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Dear Mr Renaudière,

I am contacting you regarding the notification for prior-checking relating to the "DG ENTREPRISE's ("DG ENTR") flexitime Interface to TIM" which you notified to the European Data Protection Supervisor (hereinafter "EDPS") on 22 February 2008.

On 10 April 2008, the EDPS made a request for additional information. Additional contact with the controller took place and it was agreed that a meeting between the Controller and EDPS staff would take place to present the system specifications and answer questions that the EDPS could have. The meeting was held on 23 April 2008. During that meeting, it was decided that DG ENTR would adapt its notification to the comments received and that it would send a revised version. This version was received by the EDPS on 9 June 2008. On 10 June 2008, the EDPS sent a request for further clarification on the processing operation, given the changes which had been included in the notification. The reply of the controller was received on 5 August 2008. On 18 August 2008, given the complexity of the case, the EDPS decided, in respect of Article 27(4), to extend the deadline for the adoption of his Opinion for one month.

This notification is related to the main notification on the SYSPER 2 - Time Management module<sup>1</sup> as well as to the notification specific to the flexitime system at DG INFSO, prior-checked by the EDPS<sup>2</sup>. The notification under scrutiny differs because whilst the DG INFSO system uses badges equipped with RFID-chips, DG ENTR intends to implement a button interface in working PCs to collect presence data.

TIM, in which flexitime is included, was subject to prior checking because the whole system, structurally, deals with health-related data in some modules of TIM (27.2.a). As a complementary basis, some aspects of evaluation are present insofar as the system evaluates the time and attendance at work and leave (27.2.b).

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<sup>1</sup> Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on "SYSPER 2: module Time management" (case 2007-0063).

<sup>2</sup> Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on "the implementation of flexitime - specific to DG INFSO" (case 2007-0218).

These criteria apply to the entire TIM system, analyzed as such as forming a whole, irrespective of the fact that some of the modules could, regardless of others, meet the given criteria. In relation to the specific module of flexitime, included in the TIM, it does not, in itself, fulfil these criteria. Hence, it is not subject to prior-checking.

However, during the prior checking of TIM, the EDPS pointed out that any substantial change of the system should be notified. This is the case here.

### Purpose of Flexitime

The EDPS considers it important to recall the primary purpose of the flexitime system, as provided by the "Guide flexitime" (hereinafter "the Guide"), which was analysed in the opinion on the prior checking SYSPER 2 - Time management module. As concerns the purpose, the Guide provides that: *"The Commission considers more flexible working arrangements to be an important part of its administrative reform. It has therefore decided to encourage the use of flexitime in its services by allowing its entire staff to benefit from this opportunity."*

*The Commission believes that flexitime can be a very effective tool in allowing staff to balance their professional and private commitments. The Commission's interest in the use of flexitime lies in the higher motivation of its staff resulting from their greater responsibility for the organisation of their time" (point 1.1 of the Guide).*

The purpose of TIM concerns the processing of all data on the conditions of employment (absences and leave, applications for part-time work, family and parental leave, flexible hours) that are needed for personnel management and functioning of Commission services.

As described by the guide to Flexitime, DGs and Services may use manual recording systems, electronic files, magnetic cards or similar systems but they have to stay within the legal base and purpose of the Flexitime as approved by the Commission. Of course, they must respect proportionality and be in conformity with the rest of provisions of Regulation (EC) 45/2001 on the protection of personal data processed by Community institutions and bodies. The analysis of the specific system in DG ENTR follows.

### Planned System in DG ENTR

This IT tool, called QuickTIM, is a local interface with ADMIN's TIM. In order to avoid that DG ENTR's employees have to login into TIM and manually input their timestamps, this tool will allow them to click on a button of QuickTIM which is an application running on their PC. When DG ENTR's employees log into their PC in the morning<sup>3</sup>, QuickTIM is able to obtain the employee's name and, if the user clicks on the "send" button, QuickTIM will store the timestamp temporarily in a database of DG ENTR and at the same time it will send automatically an e-mail with the timestamp to the functional mailbox of his head of unit. This functional mailbox is only accessible to the head of unit and his secretariat.

At night the timestamps of the day will be transferred to TIM. As explained by DG ENTR, QuickTIM is the compulsory interface for all staff making use of Flexitime. It is installed on the PCs of any person using the system. According to DG ENTR, there are two reasons to make use of this system. From the personnel point of view, the main objective of QuickTIM

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<sup>3</sup> In case of technical problems with QuickTIM, employees can still use Sysper2's TIM to record directly their timestamps or ask their secretary to do so.

is to ease the recording of timestamps and therefore avoid any manual recording. From an organisational point of view, the system will allow unifying recording means of working time at DG level.

DG ENTR considers that, in view of organizing the work in the units, "it appears useful to provide the head of units with a real-time overview of the presence of the staff, which is not the case with the current system. If staff forget to record, these e-mails can also keep track of hours to be recorded again in TIM/Sysper2. Furthermore, this will prevent possible abuse of the system".

In the light of all the elements provided, the EDPS considers that DG ENTR's system introduces an aspect of evaluation. This evaluation would derive from the introduction of an automatic sending of emails to a functional inbox of each head of unit, every time a staff member makes use of the QuickTIM system.

Therefore, the only ground for Prior-checking of DG ENTR's system would be based on evaluation. However, according to the guide to Flexitime, such evaluation would be excessive and out of scope.

In accordance with Article 5, paragraph a) of Regulation (EC) No. 45/2001, data processing must be "necessary for the performance of a task". It is therefore necessary to assess whether the processing of data in the context of the missions of DG ENTR is relevant to the execution of a mission.

Changing the primary purpose of treatment of flexitime, as provided by DG ENTR goes against the respect of the principle of necessity and can not therefore be accepted.

The purpose of the notification under analysis tends to monitor the presence or absence of staff. But under the TIM, it was reported that the possibility of recording times by the persons concerned may be limited to once a week, some people may not introduce their schedules on the same day (missions, for example) and indicated hence that it is primarily a system that emphasizes trust on control. Therefore, a quick scheduling of people can not be regarded as usable under the flexitime presented by DG ENTR because it runs counter to the general system of flexitime based on the TIM.

Given the evidence provided and the analysis, the EDPS considers that the purpose advanced is not compatible with how the flexitime must be used.

As a consequence, the purpose of the notified treatment by DG ENTR does not fully meet the purpose of flexitime, as derived from the analysis of TIM. The EDPS considers that, by introducing this evaluation tool, which allows the evaluation of the staff by the head of unit, the proposed treatment substantially changes the purpose of initial treatment (Article 6 of Regulation 45/2001) and it does not have a legal basis justifying the establishment of such a system. Indeed, the legal basis of the data processing of DG ENTR consists of Article 55 of the Statute and the "Guide flexitime, SEC (2006) 1796 (Commission decision of July 19 2006 and final adoption of 19 December 2006). The purpose presented by DG ENTR is absent in these legal instruments.

However, the EDPS recognises that the idea to have a user friendly interface to store timestamps into TIM without the need to use the graphical user interface of SYSPER2-TIM should not be prevented. Indeed, the benefit is that timestamps are automatically recorded at the time that the user clicks in the application.

In conclusion, the EDPS considers that the implementation of the system proposed by DG ENTR would be contrary to the provisions of Regulation 45/2001, as long as it includes the sending of e-mails to a functional mailbox of the head of unit.

I ask you to kindly inform the controller of this opinion.

Best regards,

(signed)

Joaquín BAYO DELGADO