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Dear Ms Manderscheid,

From our examination of Case 2008-197 relating to "Establishment and maintenance of personal files at CEDEFOP" we have concluded that the processing of the personal data contained in these files is not subject to prior checking by the European Data Processing Supervisor under Article 27 of Regulation (EC) No 45/2001.

Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. It is necessary therefore to determine whether the processing of data held in the personal files of members of CEDEFOP fall within the scope of this provision.

- Regarding Article 27(2)(a): "*processing of data relating to health and to suspected offences, offences, criminal convictions or security measures*":

According to our information, personal files do not contain medical data in the strict sense but nevertheless they contain data *relating to health* within the meaning of Regulation 45/2001; these are notes on the individual's state of health, the medical report and documents relating to medical expenses. The medical report is a note from the doctor who conducted the medical examination prior to the individual's entry into service, which simply states whether or not the recruited person is physically capable of doing his/her job. Documents relating to medical expenses are documents used for the reimbursement of expenditures incurred under the medical insurance scheme.

The personal files of staff members of CEDEFOP could also contain data relating to suspected offences, offences, criminal convictions or security measures to the extent that decisions may have been taken concerning possible disciplinary measures.

Article 27(2)(a) of the Regulation primarily concerns data processing operations the main purpose of which is to process data relating to health, suspected offences, criminal convictions or security measures. Although the primary purpose of personal files is not the processing of such data, those data are systematically, not randomly, included in personal

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files. The question therefore arises of whether any risk is involved. In this case, there is no a priori risk as the data are generated by previous processing operations which will themselves have to be subject to prior checking.

- Regarding Article 27(2)(b): "processing operations intended to evaluate personal aspects relating to the data subject, *including his or her ability, efficiency and conduct*":

Personal files contain not only documents relating to the administrative situation of data subjects, but also reports on their abilities and efficiency. However, the personal file itself is not used to assess the ability or efficiency of the data subject and is thus not covered by the provision.

- Regarding Article 27(2)(c): "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes":

As the data contained in personal files are processed manually ("the establishment and maintenance of the hard copy files is a manual processing operation. The insertion and maintenance of personal data in the in-house system is an automated processing operation"), personal files do not allow such linkages. This situation could change if automated processing is introduced but that would have to be examined in due course.

- Regarding Article 27(2)(d): "processing operations for the purpose of excluding individuals from a right, benefit or contract":

This provision refers to processing operations the aim of which is to exclude individuals from a right, benefit or contract (this typically refers to black lists). That is not the purpose of personal files.

We have also considered other possible risks that could justify a prior check based on Article 27(1) and have concluded that such risks are not present either.

On the basis of the information supplied and considering the reasoning above, we have concluded that the personal files of CEDEFOP staff are not subject to prior checking. However, if you believe that there other factors justifying prior checking, we are of course prepared to revise our position.

In any case, as announced in the EDPS Annual Report, we are preparing a paper on personal files, to give guidance to institutions and bodies on the data protection aspects of the processing in the context of personal files. We will keep all DPOs informed on the matter.

Furthermore, we would highly appreciate to receive the notifications of those separate procedures you have detailed in the annexes of your notification on personal files and which are subject to prior checking in their own right.

Yours sincerely,

(signed)

Joaquín BAYO DELGADO

cc: Mr Spyros ANTONIOU, data protection officer