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correspondence

Subject: Prior checking notification of the processing operations concerning the Integrated Management System for safety at work within JRC Ispra (Case 2013-0162)

Dear Mr Peter,

We have analysed the documents you have provided to the EDPS concerning the notification for prior-checking under Article 27 of Regulation EC No 45/2001 ("the Regulation") on the "Integrated Management System for safety at work within JRC Ispra". Certain outstanding issues were subsequently clarified during a videoconference on 20 February 2014, where members of the EDPS, JRC Ispra and the European Commission ("the Commission") were in attendance.

The management system for safety at work includes an injuries and accidents procedure, completion of a risk assessment sheet for each employee, and any other actions carried out by the Safety Office in line with its safety protocol.

The EDPS has conducted an in-depth examination of the data processing operation as described in the notification, and in further correspondence received from JRC Ispra and the European Commission. The EDPS has also taken into account any notifications previously submitted by JRC Ispra on the same, similar or related processing operations¹. In view of the further clarification that has since been provided by JRC Ispra, and for the reasons described below, the EDPS has now concluded that the data processing that occurs in the context of case reference 2013-0163 is **not subject to prior checking** under Article 27 of the Regulation.

¹ Most notably, cases 2009-682 on 'Safety inspections at the JRC Ispra site'; and 2008-027 on 'Système intégré de gestion de la qualité et de la sécurité du travail au CCR – site d'Ispra' (withdrawn due to internal changes).

Regrettably, some parts of the notification were incomplete. For example, the document did not indicate whether the processing operation presents certain risks to the rights and freedoms of data subjects within the meaning of Article 27(2) of the Regulation. However, this matter was clarified during a subsequent meeting with JRC Ispra representatives.

During this meeting, JRC Ispra confirmed that the risk assessment procedure is solely intended to assess environmental issues and occupational hazards within employees' working environment. No personal data is contained on the risk assessment sheet (scheda blu) apart from basic details like name, date of birth and type of contract. Similarly, other activities carried out by the Safety Office, such as safety training courses and certifications, do not involve any risky data processing operations as defined under Article 27(2).

JRC Ispra has also explained that its accident and injury forms do not usually contain medical data of the employees (which is instead contained in the Medical Service reports, which include a more detailed description of the incident and any injuries). Rather, the JRC Ispra Safety Office reports are compiled with the purpose of outlining any organisational corrective actions in relation to the event itself and any associated process failures. Contrary to what is indicated on the EDPS notification form, information about injured body parts is not usually included, apart from in limited cases where it may be inferred from the corrective actions (such as a recommendation for employees to wear hard hats for example).

The EDPS considers that if data related to health are incidentally processed in the accidents and injury procedure, such incidental processing is not a sufficient basis for submitting the processing operation for prior checking by the EDPS. Only a structural processing of health related data would justify prior checking by the EDPS. Therefore, the conclusion remains that the processing is not subject to prior checking under Article 27(2)(a).

Despite the fact that this processing activity is not subject to prior check, the EDPS reminds JRC Ispra that all relevant obligations described in the Regulation must be respected. As such, and without prejudice to the above considerations, the EDPS would like to provide the following **recommendations**:

- 1) JRC Ispra should ensure that any (direct or indirect) references to health, medical details or injured body parts are excluded from its accident and injury reports, as far as possible. As a preventative measure, in case data related to health are *incidentally* processed, we recommend that a specific declaration of confidentiality is signed by all employees that may have access to this information.
- 2) In the event of any modifications to the notified data processing operation, for example, if the processing of health data becomes regular and structural, we would kindly ask you to reassess the need for submitting this processing to the EDPS for prior checking. Similarly, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.
- 3) In September 2010, an EDPS Opinion was issued on related case 2009-682 concerning "Safety Inspections at the JRC Ispra Site". (At that time, we were informed that medical data was included in the Ispra reports.) The controller has recently submitted an update to this notification in the format of an Article 25 DPO notification form. The EDPS recommends that the DPO instead submits a fully updated Article 27 notification form, with any changes highlighted, in order that this can be added to the EDPS case management system.

I would appreciate it if you could share this position with the relevant persons at JRC Ispra and inform us of the follow up measures taken concerning the above recommendations within three months of receiving this letter.

We remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

(signed)

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Cc : Mr Philippe RENAUDIÈRE, EC Data Protection Officer
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