



EUROPEAN DATA PROTECTION SUPERVISOR

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Subject: Prior-checking Opinion regarding internal mobility at the European Investment Fund (EDPS case 2015-1102)

Dear Ms Lepert,

On 15 December 2015, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ("the Regulation") on internal mobility from the Data Protection Officer (DPO) of the European Investment Fund.²

While the notified processing operation consisting of management of internal applications for vacancies within the EIF and the European Investment Bank (EIB) Group does not fall directly under the scope of the EDPS Guidelines on processing operations in the field of staff recruitment³ ("the Guidelines"), it is sufficiently similar for these Guidelines to be applied by analogy. This Opinion will therefore only address those practices that do not seem to be in conformity with the principles of the Regulation and with the Guidelines.

1. Facts and analysis

1.1 Processing of data on behalf of the controller

Article 23(1) of the Regulation states that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required

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 and the case has been dealt on a best-effort basis.

³ Available on the EDPS website:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/08-10-10_Guidelines_staff_recruitment_EN.pdf

by Article 22 of the Regulation. Article 23(2) of the Regulation further specifies that the carrying out of a processing operation by way of a processor must be governed by a contract or legal act binding the processor to the controller. This instrument should, in particular, stipulate that the processor has to comply with obligations of confidentiality and security as set out in Articles 21 and 22 of the Regulation or in the respective national law transposing Articles 16 and 17 of Directive 95/46/EC.

Pursuant to Article 2(d) and (e) of the Regulation, the controller is the entity which determines the purposes and means of the processing operation, whereas the processor is the entity that processes personal data on behalf of the controller.

The notification mentions that for posts of Head of Division and higher, personality tests are performed with the support of external service providers. Yet it fails to provide any indications as to whether any contract between EIF and the external service providers exists and/or whether such a contract contains all the relevant data protection clauses.

The EDPS strongly recommends the establishment of a contract between EIF and the external service providers, which outlines all the obligations of the external service providers acting on behalf of the EIF as processors.

1.2 Data conservation

Pursuant to Article 4(1)(e) of the Regulation, personal data may be kept in a form which permits identification of data subjects for no longer than necessary for the purposes for which the data were collected or for which they are further processed. Personal data which are to be stored for longer periods for historical, statistical or scientific use, must be kept either in anonymous form or, if that is not possible, only with the identity of the data subjects encrypted.

According to the information provided in the notification, personal data is kept for three years after the closure of the particular selection process and indefinitely for statistical purposes in PeopleSoft. It is also mentioned that the staff has access to the permanently stored personal data. The purpose of the processing is meant to be the management of internal applications for vacancies.

The EDPS considers the existing data conservation policy misleading as the purpose of the processing is unclear, in particular as regards the further purpose of the processing. It should be clarified whether personal data collected for one particular internal vacancy may be used in another internal mobility exercise and for how long.

Moreover, it has to be ensured that all personal data kept for statistical purposes are only kept in an anonymous form or with the identity of data subjects encrypted.

The EDPS recommends that the further purpose of the processing is clarified and a corresponding time limit for conservation of personal data used for the further purpose is established.
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The EDPS also recommends that it is ensured that all personal data kept for statistical purposes have either been anonymised or the identity of data subjects encrypted.

2. **Conclusion**

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that all considerations contained in this Opinion are fully taken into account. In particular, the EIF should:

1. establish a contractual agreement with the external experts involved in the EIF internal mobility procedure;
2. clarify further purpose of processing of personal data collected for a particular internal mobility exercise and establish an appropriate time limit for conservation of personal data processed in this context;
3. ensure that data kept for statistical purposes are kept only in an anonymised form or with the identity of the data subject encrypted.

The EDPS expects **implementation and documentary evidence** thereof within **three months** of the date of this Opinion for the recommendations made in this Opinion:

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

(signed)

Cc.: Mr Paolo SINIBALDI, DPO, EIF