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Subject: Prior-checking Opinion on selection of confidential counsellors and informal anti-harassment procedures at EIOPA (EDPS case 2017-0916)

Dear [...],

On 19 October 2017, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on the processing of personal data in the context of selection of confidential counsellors and the informal procedures for cases of harassment from the Data Protection Officer (DPO) of the European Insurance and Occupational Pension Authority (EIOPA).²

The EDPS has issued Guidelines concerning the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment in European institutions and bodies³ ('the Guidelines'). Therefore, this Opinion analyses and highlights only those practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines. In the light of the accountability principle guiding its work, the EDPS would nonetheless like to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place for the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment at EIOPA.

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. This case has been dealt with on a best-effort basis.

³ Available on the EDPS website: https://edps.europa.eu/sites/edp/files/publication/11-02-18_harassment_guidelines_en.pdf

Rights to blocking and erasure

As to the rights of the data subjects (alleged victims), the EDPS Guidelines provide that the European institutions and bodies should specify both the modalities for exercising a right to block or erase data as well as the duration needed for blocking or erasing these data.⁴

The present processing operation does not specify the conditions under which a data subject may request blocking and/or erasure (for example, that these should only concern hard data such as administrative and identification data, usually directly collected by data subjects⁵) and does not provide either for any time limit to exercise these rights. In fact, while the notification provides for a 15 working days' time limit to exercise the rights, the privacy statement does not refer to any time limit.

Therefore, the EDPS **recommends** clearly specifying the modalities and duration for exercising the rights to blocking and erasure.

Information to data subjects

Articles 11 and 12 of the Regulation provide that data subjects must be informed of the processing of data relating to them and list the minimum information that should be provided. Having regard to the specific circumstance of the processing operation, additional information should be provided insofar as necessary to guarantee fair processing towards the data subject.

All the required and additional information should be given to EIOPA staff in general as well as in specific cases to all individuals concerned (confidential counsellors, alleged victim, alleged harasser, witnesses). In light of Article 32 of the Regulation, individuals have the right to complain to the EDPS at any time.

The EDPS therefore **suggests** adding the wording "at any time" to the right to complain to the EDPS in the privacy statement.

Retention of personal data

In accordance with Article 4(1)(e) of the Regulation, personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

The notification provides for a storage period of maximum 5 years following the closure of the harassment case and that longer retention periods might apply for informal procedures in order to detect recurring cases and when a case is brought before the European Ombudsman and/or the European Courts (thus until the final judgment has been issued).

Concerning the form to be stored after closure of a case, the EDPS draws attention to the principle that personal data are only to be stored for as long as they are necessary for the purpose of the processing. This also means that the content of the closure form should be limited to what is necessary for the purposes following case closure (e.g. policy evaluation, statistics).

Under Article 5(d), further storage of other documents can be lawful with the consent of the data subject. It should however be noted that this means the consent of the data subjects whose personal data are included in the documents, not the consent of the party which submitted or created them. As it is highly likely that such documents would contain personal data on both

⁴ Guidelines, section 6, fourth bullet point.

⁵ Guidelines, section 3, 'data quality'.

the alleged victim and the alleged harasser (as well as possibly witnesses), basing further storage on consent is difficult. The EDPS thus discourages such practices.

Therefore, only the opening and closure forms should be stored as part of the informal anti-harassment procedure after the closure of a case. EIOPA's retention period of 5 years for the forms is acceptable. Documents submitted by the parties or drawn up by the counsellors should be destroyed after the closure of the case they relate to. EIOPA should also ensure that data further stored for statistical purposes following the conservation period are properly anonymised.

Therefore, in line with the above, the EDPS **recommends** only keeping the opening and closure forms as part of the informal anti-harassment procedure after case closure and properly anonymising the data further stored for statistical purposes.

Security measures

Finally, concerning security measures, it is important to ask the confidential counselors to sign a declaration of confidentiality to remind them of the sensitivity of the work that they have to carry out.⁶ Confidentiality must also be ensured by others involved in a particular informal anti-harassment case.

The EDPS thus reminds that confidential counsellors as well as any other staff (e.g. from the Human Resources Unit, line managers) involved in informal anti-harassment cases should sign the declaration of confidentiality and show it to the data subject if requested. For efficiency purposes, this declaration could also contain a statement about the need to ensure data quality in line with Article 4 of the Regulation, including the need to ensure that the data collected is not excessive to the purposes.

Conclusion

In this Opinion, the EDPS has made several recommendations to ensure compliance with the Regulation, as well as several suggestions for improvement. Provided that these recommendations are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

In light of the accountability principle, the EDPS expects EIOPA to implement the above recommendations accordingly and has therefore decided to **close the case**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc.: [...], DPO, EIOPA

⁶ Guidelines, section 8, p.15.