



**Prior Checking Opinion regarding procedure for appointing members of  
the Management Committee of the European Investment Bank (EIB)  
Case 2017-0411**

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The EIB has set up a procedure for appointing the nine Members of its Management Committee. The evaluation of the candidates is made by the EIB's Appointing Advisory Committee (AAC) and the appointment by the Board of Governors. The EDPS recommends revising the information provided to candidates to include clear and specific references to the recipients and categories of recipients of the evaluation made by the AAC.

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Brussels, 27 October 2017

## 1) The facts

### *Legal basis*

The European Investment Bank (further referred to as the “EIB” or the “Bank”) is directed and managed by a Board of Governors<sup>1</sup>, a Board of Directors<sup>2</sup> and a Management Committee. Following Art. 11 of the Statute of the EIB, the Management Committee is composed of nine members appointed for a period of six years renewable by the Board of Governors on a proposal from the Board of Directors. Following Art. 23.a of the Rules of Procedure of the EIB<sup>3</sup>, “Members of the Management Committee shall be persons of independence, competence, and have experience in financial, banking and/or European Union matters. They shall, at all times: - be of high integrity and enjoy high reputation; - possess sufficient knowledge, skills and expertise to perform their duties.” In addition, it is provided that “[a]n Appointment Advisory Committee shall be set up in order to give a non-binding opinion on candidates ‘suitability to perform the duties of a Member of the Management Committee’<sup>4</sup>. The latter committee consists of persons external to the EIB.

### *Purpose*

The notification relates to both the procedure of evaluation of the candidates by the Appointing Advisory Committee (further referred to as the AAC) (phase 1) and the procedure of appointment by the Board of Governors (phase 2).

The AAC shall assess whether the candidates proposed for appointment by Member States satisfy the criteria set out in the Rules of Procedure of the Bank (Art. 23(a) quoted above). The AAC may request additional information and or documents from the Member States and ask a confidential hearing with the candidate. The opinion of the AAC consists either in a “non-objection” or a “statement of reservation”, the latter has to be duly motivated. The opinion is transferred to the nominating Member State on a bilateral and confidential basis, as well as to the candidates.

Should the Member State wish to proceed to propose its candidate after receipt of the Committee's opinion, that opinion must be included with the proposal. If the Committee does not provide its opinion within 60 days from the request, the Member State may propose its candidate without the opinion of the Committee. The Board of Governors appoints the Management Committee of the EIB on a proposal from the Board of Directors in accordance with the following procedure:

- i. the proposal from the nominating Member State (including the Committee's opinion) is transmitted to the Board of Directors upon its receipt by the EIB's Secretary General;
- ii. once approved by the Board of Directors, the EIB's Secretary General sends the proposal for the appointment (including the Committee's opinion) to the Board of Governors for approval.

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<sup>1</sup> Art. 7(1) of the Statute of the EIB of 1 July 2013: “The Board of Governors shall consist of the ministers designated by the Member States”.

<sup>2</sup> Art. 9(2) of the Statute of the EIB: “The Board of Directors shall consist of twenty-nine directors [...] appointed by the Board of Governors for five years, one nominated by each Member State, and one nominated by the Commission”.

<sup>3</sup> Decision of the Board of Governors of 20 January 2016 on the Amendments to the Rules of Procedure of the EIB to reflect the Strengthening of the EIB Governance (2016/772), OJ L 127, 18.05.2016.

<sup>4</sup> Art. 23.a (2) of the Rules of Procedure of the EIB.

### ***Categories of data processed for evaluating candidates***

Under Article 2(2) of the AAC Operating Rules, in order to assess the candidate's "high integrity and high reputation" as well as "his or her ability to ensure the sound and prudent management of the Bank", account shall be taken inter alia "of factors such as convictions or pending prosecutions of a criminal offence [...]". Under Article 2(3) of the AAC Operating Rules, the AAC considers the candidate's theoretical and practical experience as well as "skills and knowledge acquired and demonstrated by the professional conduct of the candidate". It further looks at "the candidate's ability to perform his or her duties independently".

The "information form" to be completed in agreement with the candidate is provided to the nominating Member State and shall be returned to the AAC Secretary together with a curriculum vitae of the candidate. This form gathers information on the candidate personal identification details, theoretical and practical experience of the candidate (incl. professional experience, education, and other relevant trainings), and information about the integrity of the candidate (incl. general information on criminal antecedents, financial antecedents, conduct, and financial holding and business interests and obligations).

