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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

RULES OF PROCEDURE

EUROPEAN INVESTMENT BANK DECISION

of 26 February 2019

laying down internal rules concerning the processing of personal data by the Personnel Directorate of the European Investment Bank in relation to the provision of information to data subjects and the restriction of certain of their rights

THE EUROPEAN INVESTMENT BANK ('EIB'),

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 309,

Having regard to 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,

Whereas:

Under Article 38 of the EIB Staff Regulations I and II, disciplinary measures may be adopted against members of staff who fail to fulfil their obligations to the EIB pursuant to the procedure set out in Article 40 of these regulations. Under Article 41 of the EIB Staff Regulations I and II, disputes other than those arising from the application of the disciplinary measures provided for under Article 38 of these regulations may be submitted to a Conciliation Board. Pursuant to the EIB's Policy on Dignity at Work and the EIB's Guidelines on the Appraisal Appeals Procedure, the EIB must deal respectively with harassment complaints and appeals against performance appraisals.

The organisation and management of the procedures set out in Articles 40 and 41 of the EIB Staff Regulations I and II as well as in the EIB's Policy on Dignity at Work and EIB's Guidelines on the Appraisal Appeals Procedure is the primary responsibility of the Personnel Directorate of the EIB. In particular, the Personnel Directorate provides support to and acts as a legal secretariat for the bodies in charge of the said procedures.

While carrying out its tasks, the Personnel Directorate is bound to respect the rights of natural persons in relation to the processing of personal data recognised by Article 8(1) of the Charter of Fundamental Rights of the European Union and by Article 16(1) of the Treaty on the Functioning of the European Union, as well as by legal acts based on those provisions. At the same time, the Personnel Directorate is required to comply with strict rules of confidentiality and professional secrecy referred to in the EIB Staff Regulations and in the EIB Staff Code of Conduct and to ensure the respect of procedural rights of persons concerned and witnesses, in particular the right of persons concerned to due process, the rights of defence and the presumption of innocence.

In certain circumstances, it is necessary to reconcile the rights of data subjects pursuant to Regulation (EU) 2018/1725 ⁽¹⁾ with the purposes and needs of the Personnel Directorate's tasks, as well as with full respect for fundamental rights and freedoms of other data subjects. To that effect, Article 25 of this regulation provides the Personnel Directorate with the possibility to restrict the application of Articles 14 to 22 and 35 as well as Article 4 thereof insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 22.

⁽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).

In order to ensure the effectiveness of the procedures carried out by the Disciplinary Committee and the Conciliation Board set up pursuant to respectively Articles 40 and 41 of the Staff Regulations I and II and by the Dignity at Work Panel and Adjudication Panel set up pursuant to respectively the EIB's Dignity at Work Policy and the Appraisal Appeals Procedure while respecting the standards of protection of personal data under Regulation (EU) 2018/1725, it is necessary to adopt internal rules under which the Personnel Directorate may restrict data subjects' rights in accordance with Article 25(1)(c)(g) and (h) of Regulation (EU) 2018/1725.

The internal rules should apply to all processing operations carried out by the Personnel Directorate in the performance of its mandate pursuant to Articles 40 and 41 of the EIB Staff Regulations I and II and pursuant to the EIB's Policy on Dignity at Work and the Guidelines on the Appraisal Appeals Procedure. Those rules should apply to processing operations carried out prior to the initiation of the procedures carried out by the Disciplinary Committee, the Conciliation Board, the Dignity at Work Panel and the Adjudication Panel, while these procedures are ongoing and in the course of the follow-up to the outcome of these procedures.

In order to comply with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, the data controller should inform all individuals of its activities involving processing of their personal data and of their rights in a transparent and coherent manner in the form of the data protection notices published on the EIB intranet, as well as individually inform data subjects concerned by its activities, namely persons concerned, parties and witnesses.

In addition, in order to maintain effective cooperation, the Personnel Directorate may need to apply restrictions to data subjects' rights to protect information containing personal data originating from other EIB services, the European Union institutions, bodies, offices and agencies, competent authorities of Member States and third countries, as well as from international organisations. To that effect, the Personnel Directorate should consult those other EIB services, institutions, bodies, offices, agencies, authorities and international organisations on the relevant grounds for and the necessity and proportionality of the restrictions.

