



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Adam FARKAS
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GB/OL/sn/D(2014)1892 C 2013-1066
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Dear Mr Farkas,

On 27 September 2013, the Data Protection Officer of the EBA has notified your Agency's processing operations concerning the recruitment of temporary agents, contract agents and seconded national experts to the EDPS for prior-checking under Article 27 of Regulation (EC) 45/2001¹ ("the Regulation").

The EDPS has already issued Guidelines on recruitment and selection procedures.² For this reason, the description of the facts and the legal analysis will only mention those aspects which diverge from the Guidelines. As this is an ex-post case, meaning that the processing operations were already in place at the time of notification, the deadline of two months for the EDPS to issue his Opinion does not apply. This case has been dealt with on a best-effort basis.

The facts

As concerns the grounds for prior-checking, the notification refers, besides Article 27(2) (a) and (b) of the Regulation, also to Article 27(2)(d).

A draft privacy statement, which has been published on EBA's website in the meantime, was included with the notification. The notification refers to the Executive Director of EBA, representing EBA, as the controller; the privacy statement on the other hand mentions the controller as the Head of Operations.

¹ OJ L 8/1, 12.01.2001

² Available on the EDPS website.

The privacy statement refers as recipients among others to OLAF, the Court of Justice, the European Ombudsman and EBA's legal advisor.

Legal analysis

The notification mentions Article 27(2)(d) (exclusion from right, benefit or contract) as one of the reasons for submitting this processing operation to prior checking. This provision refers to processing operations whose purpose is to exclude individuals from a right, benefit or contract. Examples would be blacklists or exclusion databases.³ However, the purpose of the notified processing operation is to enable staff members to exercise and benefit from their rights under the Staff Regulations.⁴ Therefore, Article 27(2)(d) does not apply in the present case. The notified processing operations are however still subject to prior checking under Article 27(2) points a) and b) of the Regulation.

The EDPS considers EBA as an agency to be the controller. It should be noted that Article 2(d) of the Regulation refers to the Union institution, body, agency or any organisational entity part thereof as the controller, but never to a person. Therefore, we understand the indication of the Executive Director as being as a representative for EBA. That being said, the **information on controllership provided in the privacy statement is inconsistent with that provided in the notification; this should be rectified.**

Article 2(g) of the Regulation states that "*authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients*". This is an exception from the duty to inform under Articles 11 and 12 of the Regulation. For this reason, it is not necessary to list OLAF, the CJEU and the European Ombudsman as recipients, although it can be done for full transparency. As regards possible transfers to EBA's legal advisor, Article 7 of the Regulation needs to be complied with. A possible case where such transfers might be legitimate could e.g. be litigation related to the selection procedure; such transfers may not happen on a structural basis.

Conclusion

The EDPS expects that EBA will implement the recommendations made in this Opinion and has therefore decided to close case 2013-1066.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Joseph MIFSUD, Data Protection Officer, EBA

³ See for example cases 2009-0681 and 2010-0426.

⁴ Cf. case 2007-0579 on early retirement.