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GB/BR/sn/D(2013)0353 C 2013-0606
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Subject: Prior check notification regarding EIB local agents (Case 2013-0606)

Dear Mr Souto de Miranda,

I refer to the *ex post* prior checking notification on the processing operations relating to EIB local agents, which you sent to the EDPS on 6 June 2013.

After careful consideration of the notification and the additional documents appended to your latest email, our conclusions and recommendations are as follows.

1. Scope of the notification

In accordance with Article 25 of Regulation 45/2001 ("the Regulation"), a notification covers any processing operations "*intended to serve a single purpose or several related purposes*".

In this case, however, the Article 27 notification covers five different purposes (personal files, payroll management, health insurance, pension insurance, legal assistance) that are not closely related to each other. The fact that the processing operations in question relate to local agents and involve processors in third countries does not imply that they may be included in a single notification.

Therefore, we suggest you to:

- withdraw the Article 25 and 27 notifications;
- file separate Article 25 notifications for every single purpose,
- file Article 27 notifications for processing operations whose purposes need to be prior-checked under Article 27 of the Regulation. You will find hereinafter our views in this respect, in view of the elements at our disposal (see points 2. and 3. below).

2. Prior-checkable processing operations under Article 27(2) of the Regulation

a) Personal files

Article 27(2)(a) of the Regulation primarily concerns data processing operations the main purpose of which is not to process data relating to health, suspected offences, criminal convictions or security measures, but such data are often included in personal files. However, the presumption of risk of Article 27(2) does not exist *a priori* concerning personal files since the data are generated by earlier data processing which has itself been (or should be) subject to prior checking (Recruitment procedure, Medical files, Disciplinary or administrative procedures). Therefore, data processing operations in relation to personal files do not need to be prior-checked.

b) Payroll management

Payroll management does not involve processing operations likely to present risks covered by Article 27(2) of the Regulation. Therefore, no prior-checking notification is required.

c) Supplementary health insurance scheme

The handling of a health scheme insurance scheme may involve the processing of data relating to health and is therefore subject to prior-checking under Article 27(2)(a). The EIB already notified similar processing operations for its "regular" staff (case 2008-0323). However, as the processing operations in this regard seem to be specific, it probably requires a separate notification (and not a mere update of the existing notification regarding regular EIB staff).

d) Supplementary pension insurance scheme

We do not see *a priori* any grounds for prior-checking under Article 27(2) in this context, unless the data processed in this context include health-related information.

e) Legal assistance

According to the notification, the advice provided by local law firms aims at ensuring general compliance with local law, especially employment. In this framework, the local law firm may deal with personal data of local agents, some of which possibly sensitive (health data, suspected offences, disciplinary and criminal convictions, etc.). However, this does not constitute an *autonomous* set of processing operations. Rather, law firms are virtually recipients/processors of any personal data processed by the EIB for various purposes related to local agents. Thus, data processing operations by local law firms fall within various processing operations and the notifications (whether Article 25 or Article 27) in relation thereto should include possible transfers to law firms.

3. Prior-checkable processing operations under Article 27(1) of the Regulation

Article 27(1) has a broad wording ("*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*") that leaves room for interpretation.

The EDPS position is that data transfers to third countries do not require *per se* a prior-checking notification under Article 27(1). It all depends on the circumstances.

From the information received, we take the view that data transfers to external providers located in third countries do not present such specific risks. However, apart from any prior checking requirement, data transfers are covered by specific requirements of the Regulation (Articles 7-9).

If you have some doubts about either the lawfulness or specific risks associated to such transfers, we would suggest you to submit to us a consultation under Article 28(1) or 46(d) of the Regulation. If so, the EIB should provide in its request for consultation relevant pieces of information for every set of processing operations, such as:

- data flows at stake (EIB Luxembourg-EIB regional office; EIB regional office-external provider; EIB Luxembourg-external provider);
- contractual arrangements with local providers;
- technical info (for ex. use of cloud computing);
- security measures for the exchange of personal data.

4. Update of existing notifications

Processing operations other than those mentioned in the notification are made in relation to local agents (e.g. recruitment; probation/appraisal/promotion; medical records; discipline; leave management).

Therefore, the EIB should either amend the existing notifications in this regard, by adding specificities for local agents (additional data subjects, other legal basis, additional recipients, etc.), or make new notifications dedicated to local agents if the processing operations are too different from those made for "regular" EIB staff.

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

Yours sincerely,

(signed)

Giovanni BUTTARELLI