

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 21/09/2015

CASE NUMBER: 2015-0772

INSTITUTION: EUROPEAN CENTRAL BANK

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Institutional department responsible for the processing of the data:

Directorate General Human Resources, Budget & Organisation (DG/H)
HR Policies and Staff Relations Division/ Learning and Development Section (PSR/LED)
Contact person: Head of HR Policies and Staff Relations Division

Processor contracted with the processing operation:

Cubiks GmbH (Cubiks), Broadway House, Breite Strasse 29, 40213 Düsseldorf.

Cubiks have been awarded a four-year framework agreement to provide the following services related to the execution of a Multi-source feedback exercise (MSF) at the ECB:

- the provision of a secure IT Platform on which the MSF exercise can be run**;
- the design of the MSF questionnaire for each participant group in line with the ECB's competency framework, role profiles and values;
- the collection and analysis of the feedback data from the questionnaires;

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

- data interpretation and collation (in the form of individual reports and anonymised aggregate reports).

****** The online platform on which the MSF tool is run, is operated by Cubik's UK operating Company, Cubiks Limited. For this purpose, Cubiks data processing obligations with regard to this process shall be subcontracted to Cubiks Limited (based in the UK).

A copy of the agreement including the relevant paragraph on data protection is attached as **Annex 2**. The data protection clause, as included in the agreement, is also separately attached as **Annex 14**.

3/ NAME OF THE PROCESSING

Processing/handling of personal data related to the execution of the multi-source feedback (MSF) exercise at the ECB for all managers, including Joint Supervisory Team Coordinators, and possibly at a later point in time Advisers and Heads of Mission.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the MSF exercise is to support the individual professional development of managers (and of other members of staff in a coordinating role) by soliciting a 360 degree assessment of and feedback on defined behaviours within the ECB's competency and values framework and providing this to the participating staff members. Participation in the exercise is mandatory for all members of a target staff group (i.e. mostly managers) who have been in their position for at least 6 months (the exact time period is still under discussion but should be meaningful to allow assessment). It is not mandatory for the respondents to provide feedback.

The ECB Competency framework, values and manager role profiles are attached as **Annex 4**. Currently, the ECB competency framework is being updated (competencies and behaviours are being reviewed).

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

(i) Managers participating in the exercise (recipients of the feedback): ECB staff - Senior Managers (Area Heads: Directors General and Deputy Directors General), Heads of Division and Heads of Section/Deputy Heads of Division.

(ii) Respondent groups (providers of the feedback): ECB staff and external parties in one of the following categories; direct and non-direct reports, i.e. individuals who report to the participating manager/adviser via a direct reporting line or individuals who do not have a direct reporting line to the manager/adviser but who nonetheless have regular business interactions, peers, external stakeholders; and the line manager of the manager participating in the MSF exercise.

(iii) At a later point in time, all ECB Advisers (recipients of the feedback): ECB staff – Principal Advisers (corresponding to Senior Managers in the organisational hierarchy), Senior Advisers (corresponding to Head of Division in the organisational hierarchy) and Advisers (corresponding to Head of Section in the organisational hierarchy).

(iv) Joint Supervisory Team (JST) Coordinators (recipients of the feedback): ECB staff – Managers and advisers who in view of the Single Supervisory Mechanism (SSM) functions of the ECB have been assigned the role of JST Coordinators.

(v) Heads of Mission (recipients of the feedback): ECB Staff and potentially non-ECB staff (i.e. from national competent authorities) – Heads of Mission at the ECB are neither Advisers nor Managers. They are staff at the Principal Expert level who in the context of the Single Supervisory Mechanism (SSM) have a coordinator role for a dedicated team of inspectors who conduct short term on-site missions at various banks throughout Europe.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

The following data will be processed by Cubiks:

(i) Identification data of recipients and providers of feedback: name, gender, email address, position (for recipients of feedback only), type of provider of feedback (according to categories described in section 5(ii));

(ii) Rating of specific behavioural competencies: rated on a scale still to be designed in conjunction with Cubiks (the rating scales developed by the previous MSF provider are contained in the MSF feedback questionnaire attached as **Annex 9**);

(iii) Open text comments regarding areas of strength/weakness/recommendations for improvement for the recipients of the feedback.