The Personnel Directorate should handle all restrictions in a transparent manner and register each application of restrictions in the corresponding record system.

Pursuant to Article 25(8) of Regulation (EU) 2018/1725, controllers may defer, omit or deny providing information on the reasons for the application of a restriction to the data subject if this would in any way compromise the purpose of the restriction. This is, in particular, the case of restrictions to the rights provided for in Articles 16 and 35 of Regulation (EU) 2018/1725. In order to ensure that the data subject's right to be informed in accordance with Article 16 and 35 of Regulation (EU) 2018/1725 is restricted only as long as the reasons for the deferral last, the Personnel Directorate should regularly review its position.

Where a restriction of other data subjects' rights is applied, the Personnel Directorate should assess on a case-by-case basis whether the communication of the restriction would compromise its purpose.

The Data Protection Officer ('DPO') of the EIB may carry out an independent review of the application of the restrictions, with a view to ensuring compliance with this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down the rules to be followed by the data controller, as defined in Article 2(1), to inform data subjects of the processing of their data in accordance with Articles 14, 15 and 16 of Regulation (EU) 2018/1725.

It also lays down the conditions under which the relevant data controller may restrict the application of Articles 14 to 22 and 35 as well as Article 4, of the Regulation, in accordance with Article 25(1)(c), (g) and (h) of that Regulation.

2. This Decision applies to the processing of personal data by the Personnel Directorate for the purpose of or in relation to the activities carried out in order to fulfil its tasks referred to in Articles 40 and 41 of the EIB Staff Regulations I and II, as well as in the EIB's Policy on Dignity at Work, the EIB's Guidelines on the Appraisal Appeals Procedure and subsequent amendments thereof.

3. In the framework of its mandate, the Personnel Directorate processes several categories of personal data, particularly identification data, contact data, professional data and case involvement data.

*Article 2***Specification of the controller and safeguards**

1. The controller of the processing operations is the Director General of Personnel.
2. The personal data are stored in a secured electronic and physical environment, which prevents unlawful access or transfer of data to persons who do not have a need to know.
3. The personal data processed are retained for at least six months and up to ten years. Further details on the exact length of the retention periods per procedure can be found in the Retention Schedule of the Personnel Directorate.
4. Longer periods than the period specified above are applied in exceptional and duly justified cases, subject to agreement of the DPO.

*Article 3***Applicable exceptions and restrictions**

1. Where the Personnel Directorate exercises its duties with respect to the data subjects' rights pursuant to Regulation (EU) 2018/1725, it shall consider whether any of the exceptions laid down in that regulation apply.
2. Subject to Articles 4 to 7 of this Decision, the Personnel Directorate may restrict the application of Articles 14 to 22 and 35 of Regulation (EU) 2018/1725, as well as Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22 of this regulation where the exercise of those rights and obligations would jeopardise the purpose of the procedures set out in Articles 40 and 41 of the EIB Staff Regulations I and II as well as in the EIB's Policy on Dignity at Work and EIB's Guidelines on the Appraisal Appeals Procedure or would adversely affect the rights and freedoms of other data subjects.
3. Subject to Articles 4 to 7 of this Decision, the Personnel Directorate may restrict the rights and obligations referred to in paragraph 2 of this Article in relation to personal data obtained from other EIB services, or European Union institutions, bodies, agencies and offices, competent authorities of Member States or from international organisations, in the following circumstances:
 - (a) where the exercise of those rights and obligations could be restricted by other EIB services, or European Union institutions, bodies, agencies and offices on the basis of other acts provided for in Article 25 of the Regulation or in accordance with Chapter IX of that Regulation;
 - (b) where the exercise of those rights and obligations could be restricted by competent authorities of Member States on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾, or under national measures transposing Articles 13(3), 15(3) or 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽²⁾;
 - (c) where the exercise of those rights and obligations could jeopardise the Personnel Directorate's cooperation with third countries and international organisations in the conduct of its tasks.

Before applying restrictions in the circumstances referred to in points (a) and (b) of the first subparagraph, the Personnel Directorate shall consult the relevant EIB services, European Union institutions, bodies, agencies, offices or the competent authorities of Member States unless it is clear to the Personnel Directorate that the application of a restriction is provided for by one of the acts referred to in those points.

