



## **Opinion on a notification for prior checking received from the Data Protection Officer of the European Parliament**

Brussels, 28 January 2004 (Case 2004-126)

### **Proceedings**

On 13 September 2004 Mr RØMER, the Deputy-Secretary General of the EP and Director General of DG Presidency Services, raised the attention of the DPO on a processing operation carried out by Directorate for Information Technology of reporting the amounts of individual telephone accounts surpassing a given figure per month to Directors General.

On 6 October 2004 a meeting was organised by Mr RØMER in Brussels with the DPO, the EDPS, the EP legal service, and the DIT. After a brief presentation of the facts, the EDPS expressed his opinion that a prior checking seemed appropriate, subject to a notification with all the necessary details on the processing operation involved.

On 25 October 2004 a notification for prior checking of a data processing operation in the sense of Article 27 (1) was received from Mr. Jonathan STEELE, Data Protection Officer of the European Parliament. Attached were the notification sent to the DPO concerning the processing operation (NOT/16) and a draft note to staff informing them of the processing operation.

On 11 November 2004, a note was sent to the attention of the EDPS from Mr RØMER requesting advice and approval on telephone communications billing file and on the procedure for monitoring telephone bills, known as "Top 50". Joined to this note is a description of the telephone communications "Billing File"; a draft-notice to staff on the new arrangements for the use of telephone communications and a revised version of the draft-notice to staff on the procedure for monitoring telephone bills "Top 50". All these documents were added to the ongoing prior checking.

On 17 November 2004, a request for further information was sent to Mr STEELE.

On 8 December 2004, the EDPS received an answer to this request for information from Mr STEELE in the form of a note from Mr RØMER.

### **Facts**

Telephone communications are handled by the European Parliament's Private Automatic Branch Exchange (PABX); the central equipment linking all telephone

extensions to each other through the internal network as well as to the public networks outside the Institution. To enable the verification of the charges invoiced by the different telecom operators, each external call is registered in the Billing file (*fichier de taxation*). At the end of each call, a registration of the call is saved. Every 24 hours the data of that day is collected on a central computer system called ANITE.

The billing file contains the following details:

- date and time of call;
- duration of call;
- call charge;
- access prefix ("0" for an outside line, for example);
- number dialled;
- initiating extension;
- Authorisation code (for international communications);
- Ring time;
- Call pick up (indicates whether a third person answered an incoming call);
- Outgoing circuit;
- Incoming circuit;
- Registration "ticket" number (unique key index for the file).

There is no indication in the billing file of whether the call is private. Private calls are invoiced by a manual system based on notes made by switchboard operators.

The ANITE computer system enables the verification of the billing by the different public providers and to check whether the invoices correspond to the agreed prices in the respective call-for-tender procedures.

The system allows the association of the different extension numbers with the user information data: Last name, first name, Directorate and Service.

The collected billing data will be stored for a period of:

- six months on the ANITE computer system for regular use as described above;
- six more months on a limited access disk to allow analysis on a yearly basis (traffic, costs etc.);
- six more months on off-line read-only media (CD6ROM or DVD) in a safe deposit for future reference in case of legal or security related issues.

The procedure for the monitoring of telephone bills (TOP50) is divided into two phases: an information phase and a verification phase.

In the information phase, Directors-General and Secretaries-General of political groups will be sent a list of all telephone lines in their sector that have generated overall monthly costs in excess of 50 euros (the average cost per line is 15 euros). The total charge related to a specific extension number within a particular month is related to a user or to a service (depending on whether the extension is related to a specific user or service). The list provides the extension number, the name and work address of the person in question, and the total cost of calls. No details of the calls made are included.

If they think it appropriate, the Directors-General and Secretaries-General of political groups can decide to move on to a verification phase. The users concerned will be informed of this immediately. During this phase the users will be given information pertaining to them. At the request of the user or the Directors-General or Secretaries-General of political groups, the details of the calls may be sent to the person concerned only. If there is a clear abuse of the telephone system, the Directors-General and Secretaries-General of political groups will take appropriate action.

