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C 2016-0002

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**Subject: Prior-checking Opinion regarding 360° programme for managers at the
European Chemicals Agency (Case 2016-0002)**

Dear,

On 4 January 2016, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ("the Regulation") on a 360° programme for managers from the Data Protection Officer (DPO) of the European Chemicals Agency (ECHA).²

This processing operation is similar to other notified cases of feedback tools for managers already prior checked by the EDPS.³ 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 OJ L 8, 12.1.2001, p. 1.

² As this is an ex-post notification for prior checking, the deadline of Article 27(4) of Regulation (EC) 45/2001 does not apply. This case has been dealt with on a best effort basis.

³ Cases 2009-0215, 2013-1290, 2014-0906, 2014-1146, 2015-0733, 2015-0772 and 2016-1007.

1. Facts and analysis

1.1. Lawfulness of the processing

As grounds for lawfulness, ECHA has stated that the processing of personal information is based on the unambiguous, specific, informed and freely given consent of the data subject (Article 5(d) of the Regulation⁴).

In this regard, the EDPS underlines that consent should be used with caution in the employment context. Such consent is valid only in exceptional circumstances where the employee has a genuine free choice and is subsequently able to withdraw the consent without negative consequences.⁵

The notification clearly state that participation in the 360° programme is voluntary both for the managers and for the reviewers and that they can opt-out at any time. However, the data protection notice does not specify that consent can be withdrawn at any time also while the exercise is underway. For the sake of completeness, the data protection notice should make clear that consent covers the whole process, including the group reports (see below under 1.2) and the voluntary bilateral session with the hierarchical superior.

The EDPS **recommends** that the data protection notice should clearly state that participants can decide to opt-out from the exercise at any time.

1.2. 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*"⁶. Group reports are provided to the HR Unit.

The EDPS understands that the group reports do not allow for the identification of individual answers provided by the programme participants and the reviewers to the online questionnaire. 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 grounds for lawfulness chosen by the controller (see 1.1 above). The notification and the data protection notice indicate that the purpose of the programme is to provide structured multi-level feedback to managers, allowing them to develop their managerial and leadership skills against a set of identified competencies. The purpose is thus the professional development of the manager and not a performance assessment. The generation of individual reports corresponds to that objective. However, neither the notification, nor the data protection notice indicates a purpose which corresponds to the generation of group reports. Furthermore, participants should be properly informed of the fact that it cannot be entirely excluded that the group report communicated to the HR Unit could potentially contain identifiable information related to them.

⁴ 'Personal data may be processed only if the data subject has unambiguously given his or her consent.'

⁵ Article 29 Data Protection Working Party Opinion 8/2001 of 13 September 2001 on processing of personal data in the employment context.

⁶ See point 4 of the notification.

The EDPS **recommends** that the notification and the data protection notice clearly define the respective purposes of the processing of the individual and group reports, as well as the categories of data that they include. Furthermore, participants should be properly informed of the fact that it cannot be entirely excluded that the group reports communicated to HR Unit could potentially contain identifiable information related to them.

2. Conclusion

Provided that the above recommendations are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

In light of the accountability principle, the EDPS expects ECHA to implement the above recommendations accordingly and has therefore decided to **close the case**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

cc.: Data Protection Officer, ECHA