing operation regarding the self-assessment tool "PerformanSe", notified by the European Parliament on 28 June 2013.

1. Processors and data subjects

The Programme involves two processors: 1) the Parliament's contractor, BICK Consortium/Bernard Julhiet Group and 2) the subcontractor, Cubiks. From the information provided we understand that BICK Consortium collects and processes the data provided by the Programme participant (middle manager participating in the Programme) and their colleagues through a web-based tool and generates individual reports (one for each Programme participant) and group reports (aggregated results with no reference to individual answers/results). If the Programme participant so wishes, BICK Consortium provides for individual feedback sessions following the communication of the individual report. Cubiks provides the online framework on which the 360° questionnaires are built. However, the specific roles and tasks of the processors do not appear clearly from the notification² and the privacy statement does not mention the existence of a subcontractor.

Recommendation: The notification, and in particular, the privacy statement should further clarify the respective tasks of both processors.

As regards data subjects, the notification refers to both the "assessee" (Programme participant/middle manager) and participating assessors (peers and collaborators of the Programme participants), requested to review the former.

Clarification: The processing operations subject to prior checking under Article 27(2)(b) of the Regulation (evaluation of personal aspects of the data subject) relate to the assessees, i.e. the Programme participants. Therefore, our comments and recommendations only cover the processing of the Programme participants' data.

2. Lawfulness of the processing

The processing is based on Article 5(d) of the Regulation (unambiguous consent). The Programme is voluntary and it is clearly presented as such to the middle managers when invited to participate. Consent may be revoked at any time, also while the exercise is underway³. This free choice should apply to the whole process, including the bilateral session between the manager and his/her hierarchical superior during which training needs can be discussed.

Recommendation: The notification⁴ and the privacy statement should make clear that consent covers the whole process including group reports (see Section 3 below) and the voluntary bilateral session with the hierarchical superior.

3. Processing of group reports

According to the notification, the generated group reports contain only aggregated information about the compiled group results, such as most and less voted competencies and number of participants, "*without any possibility to track or identify individual answers*"⁵. Group reports are provided to the HR Unit and senior management.

We understand that the group reports do not allow for the identification of individual answers provided by the Programme participants and the assessors to the online questionnaire.

² See point 4 and 12 of the notification.

³ See point 4 of the notification, and the privacy statement.

⁴ See point 4 and 12 of the notification.

⁵ See point 4 of the notification.

However, in view of the optional character of the Programme, one cannot entirely exclude that group reports contain identifiable information on Programme participants, since the latter could potentially constitute a very limited number. Consequently, the Regulation also applies to the processing of group reports, including the ground for lawfulness chosen by the controller (see Section 2 above). The notification and the privacy statement indicate that the purpose of the Programme is to provide multi-rater feedback to managers on their competencies related to the Directorate General leadership competency model, allowing them to develop their managerial and leadership skills. The generation of individual reports corresponds to that objective. However, neither the privacy statement, nor the notification indicates a purpose which corresponds to the generation of group reports.

Recommendation: The notification and the privacy statement should clearly define the respective purposes of the processing of individual and group reports, as well as the categories of data contained in both individual reports and group reports.

5. Recipients of individual reports

From the notification it is not entirely clear whether BICK Consortium transfers the individual report automatically to the coach or whether it is provided only to the Programme participant who can subsequently choose to share it (or parts of it), with the coach⁶.

Furthermore, the notification and the privacy statement indicate that, with a view to discuss training opportunities, the individual report may be disclosed to the hierarchy of the Programme participant, upon decision of the latter⁷. We understand that it is for the Programme participants to decide which information (if any) from the results of the exercise that they would like to share within this framework.

Recommendation: The notification and the privacy statement should further clarify the conditions under which the external coach and the hierarchy of the Programme participant have access to individual reports.

In view of the above, there is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the above-mentioned recommendations are fully taken into account. The EDPS expects the European Parliament to implement the recommendations accordingly and will therefore **close** the case.

Yours sincerely,

(signed)

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Cc: Data Protection Officer, European Parliament

⁶ The privacy statement provides that "if the participants so wishes, a certified coach from the processor (BICK) can also receive the amalgamated report of the feedback".

⁷ The privacy statement specifies that "upon decision of the programme participants, the report may be disclosed to his/her hierarchy to further discuss training needs".