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Subject: Creation of insider lists for the prevention of insider dealing and market manipulation (case 2016-0497)

On 4 May 2016, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the European Investment Bank ("EIB") a notification regarding the creation of insider lists as prevention against market abuse.

Following the adoption of Regulation 596/2014¹ on Market Abuse ("MAR") the EIB has adopted internal Guidelines in order to align with best banking practices and easily prevent insider dealing and or market abuse ("EIB Market Abuse Guidelines"). The processing is to be launched 1 July 2016.

Description of the processing operation

The ***purpose*** of this procedure is to prevent insider dealing, unlawful disclosure of inside information and market manipulation by creation and maintenance of insider lists. The EIB regularly receives inside information in the normal course of its business. Consequently, the EIB Group, its staff and its governing bodies are exposed to potential reputational and legal risks, including criminal liabilities and financial losses in connection with the treatment of inside information. Therefore, any person who receives or originates inside information in the course of his/her working activities at or for the EIB group is responsible for the appropriate circulation, use and storage of such inside information.

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

The legal basis mentioned by the EIB for this processing activity is the MAR and the decision of the Management Committee of 16 February 2016 approving the EIB Market Abuse Guidelines.

The EIB Market Abuse Guidelines define the first recipient of the inside information as the owner of the inside information, unless it is already known and processed within the EIB group. Any recipient may contact the Compliance Liaison Officer(s) of his/her Directorate to determine the owner within the bank, or, if the recipient is an EIB Group contractor or service provider his/her usual EIB Group contact person who in turn may contact the relevant Compliance Liaison Officer(s). If the relevant information is already known to the EIB Group and processed in accordance with the EIB Market Abuse Guidelines, the recipient of the Compliance Liaison Officer shall request the owner of the existing insider list to be added to it.

The responsibility of the owner include (a) the creation of the insider list, (b) to transmit the insider notice to all those in or to be added to the insider list of the existence of inside information and related duties and restrictions and (c) maintenance of the insider list which include adding to the list any additional recipients to make sure that the insider list contains an up-to-date information, sending any additional recipients the insider notice and ensuring a timely declassification of the insider list upon declassification of the inside information.

The personal information processed is the name of the insider, professional telephone number, company name and address, reasons for being insider, the date and time when a person obtained access to the inside information and when a person ceased to have access, date of birth, National Identification Number (if not working for the EIB), personal telephone numbers and personal home address². The personal information will be disclosed to other persons included on the insider list and to competent authorities upon request.

Legal Analysis

The processing activity was notified under Article 27(2)(a) and 27(2)(b) of Regulation 45/2001 ("the Regulation")³.

The procedure notified covers the creation of a list which includes persons with knowledge of information that is classified as inside information. The actual knowledge of this information is not prohibited as such⁴. If a suspicion about a market abuse arises, the persons included in that particular insider list are potential suspects and the list will be disclosed to competent authorities upon request. However, in relation to the initial stage, persons added to the insider list are not suspected of any criminal offences and therefore the processing operation is not subject to prior check under Article 27(2)(a) of the Regulation.

Furthermore, the owner of the inside information is responsible for sending the insider notice to alert all those in or to be added to the insider list of the existence of inside information and related duties and restriction. The processing thus consists of the objective assessment whether

² The information follows the format and categories prescribed within the Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider list in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

³ Article 27 of the Regulation subjects to prior checking by the EDPS processing activities likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks including under point (a) the processing of data related to suspected offences and under point (b) processing intended to evaluate personal aspects relating to the data subject, including his or her conduct.

⁴ It is the further use of the information that is prohibited if it relates to insider dealing, unlawful disclosure of inside information and market manipulation.

the inside information has been communicated to any additional recipients. It therefore does not aim at evaluating staff members' conduct in relation to Article 27(2)(b) of the Regulation at this initial stage.

The notified processing operation is therefore **not subject to prior checking**. Nonetheless, the EDPS would like to make comments on the notification and the information provided therein.

Articles 11 and 12 of the Regulation provide a minimum list of information about the processing of personal data that need to be provided to the persons affected. According to the notification, the EIB will provide an insider notice to each person added to an insider list and a data protection statement will be published on the intranet and website of the EIB. **The insider notice does, however, not include any information on how the data subjects' personal information is processed. The EDPS therefore recommends adding to the insider notice a link to the data protection statement. In this regard, the data protection statement needs to be improved so it informs the persons affected about the categories of data concerned⁵ and about the precise article in MAR that serves as a legal basis for the creation of insider lists.**

Furthermore, with regard to the procedures for data subjects notably to exercise their rights (access, rectification and others), it is good practice to include information regarding within which time limit a reaction can be expected (e.g. within max. three months for access request, without delay for rectification, etc.).

The EDPS invites the EIB to report on progress regarding the implementation of the above recommendations by 1 July 2016 (launch of the processing), which is a precondition for closure of the case.

Thank you for your cooperation.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

⁵ See Article 12(1)(c)