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Subject: Prior checking notification of 360° Multi-source feedback exercise tool - European Central Bank (Case 2015-0772)

On 21 September 2015, the Data Protection Officer ("DPO") of the European Central Bank ("ECB") submitted a notification for prior checking pursuant to Article 27 of Regulation (EC) 45/2001 (the "Regulation") on the 360° Multi-source feedback exercise tool ("MSF").¹

This processing operation is similar to other notified cases of feedback tools for managers already prior checked by the EDPS.² For this reason, this Opinion does not contain a full analysis of all data protection aspects, but focuses on pointing out those that diverge from other cases or otherwise require improvement.

1. Facts

According to the information received, the MSF exercise has been used at the ECB since 2001 to support managers in their professional development by soliciting feedback on defined managerial behaviours and competencies as defined in the ECB's competency framework and managerial role profiles. Initially, the MSF was designed as a voluntary 270° feedback exercise, i.e. including assessment from staff, peers, colleagues and possible external contacts. In 2004, the exercise became mandatory for all managers by decision of the Executive Board dated 14

¹ As this notification was submitted after the processing had already started, the deadline of Article 27(4) of the Regulation does not apply. This case has been dealt with on a best-effort basis.

² Cases 2009-0215, 2013-1290, 2014-0906, 2014-1146 and 2015-0733.

October 2003. It was also decided to use the feedback as input in their annual appraisal, thereby giving the direct manager of the appraised manager access to the feedback. The objective of the measure was to provide wider feedback to both the manager and the appraiser and to take into consideration such wider feedback when assessing performance and designing or maintaining professional development plans. One of the risks identified when making this change, i.e. making the feedback available to the appraiser of the manager rather than only to a coach, was that the focus might shift from the use of feedback as a development tool to the use as an assessment tool. It was therefore underlined that appraisers must be reminded to focus on both perspectives and that the feedback should be used as one input in a broad assessment and development exercise.

By decision of the Executive Board on 30 June 2015³, it was decided to extend the existing MSF from a 270° to a 360° exercise, also including the line manager of the assessed manager. In practice, this means that the line manager of the assessed manager will now also be a provider of feedback.⁴

It should be underlined that participation in the MSF is only mandatory for managers as assessees. Providers of feedback participate on a voluntary basis.

2. Legal analysis

Purpose of the processing operation and informing the persons affected

According to the notification, the purpose of the MSF is to "support the individual professional development of managers [...] by soliciting a 360° assessment of and feedback on defined behaviours within the ECB's competency and values framework and providing this to the participating staff members". Under point 11/ Legal basis, the notification further mentions that the MSF is used for "development purposes only". Moreover, the privacy statement states that the personal data will be used "exclusively for the execution of the MSF exercise" at the ECB. However, according to the information received, the feedback is clearly used not only as a development tool, but also as an assessment tool.

When processing personal data, the ECB must inform the persons affected by the processing; this information should include the purpose of the processing.⁵ At present, the information relating to the purpose(s) of the processing⁶ is not sufficiently clear, since it is not obvious that the feedback will be used for appraisal purposes as well.

Recommendation

The ECB should amend the notification and the privacy statement in order to properly reflect that the feedback will be used in the appraisal procedure. Participating managers should be duly informed to this effect.

Data subjects

³ Summary proceedings reference: SEC/EB/15/933/03

⁴ In this context it should also be noted that the ECB intends to extend the MSF to the ECB's Joint Supervisory Team Coordinators, Advisers and Heads of Mission. The first category are ECB staff members with management functions in the context of the Single Supervisory Mechanisms; extension to the two latter categories will be subject to putting in place a relevant legal basis.

⁵ Information obligations under Articles 11(1)(b) and 12(1)(b) of the Regulation.

⁶ "The personal data will be used exclusively for the execution of the MSF exercise at the ECB. The purpose of the ECB is to support the individual professional development of managers at the ECB".

As regards data subjects, the notification refers to both the assessed managers and the providers of feedback (staff, peers, colleagues, line managers and external stakeholders), 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 managers participating in the MSF. Therefore, our comments and recommendations only cover the processing of their data.

Lawfulness and legal basis

Contrary to other similar feedback tools prior-checked by the EDPS, which are based on consent, the MSF at ECB is mandatory for all managers and is also used in their appraisal interviews. Consequently, the MSF bases its lawfulness on Article 5(a) and Recital 27 of the Regulation, i.e. the processing is "necessary for the performance of a task carried out in the public interest" and "necessary for the management and functioning" of the ECB.

According to the information received, the legal basis of the processing operation is anchored in Article 36 of the Statute of the European System of Central Banks and of the European Central Bank⁷, and in the above-mentioned administrative decisions of the Executive Board of the ECB, dated 14 October 2003 and 30 June 2015.

The notification states that the MSF is an important development tool for managers and as such necessary for the efficient management and functioning of the institution. The purpose as described above is to support the individual development and enhance the performance of managers. It follows from the documents provided that the motivation for making the MSF mandatory was the "ECB in Motion" survey, which showed that improvements in the quality of management were needed. Given the above, it can be considered that the mandatory participation of managers in the MSF is necessary and proportionate to the aim relating to their individual professional development.

The EDPS takes note that the above documents provide for the use of the feedback in the annual appraisal, but nevertheless considers that the ECB should further explain to the persons affected the necessity of also using it for the appraisal of managers.⁸ This is all the more important given the obligatory nature of the exercise.

Reminder

The ECB should explain more explicitly to the persons affected the necessity of using the feedback for appraisal purposes.⁹

Data quality

⁷ This provision provides that "*the ECB shall lay down the conditions of employment of the staff at the European Central Bank*".

⁸ Taking into account that line managers of participants do their staff appraisal anyway, and thus already have a channel to provide feedback.

⁹ See recommendation above on information to persons affected.

In accordance with Article 4(1)(c) of the Regulation, personal data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*".

On the basis of the information provided, the personal data processed seem adequate and not excessive for the purpose of the MSF (supporting the individual professional development of managers). However, there is a possibility that the feedback providers submit information which is not necessary for the processing operation at hand, especially in the "open text comments". Personal data and in particular special categories of data that are not relevant for the purposes of the MSF should not be further processed in this context. This could for example be clarified in instructions to the assessors. This is particularly important given that the feedback is used also for appraisal purposes.

Recommendation

The ECB should ensure that staff members are aware of the data quality requirements.

3. Conclusion

In view of the above, there is no reason to believe that there is a breach of the provisions of the Regulation providing the above-mentioned recommendations are fully taken into account. In light of the accountability principle, the EDPS trusts that the ECB will implement the recommendations accordingly and will therefore **close** the case.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Data Protection Officer