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Brussels, 28 October 2005  
JBD/SLx/ktl D(2005)701 C 2005-0243

Dear Mr Hilbert,

We confirm receipt of the notification for prior checking for the management of personal files - second phase.

It should be recalled that following examination of the "Management of personal files - first phase" (Case 2005-243), we concluded that the processing of personal data in the context of the management of digitised personal files was not subject to prior checking by the European Data Protection Supervisor under Article 27 of Regulation (EC) No 45/2001.

Our reasoning was as follows:

Article 27(2) (a) concerns data processing where the main purpose is the processing of the data referred to (relating to health, suspected offences, offences, criminal convictions or security measures). Although the inclusion of data of this type in personal files is systematic, which means that strictly speaking Article 27(2) should apply, the presumption of risk in Article 27(2) does not *a priori* exist as regards personal files, since the data is generated by earlier data processing which has itself been subject to prior checking.

As the personal file is not intended to evaluate the ability or efficiency of the data subject, and simply records the outcome of separate procedures which are themselves subject to prior checking, it is therefore not covered by Article 27(2)(b) either.

As the automation of personal files planned for the first phase of the project does not allow linkages, it is not covered by Article 27(2)(c). The EDPS anticipates that the situation might be different in the second phase of the project, but suggests that the EDPS should be consulted on this point at the appropriate time so that he can consider the matter.

Finally, the management of personal files is not covered by Article 27(2)(d).

As regards Article 27(1) of the Regulation, and given the above, it does not seem that the processing operation presents specific risks to the rights and freedoms of data subjects by virtue of its nature, scope or purposes.

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However, the EDPS stated that in a subsequent phase of the project, i.e. remote consultation by interested parties and relevant departments, there might be a specific risk as referred to in Article 27(1) of the Regulation, and therefore suggested that the Data Protection Officer should consult him as appropriate to evaluate this risk before giving notification about the second phase.

Looking at the notification on the management of personal files - second phase - it seems that the two risk factors which might give rise to prior checking under Article 27(1) of the Regulation are security and access.

The Commission has established special safeguards to improve security (see "Management of digitised personal files" ADMIN B.3, 31 May 2005). The whole system is managed by DG DIGIT. All the files are stored in the Data Centre and are covered by the security provided for the Commission's computer infrastructure as well as the specific safeguards for this application. [...]

On access, the list of access rights by role and section will make it possible for the "need to know" principle to be strictly complied with. The sections will be grouped in three parts: administrative file, evaluation file and private file. The roles and access rights will be defined on the basis of the legitimate needs of the main user bodies. This new system offers a number of significant improvements from the point of view of data protection, in particular direct access by each individual to his or her own file, a more distinct separation between the different parts of the file limiting access (and hence processing) to that part of the data which is strictly necessary, and an audit trail system which will make investigations possible if there is a suspicion that the data contained in the personal file have been misused (as required by Article 22(2)(f) and (g) of Regulation (EC) No 45/2001).

These measures contribute to reducing the presumption of risk in Article 27(1) and allow the conclusion that prior checking at this stage of the project is not necessary.

At this stage of the project, the EDPS has ensured that there is no possibility of providing linkages between the databases and a search engine (email received from Mr Jean-Pierre Grillo on 7 October 2005).

However, Mr Grillo indicates that the intention is that initially, when documents which are to appear in the personal file are produced by specific computer applications, those documents will be transferred directly to the personal files. This approach should become as systematic as possible in future, thanks to new computer applications which could be created for personnel management.

The EDPS believes that if this should occur, and that following those changes search tools or linkages between databases are planned, then the EDPS should be consulted again on the question of whether or not there is any need for prior checking.

Best regards,

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Brussels, 13 September 2005  
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Dear Mr Hilbert,

We have concluded from our examination of Case 2005-243 relating to "Management of personal files" that the processing of personal data in the management of digitised personal files is not subject to prior checking by the European Data Processing Supervisor under Article 27 of Regulation (EC) No 45/2001.

The grounds given in the notification for subjecting data processing to prior checking are based on the fact that "*personal files contain, inter alia, a copy of staff reports and data relating to incompetence and any disciplinary measures imposed*".

Pursuant to Article 27(2)(a), the "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures" is subject to prior checking.

According to our information, the personal files of staff do not contain medical data in the strict sense.

They do, however, contain data "relating to health", such as references to a staff member's incompetence or medical fitness for work.

Personal files contain data relating to suspected offences, offences, criminal convictions or security measures to the extent that decisions may have been taken concerning possible disciplinary measures ("*disciplinary matters*").

All such data are produced in the course of separate independent procedures which will doubtless be subject to prior checking in their own right.

Article 27(2)(a) primarily concerns processing operations whose main purpose is to process the data under scrutiny here (i.e. data relating to health and to suspected offences, offences, criminal

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convictions or security measures). Although the prime purpose of personal files is not to process data relating to health, such data are included as a matter of routine. Therefore, strictly speaking, Article 27(2) ought to apply. That said, Article 27(2) relates to processing operations involving such data that are "likely" to present risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. It is, therefore, a matter of presumption of risk, but in this case there can be no risk, as the data are generated by a previous data processing operation which has itself undergone prior checking.

Under Article 27(2)(b), "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct" are also subject to prior checking.

A personal file contains not only documents relating to the data subject's administrative situation, but also reports on his or her ability and efficiency (staff reports and CDRs, for instance). Nonetheless, the personal file is not in itself designed to assess the data subject's ability or efficiency and only takes stock of the outcome of separate procedures subject to their own prior checks. It follows, therefore, that this provision does not cover personal files.

As for Article 27(2)(c) – "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes" – the computerisation of personal files as provided for in the first phase of the project precludes linkages. This might change as the second phase of the project takes its course, but then the situation would have to be examined. You should therefore inform us, at the relevant time, that the second phase of the project is in place, so that we can review the situation.

Lastly, Article 27(2)(d) makes "processing operations for the purpose of excluding individuals from a right, benefit or contract" subject to prior checking. This provision covers processing operations aimed at excluding individuals from a right, benefit or contract (this typically refers to blacklists). That is not the purpose of managing personal files.

As regards the application of Article 27(1), and bearing in mind the aforementioned aspects, as matters stand it would not appear that processing presents specific risks to the rights and freedoms of data subjects by virtue of its nature, scope or purposes. That said, a change in the situation in a subsequent phase of the project which is not covered by the current notification – namely remote consultation by the data subjects and departments concerned – cannot be ruled out. In such an event, the EDPS would have to be consulted in due time.

We therefore consider that, as matters stand, the management of personal files is not subject to prior checking. However, if you believe there to be other factors warranting prior checking, we are of course prepared to review our position.

Thank you for your cooperation.

Yours sincerely,

Joaquín BAYO DELGADO