



Ms Elke RIVIERE
Data Protection Officer
Executive Agency
for Small and Medium-sized
enterprises (EASME)
COV2 12/148
1049 Brussels

Brussels, 18 December 2014
2013-0837
Please use edps@edps.europa.eu for all
correspondence

Subject: Notification for prior-checking concerning "Administrative appeals under Articles 90(1) and (2) of the Staff Regulations and Article 45 of CEOS", case 2013-0837

Dear Ms Riviere,

I am referring to the notification submitted by EASME to the EDPS for prior-checking under Article 27(3) of Regulation (EC) No 45/2001 (the Regulation) on the processing of personal data in the context of administrative appeals under Articles 90(1) and (2) of the Staff Regulations and Article 45 of CEOS.

Your notification indicates Article 27(2)(b) of the Regulation as the ground for prior-checking the processing operation under analysis.

Article 27(2)(b) applies to "*processing operations intended to evaluate personal aspect relating to the data subject*"; the purpose of the processing itself must be to evaluate the data subject. In this case, the purpose of the Appeal Committee is not to evaluate the data subject, even if data relating to the evaluation of the data subject may be processed in certain cases. It follows that the processing related to administrative appeals does not present any risks under Article 27(2)(b) of the Regulation, hence it should not be subject to prior-checking by the EDPS.

Article 27(2)(a) concerns "*processing of data relating to health and to suspected offences, offences, criminal convictions or security measures*". It is possible that some data related to health and, in rare cases, to suspected offences etc., could be processed in the context of the

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 30

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

preparation of decisions to requests under Article 90 of the Staff Regulations. However, the presence of such data is neither systematic nor necessary in every case, hence the present notification should not be prior-checked under Article 27(2)(a) of the Regulation.

Article 27(2)(d) is the prior-checking legal basis for "*processing operations for the purpose of excluding individuals from a right, benefit or contract*". This provision covers processing operations which aim to exclude individuals from a right, benefit or contract (this typically refers to blacklists and asset freezing cases). The processing at hand is therefore not subject to prior checking because its purpose is not to exclude persons of a right, but assess the admissibility and merit of their appeal requests on the basis of certain criteria under Article 90 of the Staff Regulations.

In light of the above, the EDPS concludes that the present notification as such does not present risks to the rights and freedoms of data subjects under any of the categories of Article 27(2) of the Regulation and it should therefore **not be subject to prior checking by the EDPS.**

Thank you for your cooperation.

Yours sincerely,

Giovanni BUTTARELLI

(signed)

Cc: Ms Ana Elena PALLARES, Deputy Data Protection Officer
Mr Patrick LAMBERT, Director