



Mr Nico HILBERT
Acting Data Protection Officer
European Commission
Bât. J. Monnet - Rue A. de
Gasperi
L - 2920 LUXEMBOURG
LUXEMBOURG

Brussels, 13 February 2006
JBD/ES/ktl D(2006) 139 C 2006-0062

Dear Mr Hilbert,

We hereby confirm that we have received the notification concerning the processing operation on personal data regarding the procedure and system on "DG FISH Fishing-Authorisations and Permits (FAP) System" in the European Commission.

After examining the content of the notification, we have to come to the conclusion that it is not subject to prior checking under Article 27 of Regulation (EC) N° 45/2001 (hereinafter: the Regulation).

You emphasised in the notification that the Directorate General for Fisheries and Maritime Affairs processes data through the FAP System. These data are related to the requests for permission to participate in certain EC, Third Party or International fishery activities for Community vessels operating in EC, Third Party or International Waters and for non-Community vessels operating in EC or International Waters. The only personal data processed are the name and address of the owner and the name and address of the agent. In most cases, these personal data are transferred to the Community, Member States' or third countries' authorities.

In your opinion, prior checking by the EDPS seems to be necessary as the processing operation has as purpose to assign/exclude individuals from a right, benefit or contract and, being that the case, it has to be prior checked according to indent d) of paragraph (2) of Article 27 of the Regulation.

The EDPS considers Article 27 (2) d ("processing operations for the purpose of excluding individuals from a right, benefit or contract") as referring to processing operations whose specific and main purpose is to exclude persons from a right, benefit or contract, such as a black list or a "no fly list". This is not the case here. The purpose of the procedure is not to exclude individuals from a right, benefit or contract, but to examine whether a fishery permit can be lawfully granted or not.

As there is an assessment process, we have also considered Article 27 (2) b. In the course of considering all of the relevant circumstances, the Commission and the third countries concerned evaluate certain aspects linked to the application (whether the vessel fulfils the conditions laid down in the fisheries agreement applicable to Community vessels). However, neither the Commission nor the third countries in question assess personal aspects. Personal data processed during the procedure do not influence its result. It has to be underlined that the single aim of processing personal data is to contact natural persons if it proves necessary. As a consequence, the data processing described in the notification is not subject to prior checking on the basis of Article 27 (2) b either.

In conclusion we believe that the processing operation does not qualify for prior checking and have decided to close the case, unless you can give us specific grounds to reconsider.

Nevertheless, in the analysis of your notification, transfers of personal data to recipients other than Community institutions or bodies which are not subject to Directive 95/46/EC appear to take place and deserve special mention. Those transfers of personal data could fall under some of the exceptions provided for in paragraph (6) of Article 9 of the Regulation. However, as they are exceptions of the general rule and must be strictly interpreted, and given the fact that those transfers are structural¹, Article 9 (7) should also be taken into account. In any case Article 9 (8) is applicable.

Yours sincerely,

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor

¹ Article 26 (1) of the Directive 95/46/EC and Article 9 (6) of the Regulation are parallel. Being that the case, the EDPS refers to the Working document on a common interpretation of Article 26 (1) of Directive 95/46/EC of October 1995 of the Article 29 Working Party (WP114).