



EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI  
ASSISTANT SUPERVISOR

Mr Fausto PARENTE  
Executive Director  
European Insurance and Occupational  
Pensions Authority (EIOPA)  
Westhafen Tower  
Westhafenplatz 1  
60327 Frankfurt am Main  
Germany

Brussels, 17 June 2016  
WW/MG/D(2016)1303 C 2016-0415  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Prior checking Opinion on administrative inquiries and disciplinary procedures at EIOPA – Case 2016-0415**

Dear Mr Parente,

We have analysed the notification for prior checking under Article 27.2 of Regulation (EC) No 45/2001 (the "Regulation")<sup>1</sup> relating to the processing of personal data in the context of administrative inquiries and disciplinary procedures at the European Insurance and Occupational Pensions Authority ("EIOPA"), received from EIOPA's Data Protection Officer ("DPO") on 29 April 2016 and registered as case 2016-0415.

The notification is accompanied by a cover letter by the DPO and the following supporting documents:

- Regulation (EU) No 1094/2010 establishing EIOPA;
- the Draft Decision on the conduct of administrative inquiries and disciplinary procedures;
- the template letter addressed to the Investigation Panel/Disciplinary Board;
- the Privacy Statement.

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<sup>1</sup> OJ L 8/1, 12/01/2001

According to Article 27.4 of the Regulation, this Opinion must be issued within a period of two months. The draft Opinion was sent to the DPO for comments on 2 June 2016 and her comments were received on 10 June 2016. This means that, taking into account the suspension of the aforesaid legal deadline for the period 2-10 June 2016, this Opinion must be issued before 7 July 2016.

The EDPS is satisfied that EIOPA has taken into account the Guidelines on the processing of personal data in administrative inquiries and disciplinary proceedings<sup>2</sup>. The present Opinion will hence only point out one aspect where the processing operations seem to need improvement to be aligned with data protection rules.

### Rights of data subjects

The template letter addressed to the Investigation Panel/Disciplinary Board mentions the possibility of restricting data subjects' rights "*subject to the restrictions of Article 20 of the Regulation*", which provides in particular that the rights of access and rectification may be restricted where such a restriction constitutes a necessary measure to safeguard "the prevention, investigation, detection and prosecution of criminal offences" or "the protection of (...) the rights and freedoms of others".

The EDPS would like to recall that when EIOPA decides to apply a restriction under Article 20.1 of the Regulation, such a decision should be taken strictly on a **case-by-case basis**. In this case, Article 20.3 also requires EIOPA to **provide detailed reasons** for taking such a decision. The reasons invoked should demonstrate actual harm to the investigation and they should be **documented** before taking the decision to apply any restriction under Article 20.1 of the Regulation.

Should a restriction to the right of access and the right of rectification be imposed, the data subject should be informed of the principal reasons for the restriction and of the right to have recourse to the EDPS for indirect access in accordance with Article 20.4 of the Regulation<sup>3</sup>.

**Recommendation:** The notification and the privacy statement should be amended so as to set out the possible restriction that can be applied to the rights of the individual concerned pursuant to Article 20 of the Regulation. The template letter addressed to the Investigation Panel/Disciplinary Board should mention that any possible restrictions under Article 20.1 must be taken on a case-by-case basis and documented, as explained above.

### Conclusion

Having analysed the notification and the above documents, the EDPS considers that EIOPA has adopted adequate data protection safeguards in conformity with the Regulation provided that the above recommendation is taken into account. In light of the accountability principle, the EDPS expects EIOPA to implement the above recommendation accordingly and has therefore decided to **close the case**.

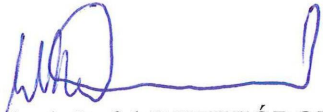
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<sup>2</sup> [Guidelines concerning the processing of personal data in administrative inquiries and disciplinary proceedings by European institutions and bodies](#) – available on the EDPS website under Supervision, Thematic Guidelines.

<sup>3</sup> For further information, see [the EDPS Guidelines on the Rights of Individuals with regard to the Processing of Personal Data](#), pages 34-35 - – available on the EDPS website under Supervision, Thematic Guidelines.

Please do not hesitate to contact us, should you have any questions.

Kind regards,



Wojciech Rafał WIEWIÓROWSKI

Cc: Ms Catherine COUCKE, DPO, EIOPA