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Dear Mr Renaudière,

I am writing about the prior check Notification concerning the Time Accounting System (hereinafter 'TAS') at Joint Research Centre (JRC) which you notified to the EDPS on 30 August 2007. The EDPS requested further information on 26 September 2007 which was received on 19 November 2007.

After an examination of the data processing operations as described in the Notification, and for the reason described below, the EDPS considers that the data processing that occurs in the context of the Time Accounting System is not subject to prior checking under Article 27 of the Regulation (EC) No 45/2001<sup>1</sup>.

The EDPS notes that TAS is a time accounting system based on the declarations of individual staff members that allows the JRC to fully account for the use of its staff resources and to manage those resources. The TAS purpose is to assure analytical accounting and particularly to allow for the correct accounting of competitive activities. Towards this end, the data controller (the Directorate of Resources, Budget Analysis and Finance Unit) will produce regular reports by organisational sub-part, and by activity. Reports containing personal identifying information will be produced only in exceptional circumstances and will be accessible only to restraint number of authorised staff. More importantly, neither the Directorate of Resources, Budget Analysis and Finance Unit nor anyone else intends to use the information stored in TAS in the staff appraisal processes. According to the Notification, the processing is not intended to evaluate staff members based on how efficiently they accomplished tasks, or how much time they spent at the office dealing with specific matters. In other words, the purpose of the processing does not include the evaluation of staff, their conduct, efficiency, etc.

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Article 27.1 of the Regulation (EC) No 45/2001 subjects to prior checking by the EDPS "*processing operations likely to present specific risks to the rights and freedoms of data subject 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. Of the various criteria listed by Article 27.2 the criteria that *a priori* could be met by the TAS is Article 27.2. (b) which subjects to prior checking those processing operations which intend to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.

In the context of the TAS, the criteria for prior checking would be met if the data processing *intended* to evaluate personal aspects relating to the data subject. For example, if the data processing intended to evaluate TAS staff efficiency, competence, ability to work etc. However, as stated in the Notification, this is not the case concerning the processing at issue. As noted above, the purpose of the processing does not include the evaluation of personal aspects of individuals but rather the evaluation of JRC activities, in order to determine the JRC's competitive contracts or to allow the right allocation of resources. The fact that the data will be used to produce reports based on organisational subparts and by activities emphasizes that the purpose of the processing is to monitor key activities in order to enable a better planning of JRC resources. The processing of information for the purposes of monitoring *activities* of an EU institution with the final aim of better planning the resource allocation does not fall within the criteria of Article 27.2 of the Regulation (EC) No 45/2001, which requires prior checking. If the purposes of the processing changed and JRC decided to use the information for the purposes of evaluating individuals, then, the processing would likely fall under Article 27.2 of the Regulation (EC) No 45/2001 and would need to be prior checked by the EDPS.

Without prejudice to the above considerations, the EDPS makes further recommendations on some issues spotted with regard to the information provided in the notification and its attachments and by the controller during the procedure.

### **Purpose Limitation**

As a matter of fact, the hierarchy may have access to individual data of their staff. In this case, even if the TAS is not design for this purpose, managers may be tempted to use the data also for performance evaluation or other purposes that may individually affect data subjects, such as allocation of tasks, contract renewals, or internal mobility. Considering the inadvertent spill-over and the risks of using data for unlawful purposes, compliance with the principle of purpose limitation will be a difficult task, to which the attention of all managers must be specifically drawn to.

For example, it would be in conformance to the purpose of the processing, for a manager whose team is struggling with accomplishment of a project, to request team members to explain why they failed to deliver results despite putting down a lot of time on that particular project. As a result, it may turn out that certain team members were responsible for the extra time, as they lacked the required specific expertise, and had to spend a disproportionate amount of time on background reading, which they assigned to the project. In this case, a manager may decide, for example, that he or she will adjust planning estimates, re-distribute tasks, or arrange for training of the struggling team members.

An example of a different, impermissible use of the data would be for the manager to make an assumption or a judgment on the efficiency or diligence of a particular team member compared to another, based on how much time each put down for the project, and then use those results in connection with the annual appraisals.

Therefore, JRC should clearly state that the database cannot be used for purposes of performance appraisal, promotion, or assessing contract renewal, and that the use of the database should not lead to dismissal, exclusion from contract renewals, promotion, or training opportunities, exclusion when tasks are allocated or team leaders and managers are selected, or to other similar prejudices to staff members. This does not mean that staff members who are unable to account for a productive use of their time cannot be dismissed or excluded when tasks are distributed. However, these decisions must be made based on information other than data in the database.

## **Data Quality**

When using the TAS database, the inherent subjectivity and unreliability of the data must be taken into account, and therefore, the hours recorded should be used only as one factor in the decision-making. The guidelines prepared by the JRC on the TAS should underline the fact that the use of data for evaluation purposes is not only impermissible but also that the data quality is insufficient for being used for that particular purpose.

