

EDPS comments on the European Investment Fund's draft internal rules concerning restrictions of certain rights of data subjects (Article 25 of the Regulation (EU) 2018/1725)

Introduction

The EDPS' comments refer to the document submitted by the European Investment Fund (EIF) on 20 December 2019. We provide these comments in accordance with Article 41(2) of Regulation (EU) 2018/1725 ('the Regulation')¹. This consultation is not a formality.

Firstly, we would like to highlight the EDPS Guidance on Article 25 of the Regulation², published on 20 December 2018. The EDPS is currently updating its guidance, providing more detail and reflecting on the practices of the EU institutions, bodies and agencies since the entry into force of the Regulation.

Secondly, we take note that the EIF draft internal rules closely resemble the EDPS Decision of 2 April 2019 on internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of activities carried out by the EDPS.

General comments

- We welcome that the EIF will only restrict data subjects' rights based on the proposed internal rules, which provide a clear legal basis thereto.
- The EDPS welcomes the fact that the draft internal rules provide for the obligation to document the application of restrictions and the reasons to apply them.
- The EDPS also takes note of the fact that the EIF will perform a necessity and proportionality test on the need for the restriction of data subjects' rights.
- In relation to this necessity principle, the EDPS has underlined that restrictions should be temporary and lifted when they no longer apply. Therefore, the EDPS notes with satisfaction that restrictions will be reviewed every six months.
- Concerning the data subjects' right to information, we take note that the EIF will publish data protection notices on its website related to the potential restrictions of data subjects' rights.

EDPS recommendations

- **Recommendation 1:** The second paragraph of the citations makes reference to 'Chapter VI'. Since Chapter VI of the Regulation refers to the EDPS, the EDPS recommends deleting this reference from the citations.

¹ OJ L 295, 21.11.2018, p. 39.

² Available on the EDPS website via: https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725_en

- **Recommendation 2:** The last paragraph of the citations makes reference to the 'opinions' of the EDPS. As the EDPS will only issue one opinion on the EIF draft internal rules, we recommend referring to this opinion issued by the EDPS.
- **Recommendation 3:** The EIF draft internal rules refer to a number of EIF internal decisions and agreements (such as the 'EIF Group Staff Code of Conduct of December 2019 as amended from time to time', the 'EIF Anti-Fraud Policy adopted in March 2015, as amended, replaced or supplemented from time to time', 'the Framework Agreement between the EIF and the EIB concerning provision of services'). Since these decisions and agreements could be subject to modification, the EDPS recommends not including a time reference in order to ensure that the reference is interpreted as being the latest version of the document.
- **Recommendation 4:** The EDPS notes with appreciation the fact that the EIF will perform a necessity and proportionality test on the need for any restriction of data subjects' rights, under Article 2(3) of the EIF draft internal rules. The EDPS recommends that this test will also be conducted in the framework of the periodic review, following an assessment of whether the factual and legal reasons for a restriction still apply. The internal rules should be adapted accordingly.
- **Recommendation 5:** Article 2 of the EIF draft internal rules contains multiple references to Article 25(1)(e) as legal basis for applying restrictions. Since this kind of restriction is specific to and could be applied by the Court of Justice of the EU in the exercise of their judicial function, we recommend deleting this legal basis.
- **Recommendation 6:** Article 10 provides for entry into force of the decision on the day of its publication in the *Official Journal*. In this sense, we would like to remind the EIF that these internal rules would allow for the restriction of fundamental aspects of the right to data protection. Therefore, it should consider if it would not be appropriate for the decision to enter into force on the twentieth day after publication into the *Official Journal*, as is standard practice for legislative texts. If urgent entry into force is necessary, we recommend inserting an explanatory recital. Please see also our letter of 29 January 2020 in case 2020-0078 (our reference D(2020) 0174).

Brussels,

20 FEB 2020

