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GB/OL/sn D(2013)2065 C 2013-1007
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correspondence

Dear Mr Keuning,

On 11 September 2013, the Data Protection Officer (DPO) of the European Central Bank (ECB) submitted a notification for prior checking pursuant to Article 27(4) of Regulation (EC) 45/2001 concerning the selection of the Chair of the Supervisory Board to the EDPS.

As requested by the DPO, we can confirm that this Opinion will not be published prior to the adoption of the draft texts attached to the notification.

As the EDPS has already issued Guidelines on selection and recruitment procedures¹, this Opinion will only focus on those aspects that diverge from the Guidelines or otherwise require further attention. On 12 September, the case was suspended following a request for additional information; answers were received the following day.

The facts

The selection procedure for the Chair of the Supervisory Board (which is to be established as part of the Single Supervisory Mechanism (SSM)²) involves a number of actors: after an open call for applications, the ECB Governing Council establishes a Pre-Selection Committee which elaborates a shortlist of suitable candidates, with assessment reports. This Committee will consist of a member of the ECB Executive Board, two other members of the ECB Governing Council and two external members with considerable experience in financial

¹ Available on the EDPS website at https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf

² See the yet to be adopted proposed Regulation that will serve as a legal basis: COM/2012/0512 final.

markets.³ The shortlist is endorsed by the ECB Governing Council. During the procedure, the ECB is assisted by an executive search agency as an external contractor. The contract with this agency includes data protection clauses.

The shortlist as well as information on the pool of applicants⁴ is transferred to the European Parliament. Afterwards, the ECB Governing Council chooses one candidate from the shortlist and submits a proposal for appointment to the European Parliament, whose responsible Committee will invite the proposed candidate for a public hearing. Upon approval of the candidate by the Parliament (via votes in the responsible committee and in the plenary), the Council of the European Union appoints the Chair via a Council Decision adopted with qualified majority (not taking into account the votes of those Member States that do not participate in the SSM).

Data on unsuccessful applicants will be stored for five years following the completion of the procedure. Data on the successful candidate will be stored for five years after the end of the term or the last pension. In case of a legal challenge, the conservation period is extended to two years after the completion of all relevant proceedings.

Legal Analysis

The notification of the ECB only relates to the processing operations carried out by it in relation to the selection of the Chair of the Supervisory Board. The European Parliament and the Council also have their roles in the procedure, which need to be addressed separately. The present Opinion only concerns the processing operations carried out by the ECB.

The notification did not mention the processing of any of the data categories included in Article 27(2)(a). Checks of criminal records will not be carried out during the selection procedure, but the appointed candidate will be subject to standard ECB procedures afterwards.⁵

As the SSM Regulation, which will serve as legal basis for the processing, is not yet adopted and in force, the ECB cannot start the procedure yet; this can only happen after the text will have become applicable.

The executive search agency will be subject to data protection obligations included in the contract.

The SSM Regulation as currently drafted will also foresee a mandatory consultation of the Supervisory Board before the ECB decides on a proposed candidate. As the Supervisory Board is not yet set up, this step will not be included in the first selection procedure. For subsequent selection procedures, the ECB should make sure that candidates will be adequately informed about this additional recipient, e.g. via the vacancy notice or the privacy statement attached to it.

Regarding the conservation of data relating to unsuccessful applicants, the EDPS recalls that following the adoption of his Guidelines on selection and recruitment procedures, he has accepted conservation periods of two or at the most three years following the end of the

³ The external members will be bound by a confidentiality undertaking; the members coming from the ECB are bound by their professional secrecy obligations under the ECB statute.

⁴ Number of applicants, gender and nationality balance, mix of professional skills, etc.

⁵ Notified to the EDPS, see case 2007-0371.

procedure.⁶ A five year conservation period appears excessive in this regard. The ECB should **adapt the conservation period accordingly**.

Conclusion

There is no reason to believe that there is a breach of Regulation 45/2001, provided that the above recommendation is implemented.

Please inform the EDPS of the measures taken based on the recommendations of this opinion within a period of 3 months.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Frederik Malfrère, Data Protection Officer, ECB

⁶ This period is derived from the possibility to bring complaints before the European Ombudsman, which have to be submitted within two years of the contested action.