



2004-0304 and 2005-0116

Dear Mr Minnaert,

We conclude from our examination of cases 2004-0304 and 2005-0116 that the processing of personal data in the personal files of members of the EIB and members of the EIB Management Committee is not subject to prior checking by the EDPS.

Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. It is necessary to determine whether the processing of data held in the personal files of members of the EIB and the EIB Management Committee fall within the purview of that provision.

- Regarding Article 27(2)(a) of the Regulation: "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures":

According to our information, the personal files of members of the Management Committee do not contain medical data.

The personal files of members of the EIB contain data "relating to health". These are notes on the individual's state of health, the medical report and documents relating to medical expenses.

Notes on the state of health relate to any note from the Invalidity Committee recognising a person's invalidity.

The medical report is a note from the doctor who conducted the medical examination prior to the individual's entry into service, which simply states whether or not they are physically capable of doing their job.

Documents relating to medical expenses are documents used for the reimbursement of expenditure incurred under the medical insurance scheme.

The personal files of Members of the EIB contain data relating to suspected offences, offences, criminal convictions or security measures to the extent that decisions may have been taken concerning possible disciplinary measures.

All these data are produced in the course of separate procedures which will doubtless be subject to prior checking in their own right.

Article 27(2)(a) of the Regulation primarily concerns data processing operations the main purpose of which is to process data relating to health, suspected offences, criminal convictions or security measures. Although the primary purpose of personal files is not the processing of such data, those data are systematically, not randomly, included in personal files. The question therefore arises of whether any risk is involved. In this case, there is no a priori risk as the data are generated by a previous processing operation which has itself been subject to prior checking.

- Regarding Article 27(2)(b): "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct":

The personal files of members of the EIB and members of the Management Committee contain not only documents relating to the administrative situation of data subjects, but also reports on their abilities and efficiency. However, the personal file itself is not used to assess the ability or efficiency of the data subject and is thus not covered by the provision.

- Regarding Article 27(2)(c): "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes":

As the data in them are processed manually, personal files do not allow such linkages. This situation could change if automated processing is introduced but that would have to be examined in due course.

- Regarding Article 27(2)(d): "processing operations for the purpose of excluding individuals from a right, benefit or contract":

This provision refers to processing operations the aim of which is to exclude individuals from a right, benefit or contract (this typically refers to black lists). That is not the purpose of personal files.

We therefore consider that as matters stand, the personal files of members of the EIB are not subject to prior checking. However, if you believe there to be other factors justifying prior checking of the personal files of members of the EIB and/or of the members of the Management Committee, we are of course prepared to review our position.

Implementation of the Electronic Data Management (EDM) project involves the automatic processing of data, as is it a procedure for electronic data retention. If that processing operation subsequently proves to involve a specific risk within the meaning of Article 27(1), the EDPS could review his position on the need for prior checking.

Thank you for your cooperation,

Yours sincerely,

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor