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GB/BR/sn/D(2013)0682 C 2013-1287  
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**Subject: Prior Checking Notification relating to the management of Sysper 2**

Dear Mr Beckers,

I am contacting you in respect of the prior checking notification submitted to the EDPS on 15 November 2013 concerning the "management of Sysper 2" by the Trans-European Transport Network Executive Agency (TEN-T).

The EDPS is of the view that the management of Sysper 2 is **not subject to prior checking** under Article 27 of Regulation (EC) 45/2001 (the Regulation).

The notification was submitted for prior checking under Article 27(2)(b) and Article 27(2)(d) of the Regulation.

*1. Article 27(2)(b) of the Regulation - Processing operations that are intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*

Sysper 2 is a supporting tool used to manage data of TEN-T staff and is *not intended*, as such, to evaluate the ability of the data subjects. Personal data are collected and processed on Sysper 2 as a result of other data processing operations pursuing various purposes (recruitment, career management, definition of individual rights, salaries, evaluation, promotion, internal mobility, etc.). Therefore, each of these processing operations need to be carefully examined in order to assess whether or not they would each be subject to separate notifications to the EDPS in case they present one of the risks listed in Article 27 of the Regulation, and in particular whether they are intended to evaluate personal aspects. If so, the

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processing operations themselves should be notified for prior checking by the EDPS. In contrast, Sysper 2 should not be notified as a database on a stand-alone basis.

In this respect, I note that several staff data processing operations have already been notified to the EDPS<sup>1</sup>. If Sysper 2 is to be used as a supporting tool for these processing operations or some of them, the related notifications should be updated accordingly.

More generally, the EDPS wishes to draw your attention to the fact that other HR data processing operations which might involve a particular risk according to Article 27 of the Regulation should be notified to the EDPS. For example, the appraisal and promotion procedures, referred to in the notification on the management of Sysper 2, should be notified to the EDPS, as they are in themselves intended to evaluate the abilities of a person<sup>2</sup>.

*2. Article 27(2)(d) of the Regulation - Processing operations for the purpose of excluding individuals from a right, benefit or contract*

The notification additionally mentioned Article 27(2)(d) of the Regulation as a ground for submitting it for prior checking. This mainly refers to processing operations such as blacklists or exclusion databases<sup>3</sup> and does not apply here.

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In view of the above considerations, the EDPS does not consider the management of Sysper 2 as notified by TEN-T to be subject to prior checking under Article 27 of the Regulation and has therefore decided to **close the case**.

Despite the fact that the management of Sysper 2 is not subject to prior checking as such, the EDPS would like to remind TEN-T that all relevant obligations described in the Regulation must be respected. In particular, TENT-T should make sure that the mandatory security measures under Article 22 of the Regulation are adequately applied.

The EDPS, of course, remains available for any further consultation on the matter.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

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<sup>1</sup> e.g.: Personnel selection and recruitment (2009-0219); Processing of health data (2009-0808); Anti-harassment policy (2011-0126); Time management (2013-0360); Selection and recruitment update - erezruitment tool (2013-1067); Internal mobility (2013-0870); Selection, recruitment and management of interim staff (2013-0871); Selection, recruitment and management of blue book trainees (2013-0872); Selection, recruitment and management of atypical trainees (2013-0873); Whistleblowing procedures (2013-0916); Renewal of contracts for temporary and contract agents (2013-1288).

<sup>2</sup> There is already a notification regarding the ability to work in a third EU language and the reclassification procedure (2011-0990).

<sup>3</sup> See e.g. EDPS cases 2009-0681 and 2010-0426.

Cc: Ms Caroline Maion, Acting DPO