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ASSISTANT SUPERVISOR

Mr Jonathan STEELE
European Parliament
KAD 2d021
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Brussels, 12 February 2009
GB/MVPA/ktl D(2009) 234 C 2008-0685

Dear Mr Steele,

On 17 November 2008 you sent for prior checking a notification of personal data processing operations relating to "Outside Activities of staff" at the European Parliament (Case 2008-0685). Having looked at this in depth, we must conclude that as things stand at present, and considering the processing as notified to us, it is not subject to prior checking by the European Data Protection Supervisor (EDPS).

The processing was submitted to the EDPS for prior checking on the basis of Article 27.2(b) of Regulation (EC) No 45/2001: "*(...) processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct; (..)*"

In the case in point, the notification covers the processing associated with outside activities of staff, in accordance with Articles 12-18 of the Staff Regulations. In all cases the processing is generally initiated by the staff member in question, who submits a request (or notification in the case of publication of texts - see below) to the appointing authority via his or her Director-General. The request is granted or denied by a letter or decision of the appointing authority (or AECE for temporary staff).

Article 12.b) of the Staff Regulations reads as follows: "1. Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Communities, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official's duties or is incompatible with the interests of the institution.

2. An official shall notify the Appointing Authority of any changes in a permitted outside activity or assignment, which occur after the official has sought the permission of the

Appointing Authority under paragraph 1. Permission may be withdrawn if the activity or assignment no longer meets the conditions referred to in the last sentence of paragraph 1."

The EDPS notes that what is evaluated in this case is not a "personal aspect related to the data subject" but the nature of the outside activity itself.

Article 15 of the Staff Regulations stipulates that: "1. An official who intends to stand for public office shall notify the Appointing Authority. The Appointing Authority shall decide, in the light of the interests of the service, whether the official concerned: (a) should be required to apply for leave on personal grounds, or (b) should be granted annual leave, or (c) may be authorised to discharge his duties on a part-time basis, or (d) may continue to discharge his duties as before."

The evaluation conducted in this case does not include any "personal aspect related to the data subject" either but describes the sort of decisions that can be taken, in the light of the interests of the service, when an official intends to stand for public office. On 18 November 2008 the EDPS asked the controller which criteria are used by the Appointing Authority for taking that decision. The controller mentioned the "Guide to the obligation of officials and other servants of the European Parliament" adopted by the Bureau on 7 July 2008. In particular he mentioned points 3 and 4. Indeed, point 3 says "The appropriate authority decides - on the basis of the interests of the service and the importance of the office, taking into account the obligations it entails and the remuneration and allowances to which it gives entitlement - (...)". Therefore, the criteria mentioned are objective and do not include personal aspects of the data subject.

The same reasoning is applicable to Article 13 of the Staff Regulations.

The DPO considers also that, as with any other provisions of the Staff Regulations, failure to respect the obligations under Articles 11-18 can result in disciplinary action. However, disciplinary actions are subject to prior check independently of the sort of violation investigated. As a consequence, this is not a basis for prior check either (Article 27.2(a) of Regulation 45/2001).

Despite the fact that the present processing activity is not subject to prior check, the EDPS would like to remind the controller that all the relevant obligations described in Regulation 45/2001 must be respected. In particular the controller has to comply with Article 11 (Information to the data subject).

The EDPS would like to receive the text of the Privacy Statement within 3 months after receipt of the present letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

