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ASSISTANT SUPERVISOR

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Brussels, 1st April 2015  
WW/XK/mv/D(2015)0558 C 2013-0810  
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correspondence

**Subject: Notification on the processing of health data in the context of pre-recruitment, annual check-ups and sick leave certificates (case 2013-0810)**

Dear Mr Van Damme,

I am writing to you about the notification you have submitted to the EDPS for prior-checking under Article 27(2)(a) of Regulation 45/2001 ("the Regulation") on the processing of health data in the context of pre-recruitment, annual check-ups and sick leave certificates at the European Court of Auditors (ECA). Following our exchange of e-mails, you have provided to the EDPS an updated version of the notification, privacy statements, a model of a confidentiality declaration and a data protection clause of the current contract with a Luxembourgish medical laboratory.

The notification and supplementary documents have been analysed in light of the EDPS Guidelines on health data in the workplace ("the Guidelines"). ECA seems to have adopted adequate data protection principles in most of its practices under analysis in light of the Regulation. The EDPS would like to highlight the following two issues:

**1) Information to be given to the data subject**

ECA prepared privacy statements listing necessary information as provided in Articles 11 and 12 of the Regulation and added them to the forms of medical pre-recruitment and annual medical visits respectively. Both privacy statements will also be published on the intranet page of ECA's medical service. Considering that the processing operations are already in place, the EDPS invites ECA to ensure that all staff members have an easy access to both privacy statements. In

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this way, ECA may guarantee a transparent and fair processing in respect of the data subject's rights in conformity with Article 11 of the Regulation.

## **2) Processing of personal data on behalf of controller**

As to the data protection clause of the contract with a Luxembourgish medical laboratory (contractor), the EDPS notes that, the first paragraph relates to the obligations of the controller vis-à-vis the personal data from the contractor and the contractor's rights. The other paragraphs describe the obligations of the contractor bound by the contract with ECA in compliance with the requirements of Article 23 of the Regulation.

With regard to the first paragraph, there is no doubt that the Regulation applies to the processing of the contractor's personal data by ECA and the latter has the obligation to inform the contractor about his rights. However, a privacy statement would have been the most appropriate channel to do so. In order to avoid any confusion, the EDPS recommends that ECA separates the above paragraphs by subtitles, namely the contractor's rights/controller's obligations on the one hand and the contractor's obligations on the other hand.

The EDPS therefore invites ECA to include an updated version of a comprehensive data protection clause to the new contract envisaged to be concluded with the contractor in the course of 2015.

In light of the above and on the basis of the "accountability principle", the EDPS expects ECA to adopt and implement the above recommendations regarding the processing operations under analysis, so that all principles of the Regulation are fully respected.

Should you have any doubts, do not hesitate to contact us. The EDPS has therefore decided to close the case.

Yours sincerely,

**(signed)**

Wojciech Rafał Wiewiórowski