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ASSISTANT SUPERVISOR

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Head of Unit  
Secretariat of the Committee on Economic  
and Monetary Affairs  
European Parliament  
ATR 02K018 Brussels

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GB/OL/sn/D(2013)0424 C 2013-1090  
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correspondence

Dear Mr Barberá del Rosal,

On 7 October 2013, the Data Protection Officer (DPO) of the European Parliament (EP) has submitted to the EDPS a notification for prior checking pursuant to Article 27(3) of Regulation (EC) No 45/2001 ('the Regulation') concerning the selection of the Chair of the Supervisory Board.

On 9 October, the EDPS has requested further information from the EP, which was provided on 17 October 2013. On 30 October, the draft Opinion was provided to the DPO for comments, which were received on 6 November 2013.

As the EDPS has already issued Guidelines on selection and recruitment procedures, this Opinion will only focus on those aspects that diverge from the Guidelines or otherwise require further attention.

### **The facts**

The selection procedure for the Chair of the Supervisory Board (which is to be established as part of the Single Supervisory Mechanism (SSM)) involves a number of actors: after a public call for applications, the European Central Bank (ECB) establishes a shortlist of suitable candidates and proposes a candidate. For the Vice-Chair, the ECB proposes a candidate. Both the shortlist and the proposed candidates are communicated to the EP. The ECB will also communicate statistical

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information on the pool of applicants to the EP. The final appointment happens via a Decision of the Council.

The specific role of the European Parliament in the procedure is as follows: the Committee on Economic and Monetary Affairs of the EP may conduct an informal hearing in camera for shortlisted candidates or simply wait for the official communication of the ECB's proposed candidate. There will be no documents or evaluation reports as a result of these informal hearings.

An official hearing with the proposed candidates for the Chair (and the Vice-Chair) is carried out. This hearing is public and will be recorded. Recordings will be made available on the EP's website. Afterwards, the Committee prepares a report for the Plenary Session of the EP, which then votes to accept or reject the proposed Chair and Vice-Chair.

Personal data of applicants communicated to the EP by the ECB or collected during the hearing(s) will in principle be stored for the duration of the on-going legislative term. For this first selection procedure, the EP informed the EDPS that the documents will exceptionally be stored until the end of the following legislative term, as the current term is near its end. Afterwards, they will either be destroyed or kept for historical value, in accordance with the IPOL retention schedule.

Personal data may be disclosed to members of the Committee on Economic and Monetary Affairs as well as to the staff of political groups. Official documents issued by the EP following the official hearing may be published on the EP's website.

### **Legal Analysis**

This Opinion only concerns the processing activities carried out by the EP. The processing operations of the ECB have been dealt with separately in case 2013-1007.

The information on the pool of applicants is of a statistical nature and does not qualify as personal data.

Concerning the conservation period, the EDPS understands that the EP intends to apply the same rules as for other committee documents, meaning conservation until the end of the legislative term, with possible conservation for historical value afterwards. For this first selection, the EP intends to exceptionally store the data until the end of the following term. By way of comparison, the EDPS accepts conservation periods of two to three years maximum for standard recruitment procedures. In principle, these periods should not be exceeded.<sup>1</sup> The argument that the current procedure falls at the end of the legislative term and that therefore the data should be stored exceptionally until the end of the following term does not appear convincing as such, given that the term of office of the chair will be five years, so that subsequent selection procedures are highly likely to fall near the end of the legislative term again. **The EDPS recommends that the**

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<sup>1</sup> The ECB has accepted a conservation period of three years for its files in connection with the selection of the Chair, see follow-up to EDPS case 2013-1007, down from five years in the notification.

**EP should store personal data only until the end of the on-going legislative term, if it can provide appropriate justification why the data should be kept in a way identical to other Committee documents<sup>2</sup>, or for a conservation period in line with best practices (two to three years).**

Concerning the disclosure of personal data to staff of the political groups, care should be taken to avoid unnecessary disclosure. The EDPS does not consider these staff members as external recipients, but as a part of the procedure, given that they assist the MEPs of the Committee in their work. Disclosure of documents to them has to respect the general rules of the Regulation. **The notification and privacy statement should be updated to reflect this.**

As concerns possible disclosure of documents (notably the shortlist) in response to requests for public access under Regulation (EC) No. 1049/2001, the **EP should adopt a pro-active approach in line with the EDPS paper on "Public access to documents containing personal data after the Bavarian Lager ruling, 24 March 2011".<sup>3</sup>**

As the privacy statement correctly mentions, the EP as an institution is the controller; for added clarity, it could be specified that the name given below is the contact point for any inquiries data subjects might have.

Please inform the EDPS of the measures taken based on the recommendations of this opinion within a period of 3 months.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Secondo Sabbioni, Data Protection Officer, European Parliament

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<sup>2</sup> E.g. if there is a legal obligation to conserve data for a certain time.

<sup>3</sup> Available on our website,

[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24\\_Bavarian\\_Lager\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24_Bavarian_Lager_EN.pdf).