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ASSISTANT SUPERVISOR

Ms Chiara ZILIOLI
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European Central Bank
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GB/OL/sn/D(2014)0938 C 2014-0394
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correspondence

Dear Ms Zilioli,

On 1 April 2014, the Data Protection Officer (DPO) of the European Central Bank (ECB) has submitted a notification for prior checking under Article 27 of Regulation (EC) 45/2001 (the Regulation) concerning the selection of the members and alternates for the Administrative Board of Review (Single Supervisory Mechanism) to the EDPS.

As the EDPS has already issued guidelines on selection and recruitment procedures¹, the description of the facts and the legal analysis in this Opinion will focus on those aspects that diverge from the guidelines and/or that need improvements.

The Facts

The members and alternates for the Administrative Board of Review for the Single Supervisory Mechanism will be selected following a public call for applications. A draft call was submitted to the EDPS; it will contain a privacy notice. This privacy notice will also mention the fact that the names of the appointed persons will be published.

Candidates will be assessed by a selection panel set up by the Executive Board of the ECB, assisted by the Directorate-General Legal Services. A list of suitable candidates will then be presented to the Executive Board, which before submitting the nominated candidates to the Governing Council will hear the Supervisory Board. The Governing Council appoints the members and alternates of the Administrative Board of Review.

¹ Guidelines concerning the processing operations in the field of staff recruitment, 10 October 2008, available on the EDPS website.

Legal Analysis

One difference to other selection procedures is the publication of the names of appointed persons. While this publication is not a specific obligation in the active text of Regulation (EU) 1024/2013, recitals 54, 58 and 66 stress that the ECB (of which the Administrative Board of Review forms part administratively) should carry out its task transparently. Publishing the names of the appointed members of this Board is considered as one measure to contribute to such transparency. The fact that the call of applications mentions this publication ensures transparency vis-à-vis the data subjects. As there is no *specific obligation* in the active text of Regulation (EU)1024/2013 for the ECB to publish the names, the lawfulness of this publication cannot be based on Article 5(b) of the Regulation, but needs to be based on Article 5(a). In this case the data subjects have, according to Article 18 of the Regulation, the right to object on compelling reasons relating to their particular situation. This is acknowledged in the notification form submitted by the ECB.

The notification and the privacy statement refer to the controller as the Director-General of the Directorate General Legal Services. While legally speaking, the ECB as an institution is the controller, we take it that this is simply to indicate a contact point.

Conclusion

After having analysed the documentation provided, the EDPS considers that there is no reason to believe that there is a breach of the Regulation. We have therefore decided to close case 2014-0394.

Thank you for your cooperation.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Frederik MALFRÈRE, Data Protection Officer, European Central Bank