



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

[...]
Head of Division, EEAS BA.HR.5
European External Action Service
(EEAS)
JOY 05/211
Brussels 1040
Belgium

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Please use edps@edps.europa.eu for all
correspondence

Subject: Prior check Opinion on Recruitment of Local Agents in EU Delegations by the European External Action Service (EEAS)

Dear [...],

On 30 November 2017, the European Data Protection Supervisor (EDPS) received a group of notifications for prior checking under Article 27(2) of Regulation (EC) No 45/2001 (the Regulation)¹, also mentioning one regarding the recruitment of Local Agents in EU Delegations² by the EEAS.

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.

The EDPS has already issued Guidelines on staff selection and recruitment³. The present assessment of the processing activity has therefore focused on those aspects where the processing operations diverge from the Guidelines or otherwise need improvement.

1. Facts and analysis

The EEAS Headquarters (BA.HR) and the EU Delegations handle vacancies for Local Agents in EU Delegations together, independently of where the position is vacant. The data is submitted by the candidates themselves with their CVs and application forms and are handled by different actors within the selection process, namely a Selection Committee composed of at least three

¹ OJ L 8, 12.1.2001, p. 1.

² This particular notification was received by the EDPS on 20.03.2018.

³ Guidelines concerning the processing operations in the field of staff recruitment, available on the EDPS website at: https://edps.europa.eu/sites/edp/files/publication/08-10-10_guidelines_staff_recruitment_en.pdf.

voting members appointed by the Head of Delegation and specialised recruitment agencies with prior authorisation from the EEAS Headquarters.

a) Rights of data subjects

The notification mentions that a privacy statement is made available on the website of the respective EU Delegations. However, since this information could be overlooked, the EDPS recommends that the EEAS provide the data subjects with the privacy statement before the selection procedure begins. In order for the information to be easily accessible, the EEAS could include a link to the privacy statement in each vacancy notice regarding Local Agents in EU Delegations.

The EDPS **recommends** providing the privacy statement to the data subjects before the selection procedure begins, for example through a link included in to the specific privacy statement in each vacancy notice.

b) Processors

The EDPS notes that the processors are only generally mentioned in the notification as ‘specialised agencies (Headhunters)’. Since sensitive information may be processed, the EDPS highlights that processors should be reminded about their responsibilities for this processing activity and for future contracts explicitly include the obligations to be imposed on the controller under Article 23 of the Regulation. In this regard, and having in mind the different data protection legal frameworks in the world, as well as the new Regulation revising Regulation (EC) 45/2001, choosing an EU processor might make it easier for the controller to ensure full compliance with the EU data protection regime. It is worth noting that controllers have a duty to assess the compliance of their contractual arrangements, namely regarding the processors and third-country transfers, with EU data protection requirements.

Based on the principle of accountability, within the new Regulation revising Regulation (EC) 45/2001 it will be the EEAS responsibility to identify risks, choose appropriate contractors and to draft contract templates or revise existing contractual clauses. The specific data protection clauses as well as the general contractual framework should enable the institutions to retain control in order to fulfil their legal obligations and to ensure compliance with the new Regulation.

The EDPS recommends that the EEAS indicate the identity of the processor(s) and its (their) respective role(s) in the privacy statement, as well as explicitly request the processor(s) to only act upon instructions from the EEAS and to have proper security measures in place (as mentioned respectively in Article 23(2)(a) and 23(2)(b) of the Regulation).

The EDPS **recommends** that the EEAS specify the identity of the processor(s) and its/their roles in the privacy statement and remind the processor(s) in writing of its/their obligations within the selection and recruitment in relation to Article 23(2) of the Regulation and include explicit obligations for the processors in future contracts.

c) Data Quality

The notification states that the EEAS will collect marital status and information on dependents of applicants. The EDPS understands that this information might be relevant for administrative management after the recruitment, but it should not be a criterion for the selection of the

applicants. This information would be excessive for the selection and recruitment purpose in the light of the data minimization principle.

The EDPS **recommends** that the EEAS collect the marital status and information on dependents of the candidates only where necessary and in any case solely regarding the recruited persons.

2. Conclusion

In this Opinion, the EDPS has made some recommendations to ensure compliance with the Regulation. Provided that the recommendations are implemented, the EDPS sees no reason to believe that there is a breach of the Regulation.

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 2017-1106**.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

Cc.: [...], DPO EEAS