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**Subject: Prior checking notification of the processing operation concerning the
Safety and Environmental Investigations at JRC Petten (Case 2012-0783)**

Dear Mr HIRVONEN,

We have analysed the documents you have provided to the EDPS concerning the notification for prior-checking under Article 27 of Regulation EC No 45/2001 ("the Regulation") on the "**Safety and Environmental Investigations at JRC Petten**". Since the receipt of the notification, the EDPS had several exchanges of correspondence with the DPO and the controller for further information and clarifications regarding the processing at hand.

The EDPS has conducted an in-depth examination of the data processing operation described in the notification and in further correspondence received from JRC Petten. The EDPS has also taken into account any notifications previously submitted by JRC Petten on similar or related processing operations¹.

Facts

JRC Petten has indicated in the notification that the processing operation at hand presents risks to the rights and freedoms of data subjects within the meaning of Article 27(2)(a) of the

¹ JRC Petten already notified on 3 January 2008 a similar processing operation on "*safety, environment and security investigations*", (case 2008-0013) but the controller never commented on the EDPS draft Opinion. At the time, the EDPS raised the issue of competence, namely as to whether JRC Petten had the competence to carry out such investigations or whether it was an exclusive competence of DG ADMIN.

See also EDPS Opinion of 19 March 2013, on the notification by JRC Petten regarding "*security investigations*" subject to a Memorandum of Understanding between the DG HR and Security Directorate (DG HR.DS) and the JRC, case 2012-0782.

Regulation. According to the notification, the Safety, Environment and Security sector coordinates and monitors works on the JRC Petten in order to verify and maintain the correct application of health and safety standards through the JRC, according to Dutch law. The areas covered include safety at work, fire prevention, environment protection, security, hygiene and health and where appropriate radioprotection. In particular, the Site Safety Officer of the JRC Petten conducts:

- **safety tours** in all JRC Petten buildings and in all units which address any works done on site that might entail any potentially hazardous situation and;
- **investigations** following either **near accident** or **injury** reports.

All persons who are entering JRC Petten and are concerned with a near accident investigation are data subjects, namely current and former staff members, external contractors and visitors.

Legal analysis

On the basis of the facts described in the notification and further information provided by JRC Petten, it appears that the purpose of the **safety tours** carried out by the Site Safety Officer is not to process any health related data; their purpose is to verify the correct application of health and safety standards prevent any hazardous situation and improve them where it is necessary. The safety tours do not therefore involve any risky data processing operations as defined under Article 27(2)(a) of the Regulation.

As to the **investigations** carried out by the Site Safety Officer, the EDPS considered *prima facie* that the reports could have contained personal data related to health, since they are based on **accidents or injury reports**. However, JRC Petten confirmed that the reports do not contain any personal data related to health, for example information about injured body parts or other medical details within the meaning of Article 27(2)(a) of the Regulation. The purpose of such reports is to monitor and prevent similar accidents and injuries outlining organisational corrective actions.

In light of the above, the EDPS considers that data related to health are in principle not processed in the context of an investigation report on accidents or injury. If they might be incidentally processed in some rare cases, such processing is not a sufficient basis for submitting the processing operation for prior checking by the EDPS. Only a structural processing of health related data would justify prior checking by the EDPS. Therefore, the EDPS concludes that the processing is **not subject to prior checking** under Article 27(2)(a) of the Regulation.

Recommendations

Despite the fact that the processing activity at hand is not subject to prior check, the EDPS reminds JRC Petten that all relevant obligations described in the Regulation must be respected. As such, and without prejudice to the above considerations, the EDPS would like to provide the following **recommendations**:

- 1) JRC Petten should ensure that any (direct or indirect) references to health, medical details or injured body parts are excluded from its accident and injury reports, as far as possible. As a preventative measure, in case data related to health are *incidentally* processed, we recommend that a specific declaration of confidentiality is signed by the investigation officers stating that they are subject to the obligation of professional secrecy equivalent to a health professional in conformity with Article 10(3) of the Regulation.

- 2) In the event of any modifications to the notified data processing operation, for example, if the processing of health data becomes regular and structural, we would kindly ask you to reassess the need for submitting this processing to the EDPS for prior checking. Similarly, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position.

I would appreciate it if you could share this position with the relevant persons at JRC Petten and inform us of the follow up measures demonstrating that JRC Petten implemented the above recommendations within three months of receiving this letter.

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

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Mr Philippe RENAUDIERE, Data Protection Officer, European Commission
Mr Dariusz WIECLAWSKI, Data Protection Coordinator, JRC