The attention of the managers must be drawn to the fact that the substantial level of subjectivity is inherent to the TAS. Actually, time spent on different types of projects in an office environment with little or no direct supervision is particularly difficult to measure objectively, and it is often the case that - if left to their own devices - two different staff members doing the exactly same thing put their time down differently.

That is why it is very important (i) to be aware of the inherent limitations on the accuracy of the database, and (ii) to take measures to limit, to the extent possible, the subjectivity involved in the time accounting process. In particular, management must recognize that, on one hand, the number of hours recorded do not automatically inform management whether the time was efficiently used, and, on the other hand, that time entries for similar work carried out by different persons are not comparable and inconsistent across the organization.

The main problems with the accuracy of JRC's time accounting database arise out of the following features of the database designed by JRC:

- First, JRC staff members are not required to keep a record of what they have actually been doing, or what they have accomplished. They merely need to indicate how much time they spent on a predefined category of activity.
- Second, concerning multiple activities during the half-day reporting period, if the staff member works on more than one activity in a reporting period (0.5 day) then a “common sense” approach is required and the activity upon which the person dedicated most time should be the activity against which he or she declares time. Therefore, the system leads to inaccuracies in the accounting, only "main" activities being registered.
- Third, time entries are required to be made on a monthly basis only. This is an invitation for staff members to leave it to the last minute to complete their records and rely on their fading memories only.

These differences mean that JRC staff members are able to significantly understate or overstate the work they carry out for specific projects. In addition, efficient and inefficient work, as well as work by senior and junior staff members are recorded with equal value. As a result of these

problems, the time-recording database may contain inaccurate data, which do not fully reflect the individual time spent on individual projects by staff members. Neither are the data consistent across the organization. Finally, they do not inform management of whether the time recorded was actually spent efficiently, and whether, within each category, work was carried out by junior or senior members of staff, and thus, how much actual added value ultimately an hour of work represents.

While the data in the database can give some direction to management as to overall use of staff time, the data are not sufficiently reliable to be used to conclusively inform the decision-making of JRC management in cases which individually affect staff members. For this reason, use of the data for purposes that may individually affect data subjects must be strictly limited.

### **Information provided to data subjects**

The documents made available to JRC staff on the intranet, in particular, the "Guidelines for using a Time Accounting System" and the "Privacy Statement for the Time Accounting System" provide considerable information on data protection. All required information is included in those documents.

However, the EDPS recommends improving the communication of the purposes of the TAS by including strict limitation of the use of the database at the individual level to decisions that may directly affect planning of activities. In addition, the Point 2 of the "Guidelines for using a Time Accounting System" dedicated to the "TAS Data Protection Policy" should be reviewed in line with the Regulation (EC) No 45/2001.

### **Conservation of data.**

The general principle in the Regulation is that personal data may be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed (Article 4.1.e of the Regulation). The EDPS has the following specific recommendations in this respect:

First, all data relating to a staff member whose employment relationship with JRC comes to an end should be immediately deleted, or, if the data are considered useful for management, accounting, historical, scientific, or statistical purposes, should be rendered anonymous. In this respect, JRC must take into account that merely deleting names does not necessarily render data anonymous. For example, staff members could be identified indirectly, by reference to their job functions and the dates during which they carried out those functions.

Second, there appears to be no need for viewing the development of any particular employee's hours over the course of time. Therefore, the EDPS recommends that all data in the database would be deleted at least once a year. If JRC wishes to preserve any data about prior years' data to help management develop strategies, or for accounting, historical, scientific, or statistical purposes, the data must be aggregated and kept only in anonymous form.

Third, the EDPS recommends that JRC reconsiders whether it is necessary to keep any data related to the time accounting exercise at least for as long as the competitive contracts are in force. According to the JRC such a long storage is required for audit and cost review purposes as well as for purposes of compliance with the provisions of the Financial Regulation. During such analysis, JRC should consider that the time accounting exercise is not a mandatory but an optional exercise and that JRC, under its Financial Regulation, would have been perfectly entitled not to carry out a time accounting exercise at all in the first place.

In any event, should JRC wish to keep certain data for future audits of its financial and management activities, the EDPS would not question a practice whereby JRC kept the aggregate reports (not nominative data) for a five-year period as referred to in the Financial Regulation. Although these reports may include some indirectly identifiable personal data as well as the non-systematic occurrence of such data, the EDPS would not find a five-year period disproportionate for these reports.

In this respect, the EDPS specifically calls the attention of the JRC to a recently added last paragraph to Article 49 of the Implementing Rules of the general Financial Regulation<sup>2</sup>, which provides the following: "Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply." This recent amendment was adopted following the recommendations provided in paragraphs 33-47 of the "Opinion of the EDPS of 12 December 2006 on proposals for amending the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules (COM(2006) 213 final and SEC(2006) 866 final), OJ C 94, 28.04.2007, p. 12".

I would appreciate if you could share this position with the controller and inform us of the follow up measures taken concerning the information to be supplied to data subjects.

I remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

Joaquín BAYO DELGADO

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<sup>2</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23/12/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.