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Dear Ms Pavesi,

Thank you for your notification for prior checking concerning the establishment of individual entitlements of EASA staff members received on 31 October 2013. As this was an ex-post case, it has been dealt with on a best-effort basis.

The notified processing operations in themselves are **not subject to prior checking**.

The reasons for this are the following.

The notification mentioned two grounds for prior checking: Article 27(2)(a) of Regulation (EC) 45/2001 ("the Regulation"), referring to the processing of special categories of data and Article 27(2)(d), referring to processing operations aiming to exclude persons from a right, benefit, or contract.

**Article 27(2)(d)** does not apply here, as the purpose of the processing is not to exclude persons from a right, benefit or contract but, on the opposite, to grant certain rights (such as allowances) –under certain conditions– to individuals.<sup>1</sup> The provision of Article 27(2)(d) relates to matters such as blacklisting or exclusion databases.<sup>2</sup>

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<sup>1</sup> See cases 2007-0561, 2008-0396, 2011-0644, 2013-0728 and -0729.

<sup>2</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.

You also mention the case of double dependent child allowance. For this allowance, EASA's administration processes a statement attesting that the child in question is handicapped. This falls under the category of data related to health.<sup>3</sup> Similar considerations apply in case of occupational illness or invalidity. Processing such data may in turn trigger the application of **Article 27(2)(a)**.

In the present case, the EDPS considers that the notified procedure, in which only the final administrative certificate is processed, does not fall under Article 27(2)(a).

This is analogous to the position taken concerning personal files – although they may e.g. contain data related to disciplinary measures (i.e. a special category of data), they are themselves not subject to prior checking, while the underlying procedure (e.g. the disciplinary procedure) is.<sup>4</sup>

On the other hand, the procedure leading up to the administrative certificate should be notified to the EDPS under Article 27 of the Regulation. EASA has already notified its processing of health data to the EDPS.<sup>5</sup> However, this notification does not seem to include the case of double dependent child allowance due to serious illness of a child. **EASA should check if the Article 27 notification concerning health data needs to be updated to include this aspect, and if so, provide this update to the EDPS.**

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

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<sup>3</sup> Although these attestations do not mention the kind of handicap, illness or invalidity, the mere fact that they state that a person is in one of these cases is enough to have them qualify as data related to health.

<sup>4</sup> See case 2013-0793

<sup>5</sup> Our case 2010-0584