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Dear Ms Claeys,

Thank you for your consultation on the need for prior checking concerning the activities of the Delegation Support and Evaluation Service (DSES), received on 20 February 2014. On 26 February 2014, we asked for additional clarifications, which were provided on 17 March 2014.

Based on the information provided, the EDPS does not consider this processing operation to be subject to prior checking. Please see below for a summary of the facts and our legal assessment.

**The Facts**

Council Decision 2010/427/EU of 26/07/2010 establishing the EEAS stipulates in Article 5(5) that Delegations shall be periodically evaluated by the Executive Secretary-General of the EAAS. This includes financial and administrative audits.

The DSES contributes to this process and gives guidance and support to Delegations by conducting on-the-spot evaluations of their operations. Compared to traditional auditing, these evaluations also cover questions of relevance, utility and sustainability of the Delegation's activities. These evaluations lead to recommendations, both to the Head of Delegation and Headquarters.

According to point 3 of the DSES' mission statement, its evaluations cover four main areas:

- Implementation of and contribution to EU policies falling within the remit both of the EEAS and the Commission.
- Use and management of resources across all areas of activity, in relation to the objectives and responsibilities of the Delegation. This includes all staff irrespective of their origin, interaction with EEAS and Commission services in HQ and the general management environment in the Delegation.
- Security issues, including physical security for staff and premises of Delegations, notably those in hostile environments, as well as protection of classified information.
- Financial management and administration of Delegations.

Point 10 of the DSES' mission statement notes that it "*could also make confidential recommendations for specific training or other support for Heads of Delegation who may*

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*face particular management challenges*". These recommendations would be discussed with the Head of Delegation during the evaluation; they would be addressed to the hierarchy of the Head of Delegation (notably Geographic Managing Director and Managing Director for Human Resources), with the Head in copy. There is no formal link to the staff appraisal procedure.

### **Legal Analysis**

The main aim of the DSES is to evaluate the functioning of the delegations and their management standards, not the individual conduct of staff members. In this respect, it is broadly similar to the activities of an internal audit service.<sup>1</sup>

The criteria for determining whether a processing operation is subject to prior checking are contained in Article 27 of Regulation (EC) 45/2001 (the Regulation); paragraph 2 of this Article contains a list of processing operations likely to present specific risks for the data subjects.

It is possible that the DSES could come across categories of data mentioned in Article 27(2)(a) of the Regulation, e.g. suspected offences. This could happen for example in case of suspected fraud. However, in these cases, the DSES would immediately hand over the issue to OLAF.<sup>2</sup> Any processing of such data by the DSES would be incidental and not structural; it is not the *purpose* of the processing to process such sensitive data. The processing does not trigger Article 27(2)(a) of the Regulation.

Article 27(2)(b) of the Regulation covers processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct as likely risky processing. The aim of the DSES' activities is to assess the internal management and control systems put in place in the delegation as well as to provide guidance on improving the delegation's performance as an organisation. The DSES confirmed that unsatisfactory findings could reflect adversely on the Head of Delegation; this is similar to how findings of an internal audit could reflect adversely on the person heading the organisational unit being audited. The evaluation by DSES is however not "*intended to evaluate*" personal aspects, as required by the wording of Article 27(2)(b): The intention of the DSES' activities is not to evaluate persons, but organisational measures and practices. Therefore, Article 27(2)(b) does not apply either.

Articles 27(2) (c) and (d) are clearly not applicable either.

### **Conclusion**

Based on the above, the EDPS does not consider that there is a reason for prior-checking the activities of the DSES under Article 27 of the Regulation. This being said, the processing operations need to comply with the provisions of the Regulation.

However, if you believe that there are other factors justifying prior checking of DSES' activities, we are of course prepared to review our position.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

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<sup>1</sup> See EDPS case 2006-0298

<sup>2</sup> Similarly, any information that could lead to disciplinary proceedings would be handed over to IDOC.