



WOJCIECH RAFAŁ WIEWIÓROWSKI  
ASSISTANT SUPERVISOR

(...)  
Office for Infrastructure and Logistics in  
Brussels (OIB)  
European Commission  
BRU-CSM1 06/P001  
B-1049 Brussels

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WW/UK/sn/D(2017)0747 C 2016-1130  
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correspondence

**Subject: Notifications of the OIB's "360° tool - feedback and leadership competencies" (case 2016-1130 / DPO-3868.1)**

Dear Ms (...),

I refer to the ex-post notification you sent to the European Data Protection Supervisor (EDPS) on 8 December 2016 regarding the processing operation "*360° tool - feedback and leadership competencies*" (the Tool) from the Office for Infrastructure and Logistics in Brussels (OIB) (registered as case 2016-1130 / DPO-3868.1).

Questions were raised on 9 December 2016 to which the DPO Office replied on 9 and 12 December 2016 as well as on 10 February 2017. The draft Opinion was sent to the DPO for comments on 21 March 2017; the EDPS received a reply on 29 March 2017.

As you have mentioned in the cover-note attached to the notification, this processing operation is similar to several previously prior-checked notifications under Article 27(2)(b) of Regulation (EC) 45/2001 (the Regulation)<sup>1</sup>. You have also pointed out that the EDPS recommendations of those previous cases have been implemented in the processing operation at hand<sup>2</sup>.

In the light of the accountability principle, the EDPS trusts that the European Commission (OIB) has adopted adequate data protection safeguards in carrying out this processing operation in conformity with the Regulation. For this reason, this Opinion does not contain a full analysis of all data protection aspects, but focusses on pointing out those aspects that are not compliant.

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<sup>1</sup> See cases 2015-0440, 2015-0441, 2014-0906, 2014-0446, 2013-1290, 2012-0590, 2009-0215.

<sup>2</sup> The development programme was launched on 8 December 2016, cf. e-mail from the Assistant DPO of 12 December 2016 and announcement on the OIB intranet ("My OIB") of 6 December 2017: "*Le lancement de l'exercice se fera en décembre 2016*".

## 1. Processors and data subjects

The Tool involves two processors: 1) the European Commission's contractor, Deloitte Consulting and 2) the subcontractor, Envisia Learning. From the information provided (notification sections 2, 3 and 7) we understand that Envisia Learning collects individual evaluation responses per line manager through an online questionnaire and automatically generates individual reports (one for each manager who participates) and group reports (aggregated results with no possibility to identify individual responses). Deloitte Consulting provides for individual coaching sessions to the managers following the communication of the individual report. However, whilst the specific roles and tasks of the processors are clearly mentioned in the notification, they do not appear clearly from the privacy statement.

**Recommendation:** The Tool's privacy statement should further clarify the respective tasks of both processors.

As regards data subjects, the notification (sections 2 and 9) refers to both the "managers"/reviewees" and "raters"/"reviewers" (the staff, peers and managers of the reviewees/managers who worked with the manager for at least six months).

**Clarification:** The processing operations subject to prior checking under Article 27(2)(b) of the Regulation (evaluation) are relating to the managers/reviewees. Our comments and recommendations only cover the processing of *their* personal data.

## 2. Processing on behalf of controllers - transfers

As already mentioned, the processing operations required by the Tool are carried out by a processor (Deloitte Consulting) and a subcontractor (Envisia Learning).

- According to the notification (section 5), the subcontractor's data centre (where the survey results are stored for seven years), is located in the United Kingdom.
- According to additional information provided subsequently<sup>3</sup>, the other processor (Deloitte Consulting) stores personal data in their data centre located in Belgium.
- Whilst Deloitte Consulting uses cloud-based *Sharefile* to support the data storage in the context of this project (e.g. presentations), this does not involve the storage or other processing of personal data<sup>4</sup>.

The EDPS welcomes that the framework contract between the European Commission and Deloitte Consulting ("EPSO/EUSA/PO/2013/063" - Consultancy services for those dealing with human resources in the EU Institutions, Agencies and other bodies, see excerpt in section 19 of the notification) provides notably that the Regulation applies to any processing of personal data in relation to the contract and that, in the case of sub-contracting in cascade, the European Commission must give written agreement to any disclosure to third parties<sup>5</sup>.

Whilst the processing at hand currently does not foresee any transfers under Article 9 of the Regulation (see also section 17 of the notification), given that the subcontractor's data centre is located in the United Kingdom, future transfers might potentially come under Article 9 of the Regulation. Against this background, the EDPS would like to highlight that for such future

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<sup>3</sup> cf. e-mail from the Assistant DPO of 10 February 2017.

<sup>4</sup> cf. e-mail from the Assistant DPO of 10 February 2017.

<sup>5</sup> Articles II.5.1c), II.6.1 and II.6.4.

transfers, an adequate level of protection will need to be ensured within the recipient's legal framework so as to meet the adequacy requirement of Article 9 of the Regulation<sup>6</sup>.

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In view of the above, there is no reason to believe that there is a breach of the provisions of Regulation providing the above-mentioned recommendations are fully taken into account.

Once this condition is satisfied, please inform the EDPS of the measures taken based on the recommendations of this Opinion within three months.

Kind regards,

Wojciech RAFAŁ WIEWIÓROWSKI

**(signed)**

Cc.: Mr Philippe RENAUDIÈRE, Data Protection Officer European Commission

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<sup>6</sup> See pp.12-13 of EDPS Position paper on transfers to third countries and international organisations by EU institutions and bodies:  
[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Papers/14-07-14\\_transfer\\_third\\_countries\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Papers/14-07-14_transfer_third_countries_EN.pdf)