Point (c) of the first subparagraph shall not apply where the interest of the European Union to cooperate with third countries or international organisations is overridden by the interests or fundamental rights and freedoms of the data subjects.

4. Paragraphs 1, 2 and 3 are without prejudice to the application of other EIB decisions laying down internal rules concerning the provision of information to data subjects and the restriction of certain rights under Article 25 of Regulation (EU) 2018/1725.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽²⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

*Article 4***Provision of information to data subjects**

1. The Personnel Directorate shall publish on the EIB intranet data protection notices that informs all data subjects of its activities involving processing of their personal data.
2. The Personnel Directorate shall individually inform data subjects who are parties to a procedure, persons concerned by a procedure or witnesses.
3. Where the Personnel Directorate restricts, wholly or partly, the provision of information to the data subjects referred to in paragraph 2, it shall record the reasons for the restriction, including an assessment of the necessity and proportionality of the restriction.

To that end, the record shall state how the provision of the information would jeopardise the purpose of the respective procedure, or of restrictions applied pursuant to Article 3(3), or would adversely affect the rights and freedoms of other data subjects.

The record and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the European Data Protection Supervisor (EDPS) on request.

4. The restriction referred to in paragraph 3 shall continue to apply as long as the reasons justifying it remain applicable.

Where the reasons for the restriction no longer apply, the Personnel Directorate shall provide the information concerned and the reasons for the restriction to the data subject. At the same time, the Personnel Directorate shall inform the data subject of the possibility of lodging a complaint with the EDPS at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

The Personnel Directorate shall review the application of the restriction at least every six months from its adoption and at the closure of the relevant procedure. Thereafter, the controller shall monitor the need to maintain any restriction on an annual basis.

*Article 5***Right of access by data subject**

1. Where data subjects request access to their personal data processed in the context of one or more specific cases or of a particular processing operation, in accordance with Article 17 of Regulation (EU) 2018/1725, the Personnel Directorate shall limit its assessment of the request to such personal data only.
2. Where the Personnel Directorate restricts, wholly or partly, the right of access, referred to in Article 17 of this regulation, it shall take the following steps:
 - (a) it shall inform the data subject concerned, in its reply to the request, of the restriction applied and of the principal reasons thereof, and of the possibility of lodging a complaint with the EDPS or of seeking a judicial remedy in the Court of Justice of the European Union;
 - (b) it shall record the reasons for the restriction, including an assessment of the necessity and proportionality of the restriction; to that end, the record shall state how the provision of the information would jeopardise the purpose of the respective procedure or of restrictions applied pursuant to Article 3(3), or would adversely affect the rights and freedoms of other data subjects.

The provision of information referred to in point (a) may be deferred, omitted or denied in accordance with Article 25(8) of Regulation (EU) 2018/1725.

3. The record referred to in point (b) of the first subparagraph of paragraph 2 and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the EDPS on request. Article 25(7) of Regulation (EU) 2018/1725 shall apply.

*Article 6***Right of rectification, erasure and of restriction of processing**

Where the Personnel Directorate restricts, wholly or partly, the application of the right to rectification, erasure or the right to restriction of processing, referred to in Articles 18, 19(1) and 20(1) of Regulation (EU) 2018/1725, it shall take the steps set out in Article 5(2) of this Decision and register the record in accordance with Article 5(3) thereof.

*Article 7***Communication of personal data breaches to the data subject**

Where the Personnel Directorate restricts the communication of a personal data breach to the data subject, referred to in Article 35 of Regulation (EU) 2018/1725, it shall record and register the reasons for the restriction in accordance with Article 4(3) of this Decision. Article 4(4) of this Decision shall apply.

*Article 8***Review by the Data Protection Officer**

The Personnel Directorate shall inform, without undue delay, the DPO whenever it restricts the application of data subjects' rights in accordance with this Decision and shall provide access to the record and the assessment of the necessity and proportionality of the restriction.

The DPO may request the Personnel Directorate in writing to review the application of the restrictions. The Personnel Directorate shall inform the DPO in writing about the outcome of the requested review.

*Article 9***Entry into force**

This Decision was approved by EIB's Board of Directors on 26 February 2019 and shall enter into force on the day of its publication on the EIB website.

Done at Luxembourg, 26 February 2019.

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