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Prevention And Control (ECDC)
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Dear Ms Robino,

From our examination of Case 2009-073 relating to "personal files at the European Centre for Disease Prevention and Control (ECDC)" we have concluded that the processing of the personal data contained in these files is not subject to prior checking by the European Data Processing Supervisor (EDPS) under Article 27 of Regulation (EC) No 45/2001 (the Regulation).

Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. It is necessary therefore to determine whether the processing of data held in the personal files of members of ECDC fall within the scope of this provision.

The processing operation has been notified under Article 27(2)(a), Article 27(2)(b) and Article 27(2)(c).

Regarding Article 27(2)(a): "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures":

According to our information, personal files do not contain specific medical data in the strict sense but nevertheless they contain data relating to health within the meaning of the Regulation; these are notes on the individual's state of health, the medical report and documents relating to medical expenses. The medical report is a note from the doctor who conducted the medical examination prior to the individual's entry into service, which simply states whether or not the recruited person is physically capable of doing his/her job. Documents relating to medical expenses are documents used for the reimbursement of expenditures incurred under the medical insurance scheme. The personal files of staff members of ECDC could also contain data relating to suspected offences, offences, criminal convictions or security measures to the extent that decisions may have been taken concerning

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possible disciplinary measures. Article 27(2)(a) of the Regulation primarily concerns data processing operations the main purpose of which is to process data relating to health, suspected offences, criminal convictions or security measures. Although the primary purpose of personal files is not the processing of such data, those data are systematically, not randomly, included in personal files. The question therefore arises of whether any risk is involved. In this case, there is no "a priori" risk as the data are generated by previous processing operations which will themselves have to be subject to prior checking.

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

Personal files contain not only documents relating to the administrative situation of data subjects, but also reports on their abilities and efficiency. However, the personal file itself is not used to assess the ability or efficiency of the data subject and is thus not covered by the provision.

Regarding Article 27(2)(c): "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes":

The data contained in personal files are mostly processed manually (through structured set of physical files and paper forms. Personal files do not seem to allow such linkages. This situation could change if a fully automated processing is introduced but that would have to be examined in due course.

We have also considered other possible risks that could justify a prior check based on Article 27(1) and have concluded that such risks are not present either.

On the basis of the information supplied and considering the reasoning above, we have concluded that the personal files of ECDC staff are not subject to prior checking. However, if you believe that there other factors justifying prior checking, we are of course prepared to revise our position.

Yours sincerely,

(Signed)

Giovanni BUTTARELLI