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Brussels, 14 July 2010  
GB/DH/ktl D(2010)1117 C 2009-0678

**Subject: Prior-checking notification, case 2009-0678**

Dear Mr Grilli,

We reviewed the documents you have provided the EDPS with concerning the notification for prior-checking under Article 27(2) of Regulation 45/2001 (the Regulation) on the selection and recruitment of non permanent staff (interim staff, trainees, summer students, staff seconded from other organisations) at the European Investment Bank (EIB). The processing operation under examination is subject to prior-checking in conformity with Article 27(2)(b) of the Regulation, since it involves an evaluation of the applicants' ability to perform the functions of the post for which the selection and recruitment procedure has been organised. The processing operation in the present case might also involve data related to health (collection of medical certificate or disability data) and to criminal offences (collection of police record), which would constitute an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation.

The procedure related to the selection and recruitment of non permanent staff, as well as the data protection practices as presented in the notification reveal some similarities to other processing operations regarding selection and recruitment by EU institutions/bodies/agencies. In this regard, the EDPS issued Guidelines on staff recruitment<sup>1</sup> as well as a Joint Opinion on "*Staff recruitment procedures carried out by some Community agencies*"<sup>2</sup>. On 29 October 2009 the EDPS requested the Union bodies and institutions that had not yet notified their recruitment processing operation to do so in the light of the guidelines indicating any differences with the guidelines. In the present case, the notification has been submitted before 29 October 2009 and therefore, the EDPS will first

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<sup>1</sup> The EDPS Guidelines can be found on the EDPS website under the title "Thematic Guidelines".

<sup>2</sup> EDPS Opinion issued on 7 May 2009 (case 2009-0287).

underline the EIB practices which do not seem to be in conformity with the principles of the Regulation and with the EDPS Guidelines and will then restrict his legal analysis to those practices. We finally would like to remind you that the relevant recommendations made in the guidelines apply to the processing operations put in place in the frame of the selection and recruitment of non permanent staff at the EIB.

The EIB sent an updated notification on 14 June 2010. The analysis is based on this updated notification.

## **1. Legal basis**

**Facts:** The legal basis for the Secondees may be found in Article 21 of the EIB Staff Regulations. Legal grounds to recruit trainees are provided by the document "provisions governing In-Service Training at the European Investment Bank". As concerns interim staff, the EIB mentioned a Luxemburgish Regulation: "portant déclaration d'obligation générale de l'avenant à la convention collective du 13 mai 1998 applicable aux travailleurs intérimaires des entreprises de travail intérimaire conclu entre l'Union Luxembourgeoise des Entreprises de Travail Intérimaire (ULEDI), d'une part et les syndicats OGB-L et LCGB, d'autre part." The EIB did not provide the EDPS with the EIB internal decision for interim staff and students for summer jobs. The processing operations related to the selection of interim staff and students are based on contracts between (i) the EIB and interim agencies and (ii) the EIB and students.

### ***Recommendation:***

*i)* The EDPS would like to encourage the EIB to establish an internal instrument framing the selection and recruitment of interim staff and students for summer jobs.

## **2. Data Quality**

**Facts:** The document "provisions governing In-Service Training at the European Investment Bank" also mentions the fact that an extract from the police record or a certificate of good conduct is collected for the trainees. Only selected candidates have to supply this document.

### ***Recommendation:***

*i)* It should be noted that police record/certificate of good conduct have a very diverse content in different Member States and carry diverse denominations. In certain Member States, they contain information that goes beyond a lawful purpose for their collection. The provisions relating to trainees for In-Service training at the EIB should be modified so as to refer only to the collection of an extract of the police register (a criminal record) of the candidate's country and not a certificate of good conduct.

## **3. Data retention**

In the notification, the EIB mentioned the data retention period of selected candidates: (i) paper files of interim staff are stored for two years, (ii) paper files for trainees are kept for five years and (iii) paper files for experts are kept for five years as from the end of the secondment. Moreover the EIB informed the EDPS that the storage period for the students for summer jobs is two years as students should not be selected for jobs in consecutive years. As for the trainees, the EIB will treat

the data of pre-selected but non recruited candidates and non- recruited candidates the same way; the EIB is storing the data up to two years. The starting date for computing the storage is from the application date of the relevant internship. The data is currently stored indefinitely in a database but the EIB is working to render them anonymous after five years.