The design of the MSF questionnaire (template/form through which data will be collected) has not started yet.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

All data subjects will be informed about (i) which data is processed (ii) how (iii) for which purpose and (iv) for how long, via the following channels:

(i) The online MSF feedback questionnaire (hosted on Cubiks UK based IT platform) (attached as **Annex 9** is the MSF feedback questionnaire developed by the previous MSF provider and using the current/not updated ECB competencies);

(ii) The Intranet page of the ECB dedicated to the MSF exercise (a copy of this communication can be found in **Annex 5**);

(iii) MSF guidelines (to be developed in conjunction with Cubiks). These shall be made available on the intranet and distributed to all data subjects through dedicated information sessions (attached as **Annex 10** are the MSF guidelines developed by the previous MSF provider);

(iv) The Privacy Statements: there is a privacy statement for providers of feedback as well as a privacy statement for recipients of feedback – attached as **Annex 11**.

In addition, data subjects will be informed and requested to confirm that they agree to provide data when accessing the online questionnaire. A copy of Cubik's general privacy & data protection

policy as well as screen shots of the privacy notice for the recipients of feedback and the consent page for providers of feedback are attached as **Annexes 6 – 8**.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS
(Rights of access, to rectify, to block, to erase, to object)

The Decision of the European Central Bank of 17 April 2007 adopting rules concerning data protection at the European Central Bank (ECB/2007/1) applies. Article 9 reads as follows:
“1. Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant controller to exercise their rights pursuant to Articles 13 to 19 of Regulation (EC) No 45/2001, as specified below.

- (a) These rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.*
- (b) Requests to exercise these rights shall be addressed in writing to the relevant controller. The controller shall only grant the request if the requester’s identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The controller shall without delay inform the data subject in writing of whether or not the request has been accepted. If the request has been rejected, the controller shall include the grounds for the rejection.*
- (c) The controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of Regulation (EC) No 45/2001 by enabling the data subject to consult these data on-site or to receive a copy thereof, according to the applicant’s preference.*
- (d) Data subjects may contact the DPO in the event that the controller does not respect either of the time limits in paragraphs (b) or (c). In the event of obvious abuse by a data subject in exercising their rights, the controller may refer the data subject to the DPO. If the case is referred to the DPO, the DPO will decide on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the controller, both parties shall have the right to consult the DPO.”*

Cubiks has confirmed in Article 11 of the Framework agreement and in **Annex 8** of the ITT (which is now part of the Framework Agreement) that any request of the controller pursuant to the above would be acted upon accordingly. The Framework agreement and Annex 8 of the ITT are attached as **Annexes 2 and 3**.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The MSF exercise is an automated processing operation.

(i) Collection of data:

Identification data of the participants (recipients and providers of feedback) is provided to Cubiks via email in the form of a password protected excel sheet by a dedicated member of staff in HR.

This data is uploaded into the Cubiks online application and used by Cubiks administrators to: (i) invite participants to the assessment (either as recipients or as providers of feedback) and (ii) to monitor the process of the exercise and send out reminder emails to all participants who have not completed their tasks by the agreed intervals.

Where applicable, data input will be validated against pre-determined rules, selected from a drop down list, specific answers or entered as free text.

(ii) Analysis of data:

The responses to the assessment questions are collected and scored by the Cubiks administrators as soon as the providers and recipients of feedback have completed their assessments. The data is then used to produce individual and aggregate feedback reports. Individual feedback reports are generated automatically from the IT system. Aggregate reports are produced both through automated and manual means. With regard to the individual feedback reports, where there are insufficient responses to guarantee anonymity, a specific category of provider of feedback can be excluded from the report or rolled over with another category of provider of feedback to guarantee individual anonymity. Only the feedback from the direct manager is provided in a non-anonymous manner.

