



JOAQUIN BAYO DELGADO
ASSISTANT SUPERVISOR

Mr Philippe RENAUDIÈRE
Data Protection Officer
European Commission
BRU BERL 08/180
B - 1049 BRUSSELS

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Dear Mr Renaudière,

After having reviewed the notification on "ARES-NOMCOM" (EDPS case ref.: 2008-299) we have concluded that the case is **not subject to prior checking by the EDPS**.

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

A) 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*".

B) Article 27(2) of the Regulation contains a non-exhaustive list of processing operations that are likely to present specific risks. The list includes, inter alia, processing of data "*relating to health and to suspected offences, offences, criminal convictions or security measures*" (Article 27(2)(a))

The documents provided with the notification and the 9 July 2008 meeting with the controller clarified that the ARES-NOMCOM system is designed to manage the documents and files of the Commission. The system, once developed and implemented, will cover the whole life cycle of the documents and files: their registration, classification, workflow, digitalisation, storage, research, archiving and destruction. Currently some functions of the system are tested in some Commission services. The whole system is not yet developed and the controller is not able, at this point, to present some of the functions, in particular management of the conservation periods, destruction of documents and transfer to the archives.

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

Our understanding is that the system implies the data processing as much as documents and files contain personal data. The system as such is not generating personal data. Although the inclusion of personal data listed in Article 27(2) is systematic, which means that a strict interpretation could lead to the conclusion that Article 27(2) should apply, the presumption of risk in Article 27(2) does not *a priori* exist as regards ARES-NOMCOM system, since the data are generated, by the Commission or third parties, in the context of a data processing which is itself subject to prior checking if conditions of Article 27 apply.

As to Article 27(1) of the Regulation, although the ARES-NOMCOM system itself presents some aspects that are most relevant for the rights and freedoms of data subjects whose personal data appear in the documents being managed, the prior check procedure does not seem adapted in this particular context, given the specific characteristics of the system, in particular the fact that it is a management tool. The fact that the conception of the system is not yet terminated also pleads against a formal prior check procedure.

On the basis of the above considerations we have decided not to issue a prior-check opinion. However, given the importance of the system in the management by the Commission of documents that may contain personal data, the EDPS will issue as soon as possible an opinion under article 46(d) on the data protection issues which can be identified at the current stage of the system development. Actually, as much as personal data are concerned, we have spotted several areas in which our recommendations would be relevant in order to ensure a full compliance of the system with the Regulation (EC) 45/2001, in particular in relation to the security measures or to the control of access rights. It is not excluded that, in this context, further information will be requested from the controller and further opinions will be issued following the development and the implementation of the system.

We would appreciate if you could inform the controller of these considerations and keep us informed about any relevant developments and modifications of the system.

Yours sincerely,

(signed)

Joaquín BAYO DELGADO