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ASSISTANT SUPERVISOR

Mr Carlos GODINHO
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Brussels, 09 November 2016
WW/ALS/sn/D(2016)2372 C 2015-1065
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**Subject: Prior-check Opinion on the Whistleblowing procedure at CPVO -
Case 2015-1065**

Dear Mr Godinho,

On 2nd December 2015, the European Data Protection Supervisor (“EDPS”) received a notification for prior checking relating to the Whistleblowing procedure from the Data Protection Officer (“DPO”) of the Community Plant Variety Office (“CPVO”) under Article 27 of Regulation (EC) No 45/2001 (the “Regulation”).

According to Article 27(4) of the Regulation, this Opinion must be delivered within a period of two months, not counting suspensions for requests for further information¹. Since the EDPS has issued Guidelines on how to process personal information within a whistleblowing procedure² while this case was suspended, the description of the facts and of the legal analysis will only mention those aspects which differ from these Guidelines.

EDPS recommendations and reminders are highlighted in bold below.

¹ The case was suspended for further information from 7 December 2015 to 1st March 2016, from 21st March 2016 to 26 September 2016 and for comments from the DPO from 26 October 2016 to 4 November 2016. The EDPS shall thus render his Opinion no later than 14 November 2016.

² Available on the EDPS website on the following link:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/16-07-18_Whistleblowing_Guidelines_EN.pdf

Description and assessment

1. Transfer information on a case-by-case basis

Whistleblowing procedures are intended to provide safe channels for anyone who becomes aware of and reports potential fraud, corruption, or other serious wrongdoings and irregularities. The CVPO's Guidelines on Whistleblowing mention under *Reporting Procedures* (page 4) that the recipient of the information is obliged to transmit the information without delay to OLAF.

The EDPS points out that OLAF is the competent body to investigate fraud against the EU budget. Since the scope of the whistleblowing procedure is not limited to cover potential fraud, there is a possibility that CPVO will receive information that it is not within the competences of OLAF. In accordance with Article 7(1) of the Regulation, the transfer of personal information should only take place when necessary for the legitimate performance of tasks covered by the competence of the recipient. Therefore, the **CPVO should assess the requirements for transferring the personal information to OLAF on a case-by-case basis and should adapt its guidelines accordingly.**

2. Ensure confidentiality of all persons implicated in a whistleblowing report

The EDPS welcomes that the CPVO guarantees the protection of the person reporting a serious irregularity. In relation to this, **the EDPS reminds the CPVO that the accused person should be protected in the same manner as the whistleblower.** The reason is due to a possible risk of stigmatisation and victimisation of that person within the organisation to which they belong. The accused persons will be exposed to such risks even before they are aware that they have been incriminated and before the alleged facts have been investigated to determine whether they are substantiated.

The potential recipients mentioned in the notification are the immediate superior, the Head of Unit/Service concerned, the President, the Human Resources service and OLAF. Internal access to the information processed must be granted on a strictly need to know basis and it must be allocated only to staff who has a need to have access. **The EDPS points out that it is crucial to keep as few people as possible involved being able to protect the confidentiality of personal information processed within a report.**

3. Inform each category of individuals

Information to data subjects is provided through the CPVO Guidelines as well as in the Specific Privacy Statement available on the CPVO's sharepoint.

This is certainly a positive step, but since this information could be overlooked, the EDPS recommends that CPVO provide all necessary information to all concerned individuals in a two-step procedure. **All individuals affected by a particular whistleblowing procedure should therefore be provided with a privacy statement as soon as practically possible, unless an exception in Article 20(1) of the Regulation applies.**³

4. Security measures

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³ See page 7 of the EDPS Guidelines on Whistleblowing.

In light of the accountability principle, the EDPS trusts that the CPVO will ensure that these considerations and recommendations are fully implemented. The EDPS has therefore decided to **close case 2015-1065**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Mr Gerhard SCHUON, Data Protection Officer