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**Subject: EDPS prior-check Opinion on "Administrative Inquiry Procedures" at EIB
(case 2017-1071)**

Dear Mr (...),

The EIB sent a notification to the EDPS for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation)¹ on 30 November 2017² on the processing operations in the context of an administrative inquiry at EIB. On 27 April 2018, two of my staff had a fruitful meeting at the EDPS premises with the EIB's Data Protection Officer (DPO), the Head of Division of the Office of the Chief Compliance (OCCO) and the Compliance Officer. They have discussed the EIB's draft on OCCO's administrative inquiry procedures (OCCO's draft procedure) and some data protection issues on information, access requests, safeguards etc.

The EDPS has updated the Guidelines³ on processing personal information in administrative inquiries and disciplinary proceedings ('the Guidelines'). On this basis, the EDPS will identify and examine the EIB's practices, which do not seem to be in conformity with the principles of

¹ OJ L 8/1, 12/01/2001.

² As this is an ex-post case, the deadline of two months does not apply. The EDPS has dealt with this case on a best-effort basis.

³ Available on our website:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/16-11-18_Guidelines_Administrative_Inquiries_EN.pdf

the Regulation, as further outlined by the EDPS Guidelines, providing EIB with specific recommendations in order to comply with the Regulation.

Legal analysis

1) Role of the DPO

Article 23(2) of the OCCO's draft procedure entitled "inspections and preservative measures", states that "*prior to conducting an inspection at the EIB premises, the GCCO shall where necessary inform the DPO, as well as ... and request his/her assistance*".

The phrase "where necessary" is vague and does not correspond to the key role of the DPO in an EU institution in ensuring the internal application of the Regulation in an independent manner⁴. More specifically, the DPO may be consulted by the controller concerned without going through the official channels on any matter concerning the interpretation or application of the Regulation⁵. The DPO, in performing his/her duties shall also have access at all times to the data forming the subject-matter of processing operations and to all offices, data protection installations and data carriers⁶.

Moreover, the EDPS has highlighted in his Guidelines⁷ that the DPO should be on board at the early stage of any policy developments in close cooperation with the top management. In particular, before the investigators conduct an inquiry, they should consult the EIB's DPO and take into consideration the DPO's practical guidance and advice regarding the application of data protection principles, such as the data minimisation principle. Since EIB will be accountable, a close contact with the DPO will help the investigators to implement the data protection principles of the Regulation appropriately.

Recommendation:

1. EIB should formulate accordingly in the OCCO's draft procedure the fundamental role of the DPO, as advisor and expert in the field of data protection in the context of an administrative inquiry.

2) Retention periods

In accordance with Article 4(1)(e) of the Regulation, personal data must not be kept longer than necessary for the purpose for which they are collected or further processed.

The notification makes a distinction between different retention periods according to five possible scenarios of keeping an administrative inquiry file. The retention periods indicated in the notification seem to be reasonable in relation to the purpose of collecting and further processing the personal data in the context of an administrative inquiry.

⁴ Article 24 of the Regulation.

⁵ Paragraph 2 of Annex to the Regulation.

⁶ Paragraph 4 of Annex to the Regulation.

⁷ Paragraphs 5 and 16 of the EDPS Guidelines:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/16-11-18_Guidelines_Administrative_Inquiries_EN.pdf

The EDPS notes that the OCCO's draft procedure does not refer to the five possible scenarios and related retention periods as in the notification.

Recommendation:

2. EIB should state in the OCCO's draft procedure the same information on retention periods as it is indicated in the notification.

3) Information to be given to the individuals concerned

Informing individuals concerned and content of the data protection notice

The OCCO's draft procedure refers to different data protection provisions and principles. Furthermore, EIB indicated in the notification that the persons concerned will be provided with a data protection notice before their interviews. The EDPS was not provided with a data protection notice.

Recommendation:

3. EIB should prepare a concise and intelligible data protection notice indicating all relevant information under Articles 11 and 12 of the Regulation in a clear and plain language. This privacy notice should be easily accessible to all persons concerned, for example on intranet where the OCCO's draft procedure will be published once adopted. Of course the mere publication of the data protection notice is not enough; it should also be communicated as early as possible to all persons concerned.

Possible limitations to the rights of information, access and rectification of the persons concerned:

EIB refers in the OCCO's draft procedure to possible restrictions to the right of information, access and rectification in light of Article 20 of the Regulation.

Reminder:

In cases where EIB decides to apply a restriction of information, access, rectification etc. under Article 20(1) of the Regulation, or to defer the application of Article 20(3) and 20(4)⁸, such decision should be taken strictly on a case by case basis. In all circumstances, **EIB should document the reasons for taking such decision (i.e. motivated decision)**. These reasons should prove that the restriction is necessary to protect one or more of the interests and rights listed in Article 20(1) of the Regulation and they should be documented before the decision to apply any restriction or deferral is taken⁹.

4) Security measures

EIB has put in place some adequate technical and organisational security measures.

⁸ under Article 20(5) of the Regulation.

⁹ This is the kind of documentation the EDPS requests when investigating complaints relating to the application of Article 20.

(...)

Conclusion

The EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the recommendations made in this Opinion are fully taken into account.

In light of the accountability principle, the EDPS **expects EIB to implement the above recommendations** accordingly and has therefore decided to **close the case**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Mr (...), Data Protection Officer, EIB
Mr (...), Head of Division, EIB