



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

[...]
Alternate of the Chair of EIOPA's Board of Supervisors
European Insurance and Occupational Pensions Authority (EIOPA)
Westhafenplatz 1
Westhafen Tower 14 floor
D-60327 Frankfurt am Main
GERMANY

Brussels, 18 December 2015
WW/SS/msm/D(2015)2429 C 2015-0685
Please use edps@edps.europa.eu for all correspondence

Subject: Prior Checking Opinion on EIOPA's open selection procedure for the position of EIOPA's Executive Director (Case 2015-0685)

On 24 August 2015, the European Data Protection Supervisor ("EDPS") received a notification for prior checking from the Data Protection Officer ("DPO") of EIOPA regarding the open selection procedure for the position of EIOPA's Executive Director.

The EDPS takes note of the fact that the processing operation has already been established, making this de facto an ex post prior check. The two-month deadline therefore does not apply and this case was dealt with on a best effort basis.

The processing notified falls under the scope of the EDPS Guidelines on selection and recruitment procedures¹ ("the Guidelines"). This Opinion therefore will not contain a full analysis of the procedure, but will focus on those aspects that diverge from standard practice and/or require improvement. In light of the accountability principle guiding his work, the EDPS would nonetheless want to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations under consideration.

Description and assessment

Grounds for prior-checking

The notification refers to Article 27(2) points (b) (evaluation of personal aspects) and (d) (processing intended to exclude from a right, benefit or contract) as reasons for prior-

¹ Available [here](#) on the EDPS website.

checking. The EDPS underlines that Article 27(2)(d) is not relevant here, since it targets processing operations such as blacklists and asset freezing², and should be deleted from the notification.

Grounds for lawfulness

According to the information received from the DPO, in case, for example the European Parliament requires the names and first names of the short-listed candidates for confirmation purposes, the consent of these candidates will be requested by email by the President of the Selection Committee. The notification refers to Article 5(a) and (d) of the Regulation. EIOPA considers Article 5(d) as a legal ground justifying the transfer of the candidates' personal data to the Parliament.

The EDPS notes that Article 51(2) of Regulation (EU) No 1094/2010 establishing EIOPA states that the Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament. This provision may be considered as the legal basis of the above transfer. The EDPS highlights that consent in an employment situation is a sensitive matter as it is doubtful that such consent is given freely and without pressure. Article 5(d) is therefore not a lawful ground to legitimize the transfer of the candidates' personal data to the Parliament. EIOPA should therefore erase this provision from the notification.

Right of access

According to the notification, the candidates are informed at each step of the procedure. They have the possibility to request additional information or to express their disagreement in a formal manner by contacting the chair of the Selection Committee. If requested, a re-transcription of the conclusions of the pre-selection and the outcome of the selection is transmitted to the relevant candidate. Candidates who have been to the assessment centre can request an oral feedback on their performance during these tests.

The EDPS welcomes the fact that candidates can request a re-transcription of the conclusions of the pre-selection and an oral feedback on their performance at the assessment centre. The EDPS suggests complementing the modalities for candidates to exercise their right of access to their own personal data as it has been recommended in the [EDPS Guidelines on the rights of individuals](#)³. This should include having access in a written form also to the interviews, oral and written tests and the remarks/results given in other evaluation instances⁴.

As to the issue of candidates' access to the assessment centre results, the EDPS has accepted in a previous opinion on a similar processing operation, a two-step procedure, in which the written transcript of their report in the assessment phase is provided to candidates at their request, only if they have received prior in-depth oral feedback on these results from the assessment centre.

² Exclusion databases offer an example of Article 27(2)(d): if a person is placed on the exclusion list, she is worse off (in that he/she is no longer eligible for participation in calls for tender) than if the exclusion database did not exist. Article 27(2)(d) therefore applies to such databases. See [cases 2010-0426 and 2009-0681](#).

³ See in particular pages 13-14 and 29-31 for selection and recruitment procedures.

⁴ I.e. tests at an assessment centre, presentation and interview with the Board of Supervisors.

