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Dear Mr LECETA,

We have analysed the documents you have provided to the EDPS concerning the notification for prior-checking under Article 27 of Regulation EC No 45/2001 ("the Regulation") on the processing of personal data in the context of staff recruitment at the European Institute of Innovation and Technology (EIT).

The EDPS points out that this case will be analysed in light of the EDPS Guidelines on staff recruitment ("the EDPS Guidelines"). On this basis, in this letter the EDPS will only identify and examine the EIT practices which do not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines, providing relevant recommendations.

## **Legal Analysis**

### **1) Controller**

Legally speaking, EIT as an EU body is the controller of the processing operation, with the human resources team being the organisational department entrusted with the processing of personal data. In the EIT privacy statement under "*Who should be contacted in case of queries or complaints?*" the EIT HR Team is referred to as the "entity acting as data controller". This is misleading because while the HR Team is the contact point for inquiries and access requests from data subjects, the actual responsibility of controllership rests with EIT itself.

**Recommendation:** EIT should amend the wording within this section of the privacy statement, to avoid any confusion. For example, the HR team could be referred to as the "internal EIT department responsible for managing the staff recruitment processing operation".

## 2) Grounds for prior-checking under Article 27

As specified in the notification, the processing operation under examination is subject to prior-checking in conformity with Article 27(2)(b) of the Regulation, since it involves an evaluation of the applicants' ability to perform the functions for which the selection procedure has been organised. The processing operations in question might also involve data related to criminal offences which would constitute an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation. Although EIT has also specified Article 27(2)(c) and (d) as prior checking grounds, the EDPS does not consider these applicable here, as the primary purpose of recruitment is not to allow linkages between data processed for different purposes, or to exclude individuals from a right, benefit or contract.

**Recommendation:** EIT should amend the notification with reference to the appropriate Articles as detailed above.

## 3) Data Quality

In the notification, EIT states that before signature of contract, the staff member has to present a police certificate stating their lack of offences and convictions. EIT has since clarified that only a criminal record extract is requested, in accordance with the EDPS Guidelines.

**Recommendation:** The notification should be amended to reflect the correction relating to criminal records.

## 4) Data retention

Regarding the conservation and retention of data, the EDPS Guidelines highlight the need to differentiate between three different categories of data subjects, specifically the recruited applicants, the non-recruited applicants and the non-recruited applicants whose names were put on the "reserve lists for appointment". The data related to evaluation results regarding all stages of the selection procedure should be kept in accordance with the retention period of each category of data subject.

As regards the *recruited applicants* whose data should be stored in their personal file (Article 26 of the Staff Regulations), the EDPS recommends that a data retention period of ten years as of the termination of employment or as of the last pension payment is considered to be reasonable.

The retention period for data relating to the *non-recruited applicants on the "reserve lists for appointment"* is to be determined in terms of the validity and the actual extension of the respective reserve lists. An additional period of two years can be added to the validity of the reserve list to cover the length of time during which a complaint may be brought to the European Ombudsman.

As to the *non-recruited applicants*, the EDPS acknowledges that the time-limit for storing such data shall be set in relation to the time-limits to be established for the possible review of the decision taken in the selection procedure (complaint to the European Ombudsman, appeal with the Civil Service Tribunal), as well as in accordance with Article 48 of the Implementing Rules to the Financial Regulation (only for the documents necessary for budgetary and audit purposes).

It is worth noting that in various Opinions the EDPS considered it appropriate to keep the personal data of unsuccessful candidates for two or three years *following the recruitment procedure* as that period was derived from the length of time during which a complaint may be brought to the European Ombudsman.

EIT does not make any differentiation between these three categories, but instead specifies a ten year retention period for all recruitment data.

**Recommendation and reminder:** EIT should ensure that these three categories are clearly specified/differentiated on both the notification and privacy statement. The EDPS would also remind EIT that selection and recruitment does not require the collection and storage of original supporting documents but rather copies, certified copies or official certified translations.

## 5) Rights of access and rectification

As outlined in the notification, the data subject has the right to access his or her data on request, unless an exemption or restriction is applied under Article 20 of the Regulation.

The EDPS would like to remind EIT that data subjects should be given access to their evaluation results regarding all stages of the selection procedure unless the exception of Article 20(1)(c) of the Regulation is applied. This exception may imply that access should be granted neither to the comparative data concerning other applicants (comparative results), nor to the individual opinions of the members of the selection panel if such access would undermine the rights of others applicants or the freedom of members of the selection panel. Nevertheless, data subjects should be provided with aggregated results. If a restriction provided for by Article 20(1) of the Regulation is imposed, the data subject should be informed of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the EDPS.

With regard to the right of rectification, the EDPS points out that any limitation applied after the closing date of submitting applications should only relate to data concerning the admissibility criteria and not to the identification data that can be rectified at any time during the selection procedure. The EDPS considers this limitation necessary for the fairness of the selection procedure, and justified in terms of Article 20(1)(c) of the Regulation.

**Recommendation:** EIT should ensure that data subjects are granted rights in accordance with the above stipulations.

## 6) Information to be given to data subjects

As explained in the EDPS Guidelines, Articles 11 and 12 of Regulation 45/2001 provide that data subjects must be informed of the processing of data relating to them, and list a range of general and additional items.

It is important that all elements listed in both Articles 11 and 12 respectively are clearly and thoroughly mentioned in the privacy statement. In this case, EIT's privacy statement does not make any reference to the rights of access and rectification; omissions which the EDPS addresses more fully in point 5 above. It is also worth highlighting that in some cases, although applicants are selected on the basis of their qualifications and experience, the issue of maintaining an appropriate geographical distribution and gender balance during the selection is also taken into consideration. If this is the case with EIT recruitment, the privacy statement should mention this

aspect of the selection procedure, so that fairness of the processing in respect of the data subject can be guaranteed.

The notification makes reference to two separate implementing provisions for contract staff and temporary agents, and a Decision of the Governing Board for SNEs, as legal bases for the processing. However, the privacy statement omits the implementing provisions for temporary agents as a legal basis.

Moreover, the privacy statement does not mention the processing of a medical aptitude certificate as part of the recruitment procedure. In addition, although data subjects are informed that they will be asked to provide details relating to potential criminal offences, the privacy statement does not make clear in what format this information will be required, or at what stage of the procedure it should be provided.

**Recommendations:** Clarifications should be added to the privacy statement in terms of gender balance and geographical distribution, if applicable.

The cited legal bases for the processing should be consistent on both the notification and privacy statement, so the latter should therefore be updated accordingly.

Applicants should be informed via the privacy statement that they will be asked to provide a current criminal record extract or similar official document issued in accordance with the respective national law, only at the end of the selection procedure for candidates actually recruited for positions - it must not be requested before this time. The privacy statement should also point out that once a candidate is selected, he or she will need to take part in a pre-recruitment medical examination.

Finally, the rights of access and rectification should be made clear within the privacy statement, including any restrictions. For instance, it is important that all applicants are informed about the scope of the restriction under Article 20(1)(c) before the beginning of the processing operation. In addition, the privacy statement should clearly state that, in the case of data related to the admissibility criteria, the right of rectification cannot be exercised after the closing date of candidatures' submission.

## **Conclusion**

Please inform the EDPS of the implementation of these recommendations within a period of 3 months following receipt of this letter. Please also provide **updated versions of the notification and privacy statement** to support your response.

Kind regards,

**(signed)**

Giovanni BUTTARELLI

Cc: Jari AHOLA – Head of Unit – Services and Finance

