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GB/OL/sn/D(2013)0681 C 2013-1238
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Dear Ms Lopez Ruiz,

Thank you for your consultation on the need for prior checking submitted pursuant to Article 27 of Regulation (EC) 45/2001 concerning the Appointment of the Chair and the Vice-Chair of the Supervisory Board (Single Supervisory Mechanism).

In keeping with the line established in earlier cases¹, the EDPS **does not consider this processing operation to be subject to prior checking**, for the following reasons.

According to Article 26(3) of Regulation (EU) 1024/2013, the legal basis for this processing operation, the Council's role in the selection procedure is to "adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board". The same Article also provides that the Council shall be kept "duly informed" about the selection procedure. In the case at hand, the European Central Bank will most likely make the shortlist of candidates and the proposed candidates available to the Council. The exact amount of information to be transferred will be determined in an inter-institutional agreement. The shortlist will be made available to the Member States' delegations in the Council and its relevant preparatory bodies as well as to the officials of the General Secretariat of the Council (GSC) involved in the work of these bodies. While the implementing decision mentioned will be adopted by a vote in the Council, no formal selection procedure is foreseen. This does not constitute an "evaluation" in the terms of Article 27(2)(b) of Regulation (EC) 45/2001.

It goes without saying that the absence of a need for prior checking does not exclude the application of the principles of the Regulation (EC) 45/2001. On this basis, we would like to

¹ EDPS case 2010-0213

make certain comments on the information provided in the notification and in the privacy notice.

The EDPS considers the GSC as an institution to be the controller. While in practice, many of the tasks of the controller will be carried out by the hierarchical superior of the unit(s) entrusted with the processing of personal data, the responsibility remains with the institution. When the inter-institutional agreement is signed, the information on the data categories in the privacy statement should be adapted, if necessary.

Concerning conservation periods, the GSC foresees to store data concerning shortlisted, but not selected, candidates for three months after the appointment of the selected candidates. Concerning this period, the GSC might want to consider if the proposed conservation period is sufficient to cover possible recourse against the decision made.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Johannes GILBERS, Director Economic and Financial Affairs, DGG1, General Secretariat of the Council of the European Union