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Dear Mr Renaudière,

I am writing to you concerning the notification "Clearance of Audit Trail System (CATS-database) and additional information" which you notified to the EDPS for prior checking on 21 October 2009 under Article 27(2)(a) of Regulation (EC) No 45/2001 ("the Regulation").

After examining the data processing operations described in the prior checking notification and after receiving the requested additional information from the data controller, the EDPS considers that **there is no basis under Article 27 of Regulation (EC) No 45/2001 to subject the processing at stake to prior checking.**

Article 27(1) of the Regulation subjects to prior checking by the EDPS "*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.*" Article 27(2)(a) notably subjects to prior checking those processing operations that relate to suspected offences. For the reasons described below, the EDPS has concluded that the CATS database and the processing done by DG AGRI in respect of the CATS database do not meet the criteria of Article 27(2)(a).

CATS is a very detailed database collecting all information related to European agricultural funds payments that includes comprehensive annual data relating to payments, beneficiaries, declarations/applications, products, inspections, export refunds and public storage. The Commission receives from the Member States, on an annual basis, the details of all individual payments made to the beneficiaries of the EAGF (European Agricultural Guarantee Fund) and EAFRD (European Agricultural Fund for Rural Development) and until financial year 2006 to the beneficiaries of the EAGGF (European Agricultural Guarantee and Guidance Fund) Guarantee section. This computerised accounting information is loaded into CATS database for purposes of clearance of accounts by the Commission and for monitoring developments and providing forecasts in the agricultural sector. DG AGRI is the data controller of the CATS database. Data relating to an identified or an identifiable natural person - including the final beneficiary identification code, name and address - may be stored in the CATS database and other additional personal data may be collected by DG AGRI in the course of an audit and on-

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the-spot checks. Information gathered in the CATS database may be accessed by the European Court of Auditors and the European Anti-Fraud Office (OLAF) for investigation purposes. The CATS database was notified to the EDPS for prior checking; however the EDPS considers that it is not the database *as such* that is subject to prior checking but the processing done by the data controller and/or by recipients of the data, which may lead to raising suspicions of offences/infringements against specific individuals, so that such processing operations must be analysed to assess whether they are subject to prior checking by the EDPS.

According to the information provided the main purpose of the processing done by DG AGRI in respect of the CATS database is to verify the functioning of the management and control systems put in place by Member States/beneficiary countries. Such processing may lead DG AGRI to raise and investigate suspicions on possible financial irregularities in Member States/beneficiary countries. These suspicions should, however, not be linked to a particular individual since DG AGRI's audits and on-the-spot checks are not directed at verifying individual fraud or irregularity cases but only fraud or irregularities at Member State/beneficiary level.

Pursuant to the division of responsibilities between the Commission services and OLAF on the investigations of financial irregularities in respect of EU agricultural and structural funds<sup>1</sup>, OLAF is responsible for investigating individual fraud or irregularity cases and is therefore the competent body in charge of dealing with suspicions about individuals in this field. The processing done by OLAF of the information contained in the CATS database may lead to raising and investigating suspicions of offences in respect of individuals, and therefore falls under Article 27(2)(a) of the Regulation. In this respect, the EDPS notes that OLAF data processing operations in relation to individual fraud and irregularity cases notably in the field of agricultural funds (EAGGF) and structural funds were notified to the EDPS for prior checking (see cases 2007-47/48/49/50/72 and 2007-84/85/86/87).

As a consequence, the EDPS considers that the data processing activities performed by DG AGRI in respect of the CATS database do not fall under the scope of Article 27(2)(a) because their main purpose is to examine the management and control systems put in place by Member States/beneficiary countries rather than aiming at assessing the particular individual conduct of the fund recipients<sup>2</sup>.

The EDPS concludes therefore that the case is not subject to prior checking under Article 27(2)(a) of the Regulation. However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.

The EDPS would, however, like to outline a few issues that require further consideration by DG AGRI.

We have been provided with DG AGRI's draft Information Systems Security Policy dated 02/12/2008, which document was still pending approval by the Director General (see page 14 of the Policy). We would appreciate receiving the final version of the Security Policy. Furthermore, we note that in accordance with section 2.1, the Security Policy should be revised

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<sup>1</sup> In accordance with a Communication to the Commission of November 2007 on the division of responsibilities between OLAF and the Commission services concerning the financial follow-up of irregularities in the domain of Community expenditure under shared management in the agricultural and structural action areas.

<sup>2</sup> This reasoning is in line with EDPS position in case 2007-0370 concerning the "Audit of the European Regional Development Fund (ERDF), the Cohesion Fund and the Instrument for Structural Policies for Pre-Accession (ISPR), letter of 19 October 2007.

every 24 months. We understand that you may currently be in the process of revising the Security Policy and we therefore look forward to receiving the revised Security Policy once it is finalised.

The EDPS notes with satisfaction that the draft Security Policy takes into account the Commission Decision of 16 August 2006 C(2006)302 concerning the security of information systems used by the Commission. The EDPS however outlines that specific security measures must be implemented in respect of the CATS database, which should take into account the Implementing Rules adopted by the Commission on 29 May 2009<sup>3</sup>. This will notably require carrying out a risk assessment in respect of the CATS database, as was already foreseen in section 2.4 of the draft Security Policy (page 8). Furthermore, it should be clarified which type of security requirements apply to the CATS database, and whether these are "standard" or "specific" requirements as outlined in section 2.1 page 7 of the draft Security Policy.

As concerns access to the CATS database, the EDPS notes that the internal procedures for managing the allocation of access rights within DG AGRI seem satisfactory. The EDPS however has doubts concerning the effective supervision by DG AGRI of the access rights it allocated to third parties and whether there are specific technical measures and procedures in place allowing DG AGRI to control the access to the database by third parties. The EDPS recommends that the conditions of access to the database by third parties are clarified in writing with the concerned third parties, for example through a Service Level Agreement. Furthermore, the EDPS recommends that the use of log files is properly documented for purpose of verifying access by third parties to the database.

Finally, in respect of the request from the European Court of Auditors to receive a copy of the complete CATS database, the EDPS considers such a request disproportionate in view of the purpose for which the European Court of Auditors is authorised access to the database. As outlined in Article 8(2) of Regulation 885/2006, the European Court of Auditors shall have access to information in the CATS database "*for the purpose of carrying out [its] functions*". While the European Court of Auditors should be allowed access to the database for carrying out specific investigations that fall within its sphere of competence, Regulation 885/2006 does not provide a sufficient legal basis for transferring the content of the whole database to the European Court of Auditors. The EDPS therefore considers that there is no legal basis allowing for the transfer of the whole content of the CATS database to the European Court of Auditors.

I would be thankful if you could forward these considerations to the data controller.

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

Yours sincerely,

*[Signed]*

Giovanni BUTTARELLI

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<sup>3</sup> Implementing rules for Commission Decision C(2006) 3602 of 16.08.2006 concerning the security of information systems used by the European Commission, adopted by Mrs. Irene SOUKA, Director-General of DG ADMIN, on 29.05.2009.