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WW/ALS/sn/D(2017)1597 C 2017-0588
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Subject: Prior-checking Opinion regarding 360° feedback exercise for managers in the Executive Agency for Small and Medium-sized Enterprises (EDPS case 2017-0588)

Dear [...],

On 16 June 2017, the European Data Protection Supervisor (“EDPS”) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ (“the Regulation”) on 360° feedback exercise for managers from the Data Protection Officer (“DPO”) of the **Executive Agency for Small and Medium-sized Enterprises** (“EASME”).

As mentioned by your DPO in the cover email of the notification, 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. For aspects not covered in this Opinion, the EDPS has, based on the documentation provided, no comments.

According to Article 27(4) of the Regulation, this Opinion must be delivered within a period of two months, not counting suspensions for requests for further information³.

¹ OJ L 8, 12.1.2001, p. 1.

² Cases 2016-1130, 2016-1007, 2016-535, 2016-0002, 2015-0967, 2015-0772, 2015-0737, 2015-0441, 2014-2009.

³ The case was suspended for comments from the DPO from 14 July 2017 to 19 July 2017. The EDPS shall thus render his Opinion no later than 24 August 2017.

Description and assessment

1. Processing of group reports

According to the notification and the privacy statement, the group report only includes aggregated information about the compiled results, such as most voted and less voted competencies and number of participants, without any possibility to track or identify individual answers.

The EDPS understands that the group reports do not allow for the identification of individual answers provided by the reviewers. However, in view of the optional character of the exercise, one cannot entirely exclude that the group report will contain identifiable information on participating managers, since their numbers may be very low. The EDPS welcomes the fact that EASME informs the *reviewers*, who provide their input in the questionnaire (including free text fields), that they could be identified in relation to their style of writing. However, in relation to the group reports, the *reviewees* should also be informed about the fact that the group reports provided to relevant staff of the EASME HR sector and senior management could potentially contain identifiable information related to them. **EASME should therefore add this information to the communication note and the privacy statement.**

Furthermore, in our understanding, the purpose of sharing the group reports is not the same as the purpose of the individual reports (to allow reviewees in the development program for EASME managers to obtain feedback on their competencies). **EASME should clarify the purpose of the group reports in the communication note and the privacy statement.**

2. Processing on behalf of controllers - transfers

The processing operations is carried out by a processor (Julhiet-Kienbaum group) and a subcontractor (Cubiks Ltd).

According to the information provided by EASME⁴, the processor stores personal data in a data centre located in Germany. Regarding the subcontractor, it is stated in the notification (section 10) that the data for the 360° feedback tool are stored on computing facilities provided by the subcontractor in the United Kingdom.

The EDPS welcomes that the framework contract “EPSO/EUSA/PO/2014/06” provides notably that the Regulation applies to any processing of personal data in relation to the contract and that the contractor shall not subcontract without the contracting authority’s written agreement to any disclosure to third parties⁵.

Whilst the processing at hand currently does not include any transfers to recipients outside the EU 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 transfers, an adequate level of protection will need to be ensured to meet the requirements of Article 9 of the Regulation⁶.

⁴ By email 4 July 2017

⁵ Articles II.7.1

⁶ See the EDPS Position paper on transfers to third countries and international organisations by EU institutions and bodies, notably pp. 12-13:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Papers/14-07-14_transfer_third_countries_EN.pdf

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In light of the accountability principle, the EDPS trusts that EASME will ensure that these considerations and recommendations are fully implemented. The EDPS has therefore decided to **close case 2017-0588**.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

(signed)

Cc: [...], Data Protection Officer