



GIOVANNI BUTTARELLI  
ASSISTANT SUPERVISOR

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Brussels, 21 April 2009  
GB/MVPA/ktl/ D(2009)568 C 2009-0040

Dear Ms Kaarlop,

On 15 January 2009 you sent the EDPS a notification for prior checking regarding personal data processing operations relating to "Events organisation" at the European Training Foundation (Case 2009-0040). Having studied this in depth, we have concluded 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 notification form you submitted did not specify the basis under which it was presented. However, in the case in point, neither the purpose of processing as described in the notification, nor the categories of data mentioned fall under Article 27.2 of Regulation 45/2001.

Despite the fact that the present processing activity is not subject to prior checking, the EDPS would like to remind the controller that all the relevant obligations described in Regulation 45/2001 must be respected. It has to be born in mind that, being ETF the controller, the applicable law is Regulation 45/2001<sup>1</sup>, and not the Italian law, except with regard to security measures (conf. joint reading of Article 3.1 of Regulation 45/2001 and Article 17.3, second indent of Directive 95/46/EC).

After an exchange of e-mails with you, where some complementary questions have been asked, the EDPS would like to make the following recommendations:

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<sup>1</sup> See Article I.9 of the Framework Service Contract CON/07/ETF/0032, in particular where it says "*Any personal data (...) relating to the Contract (...)*".

- Being ETF the controller of the processing activity under analysis, ETF has to grant access to the data subjects in case of request.
- The decision about the retention period has to be taken by ETF, not by the data processor. In any case, the necessity of retention for 10 years has to be re-evaluated in the light of the purpose of processing.
- The information to the data subject has to be provided in the light of Article 11 of Regulation 45/2001. The information currently provided in the participant's form is not respectful of the obligations provided therein. Furthermore, the statement saying "The provision of your personal data is voluntary, but refusal will prevent your participation in the meeting" is particularly to be assessed. For instance, participation to the meeting should not be prevented if a data subject would decide not to communicate "dietary requirements", which indeed may reveal religious or philosophical beliefs or data concerning health (Article 10.1 of Regulation 45/2001). Therefore, it has to be specified which data is necessary in order to allow participation to the meeting, and which data can be provided on a voluntary basis.

Please kindly inform the EDPS about the implementation of these measures within 3 months upon receipt of the present letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI