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**Subject: Prior-checking Opinion regarding the selection of confidential counsellors
at the European Investment Bank (case 2017-0136)**

Dear,

On 30 January 2017, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European Investment Bank (EIB) a notification for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to the selection of confidential counsellors.

The EDPS has issued Guidelines concerning the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment in European institutions and bodies¹ (henceforth: "Guidelines"). The introductory section of the Guidelines notes that "*processing operations involving personal data in informal anti-harassment procedures are subject to prior-checking in conformity with Article 27(2) (b) and possibly (a) of the Regulation, since they involve... for the selection of confidential counsellors, an evaluation of the applicants' ability to perform the function, and possibly processing operations related to health; ...*". The processing operations under examination (the selection of confidential counsellors at EIB) are thus subject to prior-checking in conformity with Article 27 of the Regulation².

The EDPS will highlight only those EIB practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines and will restrict his legal analysis to

¹https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-02-18_Harassment_Guidelines_EN.pdf

² The notification in case 2016-0408 and, as a consequence, this Opinion does not cover data processing operations specific to the informal procedure dealing with harassment cases; please see EDPS Opinion case 2013-0732 instead.

those practices. In the 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 put in place in for the selection of confidential counsellors at the EIB.

1. Proceedings

The procedure was notified for prior checking under Article 27 of the Regulation on 30 January 2017³. The draft Opinion was sent to the DPO for comments on 10 October 2017; no reply was received. As this is an ex-post case, the deadline of two months does not apply. This case has been dealt with on a best-effort basis.

2. Facts and analysis

a) Specific rules on modalities

Under p. 4 of the Guidelines, the modalities of the procedure leading to the selection of confidential counsellors should be further detailed in more specific rules of normative value (policy, communication, decision).

According to additional information provided on 4 September 2017, “The procedure in the EIB for the selection of confidential counsellors is aligned with page 2, paragraph 4 of the guidelines...” and includes the following process steps:

- “A call for interest is published on the Bank’s internal intranet
- Interested candidates send a motivation letter and CV to Personnel
- Candidates eligibility is checked by Personnel ...
- Candidates are invited for interview with a panel
- Panel selects candidates and may propose a reserve list
- DG Personnel (delegation from the President) agrees to selection and sends appointment letters to successful candidates (3 year mandate)
- Successful candidates sign and return a confidentiality covenant to Personnel
- The list of confidential counsellors is announced and published on the Bank’s internal intranet...”.

However, this procedure for the selection is not further outlined in any specific rules of normative value, in particular not in the “Policy on Dignity at Work - Informal procedure for addressing alleged bullying and harassment” (which contains the list of confidential counsellors) or the “Policy on Dignity at Work -Roles and responsibility” document.

The EDPS *recommends* specifying the modalities of the procedure leading to the selection of confidential counsellors in more specific rules of normative value.

b) Specific information contained in the final list of confidential counsellors

P. 2 of the Guidelines further notes that "*The final list of confidential counsellors...specifies information which may be of interest for the alleged victim's selection of a counsellor (gender, nationality, spoken languages, etc.)*". Whilst the “Policy on Dignity at Work - Informal

³ The EDPS invited the EIB to reply to a number of questions on 1 February 2017, 6 February 2017, 24 February 2017, 16 June 2017 and 6 July 2017, to which the EIB replied on 6 February 2017, 24 February 2017, 26 June 2017, 3 July 2017 and 4 September 2017 respectively.

procedure for addressing alleged bullying and harassment” contains the list of confidential counsellors, it does not specify information which may be of interest for the alleged victim's selection of a counsellor (gender, nationality, spoken languages, etc.).

The EDPS *recommends* specifying in the procedural rules of normative value (see above section a)) which information of potential interest will be contained in the final list of confidential counsellors and including such information in the final list of confidential counsellors.

c) Data quality / selection criteria

In Section 3 of the Guidelines (p. 6), the EDPS recommends adopting selection and eligibility criteria in order to guarantee the principle of data quality and presenting these criteria explicitly in the call for interests.

According to additional information provided on 4 September 2017, “*Candidates eligibility is checked by Personnel (eligibility criteria: two years’ service at the EIB, must not have been subject of a Dignity at Work procedure (formal or informal) or disciplinary procedure in last 3 years, must not be a current Staff Representative or work in certain parts of Personnel (ER division, management)*”. However, these selection criteria are not contained in any specific rules of normative value, in particular not in the “Policy on Dignity at Work - Informal procedure for addressing alleged bullying and harassment” or the “Policy on Dignity at Work -Roles and responsibility” document.

The EDPS *recommends* specifying in the procedural rules of normative value (see above section a)) the selection criteria for confidential counsellors and including these criteria explicitly in the call for interests.

3. Conclusion

The EDPS recommends that the EIB adopts specific and concrete measures to implement the above suggestions and recommendations to ensure compliance with the Guidelines and the Regulation regarding the selection of confidential counsellors. To facilitate our follow-up, please provide the EDPS with all relevant documents within three months of the date of this letter which prove that all recommendations and reminders have been implemented.

Kind regards,

Wojciech RAFAŁ WIEWIÓROWSKI

Cc.: ..., DPO European Investment Bank