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Subject: Opinion on the procedure for the renewal of temporary and contract agents' contracts at EBA (EDPS case 2017-1082)

Dear [...],

On 30 November 2017 the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on the renewal of temporary and contract agents' contracts from the Data Protection Officer (DPO) of the European Banking Authority (EBA)².

The EDPS has issued Guidelines concerning the processing of personal data for staff evaluation ("the Guidelines")³. Therefore, this Opinion analyses and highlights only those practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for the renewal of temporary and contract agents' contracts at EBA.

1. Facts and analysis

According to the information provided by EBA in the privacy statement and in the notification, this process establishes the EBA's approach to employment contract management in order to

¹ OJ L 8, 12.1.2001, p. 1.

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

³ EDPS Guidelines concerning the processing of personal data in the area of staff evaluation July 2011, page 2 section 1, available at: https://edps.europa.eu/sites/edp/files/publication/11-07-15_evaluation_guidelines_en.pdf.

ensure a transparent, consistent and fair treatment of all EBA staff members when considering whether or not to offer an eventual renewal of their employment contract. This data processing is aimed at ensuring transparency in the management of the procedure and safeguards a consistent decision-making process by the Authority Authorized to Conclude Contracts of employment (AACC).

The notification was accompanied by the following documents:

- Privacy Statement related to the Processing of Personal Data in the Contract Renewal Process, dated 30/11/2017;
- Decision of the Management Board on Implementing Rules relating to Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 (as amended).

The ground for lawfulness of the data processing operation is Article 5(a) of the Regulation. The procedure for dealing with the renewal of working contracts of temporary and contract agents is based on the rules of the Conditions of Employment of Other Servants (CEOS) and EBA's Decision of the Management Board on Implementing Rules relating to Regulation (EC) No 45/2001. The processing of personal data is considered necessary for the Human Resources – Operations Department and Management Team of EBA to evaluate if the contracts of contract and temporary agents should be renewed. The renewal of the working contract for temporary agents is based on Article 8 of the CEOS and the renewal of the working contracts for contract agents is based on Article 85 of the CEOS.

The processing operation has been notified under Article 27(2)(b) of the Regulation, which refers to "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". In order to take decisions on the renewal of working contracts for temporary and contract agents within the framework for the workforce management, the Human Resources – Operations Department and Management Team of EBA evaluates the performances of the temporary and contract agents. The evaluation of performances should be considered as the evaluation of personal aspects in the light of Article 27(2)(b) of the Regulation.

1.1) Information provided to the data subjects

Firstly, the EDPS notes that all the information required under Articles 11 and 12 of the Regulation is provided in the Privacy statement. The EDPS welcomes the fact that the Privacy statement for the notified processing activity is available on the EBA's intranet page under the Human Resources section (see point 7 of the notification). Additionally, the EDPS recommends providing the privacy statement individually to staff members concerned before further personal data are collected⁴. For example, EBA should annex a copy or include a link to the letter launching the exercise or in any other communication with the staff member on this subject.

Secondly, with regard to the procedures for staff members to exercise their rights of access, rectification and others, the EDPS suggests (as a good practice) including information on in which time limit data subjects can expect a reaction from the controller (e.g. 15 working days for access request, etc.)⁵. This information should be provided in the Privacy statement.

⁴ EDPS Guidelines concerning the processing of personal data in the area of staff evaluation July 2011, page 8 section 8, available at: https://edps.europa.eu/sites/edp/files/publication/11-07-15_evaluation_guidelines_en.pdf.

⁵ EDPS opinion of 12 June 2014 concerning "The processing operations related to renewal of contracts for temporary and contract agents in the Innovation and Networks Executive Agency", case 2013-1288, page 2, available at: https://edps.europa.eu/sites/edp/files/publication/14-06-12_letter_contract_agents_inea_en.pdf.

The EDPS recommends that EBA:

- **Provide the privacy statement individually to staff members**, for example as an annex or a link to the letter asking for the staff member's interest in renewal.
- Include information on in which **time limit a reaction can be expected** in the Privacy statement.

1.2) Data recipients

The notification and the Privacy statement both mention a number of possible recipients of personal data on a need-to-know basis, such as the European Anti-Fraud Office. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not *need* to be mentioned in the privacy statement ⁶.

As an improvement, the EDPS suggests that EBA **remove External lawyers, OLAF, European Ombudsman and Courts of the European Union from the privacy statement.**

2. Conclusion

In this Opinion, the EDPS has made some recommendations to ensure compliance with the Regulation, as well as some suggestions for improvement. Provided that the recommendations and suggestions are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

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

Yours sincerely,

[signed]

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, EBA

⁶ 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 and the European Ombudsman 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.