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GB/[...] D(2014) 2391 **C 2014-0846**
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Subject: Opinion on the prior checking notification concerning recruitment and assessment of Temporary Agents and Contract Agents at Eurofound

Dear [...],

On 4 September 2014, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27(2) of Regulation (EC) No. 45/2001¹ (the Regulation) relating to the selection and recruitment of Temporary Agents (TAs) Article 2(f)² at Eurofound. The EDPS asked for further information on 8 September 2014, 13 October 2014 and 13 November, and Eurofound replied on 14 October 2014 and 13 November 2014.

The EDPS has already issued Guidelines on recruitment and selection procedures³. For this reason, the description of the facts and the legal analysis will only mention those aspects which diverge from the Guidelines, or otherwise merit explanation.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8/1, 12/01/2001.

² "For the purposes of these Conditions of Employment, 'temporary staff' means:

(f) staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to an agency as referred to in Article 1a(2) of the Staff Regulations and which the budgetary authorities have classified as temporary, except heads of agencies and deputy heads of agencies as referred to in the Union act establishing the agency and officials seconded in the interests of the service to an agency".

³ EDPS - *Guidelines concerning the processing operations in the field of staff recruitment*, issued on 10 October 2008.

The purpose of the processing operation under review is the selection procedure and appointment to TA contracts under Article 2(f) of the Conditions of Employment of Other Servants (CEOS)⁴, for which preference is given to existing staff members who may need to be subject to performance assessment.

Based on the information provided in the Notification, the personal data processing operation under review seems to be compliant with the Regulation. The EDPS will only refer to some aspects which should be clarified in relation with the Notification and the Privacy Statement.

According to Article 5(a) of the Regulation, personal data may be processed if it is necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the institution or body which controls the data processing operation.

Following Article 6 CEOS, *"each institution shall determine who shall be authorised to conclude the contracts"* of temporary staff. According to Article 12(5) CEOS, the Appointing Authority *"shall adopt general provisions on the procedures for recruitment of temporary staff in accordance with Article 110 of the Staff Regulations, as necessary"*. In the case under review, the Appointing Authority is the Director of Eurofound. The Director issued a Decision (Office Notice 2014-10) in which he details the procedure for offering contracts for TA Article 2(f) vacancies by providing first consideration only to staff members already having specific types of TA and CA contracts with the institution and who are on a reserve list for TA Article 2(f) (and not all TA and CA contracts). Therefore, the data processing operation under review has as lawful basis under Article 5(a) of the Regulation, together with Article 6 and Article 12(5) of CEOS of the Staff Regulations and Office Notice 2014-10 issued by the Director of Eurofound. All the other legal bases mentioned in the notification (Article 2(f), Article 8, Article 9, Article 10, Article 14 and Article 15 CEOS) are indeed related to temporary staff, their status within an institution or body of the EU and the general conditions for their employment, but are not directly a legal basis for the processing operations at hand. For the sake of clarity, Eurofound should **only mention in the Privacy Statement Article 6 and Article 12(5) CEOS together with the Office Notice 2014-10 as legal bases** for the processing under review.

The processing operation at hand was notified under Article 27(2)(b) and (d). The EDPS would like to point out that the sole legal basis for prior checking this processing operation is Article 27(2)(b) of the Regulation. The selection of TA Article (2f) is subject to prior-checking in conformity with Article 27(2)(b), since the processing operations are intended to evaluate the candidates' ability to perform the job functions. Article 27(2)(d) of the Regulation, also mentioned in the Notification, is not relevant in this case because the purpose of the processing operation is to identify suitable staff members apt to fill in a vacancy in the institution, and not to exclude them from the selection process by creating a blacklist.⁵

As a matter of consistency, **point III of the Privacy Statement should be modified to mirror the information from the notification regarding the identity of the controller**. More precisely, the Privacy Statement should also refer to the Eurofound as being the controller and to the Head of the HR Unit as being the organisational part of the institution entrusted with the processing of personal data.

⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385).

⁵ See e.g. EDPS case 2009-0681 on the European Commission's central exclusion database.

Finally, with regard to the rights of the data subject, the EDPS observes that even if the right of rectification, enshrined in Article 14 of the Regulation, is mentioned in the notification, it is not mentioned in the Privacy Statement. Mentioning the right of rectification is a mandatory item under Article 11(1)(e) of the Regulation. Eurofound should therefore **add the right to rectification to point VII of the Privacy Statement**, also having regard to the fact that Article 14 of the Regulation requires the controller to rectify incomplete and inaccurate data "without delay".

In conclusion, there is no reason to believe that there is a breach of the Regulation provided that the recommendations contained in this Opinion are fully taken into account. In particular, Eurofound should complete the Privacy Statement as described above.

The EDPS expects that Eurofound will implement the recommendations made in this Opinion and has therefore decided to close case 2014-0846.

Yours sincerely,

Giovanni BUTTARELLI

(signed)

Cc.: [...], DPO - EUROFOUND