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ASSISTANT SUPERVISOR

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**Subject: Notification on prevention of harassment and selection of confidential  
counsellors at ECDC**

Dear Mr Sprenger,

On 25 April 2014, 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 prevention of harassment and selection of confidential counsellors from the Data Protection Officer Assistant of the European Centre for Disease prevention and Control Agency ("**ECDC**").

Given that informal anti-harassment procedures have already been the subject to EDPS Guidelines, this prior check Opinion will only focus on those aspects that diverge from the Guidelines and/or are not compliant with the Regulation.

**Legal Analysis**

**Ground for prior-checking**

The notification referred to Article 27(2)(d) of the Regulation (processing intended to exclude from a right, benefit or contract) as reasons for prior-checking. In the view of the EDPS, only Article

27(2)(b) and possible (a) is relevant here; point (d) targets processing operations such as blacklists and asset freezing.<sup>1</sup>

### Controllership

Legally speaking, ECDC as an agency is the controller of the processing operation, with the Human Resources Section being the organisational part entrusted with the processing of personal data. The Regulation never refers to specific individuals as controllers, but always to institutions, bodies, units and organisational entities. This should be clarified in the data protection notice - ECDC as an agency is the controller; while the Head of the Human Resources Section might be the “controller in practice” and a good contact point for inquiries from data subjects, the responsibility of the controller rests with ECDC as an agency.

### Information to data subjects

The notification and the data protection notice (for the process of selecting confidential counsellors) mention a number of possible recipients of personal data, such as the OLAF and the European Ombudsman. For your information, with regard to Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not *need* to be mentioned in the privacy statement.<sup>2</sup>

### Conclusion

The EDPS considers that there is no reason to believe that there is a breach of the provisions of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the ECDC should add information to the privacy statement that the ECDC as an agency is the controller.

The EDPS expects the ECDC to implement the recommendations accordingly and will therefore close the case.

Thank you for your cooperation.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

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<sup>1</sup> Exclusion databases offer an example of Article 27(2)(d): if a person is placed on the exclusion list, she is worse off (in that he/she is no longer eligible for participation in calls for tender) than if the exclusion database did not exist. Article 27(2)(d) therefore applies to such databases. See cases 2010-0426 and 2009-0681.

<sup>2</sup> This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the OLAF, the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.

Cc: Ms Andrea AMMON, Acting Data Protection Officer - ECDC