Information to data subjects

The vacancy notice and the privacy statement will be published on EIOPA's website. The vacancy notice will also be published in the Official Journal and an advertisement will be published in other relevant European publications.

Since candidates apply by email to a dedicated email address, the EDPS recommends also including a link to the privacy statement in the section on "Protection of personal data" of the vacancy notice so that all applicants can receive the privacy statement before they apply.

The EDPS further recommends adding in the privacy statement the information that the first and last name of shortlisted candidates might be sent to the EP.

Should EIOPA disclose candidates' personal data in the media⁵, EIOPA should inform the candidates beforehand.

Likewise, the selected candidate should be informed that his/her CV and declaration regarding interest will be published on EIOPA's website according to the Decision on EIOPA's Procedure on Independence and Decision Making Processes regarding Declarations of interests for staff and other contractual parties. This Decision provides the legal basis for the publication of the declaration of interest. While this decision only deals with the processing of declarations of interest, the same principle and reasoning (the need for transparency on integrity and public trust) can justify the publishing of the Executive Director's CV. The Executive Director, as part of the high management of EIOPA, may have significant influence and powers within the EU decision-making process⁶. For that reason it is important for EIOPA to show there are no conflicts of interest. The EDPS considers that the publication of the CV and declaration is therefore lawful under Article 5(a) of the Regulation.

The EDPS considers that with regard to the publication of the CV and declaration, data subjects should be informed at an early stage – at the latest when data is collected from them – about the possible publication of their data and their right to object to this on the basis of compelling legitimate grounds pursuant to Article 18 of the Regulation. The EDPS recommends that this information is included in the privacy statement.

Furthermore, the EDPS recommends that EIOPA adds in the privacy statement the above recommendations on the candidates' right of access.

The EDPS also recommends specifying in the privacy statement that the data subjects can at any time have recourse to the EDPS.

Processing by the processor

According to the additional information from the DPO, EIOPA is in the process of procuring the external provider for assessing the management skills of the candidates and the contract would follow the usual EU Institutions contract template.

The EDPS would like to stress as it is stated in the Guidelines that *"in case an external company, covered by the Directive is in charge of carrying out tasks for an agency, the exact tasks between the controller (agency) and the processor-recipient (company) should be set up*

⁵ See point II.1.2 of the Note on OSP for EIOPA ED.

⁶ See the [EDPS Guidelines on the processing of personal data with regard to the management of conflicts of interest in EU institutions and bodies](#).

through a contract or a legal act. Their respective obligations should also be ensured in the light of the confidentiality and security requirements pointed out in Article 23 of the Regulation".

The EDPS points out that the rights and obligations of the external contractor in the area of data protection should be clearly distinguished in the contract. There should be no confusion between the obligations of EIOPA with regard to the personal data of the external contractor (its staff) and the obligations of the external contractor towards EIOPA concerning the processing of personal data which is the object of the contract (data of the candidates that are invited to the tests of the external assessment centre)⁷.

EIOPA should clarify whether the processor will keep any of the candidates' personal data and if it is the case, a retention period should be established. Furthermore, EIOPA should clarify whether the processor will be responsible for granting access rights to candidates' personal data. This information should be indicated in the privacy statement.

Completion of the notification

In order to have the full information on the processing operation in the notification, the EDPS recommends that EIOPA completes the notification to indicate that the HR Coordinator, one other HR staff member and IT-staff members have access to the special dedicated email and the folders with applications and reports of the Selection Committee in Outlook and main EIOPA server, and that the Legal team grants this access.

Conclusion

Based on the information provided, the EDPS has no reason to believe that the procedure breaches the Regulation.

In light of the accountability principle, the EDPS trusts that EIOPA will ensure that all the above recommendations will be duly implemented in accordance with the Regulation.

We have therefore decided to **close case 2015-0685**.

Kind regards,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, European Insurance and Occupational Pensions Authority

⁷ See conclusions of the 2013 EDPS inquiry on measuring compliance with Regulation (EC) 45/2001 in EU institutions (section 3.5.):
https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2014/14-01-24_survey_report_EN.pdf