(iii) Distribution of data

Individual feedback reports will be created once for each recipient of feedback as soon as the respective providers of feedback have completed the evaluation. The reports will be provided directly to the recipients of the feedback during an information session at the premises of the ECB in which a consultant from Cubiks will explain how to read and interpret the report and answer any questions the recipients of feedback may have. The reports could be handed over in paper format as well. The recipients of the reports can choose in which format (paper or digital) they would like to share their report with their chosen coach and their direct manager. The latter is expected to be done, at the latest, during the participants annual appraisal exercise with his/her direct line manager.

Annual reports containing aggregated data on that year's participating groups shall be emailed to a dedicated mailbox accessible only accessible to the HR members of staff assigned to administer this process. No individual feedback reports will be received by the ECB.

10/ STORAGE MEDIA OF DATA

The data on all data subjects shall be stored on Cubiks' database both during and after the processing. As mentioned in point 2), this tool is operated by Cubiks Limited and is located in the UK.

Individual reports shall be directly sent to data subjects but not stored on any ECB system.

Aggregate reports shall be stored on the ECB's Electronic Documents and Records Management System (DARWIN) with the relevant permissions restricted to the management in charge of HR and those members of staff in HR assigned to the coordination of the exercise.

Cubiks does not retain any paper copies of the reports.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The legal basis of the processing is anchored in the following legal articles & administrative decisions:

(i) Article 36 of the Statute of the European System of Central Banks and of the European Central Bank states that “...**the Executive Board shall lay down the conditions of employment of the staff of the European Central Bank**”. The decision to conduct a mandatory 360 degree Multi-source feedback exercise for all managers of the ECB was approved by the Executive Board at its meeting of 30th June 2015. Summary proceedings reference number: SEC/EB/15/933/03. Extract: The Executive Board considered the following documentation, prepared by DG/SE Crescendo Coordination Office:; a fourth memo, entitled “Move existing mandatory multi-source feedback exercise (MSF) from 270o to 360o”

As to moving the existing mandatory multi-source feedback exercise from 270 o to 360 o: (h) approved moving the existing ECB mandatory multi-source feedback exercise for managers from 270 o to 360 o to include as a provider of feedback the line manager of the manager participating as recipient of feedback in order to support managers in their individual development to further enhance performance; (i) decided to request DG/H to launch a check with the European Data Protection Supervisor regarding the 360 o multi-source feedback exercise at the ECB; and (j) decided to run the 360 o multi-source feedback exercise (mandatory to all managers) subject to approval of the European Data Protection Supervisor as from 2016.

The legal basis for the data processing of the recipients of feedback is:

(ii) Article 5(a), Recital 27 of the Regulation which stipulates that “**processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments [...]**” which includes “**the processing of personal data necessary for the management and functioning of the institutions**”. The execution of the MSF exercise at the ECB is considered as an important developmental tool for managers (and other staff members in a coordinating role, e.g. potentially Advisers, Heads of Mission) and as such necessary for the efficient management and functioning of the institution. The MSF offers feedback on how the recipients of feedback perform in terms of the expectations and behaviours important for the ECB and supports their individual development to enhance performance. Balanced and focused feedback (MSF) is a key element in ensuring continuous development and high levels of motivation at the ECB both for participants and the staff as a whole. Research shows that MSF feedback tools foster an environment of stronger feedback culture, openness, teamwork and trust, as well as an improved attitude towards work. The MSF at the ECB is used for development purposes only.

The legal basis for the data processing of the providers of feedback is:

(iii) Article 5(d); the data subject has unambiguously given his or her consent. It is not mandatory for providers of feedback to participate in the MSF exercise. As indicated in the privacy statement, there are no consequences of not participating. By participating, the provider of feedback consents to the use of his personal data for the purpose of the MSF exercise.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

The identification data of the data subjects shall only be disclosed to the data processor i.e. the administrators at Cubiks assigned to this project.