Members of the European Parliament and other institutions and their staff are not covered by the TOP 50 procedure.

External staff is staff employed by companies which have concluded contracts with the European Parliament and who are granted facilities, including access to telephones, by the administrative authority for which they are providing services: Directors-General and Secretaries-General of political groups. They are also covered by the TOP50 procedure.

The processing operation had been suspended some 6 months previously, in the sense that no such list had been prepared or sent to Directors General, although the data required to do so is still held in DIT. The reason for the suspension of the processing operation was that doubts had arisen about the legitimacy of the processing, further to an opinion of the EP's legal service.

A notification of the processing operation has been made by Mr Gilbert SCHILT on 16 July 2003 of an operation called "fichier de taxation". The purpose of the processing is referred to as "Etude de trafic - vérification de la facturation des opérateurs - recours juridique". The categories of data processed are referred to as those dealing with telephone numbers and communications.

A draft Notice to staff on "Outgoing telephone communications - new arrangements" has been proposed. A distinction is made between identified telephones in staff offices and anonymous telephones in corridors, meeting rooms, etc.

National telephone calls and international calls between the three working places of the EP can be made without operator intervention. Other international calls as well as private calls can be made through the switchboard. The switchboard will request the name and function and ask to indicate whether the call is private or professional. Senior staff and members of the European Parliament are given PINs for international calls which they can make without going through the switchboard. For private calls the staff number is requested and the calls are invoiced on the user's salary.

Only local calls can be made from anonymous telephones. Long distance, cell phone or international calls can be made through the switchboard. For private calls the staff number is requested and the calls are invoiced on the user's salary.

A draft note to the intention of staff has been produced as a general information note on the procedure for monitoring telephone bills. This note identifies the following two purposes: telecommunications budget and traffic management and the verification of authorised use of the telecommunications systems on the basis of the rules set out in the Notice to staff on "Outgoing telephone communications - new arrangements".

## **Legal Aspects**

### **a) Prior checking**

Article 27 (1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks.

The processing of traffic data presents specific problems, which are so important that a specific provision and special safeguards have been provided in Chapter IV of the Regulation. Furthermore, the proposed processing may have consequences for the data subjects, namely the adoption of disciplinary measures. This can be qualified as a processing operation intended to evaluate personal aspects relating to the data subject, notably his conduct as provided in article 27(2) b. For these reasons the processing operation must be prior checked by the EDPS under the article 27 procedure.

The notification of the DPO was received on 25 October 2004. According to Article 27 (4) the present opinion has to be delivered within a period of two months that is before 25 December 2004. A request for further information suspends the two-month period for 21 days that it is to say until 15 January 2005.

### **b) Data retention**

This opinion does not intend to analyse the processing of traffic data as such and the conditions under which the retention of data is lawful in general terms. This opinion is limited to the processing operation, which was subject to the notification for prior checking (TOP50 procedure).

In the absence of a list of data agreed by the EDPS to be processed for the purpose of telecommunications budget and traffic management, including the verification of authorised use of the telecommunications systems, the erasure of traffic data must be immediate upon termination of a call or connection. However, on a temporary basis, while the ongoing EDPS project for the setting up of the list foreseen in Article 37(2) is not finished, the erasure may be postponed under Article 20 (1) (b) and (e), where it is necessary for the purposes mentioned, as Article 37 (1) is indicated among the possible restrictions.

As mentioned earlier, the processing operation has been suspended some 6 months previously, in the sense that no such list had been prepared or sent to Directors General, although the data required to do so is still held in DIT. According to the Regulation (EC) 45/2001, any traffic data dating from a period prior to six months to the communication to which it is related and retained by the DIT must be deleted unless it concerns a legal claim actually pending before a court. The DIT must

therefore take the necessary measures to ensure that any traffic data prior to six months before the communication is erased or made anonymous.

