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ASSISTANT SUPERVISOR

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

Brussels, 12 November 2008
JBD/MV/ktl/ D(2008) 1639 C 2008-0486

Dear Mr Renaudière,

I am writing in connection with the notification for prior checking regarding "ZEUS - FLEXITIME at the JRC-ITU in Karlsruhe" sent on 22 August 2008 (2008-0486) pursuant to Article 27(1) of Regulation (EC) No 45/2001 (hereafter: "the Regulation").

The European Data Protection Supervisor (EDPS) has examined your notification regarding ZEUS processing and the additional information provided by the controller and has concluded that, for the reasons set out below, this processing does not need to be submitted to him for prior checking. Nevertheless, the EDPS wishes to make a number of recommendations to help ensure that the processing is correctly carried out.

The notification describes ZEUS-FLEXITIME as the flexitime management system used at the ITU. The data subject, and no-one else, records the hours that he works by means of an electronic badge. ZEUS FLEXITIME is a decentralised application for processing flexible timetables. It was set up in 1987. The processed data play no role in the assessment procedure. What is more, flexitime data do not serve directly for the payment of overtime, although they are referred to by the staff's direct superiors or heads of unit when validating overtime records. The system has one purpose only, to record hours worked.

This notification has to be considered in relation to the one for prior checking of the overall system SYSPER 2: Time Management module (TIM), which the EDPS¹ examined on an earlier occasion. The Commission's Guide to Flexitime (as tailored to the situation at the ITU in Karlsruhe) has also been taken into account.

¹ Opinion on the notification for prior checking received from the Data Protection Officer of the Commission regarding "SYSPER 2: Time Management module", 29 March 2007 (Case 2007-63).

When the TIM underwent prior checking, the EDPS made it clear that he should be informed of any substantial change to the system. This was the case when DG INFSO's Flexitime processing system incorporated an RFID chip², which was regarded as a crucial new element reinforcing the need for scrutiny by prior checking on the basis of Article 27(1), on account of the additional specific risks to which the system exposed data subjects (use of service cards integrating RFID technology). In other cases a change of purpose of the processing operation, for example in the processing of Flexitime data at DG ENTR³, was grounds for consulting the EDPS.

The processing in question was notified under Article 27(1) of Regulation (EC) No 45/2001 (*"Processing operations likely to present specific risks to the right and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data Protection Supervisor."*).

In the case under consideration, the EDPS took the view that there had not been any substantial change in the processing taking place in the TIM. In his examination of Flexitime processing at the ITU, the EDPS did not find that ITU badge technology involved risks warranting application of Article 27(1) of the Regulation. The system in this case does not introduce such technology but is based rather on a system of card-readers.

The EDPS also considered whether the processing in question met any of the specific criteria listed in Article 27(2) of the Regulation and concluded that it was not covered by that provision.

We are ready, however, to reconsider our position if you believe that there are other grounds for prior checking.

The EDPS would nevertheless like to draw the controller's attention to the following points arising from the notification submitted to him:

Data retention

The ITU's procedure involves the storage of data in paper and electronic form. If no period is specified, Flexitime data are kept for three years (or longer if remedies are sought).

Various EDPS opinions on Flexitime have stressed that there should be a limit on how long data are kept. There should be a short period of retention for the purpose of auditing the records of hours worked, which would take account of the system being used. One month is generally considered to be sufficient. As regards the processing of administrative data, the EDPS has confirmed the solution proposed in the prior notification of the TIM, whereby flexitime data are kept for the current calendar year. They are to be erased once the procedure for transferring unused days of annual leave to the following year has been completed and no later than March of that year. In line with this, the EDPS considers three years to be too long.

External staff

The notification mentions the use of Flexitime data by personnel not covered by the Staff Regulations (external staff) in connection with timetables imposed by their employers. In order to obtain validation of the hours they have worked, external contract staff fill in records of their timetables (supplied by the employer) and submit them to their immediate superiors at

² Case 2007-0218

³ Case 2008-0111

the ITU (Head of Sector, Head of Group, Action Leader) for approval and signature. Contract staff's employers receive only the data from those records, information which is communicated by the employees themselves.

Having looked into the relations between the JRC and external firms, the EDPS considers that data on staff not covered by the Staff Regulations should not be kept any longer than necessary. Once they have been passed to the employers, those data should not be kept by the ITU.

I would be grateful if you would forward this decision to the controller and inform me within three months that the recommendations have been implemented.

Yours sincerely,

(Signed)

Joaquín BAYO DELGADO