

Opinion on the notification for prior checking the selection and appointment of the two Stakeholder Groups at the European Insurance and Occupational Pensions Authority (EIOPA)

Brussels, 3 July 2012 (case 2012-0264)

1. Proceedings

On 16 March 2012, the European Data Protection Supervisor (EDPS) received from the Executive Director of the European Insurance and Occupational Pensions Authority (EIOPA) a notification for prior checking concerning the processing of personal data for the selection and appointment of members of the two EIOPA Stakeholder Groups, namely the IRSG (Insurance and Reinsurance Stakeholder Group) and OPSG (Occupations Pensions Stakeholder Group) and establishment of a reserve list. The notification form was accompanied by the following documents:

1. Letter of Mr Carlos Montalvo, Executive Director at the EIOPA;
2. Call for expression of interest regarding membership in the EIOPA Insurance and Reinsurance Stakeholder Group - Academic - (EIOPA -012-043);
3. The application form (February 2012);
4. The CV-template (February 2012);
5. The selection procedure for members of the EIOPA stakeholder groups (IRSG and OPSG);
6. Anonymised curriculum vitae of one member.

The draft Opinion was sent to the DPO for comments on 19 June 2012. These were received on 2 July 2012.

2. Facts

The **purpose** of the processing in question is the selection and the appointment of members of the two EIOPA Stakeholder Groups, namely the Insurance and Reinsurance Stakeholder Group (IRSG) and the Occupational Pensions Stakeholder Group (OPSG) and the establishment of a reserve list, if necessary. The two Stakeholder Groups are established to help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority¹. The first selection procedure was launched in November 2010 under EIOPA's predecessor CEIOPS. A second call has been launched by EIOPA on 3 February 2012 to replace a resigning member in the Insurance and Reinsurance Stakeholder Group. Each group should include 30 members, to be appointed by the Board of supervisors of the EIOPA after the selection procedure.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the council of 24 November 2010, in particular Article 37.

The selection procedure is detailed in EIOPA's Selection procedure for members of the EIOA stakeholder groups (IRSG and OPSG) (EIOPA-BoS-11-010). The selection procedure includes:

- the publication of the call for candidates providing for selection criteria, application requirement, membership duties, location of meetings and financial information;
- the processing of applications;
- the appointment by the Board of Supervisors, and
- the publication of the CV of the appointed members.

The Selection Committee shall select the candidates to be proposed to the Board of Supervisors for final appointment after the consultation with the Management Board. To this effect, the Selection Committee shall present the results of the selection process on the basis of an individual assessment form for each candidate. Where possible, a reserve list of candidates will be established. Members of the Stakeholder Groups shall be appointed following proposals from the relevant stakeholders².

The **controller** is the EIOPA, here represented by the Executive Director.

Data subjects are qualified individuals. The following **categories of data** included in the CV (model European CV from Europass recommended) and the application form may be processed:

- *Personal and contact information* (name, date of birth, gender, nationality, address, further contract details), *membership sought*;
- *Work experience/Employment History* (current organisation, job title, organisation name and type, description of responsibilities);
- *Education, training and academic background*;
- *Personal skills and competences* (languages, mother tongue, technical skills, other skills);
- *Field (s) of expertise, technical capacity as specified in the call for interest*;
- *Declaration of conflicts of interest*.

The applicants may provide a motivation letter.

The **data processing is automated**. Applications shall be submitted either by registered post or by private courier service (to EIOPA address) or by email to a specified EIOPA email address. All relevant documents regarding candidates will be saved on the EIOPA server.

The following **retention policy** applies:

Data of rejected applicants are kept for 2 years and a half for applicants who have been neither on the reserve list nor appointed to the Stakeholder Groups, from the date of the appointment decision.

Data of appointed members are kept for five years after the expiry of the mandate. Some categories of members are granted the reimbursement of travel costs and other allowances. For audit purposes, EIOPA is obliged to keep all information related to the reimbursement. For practical reasons, EIOPA decided to keep the data of all appointed members, and not only of those receiving reimbursements, for five years after the expiry of the mandate.

Data of candidates inserted in the reserve list are kept until a new call for expressions of interest is published.

² cf Art.37 (4) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010

In case of a legal challenge, the above dates shall be extended until the completion of all relevant proceedings.

Data processed within the processing operation may be disclosed to the following **recipients**:

- The Selection Committee shall receive the complete documentation sent by each applicant.
- The Boards (Management and Board of Supervisors) shall receive the relevant documentation of the candidates proposed by the Selection Committee.
- The names of the appointed members are published on EIOPA's website. In addition, a short biography and a photo of the Chairs and the Vice-Chairs of the two Stakeholder Groups are published. Before the publication, EIOPA will request the explicit approval by the appointed candidates³.

Data of members on EIOPA's website will be deleted after the resignation of a member or the expiry of a mandate.