As to the future storing of billing data, the rules for data retention provided for in article 37 of the Regulation (EC) 45/2001 must be respected. Traffic and billing data processed and stored to establish calls and other connections over the telecommunications network must be erased or made anonymous upon termination of a call. They may be processed for a longer period for the purpose of telecommunications budget and traffic management, including the verification of authorised use of telecommunications systems. In any case, regardless the existence of the above-mentioned list, the data must be made anonymous or erased as soon as possible and no later than six months after collection, unless they need to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a court.

According to the description of the telephone communications Billing File received, the billing data will be stored for a period of:

- six months on the ANITE computer system for regular use as described above;
- six more months on a limited access disk to allow analysis on a yearly basis (traffic, costs etc.);
- six more months on off-line read-only media (CD6ROM or DVD) in a safe deposit for future reference in case of legal or security related issues.

The total period of retention of the data by the PABX is of eighteen months which exceeds the six months after the collection allowed by article 37 (2) of the Regulation.

As mentioned above, traffic data may be kept for six months on the ANITE system for regular use for the purpose of traffic and budget management including the verification of the authorised use of the telecommunications system. This is the initial aim of the TOP50 procedure.

As concerns the second period of six months to allow analysis on a yearly basis, the data must be made anonymous and may only be processed for statistical reasons. Making the data anonymous implies not being able to link the data to any identified or identifiable person. Since an extension number can be linked to an individual, it is recommend that the reference to the extension number and the number dialled be removed from the files before they are processed for statistical purposes.

As for the last six months of storage of the data for "legal and security related issues", the Regulation permits the storage of the traffic and billing data in the frame of a pending legal claim before a court. The data may not be stored for possible future legal actions.

### **c) Lawfulness of processing**

The retention of traffic data and establishment of average costs are clearly an operation that fall under the definition of "processing" of Article 2 (b) of the Regulation. Although the personal details of the person making the call or receiving the call (or rather those of the person associated to the telephone line) are not

elements of the billing file, the ANITE computer system allows for the association of the different extension numbers with the user information data. In the specific case of the TOP50 procedure, the total charge related to an extension number is related to a user. The data must therefore be qualified as "personal data" in the terms of article 2 (a).

Traffic data as such and as processed in this case, are not included in any special category of data as defined in Article 10. Consequently, no prohibition or limitation as provided for in Article 10 is applicable.

Two purposes have been identified in the draft information note to staff:

- the purpose of telecommunications traffic and budget management;
- the verification of authorised use of the telecommunications systems.

The lawfulness of processing of such data is covered by the legitimate exercise of the official authority vested in the European Parliament, as a Community institution, to efficiently manage the use of telecommunication tools within the Parliament (article 5a). This is supported by the provisions in article 37(2) which implies the lawfulness of such processing for "the purpose of telecommunications traffic and budget management, including the verification of the authorised use of telecommunications systems".

As concerns external staff, since they are granted facilities, such as the access to the use of telephones, in the framework of the contract linking the company for whom they work to the European Parliament, they are covered by the TOP50 procedure so that the relevant administrative authorities can keep track of the technical facilities made available to them on the EP premises. This is therefore also covered by article 5a.

A primary purpose has been mentioned in the meeting of 6th October of detecting whether any telephone lines were no longer needed. Should this purpose still be relevant, it should be mentioned in the notification and information provided to staff.

#### **d) Information of data subjects**

Fair processing implies that sufficient information is provided to the data subjects concerned. This is the object of the draft notice which is to be sent to EP staff on the procedure for monitoring of telephone bills. The reference to the verification of the authorised use of telecommunications systems and the reference to "clear abuse of the telephone system" refer to the rules that have been established on the authorised use of the telecommunication systems of the European Parliament in the notice to staff on "Outgoing Telephone communications - new arrangements".

