



EUROPEAN DATA PROTECTION SUPERVISOR

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WW/OL/sn/D(2015)1102 C 2015-0463
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correspondence

Subject: Prior-check opinion on the pre-selection procedure for the post of the Director of FRA

Dear [...],

On 28 May 2015, the Data Protection Officer (DPO) of the General Secretariat of the Council has notified the pre-selection procedure for the post of the Director for the European Union Agency for Fundamental Rights to the European Data Protection Supervisor (EDPS) for prior-checking under Article 27 of Regulation (EC) No. 45/2001 (the Regulation).

This notification to the EDPS was done "ex-post".¹ As stated in our letter to all Institutions of 5 July 2012 (our case reference 2012-0557) and repeated on numerous occasions, **all** notifications relating to existing procedures involving the processing of personal data likely to present specific risks should have been submitted to the EDPS by the 30 June 2013. For this reason, the deadline of Article 27(4) Regulation does not apply.

In principle, this ex-post notification should nevertheless not have consequences on the validity of administrative procedures.

While the processing notified does not directly fall under the scope of the EDPS Guidelines on selection and recruitment procedures², it is sufficiently similar for these Guidelines to be applied by analogy. This Opinion therefore will not contain a full analysis of the procedure,

¹ The procedure has been used during the last appointment procedure for the Director of the European Union Agency for Fundamental Rights between September 2007 and February 2008. While the reason for notifying it now was the upcoming selection procedure for this post, this does not change the fact that the procedure as such already existed before.

² Available on the EDPS website

but will focus on those aspects that diverge from standard practice and/or require improvement.

Description and assessment

Data subject rights

As regards the exercise of their rights to access, rectification etc., the information notice only contains a cross-reference to Council Decision 2004/644/EC (the Secretariat General's implementing rules for the Regulation).

In the interest of providing information in a clear and understandable manner, this could be replaced by text along the lines of "you have the right to access and rectify data concerning you. To exercise these rights, you can contact the controller. Further details on the procedure can be found in Section 5 of Council Decision 2004/644/EC".

Conservation periods

Concerning the conservation periods the notification indicated periods of one year in general and only three months after appointment for shortlisted but not appointed candidates. Afterwards, documentation may be kept for historical purposes.

Concerning the possible further use for historical purposes, the EDPS would like to refer to the principles relating to such further use in Article 4(1)(b) of the Regulation. The controller has to provide appropriate safeguards, in particular to ensure that the data are not used for any other purposes or in support of measures or decisions concerning particular individuals.

Conclusion

Based on the information provided, the EDPS has no reason to believe that the procedure breaches the Regulation. We have therefore decided to **close case 2015-0463**.

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, General Secretariat of the Council