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ASSISTANT SUPERVISOR

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UNITED KINGDOM

Brussels, 24 July 2007
JBD/TG/ktl D(2007)1203 C 2007-0416

Dear Mr Salvatore,

We have concluded from our examination of Case 2007-416 relating to "Management of personal files" that the processing of personal data in these files is not subject to prior checking by the European Data Processing Supervisor under Article 27 of Regulation (EC) No 45/2001.

Article 27(2) of the Regulation contains a list of 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. It is necessary to determine whether the processing of data held in the personal files fall within the scope of this provision.

As to Article 27(2a): *"processing of data relating to health and to suspected offences, offences, criminal convictions or security measures"*:

According to our information, the personal files do not contain medical data in the strict sense. They rather contain data *relating to health* within the meaning of Regulation 45/2001, these are notes on the individual's state of health, the medical report and documents relating to medical expenses. All these data are produced in the course of separate procedures which are subject to prior checking in their own right. The same applies for data relating to offences, criminal convictions or security measures to the extent that decisions may have been taken concerning possible disciplinary measures.

As to Article 27(2b): *"processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct"*:

The personal files contain not only documents relating to the administrative situation of data subjects, but also reports on their abilities and efficiency. However, the personal file itself is not used to assess the ability or efficiency of the data subject and is thus not covered by the provision.

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On the basis of the information supplied and considering the reasoning above we therefore conclude that the personal files of staff of the EMEA are not subject to prior checking. However, if you believe there to be other factors justifying prior checking, we are of course prepared to review our position.

In any case, as announced in the EDPS Annual Report 2006, we are preparing a paper on personal files, to give guidance to institutions and bodies on the data protection aspects of the processing in the context of personal files. We will keep all DPOs informed on the matter.

Yours sincerely,

Joaquín BAYO DELGADO