



White Paper (powerpoint presentation) for European multinationals on implementing online assessment for employee selection in their USA based company/operation

Kenhardt, july 2013

drs. Marco van Aarle / drs. Katja Dekker

*Both Registerpsycholoog NIP / Arbeid & Organisatie / Certified Psychologist
(Dutch Institute of Psychologists)*

Main issues

- Data protection
- Anti-discrimination in hiring
- Please note that the information in this document is an overview based on our experiences and current knowledge (of best practices)
- We do not claim to be all comprehensive

Conclusions

- Data protection seems not to be a problem

- Anti-discrimination; online assessment can be implemented with the use of an expert based job analysis / competency profiling system in a USA based company/operation under the following conditions:
 - Close guidance from an external consultant specialised in assessment and psychometrics
 - Involvement of an external consultant with presence in the USA in order to conduct a local validation study

Data protection

- The USA have enacted laws to address particular privacy harms (e.g. collection of personal information of children) but have never enacted a comprehensive data protection or privacy law like in the EU model
- In the USA data privacy laws seem to be not nearly as strict as in Europe
- In Europe we have the European Commission's Directive on Data protection that went into effect in October of 1998
- In fact; in the USA a framework has been made under the name of Safe Harbor (<http://export.gov/safeharbor/>) to bridge the gap between American and European regulations

- Therefore in our opinion data storage in Europe of personal data from American citizens seems not be a problem from the USA-perspective
- Existing international clients with USA based operations in our international partner network have thusfar not experienced any problems E.g. Belden (HQ: USA), Polygon Group (HQ: Sweden) and Red Bull (HQ: Austria)

Data protection (2)

- From a USA-perspective it is unclear if the patriot act (and therefore access to data by the NSA/CIA/FBI) is applicable to assessment data
- Our partner consultant in the USA, Craig Haas, Ph.D, SPHR, GPHR, president of the USA Operation of Cut-e has the following to say about that:
'I doubt that the Patriot Act relates to online assessment data, but you never know'

Anti-discrimination

- Concerning anti-discrimination two issues are important:
 - Criteria for selecting candidates have to be objective and relevant for the job, covering all relevant aspects
 - The tests/questionnaires that are used can predict job performance within the specific USA based company/operation and do not create any adverse impact

Anti-discrimination (2)

- Objective and relevant criteria. Two worldwide leading companies in assessment tooling Cut-e/Hrorganizer and SHL have chosen the path of covering this with job analysis / competency profiling systems:
 - Job profiles are made with an expert based job analysis / competency profiling system
 - In these systems job tasks / job characteristics need to be selected via interviews with managers and/or job experts
 - The system 'links' these tasks via expert knowledge to the competences that are necessary for successful job performance
 - In order to enhance objectivity even more, the Cut-e/Hrorganizer system then selects the tests and questionnaires that have to be included in the online assessment

Anti-discrimination (3)

- In summary; an expert system needs to be used. This drastically improves objectivity of the job profiling process, the selection of criteria and (with the Cut-e/Hrorganizer system) the choice of selection instruments
- Next to that, the local consultant in the USA has to perform a local job analysis to make sure it relates to the local (legal) situation. He needs to make sure that:
 - Job profiles reflect the local situation
 - Job profiles are alligned with existing profiles from other organisations (archival job analysis data)
 - The tasks and competences that are chosen reflect the whole spectrum of the job

Anti-discrimination (4)

- The tests/questionnaires have to predict job performance within the specific USA based company/operation and must not create any adverse impact
 - Adverse impact will almost certainly be created when aptitude testing will be included in the assessment programme. This creates a risk for law suits. Naturally that risk will be higher if high volumes of candidates will be processed
 - To manage the risk of creating adverse impact by aptitude testing, first the following choice needs to be made:
 - Not include aptitude tests at all but instead use other predictors for job performance. -> *Low risk*
 - Include aptitude tests (as well as other predictors), but not base hiring decisions on the outcomes of those tests. -> *Medium Risk*
 - Include aptitude tests (as well as other predictors) and conduct a criterion related validity study with which you can prove that no adverse impact is being created. Of course the external consultant needs to have extensive experience with conducting such validation studies. -> *Assess and then decrease the risk*

Anti-discrimination (5)

- From the perspective of predictive validity it is almost always advisable to include aptitude tests and to manage that risk by:
 - Not basing hiring decisions solely on the outcomes
 - Conducting criterion-related validity studies

- We always advise our clients to ask their USA based Legal Department to make their own assessment of the risks involved and how to manage those. Then it is common practice in the USA to set up an addendum (see next page) to the existing contract between the specific company/operation and the provider of the online assessment tooling

- Note: if the specific USA based company of operation is a US Federal Contractor the risks are higher since it would put this company/operation under closer scrutiny of compliance

- For more background information we refer to the [Cut-e white paper on fairness](#).

The addendum; obligations for USA based organisation

- Online assessment questionnaires/tests/reports may never be used as the sole criterion for any employment-related decisions (including but not limited to hiring, termination and promotion decisions)
- The organization will never utilize any questionnaires/tests/report in a discriminatory or otherwise unlawful manner
- Usage always in conformity with applicable law, including but not limited to;
 - Title VII of the Civil Rights Act of 1964
 - The Americans with Disabilities Act
 - The Age Discrimination in Employment Act
 - The Equal Pay Act
 - The Genetic Information Nondiscrimination Act
 - And any other local, state or federal statute, regulation, guideline or policy relating to the rights of employees

The addendum; obligations for Online assessment supplier

- Online assessment supplier guarantees that the substance of the questionnaires/tests/reports shall be scientifically valid for intended purposes