The data subjects are granted **rights of access, rectification and to obtain the blocking or deletion** of personal data. EIOPA's implementing Rules on Data Protection lay down the detailed rules pursuant to which a data subject may exercise his or her rights, the procedure for notifying a processing operation and the procedures for obtaining access to the register of processing operations kept by the Data Protection Officer.

Information to data subjects is provided in the Personal data protection notice published on EIOPA's website dedicated to the call for candidates. In addition, the call for expression of interest informs candidates that the final composition of the two Stakeholder Groups (names, nationality and short bios of their members) will be published on EIOPA's website. The implementing Rules on Data Protection are published on EIOPA's website on the legal framework

The *Personal data protection notice* provides information about the following details:

- purpose of the processing;
- identity of the controller;
- categories of data processed;
- recipients of the data processed;
- retention policy;
- rights of access and rectification;
- information related to technical means and security measures;
- EIOPA's contact information;
- right to have recourse to the DPO of the European Commission and the EDPS.

[...]

³ Publication was furthermore requested by the European Ombudsman with the aim of providing enhanced transparency as to the membership of the EIOPA Stakeholder Groups as well as to the professional qualifications of their members.

3. Legal aspects

3.1. Prior checking

The processing of personal data within the management and administration of the selection procedure falls within the scope Regulation (EC) 45/2001 (hereinafter the Regulation) and is subject to prior checking by the EDPS pursuant to its Article 27(2) (b).

Data is collected and processed with the purpose to evaluate personal aspects relating to the data subject, including his or her ability to become a member of one of the Stakeholder Groups. The selection of candidates is performed on the basis of an evaluation of specific criteria, including their profession and experience in the relevant fields.

In principle, prior checks by the EDPS should be carried out before the processing operation is implemented. Since the selection procedure has already been launched in February 2012 and the relevant data processing operations have been established, the check has to be carried out *ex post*. The EDPS finds this regrettable and reminds the EIOPA that in any case all recommendations made by the EDPS should be fully taken into account and the processing operations should be adjusted accordingly.

The notification of the DPO was received on 16 March 2012. According to Article 27(4) of the Regulation, the EDPS Opinion must be delivered within a period of two months. The procedure was suspended for 55 days to request complementary information and to allow for comments on the draft Opinion. Therefore, the present Opinion must be delivered no later than 11 July 2012.

3.2. Lawfulness of the processing

The legal basis of the processing of personal data within the selection procedure for members of the EIOPA Stakeholder groups can be found in the following legal acts:

- Article 37 of Regulation (EU) No 1094/2010⁴;
- EIOPA-012-043 Call for expression of interest regarding membership in the EIOPA Insurance and Reinsurance Stakeholder Group;
- EIOPA-11-049 EIOPA Insurance and Reinsurance Stakeholder Group - Rules of Procedure;
- EIOPA-11-048 EIOPA Occupational Pensions Stakeholder Group- Rules of Procedure.

Processing of personal data within the selection procedure at the EIOPA can be considered as necessary for the performance of tasks carried out in the public interest on the basis of the above mentioned regulations and to ensure compliance with obligations arising from them. Thus, processing of personal data in the case at hand is lawful within the meaning of Article 5(a) of the Regulation, read together with its recital 27.

Article 15 of the Treaty on the Functioning of the European Union (TFEU)⁵ specifies that each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph. The publication of the names of the appointed members as well as short biography of the Chair and Vice-Chairs of the Stakeholder Groups on EIOPA's website enhances transparency and can therefore also be

⁴ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

⁵ Consolidated version published in the Official Journal of the European Union C 115/47 on 9.5.2008.

considered lawful under Article 5 (a) of the Regulation.⁶ Moreover, before the publication, EIOPA will also request the explicit approval by the appointed candidates.

As regards the publication of the photos on EIOPA's website, the EDPS considers that there is no evidence that such processing is "necessary", in the present case, for the performance of a task carried out in the public interest. Therefore, according to the available information, this processing activity could only take place if "*the data subject has unambiguously given his or her consent*" (Article 5(d) of the Regulation). As a consequence, the EDPS recommends EIOPA to avoid the publication of the stakeholders' photos before they are given the opportunity to express their consent in the sense of Article 2(h) of the Regulation ("*the data subject's consent shall mean any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed*").

3.3. Data quality

The collection of personal data listed above seems to be necessary for the identification and evaluation of eligibility of the data subjects.

As regard the publication of data on EIOPA's website, there is no evidence that the information that is published goes beyond what is necessary for transparency.

Data are provided by the respective data subjects; hence the procedure itself helps to guarantee accuracy of data being processed. The rights of access and rectification contribute further to ensure that the data processed are accurate and up to date (cf. point 3.6. below).