The assessment/individual reports shall be disclosed to the recipients of the feedback who shall share their report (either in paper or digital format) with their chosen coach for individual follow up and, as recommended by DGH, their direct line manager. The latter shall take place at the latest during the annual appraisal of the recipient of feedback with his/her line manager. The recipients

of feedback shall not be able to trace back who has given which input with the exception of the input given by the direct line manager.

The aggregated reports shall be disclosed to the management in charge of Human Resources, dedicated members of staff administering the MSF exercise, the ECB decision making bodies for analysis purposes only.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The personal data stored on Cubiks database is stored for a maximum of 4 years, commencing on the date of the completion of the assessment. The 4 year period is based on the fact that the tool offers recipients of the feedback the opportunity to have a time comparison report to capture the key differences between time 1 and 2 (with an interval of 2 years) and also allows for the production of comparative aggregate reports for both groups of recipients (e.g. Heads of Section and Deputy Heads of Division who would start e.g. in 2016 and have a comparative exercise in 2018 and Heads of Division and Senior Managers who would start in 2017 and have their comparative exercise in 2019) at end of the entire cycle. All data shall be deleted after this 4 year period. The data of any participant (recipients or providers of feedback) who leave the bank during this 4 year period shall be deleted manually.

Anonymised aggregate reports shall be retained for 10 years in the ECB's Electronic Documents and Records Management System (DARWIN) in line with the ECB's documentation retention policy.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS *(Please, specify the time limits for every category, if applicable)*

No specific time limits apply to the erasure (anonymisation) of data on justified legitimate requests from the data subjects. During the period that the assessment is open, the providers of feedback can access and edit/delete their input as and when required until the deadline for the completion/closure of the survey has been reached.

Cubiks does not have a facility for blocking data. However, data can be anonymised through the deletion of identification data (i.e. name, position, e-mail address). Data is anonymised by replacing identification data with specific wording "Anonymised on date, time".

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

(If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification)

It is not foreseen to retain the data on the Cubiks database for longer periods than mentioned in point 12. Should it be decided at a later stage to retain the data for statistical purposes, the data shall then be anonymised by deleting the name and email address. Any data retained for statistical purposes shall be used by the ECB only.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

N/A

<p>16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING <i>(Please describe)</i></p>
<p>AS FORESEEN IN:</p> <p><input type="checkbox"/> Article 27.2.(a) <i>(Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,)</i></p> <p><input checked="" type="checkbox"/> Article 27.2.(b) <i>(Processing operations intended to evaluate personal aspects relating to the data subject,)</i></p> <p><input type="checkbox"/> Article 27.2.(c) <i>(Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,)</i></p> <p><input type="checkbox"/> Article 27.2.(d) <i>(Processing operations for the purpose of excluding individuals from a right, benefit or contract)</i></p> <p><input type="checkbox"/> Other (general concept in Article 27.1)</p>
<p>17/ COMMENTS</p> <p>The notification concerns an ex-post check. The following documents are attached as background information: Annex 2: Framework agreement between ECB and Cubiks Annex 3: Data protection questionnaire – part of the Framework Agreement, Annex 8 to ITT Annex 4: ECB competency framework, values and role profiles (to be updated) Annex 5: ECB Intranet communication Annex 6: Cubiks privacy & data protection policy Annex 7: Cubiks data subject consent form Annex 8: Cubiks privacy notice for recipients of feedback Annex 9: MSF questionnaire (to be updated) Annex 10: MSF guidelines (to be updated) Annex 11: Privacy Statements for provider & recipient of feedback Annex 12: Cubiks data security key principals Annex 13: Cubiks statement of compliance, code of conduct, anti-bribery & data security documents Annex 14: Data Protection Clause of Framework Agreement</p>

PLACE AND DATE: FRANKFURT AM MAIN, 21/09/2015

DATA PROTECTION OFFICER: BARBARA EGGL

INSTITUTION OR BODY: EUROPEAN CENTRAL BANK