### ***Recommendations:***

*i)* For each category of recruitment, the data retention period for not recruited applicants should be inserted in the notification accordingly;

*ii)* As to the storage period of personal data of trainees, the EIB may need to keep for a longer period the data necessary for providing a copy of the trainee certificate i.e. information on the duration of the traineeship, the department to which the trainee was assigned, the name of supervisor and the nature of work performed should be stored. In case the data subjects require that a certificate of their traineeship is re-issued, the EDPS accepted a longer period of retention under the condition that only the above-mentioned data are kept.

*iii)* Any further data required for statistical purposes should be kept in an anonymous form in the light of Article 4(1)(e) of the Regulation.

### ***Reminders***

*i)* Retention period of criminal records and of sensitive data are also specific. The EIB shall apply the recommendations made in the guidelines.

## **4. Transfers**

**Facts:** Interim agencies are partly in charge of the selection and recruitment of interim staff. In the case in point, monthly presences of interim staff are transferred to the agencies to allow them to calculate the payment of the salaries.

**Reminder:** The necessity of the transfer of data to the agencies should be examined under the conditions provided in Article 8(b). In particular, it must be established whether the data are necessary for the performance of their task and whether there is no reason to assume that the data subject's interest might be prejudiced.

## **5. Right of access and rectification**

**Facts:** The notification states that candidates are informed (via the privacy statement) of the point of contact to which they may submit their request to access their data and exercise their rights.

The right of access and rectification are limited to administrative data and to information regarding particular remarks made by those involved in the selection process. It is to be noted that there is no panels devoted to the evaluation of candidates. Trainees are selected on the basis of their applications and telephone interviews, students on the basis of drawing lots, secondees on the basis of an agreement between two institutions and interim staff on the basis of the CVs provided by the interim agency and an interview.

**Reminder:** The rights of access and rectification deserve a special attention. The EDPS would like to remind the specific recommendations developed in the guidelines. Among other things the right of rectification can only apply in the case of factual data processed within the selection

procedure. In addition, the EDPS points out that any limitation to the right of rectification after the closing date of submitting applications should only apply to data related to the admissibility criteria and not to the identification data that can be rectified at any time during the selection procedure. The EDPS considers this limitation necessary for the fairness of the selection procedure and justified in terms of Article 20(1)(c) of the Regulation. It is however important that all applicants are informed about the scope of this restriction before the beginning of the processing operation (see below "*right of information*").

## **6. Information to be given to the data subject**

**Facts:** A data protection notice is available on the EIB website in the section "Jobs". The EDPS has carefully analysed it. Interim staffs sign a confidentiality agreement on their first day. The document contains information related to data protection. The EIB suggested providing a privacy statement to secondees the day they join the Bank if they have not received it previously (for e.g. by applying to regular posts via the website).

### ***Recommendations:***

*i) Content of the information note:* As to the content of the data protection note, the EDPS would like to highlight that all elements listed in both Articles 11 and 12 of Regulation 45/2001 should be clearly and thoroughly indicated in the note. The time-limit for storing the data, the different legal basis of the different recruitment procedures and the recipients of the data are not clearly indicated.

*ii)* Information should be provided to the secondees as suggested by the EIB.

*iii) Information on the right of rectification:* As indicated above, it is important that all applicants are informed about the scope of restriction of this right before the beginning of the processing operation (see below "*right of access and rectification*").

## **7. Processing of personal data on behalf of controllers**

**Facts:** Interim agencies collect and process data on behalf of the EIB to select the best suitable candidate for a specific post. The EDPS received copies of the contracts binding the processors to the controller and carefully analysed them. The EDPS found no reference to Article 23.2.

### ***Recommendation:***

*i)* The contracts or the legal acts governing the outsourcing of the selection of interim staff to interim companies should stipulate that the processor shall act only on instructions from the controller and that the obligations set out in Articles 21 and 22 of the Regulation shall also be incumbent on the processor unless the processor is already subject to obligations with regards to confidentiality and security laid down in the national law of a Member State. In this case, interim agencies are subject to Luxemburgish law and therefore the obligations with regards to confidentiality and security established under Luxemburgish law are incumbent to them.

## **8. Conclusion**

The EDPS recommends that the EIB adopt specific and concrete measures to implement these recommendations regarding the selection and recruitment of non-permanent staff within the EIB. As concerns the reminders, the EDPS would like to be informed about the situation regarding the compliance with the guidelines. To facilitate our follow-up, it would therefore be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter which prove that the recommendations have been implemented.

Kind regards,

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Jean-Philippe MINNAERT, Data Protection Officer of EIB  
Ms Marie Mc GINLEY, Assistant Data Protection Officer of EIB