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ASSISTANT SUPERVISOR

Mr Spyros ANTONIOU
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Brussels, 2 September 2008
JBD/DH/ktl D(2008)1163 C 2008-0195

Dear Mr Antoniou,

I refer to the prior checking notification on the processing operations on personal data concerning "access control to the premises" (2008-195)¹.

After examining the content of the notification and the annexes, we have come to the conclusion that **it is not subject to prior checking** under Article 27 of Regulation (EC) No 45/2001 ("the Regulation").

Article 27(1) of the Regulation subjects to prior checking by the European Data Protection Supervisor (EDPS), 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. Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks in the above sense. The prior checking notification has been submitted under Article 27(2)(a) of the Regulation.

Article 27(2)(a) of the Regulation states that a specific risk is present in processing operations of data relating to health and to suspected offences, offences, criminal convictions or security measures. The EDPS interprets the notion of "security measures" in Article 27 (2)(a) not as relating to the physical protection of buildings and staff, but rather as the measures taken as regards individuals in the context of criminal (or administrative) procedures (in French: "mesures de sûreté").

We have also considered whether other aspects of the processing trigger the need for prior checking. In this respect, the use of the RFID technology is a relevant aspect. The EDPS considers that RFID by itself, without any other additional element, does not present specific risks in the sense of Article 27(1). This does not mean, though, that best practices should not be recommended to guarantee privacy and data protection. This is the case here; see below.

¹ The EDPS is aware of the fact that the premises include the Day Care Centre; see EDPS Opinion on case 2008-193.

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

Recommendations and follow up:

Although not subject to prior checking, the EDPS would like nevertheless to draw your attention to the following aspects:

- The purpose of the processing is not clearly established in the notification. There is a lack of clarity in boxes 4, 9, 12 and 13 of the notification; two different processing operations are mentioned: access control and time management (flexitime). The flexitime system, as mentioned in your e-mail of 21 April 2008, should be notified separately for consultation as to the need for prior checking to the EDPS. Therefore, to avoid confusion, notification and information to the data subjects should be distinguished in the future.
- The notification should include the description of internal access control.
- The EDPS only received the Privacy statement for Visitors. The EDPS is of the opinion that the information foreseen in Articles 11 and 12 of the Regulation should be provided to the staff members of the Cedefop since they are also concerned by the processing of data. Indeed the information given to the data subject is part of the fairness of the processing operation.
- Concerning the conservation of the data, the EDPS recommends a period of conservation no longer than necessary for the access control purpose, that is to say a retention period of maximum three months.
- Cedefop has deployed, for access control, a HID card called "MiniProx". The card has a reading range of 14 centimetres and broadcasts a unique ID number. The EDPS recommends that privacy and data protection be better guaranteed against cloning of the badge or tracking of the cardholder. More appropriate technologies, such as contactless smartcard using random UID, could be selected and implemented². Alternatively, the Cedefop could implement a stronger shielding protection (aluminium foil) of the card which is only removed when the card is used. These technical measures should be complemented by policy procedures such as: (i) prohibiting sharing or lending of access cards, (ii) requiring immediate reporting of stolen or lost access cards and (iii) recommending that employees hide their access card when outside the Cedefop premises.

Please, inform the EDPS of the measures taken on the recommendations made in this letter within a period of three months.

We remain of course available for any further consultation on the matter.

Yours sincerely,

(signed)

Joaquín BAYO DELGADO

² This issue was highlighted last year by the International Civil Aviation Organisation (ICAO) see page 22: http://www.mrtd.icao.int/component/option,com_remository/Itemid,256/func,startdown/id,26/