As concerns external staff, they should be informed not only of the TOP50 procedure, but also of the rules established on the authorised use of the telecommunication systems of the European Parliament. The European Parliament should therefore forward to the companies with which it has concluded contracts, the information provided in the staff notice on outgoing telephone communications and the

information on the monitoring of telephone bills so that the companies may inform the staff concerned.

As to the content of the note, reference to the fact that the billing file ("fichier de taxation") has been "agreed by the European Data Protection Supervisor (ref. NOT/16) pursuant to article 37(2) of the Regulation 45/2001" must be rectified in the draft note to the intention of staff. Instead reference to the prior checking by the European Data Protection Supervisor may be included if this is felt necessary. Information must also be provided on the right of access to and right to rectify data concerning him or her. The controller of the TOP 50 procedure should also be clearly identified.

#### **e) Data Quality**

The data processed must be adequate, relevant and not excessive in relation to the purposes for which they are collected that is to say traffic and budget management and verification of authorised use of telecommunication systems. It must be established whether the data are necessary for the purpose for which they are being processed.

The inclusion of personal calls in the threshold figure in the TOP50 procedure could be considered as excessive. The data relating to personal calls are not relevant for budget management since private calls are invoiced to the user him/herself by a manual system based on notes made by switchboard operators. Nor are the personal calls relevant as such for the purpose of monitoring professional communications.

It has been advanced that there may be a legitimate business reason for the costs of communications to exceed 50 euros per month. However, the fact that private calls contribute to the threshold figure means that it is not possible to determine whether or not the reason for a high cost is a legitimate business reason. Furthermore, since there is no indication of the duration of the call it is not possible to determine the reason for which the cost exceeds the threshold. A short international call made for a personal purpose will contribute to raising the figure and yet not be relevant for the purpose of verification of the authorised use of the system. The inclusion of personal calls in the threshold figure therefore tends to be misleading.

It is therefore suggested that telephone calls properly declared as private calls should not be used to calculate the threshold figure.

#### **f) Change of purpose**

Article 6(1) is not applicable as it refers to a general change of purpose in the processing of the collected data. The transmission of the list of users, whose line exceeds 50 euros per month, is in line with the purpose of telecommunications traffic and budget management, including the verification of the authorised use of telecommunications systems. Article 6(2) is not applicable either as the data are not "collected exclusively for ensuring the security or the control of the processing systems or operations".

### **g) Notification to the Data Protection Officer**

The notification received by the DPO (NOT/16) on the "*fichier de taxation*" must be completed so as to include the purpose of budget management including the verification of the authorised use of telecommunications systems and the transmission in certain cases to Director Generals. It should also be mentioned that this data may, in certain cases, be used in order to "take appropriate action" ("prendre les mesures appropriées").

### **Conclusion**

The proposed processing operation does not seem in breach of any provision of Regulation (EC) 45/2001 provided that the aforementioned considerations are taken fully into account. This means, in particular:

- DIT to erase or anonymise presently retained traffic data held for over 6 months after collection, unless needed for an actual legal claim pending before a court;
- data retained in the future to be made anonymous or erased as soon as possible and no longer than six months after collection, unless needed for an actual legal claim pending before a court;
- extension number and the number dialled to be removed before traffic data are processed for statistical purposes;
- notification and information to staff to mention detection of lines no longer needed (if appropriate);
- external staff to be informed of rules and procedures as described;
- draft communication to staff to be rectified, with reference to EDPS prior checking if appropriate, and to include the exercise of the rights of access and rectification;
- declared private calls to be excluded from threshold figure;
- notification NOT/16 to be amended to include purpose of budget management and verification of the authorised use of telephone, with mention of the possible "appropriate action";

Done at Brussels, 21 December 2004

*European Data Protection Supervisor*

Peter HUSTINX

Follow-up Note

10 October 2005

All acting measures have been taken on 4 October 2005.

*The European Data Protection Supervisor*