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Dear Ms Maion,

On 25 November 2013, the European Data Protection Supervisor (EDPS) received an e-mail from the Data Protection Officer (DPO) of the Innovation & Networks Executive Agency (INEA) (previously called the Trans-European Transport Network Executive Agency until 31 December 2013, which has been interpreted as a consultation on the need for ex-post prior-checking under Article 27(3) of Regulation (EC) 45/2001.

The EDPS notes that the notification mentions Article 27(2)(b) of the Regulation as legal ground for prior checking the processing operation under analysis.

According to INEA's e-mail, the purpose of the processing operation in question is to evaluate data subjects' abilities in relation to training (trainers and staff members attending language courses). This will include assessment of the trainer's knowledge and ability to deliver the material, as well as determining whether staff has the language level required to continue the course. The training might take the following forms:

- Commission-wide trainings, provided by the relevant Commission services (DG HR, DIGIT EUSA/ European School of Administration). The training is divided into three fields: informatics, language and general, as in the Commission.
- Internal courses organised by the Agency (using a framework contract, other providers for group courses, away days, etc.).
- External courses (individual courses contracted for one staff member and paid by the Agency).

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The first two are generally managed through Syslog. The last is managed manually.

Taking into account the way of providing the staff training, either through Syslog or by the Agency:

- Staff members who are participating in training are asked to evaluate the courses that they have attended (the evaluation form does not contain any personal data relating to the trainers). For training organised by the Agency, evaluations are then compiled and transmitted anonymously to the trainers.
- The trainers evaluate the performance of the staff members participating in language courses.

On 6 December 2013, the EDPS made a request for further information on the content of contracts used by INEA with other providers in the context of its internal courses (see second bullet point above). The aim of this request was to verify whether the Agency deviates from the standard European Commission framework contracts with these other providers, and if so, to analyse the data protection clause of the contracts in place. The EDPS received a reply to this request on 9 December 2013, stating that when the Agency does not use the EC framework contracts, it selects the trainers following a call for interest. The related procurement procedure and data protection clauses were notified to the EDPS for prior checking under case reference 2013-1231, currently under analysis.

Based on the information provided, the EDPS considers that the processing operation related to training in INEA is not intended to verify the level of acquired knowledge of the training participants. As far as language courses are concerned, there would only be one specific situation in which the acquired level of knowledge is collected by the relevant department of INEA, i.e. for language training connected to Article 45.2 of the Staff Regulations (proficiency in a third language before promotion), but this aspect is covered in a separate prior checking Opinion<sup>1</sup>.

Any other assessment relates to the anonymous evaluation of the trainer by the participants, with the sole intention of maintaining and guaranteeing the quality of the training.

Consequently, the processing operation does not seem to present specific risks to the rights and freedoms of data subjects by virtue of its purposes under Article 27(2) (b) of the Regulation.

The EDPS therefore considers that the management of trainings by the INEA should **not be subject to prior checking by the EDPS**.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

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<sup>1</sup> See Case 2012-0990: Joint Opinion of 14 December 2011 on the notification for prior checking from the Data Protection Officer of the Trans-European Transport Network Executive Agency (TEN-T EA) regarding staff evaluation procedures. This Opinion covers the evaluation of the ability to work in a third Union language.

