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ASSISTANT SUPERVISOR

Mr Johan Van Damme
European Court of Auditors
12, rue Alcide De Gasperi
L- 1615 Luxembourg
LUXEMBOURG

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Dear Mr Van Damme,

On 15 July 2011, the European Data Protection Supervisor (EDPS) has been consulted under Article 27(3) of Regulation 45/2001 (the Regulation) on the implementation of SYSLOG (training management system from the Commission) by the Court of Auditors. On 25 July 2011, the EDPS replied that a notification should be prepared for the register on the basis of Article 25 of the Regulation and be subject to prior-checking.

On 4 August 2011, the Court of Auditors submitted a notification on the "*management of trainings*" for prior-checking under Article 27(2)(b) of the Regulation. According to the notification, the purpose of the processing operation in question is to:

- plan and organise training activities for the Court of Auditor's staff;
- manage all the procedures of training actions;
- facilitate internal communication towards different target groups according to their functions or centres of interest;
- create annually a "personal development plan" for all staff;
- evaluate the training actions in view of quality control and
- evaluate participants learning status in view of career steps according to the Staff Regulations.

The categories of the data subjects are all staff members including external participants such as spouses as well as internal trainers and external trainers provided by external contractors. The data processed are administrative data, such as name, grade, e-mail, organisational unit, status, date of entry at the E.U. institutions and bodies, administrative position, name of spouse, and if requested, training.

As it is explained in the specific privacy statements attached, at the end of a training participants obtain a certificate and in case of a language course they take a test in order to verify the level of their knowledge acquired and be able to continue to the next level. This has

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no impact to their career, unless they need a third language under Article 45(2) of the Staff Regulations. Any evaluation aspect linked to the training will therefore be considered in the frame of the evaluation exercises¹. Any other evaluation relates to the anonymous evaluation of the trainer by the participants with the mere intention of maintaining and guaranteeing the quality of the training. In addition, under Article 2 of the Decision n°7-2006 laying down the rules of the Court of Auditors on training, the objectives of the trainings are to increase the quality of work of its staff members, promote staff mobility, keep their specialised knowledge up-to-date and improve the performance of the Court's work.

The EDPS considers that the trainings are carried out in the interest of both the institution and its staff members. Furthermore, the result of a language course in general or the participants' evaluation of the trainer and training are not processed for the purpose of evaluating the data subjects in the framework of their career. It follows that the processing operation in question does not intend to evaluate personal aspects relating to the data subject, including their ability, efficiency and conduct. Consequently, the processing operation does not seem to present specific risks to the rights and freedoms of data subjects by virtue of its purposes under the specific category of Article 27(2) of the Regulation. On the basis of the further information provided, the EDPS therefore considers that the management of trainings by the Court of Auditors should **not therefore be subject to prior checking by the EDPS**.

Having analysed the notification and documents enclosed, the EDPS would, nevertheless make the following recommendations in order to ensure that there is no breach of the provisions of the Regulation regarding the processing operation in question:

1) Specific privacy statements

Right of access and rectification

The EDPS notes that the specific privacy statement addressed to the trainers does not include the information regarding the exercise of their right of access and rectification to their personal data processed.

The information on the existence and method of exercising these rights is not only a fundamental right of the data subject, but it also guarantees the principle of accuracy of data laid down in Article 4(1)(d) of the Regulation². The EDPS therefore recommends that this information is also included in the specific privacy statement in conformity with Articles 11(e) and 12(e) of the Regulation respectively.

Legal Basis

Furthermore, neither the specific privacy statement addressed to the participants nor the one to the trainers make reference to the legal basis of the processing operation in question.

The EDPS invites the Court of Auditors to add this information in both privacy statements, as required under Articles 11(f)(1) and 12(f)(i) of the Regulation respectively and to ensure that the Decision n°7-2006 regarding the rules on training is easily accessible on the home page of the Institution.

¹ The EDPS has already prior-checked the procedures on certification (case 2006-0109), notation (2006-422) and promotion (case 2007-0292) carried out by the Court of Auditors.

² Personal data must be "*accurate and, where necessary, kept up to date*" and that "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*".

2) Contracts with external contractors

The Court of Auditors has provided the EDPS with some of the contracts signed with external contractors.

The EDPS notes that they seem to be in conformity with the requirements laid down in Article 23 (2) of the Regulation. However, the EDPS would like to draw attention to Article 27 of all contracts entitled "*data protection*". Mere reference to the contractor's personal data and their right of access and rectification is not sufficient. Reference to the data subjects whose data are processed should also be included since part or all of their data are processed by the external contractor-processor in view of the execution of the contract. Consequently, where there is reference to "the Contractor", the Court of Auditors should add the phrase "*and the data subjects whose data are processed by the Contractor*".

The EDPS invites the Court of Auditors to adopt and implement the above recommendations in the context of its management of trainings. To facilitate our follow-up, it would be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter to evidence that the recommendations have been implemented.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Ms Christine STARK, Human Resources Direction