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Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European External Action Service concerning annual appraisal

Dear Mr Vidal,

On 18 February 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the European External Action Service (EEAS) a notification for prior checking concerning the annual appraisal of officials and temporary agents, accompanied by the respective privacy statement.

The Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 16 May 2012 adopting implementing provisions for Article 43 of the Staff Regulation was provided on 22 April 2013 upon request for additional information of 2 April 2013.

The procedure was further suspended from 29 April to 8 May 2013 to allow for DPO comments on the draft Opinion.

1. Legal aspects

This Opinion deals with the already existing annual evaluation of officials and temporary agents at the EEAS. It is based on the Staff Evaluation Guidelines¹ which allows the EDPS to focus on the practices that do not seem to be fully compliant with the Data Protection Regulation 45/2001².

1.1. Data conservation. The annual evaluation reports are kept for up to ten years after the end of service³ in order to allow that all legal rights and obligations referring to the employment contract or to the status of the official or temporary agent as well as all recourse possibilities have elapsed.

Article 4(1)(e) of the Regulation 45/2001 states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS establishes that no sufficient evidence was provided to demonstrate the necessity of the above mentioned conservation extending to the whole career at the EEAS. Therefore, he invites the EEAS to reconsider the existing time limits and to provide precise justifications in this respect, in particular as regards the related legal rights and obligations referring to the employment contract or formal status. These justifications will be taken into account in the upcoming discussions of the EDPS with the relevant stakeholders.

1.2. Data transfers. Personal data processed in this context are transferred to hierarchical superiors, case handlers in the MDR.C.4 career section, as well as to the DG HR of the European Commission (in case of an Article 90(2) complaint) or to the Court of the EU (in case of an appeal). All these transfers can be considered necessary for the accomplishment of the recipient's task in the annual evaluation procedure and thus in compliance with Article 7(1) of Regulation 45/2001.

In order to ensure full compliance with the Regulation, the EDPS recommends that all data recipients are made aware of the purpose limitation set out in Article 7(3).

1.3. Information to the data subjects. The privacy statement available at the EEAS Intranet provides for all information listed in Articles 11 and 12 of Regulation 45/2001.

Nevertheless, the EDPS recommends that the information about data recipients refers to "the DG HR of the European Commission and the Court of the EU" instead of "the third parties when necessary".

¹ Guidelines concerning the processing of personal data in the area of staff evaluation adopted on 15 July 2011 (EDPS 2011-042).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

³ termination of contract or retirement from the active service.

2. Conclusion

In view of the above, the EDPS recommends that the following measures are taken in order to ensure full compliance with Regulation 45/2001:

- the existing data conservation period is reconsidered and precise justifications are provided;
- all data recipients are reminded of the purpose limitation principle;
- the existing privacy statement is revised according to the recommendations provided above.

He would like to invite the EEAS to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor
(signed)