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**Subject: Prior checking Opinion on EIOPA's procedure on the election of the Selection Committee for the open selection procedure of EIOPA's Executive Director (Case 2015-0686)**

On 24 August 2015, the European Data Protection Supervisor ("EDPS") received a notification for prior checking from the Data Protection Officer ("DPO") of EIOPA regarding the procedure on the election of the Selection Committee for the open selection procedure of EIOPA's Executive Director.

The EDPS takes note of the fact that the processing operation has already been established, making this de facto an ex post prior check. The two-month deadline therefore does not apply and this case was dealt with on a best effort basis.

While the processing notified does not directly fall under the scope of the EDPS Guidelines on selection and recruitment procedures<sup>1</sup>, it is sufficiently similar for these Guidelines to be applied by analogy. This Opinion therefore will not contain a full analysis of the procedure, but will focus on those aspects that diverge from standard practice and/or require improvement.

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<sup>1</sup> Available [here](#) on the EDPS website.

## **Description and assessment**

### **Lawfulness of the processing**

EIOPA bases the lawfulness of the processing (selection of members of the Selection Committee) on Article 5(a) of the Regulation (processing is necessary for the performance of tasks carried out in the public interest on the basis of the Treaties establishing the European Communities). The EDPS considers Article 5(a) read together with Recital 27 an appropriate ground for lawfulness since the selection procedure is necessary for the management and functioning of the Agency.

The publication on EIOPA's website of the names of the members of the Selection Committee was recommended by the European Ombudsman. EIOPA bases the lawfulness of this processing on the unambiguous consent of the data subject (Article 5(d)). The EDPS considers that consent is not the appropriate ground for lawfulness. The lawfulness of processing should be based on Article 5(a) of the Regulation since the processing is necessary for EIOPA to be transparent about who the members of the Selection Committee will be. The fact that the names of the members of the Selection Committee will be public is an indication of EIOPA's culture to foster integrity and public trust<sup>2</sup>. The Selection Committee will pre-select three eligible applicants considered to be best qualified for the position of Executive Director of EIOPA. As such, the Selection Committee may have significant influence and powers within the EU decision-making process<sup>3</sup>. For that reason it is important for EIOPA to show there are no conflicts of interest. Therefore the publication of names of the members of the Selection Committee appears justified.

Accordingly, the EDPS recommends updating the notification and the privacy statement to delete the references to consent and only indicate Article 5(a) as the ground on which EIOPA bases the lawfulness of processing.

### **Information to data subjects**

The Selection Committee will comprise three members in total, two from the Board of Supervisors (elected by the Board of Supervisors) and one from the European Commission (nominated by the Commission). The call for candidates for the Selection committee was sent to the Board of Supervisors. Attached to the call for candidates were the Note on the open selection procedure for the appointment of the Executive Director<sup>4</sup> ("Note on OSP for EIOPA ED") and the timeline for the open selection procedure for the Executive Director. The call for candidates for the Selection committee did not contain the privacy statement or the information on the publication of their first and last name on EIOPA's website if they are elected to the Selection Committee.

The EDPS was informed that a reminder of the call sent to the Board of Supervisors contained the privacy statement and required the candidates to confirm the unambiguous consent to the publication on EIOPA's website of their first and last names as members of the Selection Committee when sending their expression of interest. The privacy statement was sent to the member of the Selection Committee nominated by the Commission at the receipt of his/her

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<sup>2</sup> This commitment to foster integrity and public trust has been expressed in EIOPA's founding regulation and Decision on EIOPA's Procedure on Independence and Decision Making Processes regarding Declarations of interests for staff and other contractual parties.

<sup>3</sup> See the [EDPS Guidelines on the processing of personal data with regard to the management of conflicts of interest in EU institutions and bodies](#).

<sup>4</sup> Annex I to the notification.

nomination. At the same time his/her consent to the publication on EIOPA's website of his/her first and last name as member of the Selection Committee was collected.

While the Commission is in charge of the nomination procedure of its member of the Selection Committee, EIOPA established the Note on OSP for EIOPA ED and the privacy statement that were used.

In light of the above, the EDPS recommends that a "data protection note" is made easily accessible, before the selection procedure begins, to all candidates informing them about the processing of their data and their rights regarding the processing. Accordingly, all data subjects (from the Board of Supervisors and the Commission) should receive the privacy statement before they apply for election or nomination. Since this can easily be achieved by EIOPA including the privacy statement in the Annexes of the Note on OSP for EIOPA ED, the EDPS recommends doing so.

As has already been observed in the analysis of the lawfulness of the publication of names of members of the Selection Committee, the ground for lawfulness of this processing is Article 5(a) of the Regulation, so there is no need for consent of the data subject. However, in accordance with Article 18 of the Regulation, the data subjects have the right to object on compelling legitimate grounds relating to his or her particular situation. The EDPS therefore recommends that EIOPA updates the privacy statement to include the information on the right to object.

The Note on OSP for EIOPA ED states that the Board of Supervisors should strike a geographical and gender balance, to the extent possible, between the members of the Selection Committee elected from its quota. In accordance with the Guidelines "*if it is the case, the "data protection note" should inform the applicants-trainees that data related to gender and nationality, aside from identification purposes, might be processed on the basis of the agency's policy and internal decision, so that the fairness of the processing in respect of the data subject can be guaranteed*". The EDPS thus recommends including this information in the privacy statement.

The EDPS also recommends specifying in the privacy statement that the data subjects can at any time have recourse to the EDPS.

### **Completion of the notification**

In order to have the full information on the processing operation in the notification, the EDPS recommends that EIOPA completes the notification with the following information:

- the grounds on which EIOPA bases the lawfulness of the processing operation, i.e. Article 5(a) and Recital 27 of the Regulation, and the right of the data subject to object on compelling legitimate grounds;
- EIOPA's Communication team as a recipient and the data they receive;
- the roles EIOPA's Legal and HR teams should be defined as indicated in the additional information sent to the EDPS, i.e. 2 members of Legal team assisting the Alternate Chairperson in selection of members of the Selection Committee until their election and 2 members of HR team assisting the Selection Committee during selection of Executive Director; and
- indicate that the Alternate Chairperson and the Legal team are in charge of the access and managing access to the special dedicated email and the folders with expressions of interest in Outlook and main EIOPA server.

## **Conclusion**

Based on the information provided, the EDPS has no reason to believe that the procedure breaches the Regulation.

In light of the accountability principle, the EDPS trusts that EIPO will ensure that all the above recommendations will be duly implemented in accordance with the Regulation.

We have therefore decided to **close case 2015-0686**.

Kind regards,

**(signed)**

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Cc: (...), DPO, European Insurance and Occupational Pensions Authority