Processing operations are subject to EIB's confidentiality rules. The "information form" for candidates mentions their rights under Regulation (EC) n° 45/2001<sup>5</sup> (the Regulation).

### ***Recipients or categories of recipients***

During the evaluation phase (confidential bi-lateral process between AAC and the Member State), the "information form" and the curriculum vitae provided by the candidate are shared between:

- The responsible Ministry/Department from the Member State presenting the candidate;
- The AAC members;
- The EIB Secretary General acting as AAC Secretary;
- The candidate, including any information additional to the information already provided by him/her in the "information form".

During the appointing phase, should the Member State wish to proceed to propose its candidate after receipt of the Committee's opinion, the data that might be disclosed will be limited to the information in the AAC opinion and in the curriculum vitae provided by the candidate to:

- The responsible ministry/department from the Member State presenting the candidate;
- The candidate, to the extent that the candidate might exercise the right of access to his/her own personal data contained in the AAC opinion according to applicable legislation;
- The EIB President;
- The EIB Secretary General ;
- The Members of the Board of Directors;
- The Members of the Board of Governors.

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<sup>5</sup> 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, 12.01.2001.

## 2) Legal analysis

This prior checking Opinion<sup>6</sup> under Article 27 of the Regulation will focus on those aspects which raise issues of compliance with the Regulation or otherwise merit further analysis. For aspects not covered in this Opinion, the EDPS has, based on the documentation provided, no comments.

### a) Information to data subjects

Article 11 of the Regulation provides that the controller shall inform the data subject from whom data relating to himself/herself are collected about the processing, including “[...] (c) the recipients or categories of recipients of the data; [...]”.

The information supplied in the information does not fully comply with the above-mentioned requirements. There is no specific information relating to the **recipients and categories of recipients of personal data processed by the AAC**.

The EDPS **recommends** modifying the information provided to data subjects to include information relating to recipients of personal data processed by AAC.

In addition, it would be preferable to refer to the “right of access” instead of the “right to inspect” in the information form, to ensure consistent terminology.

The EDPS **suggests** replacing, in the information provided to data subjects, the “right to inspect” by the “right to access”.

### b) Confidentiality of the evaluation process

Article 22 of Regulation 45/2001 provides that “[h]aving regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected”.

The notification provides that processing operations and processed data shall be subject to EIB’s confidentiality rules. The evaluation of candidates to the Management Board of the Bank includes the processing of data relating to criminal antecedents (see section 4.1 of the information form). The processing of these personal data is subject to appropriate specific safeguards pursuant to Article 10(5) of the Regulation.

In the light of the Regulation’s requirements for confidentiality and security measures as foreseen in Articles 21 and 22, the EDPS considers that members of the AAC processing the applications of candidates in view of evaluating them should be subject to strict confidentiality obligations. The EDPS considers it good practice to have members of selection panels sign a

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<sup>6</sup> As this is an ex-post case, the deadline of two months for the EDPS to issues his Opinion does not apply. The notification was received on 19 April 2017. On 22 May 2017, the EDPS requested some clarifications and additional information that was supplied on 26 June 2017. This case has been dealt with on a best-effort basis.

specific confidentiality declaration prior to the beginning of the evaluation procedure, notably specifying that data regarding the evaluation and selection procedure shall not be used for any other purpose than the one for which they were transmitted. This applies by analogy to the AAC as well.<sup>7</sup>

The EDPS recommends drafting a specific confidentiality form to be signed by the members of the AAC prior to the beginning of the evaluation procedure.

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### 3) Recommendations

In this Opinion, the EDPS has made recommendations to ensure compliance with the Regulation, as well as one suggestion for improvement. Provided that these recommendations are implemented, the EDPS has no reason to believe that there is a breach of the Regulation.

The EDPS expects implementation within **three months** of the date of this Opinion for the recommendations made in it:

1. Modify the information provided to data subjects to include information relating to recipients of personal data processed by AAC.
2. Draft a specific confidentiality form to be signed by the members of the AAC prior to the beginning of the evaluation procedure.

As a suggestion for improvement, the EIB could replace, in the information provided to data subjects, the “right to inspect” by the “right to access”.

Done at Brussels, 27 October 2017

Wojciech RAFAŁ WIEWIÓROWSKI

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<sup>7</sup> Even more so since, being external to the Bank, the AAC members are not subject to the confidentiality obligations of the Staff Regulations.