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Dear Ms Pyloridou,

Thank you for your email of 13 May 2015 regarding the guidelines of key performance indicators ('KPI's) for the EU Agencies' Executive Directors. In your email, you ask whether the introduction on KPIs should be subject to prior-checking in the meaning of Article 27 of Regulation (EC) No 45/2001 ('the Regulation'). We have treated this question as a consultation under Article 27(3) of the Regulation on the need for prior checking.

As you know, Article 27(1) of the Regulation subjects to prior-checking all processing operations which are likely to present *specific* risks to the rights and freedoms of data subjects by virtue of their nature, scope or their purposes. In particular, Article 27(2)(b) establishes that specific risks may occur from processing operations "*intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*".

On the basis of the information provided, the EDPS understands that this is in line with the Common Approach on EU decentralized agencies where it is stated that the European Commission should develop guidelines on tailored performance indicators to assess the results achieved by Directors. On 13 of March 2015 the Commission adopted a Staff working Document<sup>1</sup> regarding guidelines on KPIs for directors of EU decentralised agencies. The value of the KPIs is to assist in the assessment of the results achieved by the Director/Head of Agency and not those of the agency (whose performance is affected not only by the Director but also by the Management Board and by external factors and stakeholders). The KPIs are split in two categories; achievement of operational objectives and human and financial resources management. The objective of KPIs is not to compare the agencies' Directors with

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<sup>1</sup> SWD(2015)62)

one another since they are not designed for this purpose and cannot either be used for this purpose.

After having examined the available information the EDPS has come to the conclusion that the use of KPIs for the EU Agencies' Executive Directors **shall be subject to prior checking** on the basis of Article 27(2)(b) of the Regulation. This since the purpose with the processing of the personal information is intended to evaluate the Directors personal aspects (i.e ability and efficiency).

Furthermore, EDPS has issued guidelines on processing of personal data in the area of staff evaluation. These guidelines mentions that staff evaluation *stricto sensu*, also referred to as staff performance assessment, staff appraisal or career development review/report, based on Article 42 of the Staff Regulation (and/or Article 15(2) of the Conditions of Employment of Other Servants) *including the possible use of performance indicators for the purpose of such evaluation are subject to prior checking.*<sup>2</sup> It is stated that the use of performance indicators related data for annual evaluation could be considered legitimate provided it is only used as a support tool, as well as based on an appropriate legal instrument outlining adequate guarantees for rectification of inaccurate data or justification of certain figures by the staff member concerned.<sup>3</sup>

The EDPS thus invites you to formally notify the processing of personal data in the framework of KPIs for Directors.

Thank you for your cooperation.

**(signed)**

Wojciech WIEWIÓROWSKI

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<sup>2</sup> Guidelines concerning the processing of personal data in the area of staff evaluation, July 2011, pg 1

<sup>3</sup> Idem, pg 2-3