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SUPERVISOR

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C 2011-1105, 1106 & 1107, C 2014-0774  
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**Subject: Prior checking notifications on probation, conversion of fixed-term contracts, annual salary and bonus review as well as additional salary adjustment.**

Dear Mr Keuning,

I refer to the notifications for prior checking concerning probation, conversion of fixed term contracts into indefinite contracts procedure, annual salary and bonus review (ASBR) as well as additional salary advancement (ASA) submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer of the European Central Bank (ECB) on 29 November 2011 and 25 July 2014.

We note that all these notifications complement the notification on staff appraisal of 8 February 2004<sup>1</sup>.

All these procedures are subject to prior checking under Article 27(2)(b) of Regulation (EC) No 45/2001<sup>2</sup> as they are intended to evaluate ability and efficiency of the staff members. In fact, the probation consists of evaluation of the initial performance of the staff member concerned and the conversion procedure of evaluation of the performance during the initial convertible fixed term contract. Both, the ASBR and the ASA involve a comparative

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<sup>1</sup> Addressed in the EDPS Opinion of 20 April 2005 (EDPS 2004-0274).

<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

assessment of performance in relation to the colleagues<sup>3</sup>, whereby the ASA provides for a reward for continuous outstanding performance over a longer period of time, the *ad personam* promotion for approximately 1% of the ECB staff.

We note that these procedures are in most aspects in compliance with the Regulation as outlined in the EDPS Staff Evaluation Guidelines<sup>4</sup> and will therefore address only the information to data subject's policy which does not seem to be fully compliant in this respect.

The EDPS notes that privacy statements for probation and contract conversion procedures reflecting the requirements of Articles 11 and 12 of the Data Protection Regulation should have been established in the late 2011/early 2012. As this does not seem to be the case, we invite the ECB to establish such statements and make them available at the launch of the respective evaluation procedure.

As to the ASBR and ASA procedures, we note that some information may be contained in the related documents posted on the ECB Intranet. However, most information required in terms of Articles 11 and 12 of the Regulation seems to be missing. Consequently, we invite the ECB to establish specific privacy statements for these procedures and make them available on the Intranet.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation on condition that the considerations provided in this Opinion are fully taken into account. In particular, the ECB should establish specific privacy statements for all four procedures and make them available on the ECB Intranet.

We would like to invite the ECB to inform us about the implementation of these recommendations within three months after receipt of this Opinion.

**(signed)**

Giovanni BUTTARELLI

Cc: Mr Frederik MALFRÈRE, DPO

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<sup>3</sup> Assessment of the growth of the staff member's contribution to the ECB tasks relative to that of other staff members who perform their duties within the same business area.

<sup>4</sup> Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042) applicable by analogy to the staff appraisal procedures at the ECB.