As already mentioned in section 2, the applicants may provide additional information in a motivation letter which might not be necessary for the respective selection procedure. Provided that the controller does not process further data that are irrelevant and excessive to what is requested for the purpose of the selection of the group members, compliance with the principles relating to data quality as stipulated by Article 4 (1)(c) of the Regulation will be ensured.

3.4. Data retention

According to Article 4(1)(e) of the Regulation, personal data may be kept in a form enabling identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

As regard appointed members of the Stakeholder Groups, the EDPS notes that keeping personal data related to the reimbursement for 5 years after the expiry of the mandate would correspond to the time period for which personal data is necessary for audit purposes. However, as regard data of members who are not granted reimbursements, the EDPS invites the EIOPA to reconsider its data retention policy and also to make respective changes in the privacy statement taking into consideration that to be justified in light of Article 4 (1)(e) of the Regulation personal data may be not kept for longer than is necessary for the purposes for which they were collected.

The storage period for personal data of candidates inserted in the reserve list until a new call for expressions of interest is published can be considered appropriate. This also applies to the

⁶ This is also in line with the request of the European Ombudsman with the aim of providing enhanced transparency as to the membership of the Stakeholder Groups as well as to the professional qualifications of their members.

storage period for data of the Group's members on EIOPA's website and to the extension of the aforementioned retention periods in case of a legal challenge.

Concerning data of applicants who have been neither retained on the reserve list nor appointed to the Stakeholder Groups, the EDPS suggests that the retention period of two years and a half is reconsidered. The data retention period could not be longer than the deadlines to exhaust available legal remedies. The maximum time period for which personal data is necessary for legal remedies would be two years⁷.

3.5. Transfer of data

Intra - institutional transfers of personal data take place within the processing operation under review. Pursuant to Article 7 of the Regulation, the transfers within the EIOPA have to be "*necessary for the legitimate performance of the tasks covered by the competence of the recipient*" (paragraph 1) and the recipients can process the data "*only for the purposes for which they were transmitted*" (paragraph 3).

In the present case, the transfers of personal data to the Selection Committee and to the Boards of Supervisors and Management Board are considered as necessary for the accomplishment of the selection procedures. To ensure full compliance with the Regulation, the EDPS recommends that all data recipients are explicitly reminded of their obligation not to use personal data for any other purpose than the one for which they are transmitted.

3.6. Rights of access, rectification, blocking and erasure

Access and rectification of data processed will be granted upon request sent by post or e-mail to the DPO of EIOPA. The EDPS notes, that this procedure seems to ensure compliance with Article 13 of the Regulation.

3.7. Right to object

Article 18(a) of the Regulation provides that the "*data subject shall have the right to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of personal data relating to him or her, except in the cases covered by Article 5(b), (c) and (d). Where there is a justified objection, the processing in question may no longer involve those data*".

According to the EDPS, since the publication of personal data in any form and medium, including EIOPA's website is based on Article 5 of the Regulation, the data subjects might use their right, on compelling and legitimate grounds, to request that their data are not made publicly available on the EIOPA's website. The EDPS recommends that the reference to the data subject's right to object be included in the "Personal data protection notice" and in the call for expression of interest (see point 3.7). If such a case occurs, the EIOPA will need to take the necessary measures in order to weigh the compelling and legitimate interests that the data subject might invoke against the interests of transparency.

3.8. Information to the persons concerned

The EDPS notes that the personal data protection notice contains necessary information to be supplied to data subjects as prescribed by the Regulation. However, as the data processing

⁷ This time limit covers the period in which data subjects may lodge a complaint with the European Ombudsman (see Article 2, paragraph 4, of Decision 94/262/ECSC, EC, Euratom of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ L 113 of 4.5.1994, p.159).

involves web-publication, information to data subjects should be revised as outlined in section 3.7, in the light of the fairness principle.

[...]

4. Conclusion

The notified processing operations do not appear to involve any breach of the provision of the Regulation, provided that the recommendations made above are taken into account. This means that:

- the controller should avoid the publication of photos before the respective members of the Stakeholder Groups are given the opportunity to express their consent in the sense of Article 2(h) of the Regulation;
- the controller should ensure that data that are irrelevant or excessive to what is requested for the purposes of the processing operations, are not processed (section 3.3);
- the controller should reconsider its data retention policy regarding personal data of members who are not granted reimbursements and regarding personal data of applicants who have been neither retained on the reserve list nor appointed and make respective changes in the personal data protection notice in line with section 3.4;
- all data recipients are explicitly reminded of their obligation not to use personal data for any other purpose than the one for which they are transmitted (section 3.5);
- in relation to the publication of personal data the right to object of the data subject should be ensured and information to data subjects is revised as outlined in sections 3.7 and 3.8.

The EDPS would like to invite the EIOPA to inform him about the implementation of this recommendation within three months after receipt of this letter.

Done at Brussels, on 3 July 2012

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor