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Subject: Prior check Opinion on Selection, Recruitment and Administrative Management for Seconded National Experts in EEAS Headquarters and EU Delegations (case 2016-0769)

On 5 August 2016, the European Data Protection Supervisor (“**EDPS**”) received a notification for prior checking under Article 27.2 of Regulation (EC) No 45/2001 (the “**Regulation**”) relating to selection, recruitment and administrative management for Seconded National Experts in the European External Action Service (“**EEAS**”) and EU Delegations (“**Delegations**”).

As this is an ex-post prior check, the two-month deadline within which the EDPS must deliver his opinion does not apply. This case has been dealt with on a best effort basis.

Since the EDPS has already issued Guidelines on staff selection and recruitment¹, the assessment of the processing activity has focused on those aspects where the processing operations diverge from the Guidelines or otherwise need improvement.

1. Facts and analysis

As to the understanding of the EDPS, the EEAS headquarter (“**HQ**”) is in charge of handling this kind of vacancies independently of where within the EEAS, HQ or Delegation, the position is vacant. The notification states that the EEAS (HQ) is the controller for the processing activity alongside with the Delegation to each specific third country and international organisation as

¹ Guidelines concerning the processing operations in the field of staff recruitment, available on the EDPS website under Supervision, Thematic Guidelines.

co-controller. Under point 5 of the privacy statement, only EEAS (HQ) is mentioned as the controller and not the Delegations. However, the Delegations could be co-controllers depending on the involvement of the specific delegation when recruiting a SNE. It should therefore be specified in the privacy statement, that the EEAS (HQ) is the controller and that depending on the vacancy, the recruiting Delegation may be co-controller.

Furthermore, in both the notification and the privacy statement under the recipients of data, the Head of Delegation and Head of Administration in EU Delegations are listed as processors (of CVs and other material). However, the notion of "processor"² refers to outsourcing, not to staff of the institution tasked with processing personal data. The Head of Delegation and Head of Administration are employed by the EEAS and therefore considered to be included in the definition controller. However, if a specific delegation instructs an external contractor to carry out the selection procedure for example, this external contractor would be considered as a processor³.

2. Conclusion

The EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the EEAS should:

- clarify the position of the Delegation as a possible co-controller in the privacy statement, and;
- remove the information about the Head of Delegation and Head of Administration being processors of the personal information, both in the notification and privacy statement under the recipients of data.

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In light of the accountability principle, the EDPS trusts that the EEAS will ensure that these considerations and recommendations are fully implemented. The EDPS has therefore decided to **close case 2016-0769**.

Kind regards,

Wojciech Rafał WIEWIÓROWSKI

(signed)

Cc: Ms Emese SAVOIA-KELETI, Data Protection Officer

² See Article 2(e) of the Regulation

³ Subject to requirements of Article 23 of the Regulation