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GB/AP/mch/D(2012) 2523 C 2012 -0900
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correspondence

Subject: Prior checking notification of the processing operations concerning the ECDC Professional Profile Map (Case 2012-0900)

Dear Ms Trott,

I refer to the prior checking notification on the processing operations concerning the planned ECDC Professional Profile Map ("EPPM") at the ECDC, which you notified to the EDPS on 16 October 2012.

The EPPM is a searchable, voluntary database on the ECDC staff's educational/work experience records, their skills and competences filled in directly by the data subjects using an internal web application. The purpose of the EPPM is to store in a structured way the skills and knowledge competences of the individuals working in the ECDC, in order to assist managers in identifying the most suitable individuals for specific needs that might come up in the ECDC (work planning and human resources allocation). The ECDC clarified that the database was not used for internal mobility but for the work plan related allocation of resources. The ECDC works as a matrix organisation and experts partly work in horizontal Disease Programmes. Therefore capacity allocation is decided on a year-by-year basis in a negotiation process between the resource unit/section line management and the horizontal Disease Programme Management supported by the EPPM.

After an in-depth examination of the data processing operations as described in the notification and further information received from the DPO of the ECDC, for the reasons described below, the EDPS considers that the data processing that occurs in the context of the EPPM is **not subject to prior checking** under Article 27 of the Regulation (EC) No 45/20011 (hereinafter "the Regulation").

In the notification the ECDC indicated that the processing concerning EPPM presents certain risks to the rights and freedoms of data subjects within the meaning of Article 27(2)(b) of the Regulation, i.e. that it would entail "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

In further exchanges between the ECDC and the EDPS, the ECDC clarified that the EPPM was not used for internal mobility. The database is thus only used to allocate tasks within the ECDC as a matrix organisation and to find experts with a certain expertise or experience on a subject. The database collects the staff's abilities already recognized during the selection and recruitment procedure. In that sense it is arguably not an assessment of the abilities of staff, as the qualifications of staff have already been evaluated at the time of their recruitment. These selection and recruitment procedures which precede the employment of staff of the ECDC are an evaluation and thus already subject to prior checking in their own right under Article 27(2)(b) of the Regulation. The assignment of existing staff to specific tasks within the ECDC arguably constitutes only day-to-day management and planning of human resources for the tasks of the agency. Therefore, the EDPS considers that processing in the framework of the EPPM is not 'intended' to evaluate personal aspects of the data subjects such as their ability.

The EDPS also analysed whether the processing operations relating to the use of the EPPM could fall under other grounds listed in Article 27 and concludes that this is not the case. Therefore, there is no basis under Article 27 of the Regulation to subject the processing operations concerning the EPPM, as notified by the ECDC, to prior checking. However, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position. Similarly, in the event of any modifications to this data processing (notably a change of the purpose of the processing or possible changes in the next version of the EPPM mentioned) we would kindly ask you to reassess the need for submitting this processing to the EDPS for prior checking.

Without prejudice to the above considerations, the EDPS would like to give some recommendations regarding the processing of personal data in the EPPM:

The processing operation is based on Regulation 851/2004 establishing a European centre for disease prevention and control and the annual work plan. In order to reinforce the lawfulness of the processing given the general nature of the legal basis, the EDPS would recommend adopting a decision stipulating the characteristics, definitions and guarantees of the EPPM.

Furthermore, in view of the purpose of the EPPM, i.e. the horizontal allocation of tasks pursuant to expertise and skills of the experts working in the ECDC, the EDPS recommends that the EPPM should be limited to 'expert' staff. In the EDPS's view, the necessity of the personal data processed on ECDC staff not working as experts (notably AST staff or staff of administrative units such as Information and Communication Technologies or Resource Management and Coordination) is questionable in view of its purpose (see Article 4(1)(c) of the Regulation). Therefore the EPPM should only collect personal data for experts (temporary agents, contract agents or SNEs) which can potentially work on such horizontal projects. In view of the purpose of the processing, also the necessity of interim staff and trainees to be included in the EPPM should be reconsidered.

The EDPS welcomes that the ECDC issues a detailed data protection notice providing information pursuant to Article 11 to the data subjects, that this notice is integrated in the application and that data subjects must first tick that they have read this notice before filling in their data. When filling in the data in the database, the data subject can determine the

audience to whom the information provided may be disclosed (i) only to line management, (ii) to the group, section, unit of the data subject, or (iii) to all staff of the ECDC. The EDPS recommends that the default setting should be the most restrictive one limited to the line management. This guarantees that the data subject must actively tick the group, unit or section box or the entire ECDC box and prevents that personal data are disclosed unintentionally too widely. In this respect the data protection notice is not entirely clear if the default setting is only line management or the entire management of the ECDC (Director, all Heads of Units, all Heads of Sections and all Heads of Groups) and could be clarified.

Furthermore the notification sets out that personal data is only stored as long as the data subject is a staff member of the ECDC (unless he/she erases its data before given the fact that data subject can access, rectify and delete data at any time themselves in the database). The EDPS recommends that - should such procedure not be already in place - an automatic procedure should be established by the administrator of the EPPM to ensure that the data set is deleted as soon as the data subject leaves the agency.

I would appreciate if you could share this position with the relevant persons in the ECDC and inform us of the follow up measures taken concerning the above recommendations within three months of reception of this letter.

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

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Laszlo BALKANYI (controller) - ECDC