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ASSISTANT SUPERVISOR

Mr Niall McHALE
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Brussels, 21 October 2013
GB/DG/sn/D(2013)0209 **2013-0735 & 0736**
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correspondence

Dear Mr McHale,

We have analysed the documents you have provided to the EDPS concerning the notifications for prior-checking under Article 27 of Regulation 45/2001 ("the Regulation") on the processing of personal data in the context of the recruitment procedure for temporary agents, contract agents and seconded national experts (case 2013-0735) and service contracts for trainees under the agreement for educational cooperation with the University of Vigo (case 2013-0736).

The processing operations under examination are subject to prior-checking in conformity with Article 27(2)(b) of Regulation 45/2001, since they involve an evaluation of the applicants' ability to perform the functions for which the selection and recruitment procedure has been organised. The processing operations in the present cases might also involve data related to health (collection of medical certificate or disability data, and medical examination) and to criminal offences (collection of criminal record extract), which would constitute an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation. Although EFCA has also specified Article 27(2)(d) as a prior checking ground for both cases, the EDPS does not consider this applicable here as the primary purpose of recruitment is not to exclude individuals from a right, benefit or contract.

The EDPS points out that both these cases will be analysed together in light of the EDPS Guidelines on staff recruitment ("the EDPS Guidelines"). The principles laid down in the EDPS Joint Opinion on "*Staff recruitment procedures*" by certain Community agencies ("the EDPS Joint Opinion") are also applicable in the present cases.

On this basis, in this letter the EDPS will only identify and examine EFCA's practices which do not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines, providing EFCA with relevant recommendations. It is noted that EFCA has already notified processing operations relating to the recruitment of temporary and contract agents which were

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dealt with in the Joint Opinion, and that case reference 2013-0735 is intended as an update to include seconded national experts.

Data Quality

In the notification and privacy statement related to case reference 2013-0735, EFCA states that police certificates are collected during the application process for temporary and contract agents, as well as a criminal record extract on offer of contract. EFCA has since acknowledged that both the notification and privacy statement are misleading on this point, due to a clerical error. It has been confirmed that in practice, police certificates are not collected. Therefore, both the notification and privacy statement will be duly amended.

Recommendation: EFCA should confirm that both documents have been amended, and resubmit updated versions to the EDPS, removing any reference to a police certificate.

Please inform the EDPS of the implementation of this recommendation within a period of 3 months following receipt of this letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Rieke ARNDT – Data Protection Officer