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Dear Ms Nesterowicz,

I refer to your e-mail of 25 February 2014 by which you submitted to the European Data Protection Supervisor (EDPS) a consultation under Article 27(3) of Regulation (EC) 45/2001 (the Regulation) on the need for prior checking of the appeal procedure under Article 90 of the Staff Regulations.

Your email does not include any further information as to the processing operations at stake. Therefore, we can only provide a general answer as to the need for prior checking these processing operations under Article 27(2) of the Regulation. Having made this precision, we are of the opinion that processing operations made in the framework of Article 90 of the Staff Regulations are **not**, as such, **subject to prior checking** by the EDPS, for the following reasons.

We will successively examine the grounds for prior checking that may be relevant in the present case.

1. Article 27(2)(a) of the Regulation: "*processing operations relating to health and to suspected offences, offences, criminal convictions or security measures*"

It is possible that some data relating to health and to suspected offences etc., could be processed when examining the cases and preparing replies to requests under Article 90 of the Staff Regulations. However, Article 27(2)(a) is aimed essentially at processing operations whose main purpose is the processing of data relating to health and to suspected offences, offences, criminal convictions or security measures. The mere possibility of the presence of such data does not automatically make it a case for prior checking.

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

Under this provision, the purpose of the processing itself must be *intended to evaluate* the data subjects. Typically, this provision covers procedures developed for annual appraisal exercises, probationary period reports, administrative inquiries, etc.

Under Article 90 of the Staff Regulations, the intended purpose of the processing operations is not the evaluation of the data subject¹. The processing operations are aimed at replying to requests submitted by a data subject which in some cases could be related to an evaluation of his/her personal aspects.

3. Article 27(2)(d) of the Regulation: "*processing operations for the purpose of excluding individuals from a right, benefit or contract*"

This provision covers processing operations aimed at excluding individuals from a right, benefit or contract (this typically refers to blacklists). The processing at stake is not subject to prior checking under Article 27(2)(d) of the Regulation because its *purpose* is not to exclude persons of a right, but to deal with requests of different kinds that may sometimes *result* in the exclusion of a right.

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In view of the above, we consider that, as matters stand, processing of personal data in connection with appeals submitted under Article 90 of the Staff Regulations is not subject to prior checking. We have consequently decided to **close** the case 2014-0261. If you believe, however, that additional elements might trigger the need for prior checking, we are of course prepared to reconsider our position.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

¹ See case 2011-0772.