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Mr Philippe RENAUDIÈRE
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European Commission
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JBD/kdl D(2007)1117 C 2007-0374

Dear Mr Renaudière,

After having reviewed the notification for prior checking on the personal data processing related to the mobile telephone billing system at the Joint Research Centre in Petten (your ref.: DPO 955.1), we have come to the conclusion that the case is **not subject to prior checking** by the EDPS.

The processing was submitted for prior checking under Articles 27(1) and 27(2)(b) of the Regulation (EC) No 45/2001 ("the Regulation).

As the EDPS has already pointed out in a previous case¹, **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, their scope or their purposes. Chapter IV of the Regulation contains a particular provision on the confidentiality of communication (Article 36). Where there is a breach of confidentiality of communication, a specific risk to the rights and freedoms of data subjects may exist, and therefore, the processing operation is subject to prior checking by the EDPS.

After studying the description of the processing the EDPS considers that it does not imply any breach of confidentiality of communication. Thus the processing does not fall under the scope of Article 27(1), as regards this specific risk.

As regards the other legal basis of the prior checking referred to, **Article 27(2)(b)** subjects to prior checking processing operations intended to evaluate personal aspects related to the data subject. As it is highlighted in the privacy statement relating to the notified processing, the

¹ EDPS case reference: 2006-507 ("Telephony" at the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR)

"sole purpose of processing data via KPN is to meet the needs of managing telephony on mobile phone". The notification mentions "reimbursement of the costs done for private calls to the Commission" as the purpose of the processing.

In the present case traffic and billing data are processed in order to separate official and private calls for deduction of costs related to private calls from the concerned staff members' salary. The processing does not aim at evaluating personal aspects. Assessing of staff members' ability, efficiency or conduct is outside the ends of the processing. Being that the case, the EDPS considers that the processing is not subject to prior checking under Article 27(2)(b).

Based on the above considerations **the EDPS has decided to close the case**. However, if you believe that there are other factors justifying prior checking of the notified processing, we are prepared to review our position.

Without prejudice to the above mentioned arguments, in our analysis of the case the retention periods applied by the JRC in Petten raise concerns in the light of the provisions of the Regulation. The notification states (under point 7) that data received from the service provider are transferred on a CD to the JRC. At the same time a paper format also exists which is "archived". Could you please explain the specificities of this storage detailing whether or not paper versions contain personal data? And if so, how long are they kept? We would like to see guarantees applied ensuring that traffic and billing data are not kept, either on CD or on paper, for longer as provided for by Article 37 of the Regulation.

Thank you in advance for your answer and cooperation.

Yours sincerely,

Joaquín BAYO DELGADO