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C 2014-0861, 2014-1065 & 2014-1067
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**Subject: Prior-check Opinion on selection and recruitment of staff - cases
2014-0861, 2014-1065 and 2014-1067**

On 9 September 2014 and on 17 November 2014 the European Data Protection Supervisor ('EDPS') received three notifications for prior checking under Article 27(2) of Regulation (EC) No. 45/2001 (the '**Regulation**') relating to selection and recruitment¹ of staff, from the Data Protection Officer of the European Investment Fund ('EIF').

The EDPS has issued Guidelines on staff selection and recruitment² (the '**Guidelines**') based on the Staff Regulations of officials and Conditions of employment of other servants of the European Union. EIF is subject to its own staff regulations³ but since EIF's staff regulations are based on, and in the relevant parts largely identical to, those for the other EU Institutions, the Guidelines can be applied by analogy. The present Opinion will therefore focus on those aspects where the processing operations diverge from the Guidelines or otherwise need improvement. Since the three notifications are covered by the Guidelines, this Opinion concerns all of them.

¹ External recruitment of EIF staff (case 2014-0861), Recruitment of EIF non-agents (case 2014-1067) and Constitution of selection panels (case 2014-1065, concerns the recruitment of senior management).

² [Guidelines concerning the processing operations in the field of staff recruitment.](#)

³ http://www.eif.org/news_centre/publications/eif-staff-regs-at-01012009-final-version.pdf

As these are ex-post prior checks, the two-month deadline within which the EDPS must deliver his opinion does not apply. The cases have been dealt with on a best effort basis.

Legal analysis

Grounds for prior-checking

The notifications refer to paragraphs (a), (b) and (d) of Article 27(2)⁴ of the Regulation, as reasons for prior-checking. However, only paragraphs (a) and (b) are relevant here; paragraph (d) targets processing operations such as blacklists and asset freezing.⁵

Legal basis and lawfulness of the processing

The EIF states that since applicants apply voluntarily for vacancies and the process that follows, it can be assumed that they give their consent to the necessary processing of personal information. Since participation in the recruitment procedure is not mandatory, the processing operation is therefore lawful under Article 5(d) of the Regulation.

The EDPS considers that Article 5(d) should not apply to recruitment procedures since consent is not necessarily unambiguous and freely given in the employment context. However, selection procedures are necessary for the management and functioning of the EIF, and the processing is therefore lawful under Article 5(a) of the Regulation.

Data quality

According to Article 4(1)(c) of the Regulation, personal information must be adequate, relevant and non-excessive in relation to the purposes for which they are collected and/or further processed. They must also be accurate and, where necessary, kept up to date (Article 4(1)(d)).

In the notifications, the EIF lists the information they request when candidates are invited for an interview, following a first selection. In the view of the EDPS, all the personal information requested is not necessary to collect at this stage. Reasons for leaving a previous post constitute such excessive information in relation to the recruitment procedure⁶. Moreover, by asking questions on interests and skills not related to work, including social and sport activities, candidates give information that is irrelevant for the post which they apply for⁷. The EDPS considers that questions of this kind are not fully appropriate with regard to the purpose of the recruitment procedure. Therefore, this question should be optional. However, it has to be ensured that the candidates not answering optional questions will not be put in a

⁴ The processing of data relating to (a) health, suspected offences, offences, criminal convictions or security measures, (b) the processing operation intended to evaluate personal aspects (...) and (d) the processing operation intended to exclude from a right benefit or contract.

⁵ Exclusion databases offer an example of Article 27(2)(d): if a person is placed on the exclusion list, he/she is worse off (in that he/she is no longer eligible for participation in calls for tender) than if the exclusion database did not exist. Article 27(2)(d) therefore applies to such databases. See cases 2010-0426 and 2009-0681.

⁶ EIF has stated in the notifications on external recruitment (case 2014-0861) and recruitment of senior management (case 2014-1065) that they collect information on the reasons for leaving a previous post.

⁷ Ibid regarding information on 'cultural, social, or sports activities pursued' (external recruitment) and 'social, cultural or physical activities'.

disadvantageous position. **The EIF should therefore ensure to only collect information necessary for the purpose of the recruitment and to remove excessive information already collected.**

Conservation period

As a general principle personal data must not be kept in a form which permits identification of data subjects for longer than is necessary for which the data are collected and/or further processed (Article 4(1)(e)).

The EIF states that applications are retained for no longer than ten years but that a general review of the document retention and classification rules is ongoing, which will formalise the retention periods for various documents. With this in mind, the EDPS would like to mention the following: In the Guidelines we point out the need to differentiate between three different categories of applicants: the recruited applicants, the non-recruited applicants and the non-recruited applicants whose names were put on the 'reserve lists for appointment'. The EIF has not provided any different conservation periods in the notifications on external recruitment and recruitment of non-agents. However, in the notification on recruitment of senior management, the EIF clarifies that paper documents on internal applications are kept for five years following the closure of the selection procedure in view of a possible grievance process. It can be noted that in various opinions, the EDPS has accepted to keep personal data of unsuccessful candidates for two years following the recruitment procedure, as that period was derived from the length of time during which a complaint may be brought before the European Ombudsman.⁸ In view of the above, **the EIF should establish different conservation periods depending on whether a person is recruited or not.**

Furthermore, the notifications outline that electronic applications are kept indefinitely for statistical purposes. As follows from Article 4(1)(e), personal data that are kept for longer periods for statistical use should be kept either in anonymous form only or, if it is not possible, only with the identity of the data subjects encrypted. **The EIF should therefore ensure that personal data kept for statistical purposes do not permit identification of the applicants.**

Information to data subjects

The privacy statement does not appear to inform the applicants of any time limits for responses to requests. It is good practice to include information on within which time limit a reaction can be expected (e.g. 3 months for access request, without delay for rectification, etc.). Consequently, we recommend that such a time limit be added to the privacy statement.

The notification and the privacy statement both mention a number of possible recipients of personal data, such as OLAF and the European Ombudsman. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the

⁸ See EDPS Guidelines in the field of staff recruitment, page 5

context of specific targeted inquiries are not considered "recipients" and do not need to be mentioned in the privacy statement.⁹

The EDPS expects that the EIF implements the recommendations accordingly, including updating the notifications, and will therefore **close** the case.

Thank you for your cooperation.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Mr Jobst NEUSS, Data Protection Officer - EIF

⁹ This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the OLAF, the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.