

Dr Werner Hoyer
President

Ms Emily O'Reilly
The European Ombudsman
1, avenue du Président Robert Schuman
67001 Strasbourg
France

Luxembourg, 10 November 2021

Dear Ms O'Reilly,

I refer to your letter of 8 July 2021 informing me of your decision to open an own initiative inquiry into the "European Investment Bank's practice of requesting sensitive personal information from job applicants in the context of recruitment procedures".

In your letter, you referred to our earlier exchanges on the EIB's practice to request candidates to provide information on their family situation before taking the final hiring decision. Furthermore, you requested the EIB to offer information regarding any developments in the EIB's above-mentioned practice and specifically whether the EIB had established or was currently establishing methods for minimising or eliminating the collection of such information prior to the communication of job offers.

As a preliminary remark, the EIB considers that the information at stake does not qualify as "sensitive personal information" under a data protection perspective or under a gender diversity perspective. With regard to the second aspect, it is to be noted that the benefits packages apply equally to successful candidates regardless of gender (please see further details on these points in the Annex).

As outlined in the EIB's previous communications on this matter, on the one hand, the practice of requesting information on the family situation of candidates before the final hiring decision was meant to facilitate the timely identification of the specific benefits package applying to candidates. On the other hand, and most importantly, the information was collected with the aim of providing the candidates with a clear overview of the financial package in order for them to be fully informed in a timely fashion about their financial treatment (which can vary depending on the applicability of certain allowances).



It is to be stressed that this information was always treated with the highest confidentiality and not shared beyond the EIB's Human Resource Directorate (Personnel). In my letter dated 5 August 2020, I further explained that, following your observations, the EIB made the provision of such information voluntary.

I understand and have taken into careful consideration your further concerns regarding the EIB's practice notwithstanding the already established changes and I fully share your commitment to ensure public confidence in the EIB's recruitment practices and their inclusiveness.

The EIB has therefore reconsidered its practice and decided not to ask candidates for any information regarding their family situation including information on dependents – not even on a voluntary basis – before the final candidate is determined. This new procedure is in place since 1 April 2021. As a consequence, applicants are no longer asked to provide information on their family situation during the selection process. Only the selected candidate (i.e. for whom a signed selection note has been sent to Personnel) is asked to provide the personal details regarding his/her family situation to determine his/her benefits package. The changes have been formalized in the internal procedures of the EIB.

I trust that the outlined reform of the EIB's practice addresses the concerns raised satisfactorily and I remain at your disposal for any further clarification you might need.

Yours sincerely,

Enclosure: 1



Annex – Further clarifications on case OI/5/2021/PB

1. Sensitive personal information under Regulation 2018/1725¹

The EIB considers that the use of the term “sensitive personal information” in the Ombudsman’s correspondence might be misleading. In the context of the General Data Protection Regulation² and of Regulation 2018/1725, the expression “sensitive data” is used to indicate special categories of personal data for which processing is prohibited (except in certain circumstances as provided by article 9 of the GDPR and Article 10 of Regulation 2018/1725)³. The personal information at stake does not fall in the category of sensitive data under Regulation 2018/1725.

2. Purpose of the EIB’s former practice

The Ombudsman’s letter refers, as an example of a legitimate ground for collecting personal information, to the case of an organisation’s policy on positive discrimination. Specifically, the Ombudsman notes that in the aforementioned situation, the ground to request such information is “*related to rights*”, whilst “*in relation to the practices here concerned [i.e. the EIB’s practices on recruitment], the ground appears to be related to efficiency*”.

With regard to the Ombudsman’s remark on the possible use of personal information for “positive discrimination” purposes, the EIB would like to stress that this is not the case and it is to be noted that the benefits packages apply equally to successful candidates regardless of gender. The EIB’s practice pursued two main goals: the efficiency of the EIB’s administrative action and the comprehensiveness of the information to job applicants about their financial treatment, if hired by the EIB.

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.

² 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).

³ This includes, for example, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic data, biometric data, health-related data, data concerning a person’s sex life or sexual orientation.