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ASSISTANT SUPERVISOR

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GB/OL/sn D(2013) 1966 C 2013-0793  
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Dear Mr Cornu,

On 1 July 2013, you have submitted a notification (dated 26 June 2013) on the management of personal files at the European Environment Agency (EEA) to the European Data Protection Supervisor (EDPS) for prior checking under Article 27 of Regulation (EC) 45/2001 (the Regulation).

**The EDPS does not consider the management of personal files *as such* to be subject to prior checking.**<sup>1</sup>

It is true that personal files contain data related to health (e.g. certificate of aptitude for performance of duties, documents related to sick leave), data related to offences, criminal convictions and security measures (e.g. extract of criminal record collected before appointment), as well as the outcome of procedures intended to evaluate the conduct of the data subject (e.g. appraisal, disciplinary proceedings).<sup>2</sup> At first sight, this might be seen to present specific risks in the sense of Article 27 of the Regulation.

However, the personal file basically serves as a repository to document the outcome of other procedures, which on their own are already subject to prior checking. The EEA has already

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<sup>1</sup> See cases 2004-0304, 2005-243, 2008-0197, 2009-0073, and 2013-0720.

<sup>2</sup> The notification additionally mentioned "processing operations for the purpose of excluding individuals from a right, benefit or contract" as a ground for submitting it for prior checking. This mainly refers to processing operations such as blacklists or exclusion databases (see e.g. cases 2009-0681 and 2010-0426) and does not apply here.

notified to the EDPS the underlying standard procedures (e.g. recruitment, administrative inquiries and disciplinary proceedings, medical data, staff appraisal).

One possibility in which the management of personal files *as such* could be subject to prior checking would be the electronic management of the files, given that it might entail risks under the general provision of Article 27(1). This could be the case if, for example, access to the files were not properly restricted; if the files were to be interlinked with other databases (see also Article 27(2)(c)); if security measures were insufficient; or in case of powerful search functions. None of this seems to be the case here.

To the extent that personal files are managed electronically (e.g. appraisal reports stored in the career development cycle (CDC) application), the EEA should ensure that the mandatory security measures under Article 22 of the Regulation are adequately applied.

Therefore, **the EDPS does not consider the management of personal files as notified by the EEA to be subject to prior checking under Article 27.**

Nevertheless, the EDPS would like to make some comments regarding the privacy statement attached to the notification.

Regarding point 2 of the privacy statement, we would like to highlight that EEA made good reference to the principle of purpose limitation. The text could however be further clarified by stressing that PMO only receives certain parts of the file for specific management purposes (determination of EEA's staff members' rights, salaries, reimbursement of medical expenses etc.) and does not have direct access to the files.

Point 4 of the privacy statement states that staff members are free to provide their personal data on a voluntary basis. The obligation to inform data subjects of whether providing data is mandatory or voluntary under Article 11(1)(d) applies to situations in which data are directly collected from the data subject (e.g. application forms and questionnaires). Once more, the personal file serves basically as a repository of the outcome of these other procedures. In many cases, the data to be included in the file are derived from other procedures and are not provided or collected directly from the data subject. For this reason and in the interest of clarity this statement in Point 4 could be removed, because in the context of some procedures related to documents in the personal file, answers might be mandatory, so claiming otherwise here could create confusion for data subjects.

Point 9, related to the legal basis and lawfulness, mentions Article 5(b) of the Regulation as ground for lawfulness. While the Staff Regulations clearly establish that there shall be one and only one personal file per official, Article 5(b) covers situations in which not only the existence of a file or procedure is mandatory, but where there is also no discretion for the controller regarding the processing of personal data in it.<sup>3</sup> Article 5(a) read in conjunction with recital 27 seems to be more appropriate here. The EDPS therefore considers that Article 5(a) is the appropriate basis for lawfulness in this case.

In point 10, related to conservation periods, it could be included that certain documents can be removed before the end of the conservation period of the personal file as such. An example would be disciplinary measures according to annex IX to the Staff Regulations. This is mentioned in the notification form and could increase clarity for data subjects.

Additionally, it would be helpful to include links to the privacy statements for the procedures resulting in entries to the personal file (appraisal, disciplinary proceedings, etc.) in the privacy statement. This would increase transparency and would allow data subject to more easily get an overview of processing operations linked to their personal file.

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<sup>3</sup> See e.g. cases 2008-0706 and 2010-0426.

Please inform the EDPS within 3 months about the adaptations made to the privacy statement in order to implement the recommendations contained in this letter.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

CC: Ms Lene Bang Pedersen, Head of Human Resource Management Group