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JBD/EDK/kt/ D(2008) 1243 C 2008-0415

Subject: Establishment of annual appraisal reports 2008-415

Dear Mr De Medrano,

I am referring to the notification for prior checking submitted to the European Data Protection Supervisor (EDPS) on 7 July 2008 related to the data processing operations in the frame of the establishment of annual appraisal reports.

The new appraisal tool obviously involves the processing of personal data of the individuals concerned, but after the analysis of the notification, its annexes and the telephone conversation with you on 15 September 2008, the EDPS reached the conclusion that **the modification in the appraisal system does not qualify for prior checking for the reasons expounded below.**

Article 27(1) of Regulation (EC) No 45/2001 requires that all 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 be submitted to the EDPS for prior checking. Article 27(2) provides a list of such processing operations.

The submitted notification covers certain modifications that were introduced after the prior checking opinion of the EDPS related to staff appraisal was issued.¹ The present notification was submitted as an "update", where the changes of the appraisal procedure only relate to the storage media.

¹ Opinion of 28 July 2005 on a notification for prior checking on periodical staff appraisal (Case 2004-293).
Available at: www.edps.europa.eu

The modifications in the appraisal procedure concern the following technical aspects: By employing the new access tool, the reporting officer generates, for each jobholder assigned to him/her, a blank appraisal report in word format. A cover page on which administrative data are automatically inserted is also generated. Only the reporting officer has access to the personal data of his staff for the period in which the appraisal is going on and for this sole purpose. A list of training activities undergone by the jobholders during the respective period and the languages and corresponding level as indicated in the former appraisal report is accessible exclusively to the reporting officer. The data are stored on the appraisal tool located on [...]. After finalising the drafting of the appraisal report, the access tool is retrieved from the directory [...]. The data included on the appraisal tool for the generation of reports are used for the update of the following year's appraisal exercise.

The above described modifications have obvious data protection impact concerning the storage media and the access rights to the new appraisal tool, which seem to have been taken care of, except the information obligation (see below). Nevertheless those changes **do not amount to constituting the specific risk** required for a prior checking by the EDPS under Article 27 of Regulation (EC) No 45/2001.

Should you raise other considerations, we are of course prepared to revise our position.

Without prejudice of the above position, I want to make the following further remarks regarding the content of the notification.

● **Information to be given to data subjects:**

Section 7 of the notification for prior checking mentions that the administrative decision (ADM 04-18 rev.) gives all relevant information to the data subjects regarding the procedure, and that further information is provided in the appraisal form itself.

Although the above mentioned documents contain much of the information required under Articles 11 and 12 of the Regulation, they do not cover all items. Notably, the identity of the controller, the existence of right of access and rectification of one's own data, the time-limits for storing the data and the right to recourse to the DPO and to the EDPS is not mentioned in the documents.

Therefore, the EDPS recommends drafting a privacy notice including all items required under Articles 11 and 12 of the Regulation and making it available on the intranet of the agency for staff members.

● **Retention policy:**

The EDPS welcomes the fact that the electronic word files used for the drafting of individual reports (stored on the individual PCs of the reporting officers until the reports are deemed final) are erased by the reporting officer. This was one of his recommendations in case 2004-293 regarding the staff appraisal procedure.

● **Follow up of EDPS Opinion 2004-293**

I take this opportunity to draw your attention to the fact that the case on "Staff appraisal" (2004-293) has not yet been closed as we are still waiting for the feedback requested in our letter of 20 July 2006.

I would appreciate if you could share these considerations with the controller.

Yours sincerely,

(signed)

Joaquín BAYO DELGADO