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GB/PC/sn/D(2015)0102 C 2014-1066  
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correspondence

**Subject: Notification for prior checking of the processing of approval and monitoring of external activities of EIF staff (Case 2014-1066)**

Dear [...],

I am contacting you with regard to your notification sent to the European Data Protection Supervisor ("EDPS") for prior checking under Article 27 of Regulation (EC) No 45/2001 ("the Regulation") relating to the processing of personal data in the framework of the approval and monitoring of external activities undertaken by staff members of the European Investment Fund ("EIF").

According to the notification, the processing aims at approving and monitoring external activities of EIF staff. Under the EIF Staff Code of Conduct, external activities are subject to approval by respective hierarchical superior following consultation of the Compliance and Operational Risk Division of the EIF on compliance related aspects.

In line with its case law on the matter<sup>1</sup>, as explained below, the EDPS notes that the administration of external activities is **not subject to prior checking** under Article 27 of the Regulation.

As you know, Article 27(1) of the Regulation subjects to prior checking all processing operations which are likely to present *specific* risks to the rights and freedoms of data subjects by virtue of their nature, scope or their purposes.

In particular, Article 27(2)(b) establishes that specific risks may occur from processing operations "*intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". However, the evaluation in the framework of a staff member's outside activities focuses on the "*nature of the outside activity*" itself and not on

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<sup>1</sup> See Case 2013-0675 EIB, EDPS Letter of 5 September 2013; Case 2012-1039 EASA, EDPS Letter of 28 February 2013; Case 2012-0005 Ombudsman, EDPS Letter of 12 January 2012; Case 2008-0685 European Parliament, EDPS Letter of 12 February 2009; Case 2007-0417 EMEA, EDPS Letter of 16 November 2007.

*"personal aspects related to the data subject"*<sup>2</sup>. The processing thus arguably consists in an *"objective assessment of the activities in question, not the evaluation of staff"*<sup>3</sup>.

The EDPS also analysed whether the processing operations could fall under other grounds listed in Article 27 and concludes that this is not the case. Therefore, there is no basis under Article 27 of the Regulation to subject the processing operations at stake to prior checking. However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.

Despite the fact that this processing activity is not subject to prior checking, the EDPS would like to remind the EIF that all relevant obligations described in the Regulation must be respected.

We remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

Giovanni BUTTARELLI

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<sup>2</sup> Case 2008-0685 European Parliament, EDPS Letter of 12 February 2009.

<sup>3</sup> Case 2007-0417 EMEA, EDPS Letter of 16 November 2007; Case 2012-0005 Ombudsman, EDPS Letter of 12 January 2012.