



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

AUDIT REPORT ON HR ANALYTICS, RECRUITMENT PROCEDURES AND RESTRICTION OF DATA SUBJECT RIGHTS AT THE EUROPEAN CENTRAL BANK (ECB)

Frankfurt, 4 and 5 December 2023

EDPS case number 2023-0758

Executive summary

Introduction

The European Data Protection Supervisor (EDPS) is the independent supervisory authority established by Article 52 of the Regulation (EU) 2018/1725¹ (the “Regulation”) responsible for:

- Monitoring and ensuring the application of the provisions of the Regulation and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by an EU institution or body; and
- Advising EU institutions and bodies and data subjects on all matters concerning the processing of personal data.

To these ends, the EDPS fulfils the duties provided for in Article 57 and exercises the powers granted in Article 58 of the Regulation. Among his powers to investigate, the EDPS can carry out investigations in the form of data protection audits. The power to audit is one of the tools established to monitor and ensure compliance with the Regulation.

The audit was part of the EDPS Annual Audit Plan for 2023 and should be viewed as the final stage before formal action under Article 58 of the Regulation is undertaken. The formal Decision was communicated to the ECB by means of an Announcement Letter dated 26 October 2023. The fieldwork was carried out on 4 and 5 December 2023 at the ECB premises in Frankfurt (Germany).

Overall, the EDPS notes that the ECB cooperated with the EDPS audit team in an exemplary way.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98.

Scope of the audit

The audit of the European Central Bank (ECB) covered the following points: i) the follow-up on the EDPS orders included in an EDPS decision from a previous complaint case, ii) processing of personal data in the context of recruitment procedures, iii) the follow-up of an EDPS inspection on restriction of data subject rights. The EDPS also determined the scope of this audit taking into consideration the EDPS' decision in another previous complaint case, where the EDPS found a number of infringements of the Regulation, as well as the impact of the processing operations at stake (i.e. recruitment procedures, and restriction on data subject rights) on the rights and freedoms of data subjects.

Key findings of the audit

The main findings of the audit include the following:

- Consent (Article 5(1)(a) of the Regulation) is not an appropriate lawful ground for the processing of personal data in the context of the recruitment and talent management platform used by the ECB for job applications. In the same vein, consent is not an appropriate lawful ground for the processing of personal data in the context of pre-recorded interviews, in the absence of provision of alternative means to data subjects when applying for a vacancy.
- The information provided to data subjects for the processing of their personal data for pre-recorded interviews carried out in the context of recruitment procedures does not meet the requirements of Article 15 of the Regulation.
- Storage limitation (Article 4(1)(e) of the Regulation): The ECB has not sufficiently demonstrated the necessity and proportionality of retaining personal data processed in the context of the assessment of managerial skills of staff for a three-year period. Finally, it did not demonstrate the necessity and proportionality of keeping the medical certificate that indicates that a data subject is fit for work for ten years after the expiration of all financial rights of the employee and its dependants.
- The ECB has not put in place written guidance for handling data subjects' requests.

Recommendations and follow-up to the audit

On the basis of Article 58(2)(c) of the Regulation and his power to refer matters to the controller, the EDPS has thus issued a series of recommendations, which must be implemented by the ECB **to ensure compliance** with the Regulation.

Such recommendations concern the lawfulness of the processing of personal data in the context of the recruitment and talent management platform used by the ECB for job applications, and in the context of pre-recorded interviews, as well as compliance with the transparency requirements concerning processing in the context of headhunting services, and pre-recorded interviews.

They also concern compliance with the data minimisation principle when applying for a vacancy at the ECB via the recruitment and talent management platform used by the ECB for job applications, as well as compliance with the storage limitation principle concerning processing undertaken in the context of certain parts of the recruitment procedure.

The EDPS has also issued a series of recommendations that would help ECB **enhance compliance** with the Regulation. Such recommendations concern data subject requests, transparency requirements, deletion of personal data on the recruitment and talent management platform used by the ECB for job applications, and formalising as well as documenting training of staff involved with HR analytics.

In view of the above, the ECB should demonstrate that the recommendations included in the audit report are implemented within the deadlines indicated therein. The EDPS reserves the right to investigate the matter and, if need be, to exercise the powers listed in Article 58 of the Regulation.

Brussels, 19 November 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI