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ASSISTANT SUPERVISOR

Mr Nikolaos FIKATAS
Data Protection Officer
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Fundamental Rights (FRA)
Schwarzenbergplatz 11
A-1040 Vienna

Brussels, 22 July 2009
GB/RB/kt/ D(2009)1018 **C 2009-0382**

Dear Mr Fikatas,

I refer to the prior checking notification and annexes on the personal data processing operations concerning "Security Access System" ('Notification') at the Fundamental Rights Agency ('FRA'), case 2009-382.

After examining the content of the Notification, we have come to the conclusion that **it is not subject to prior checking** under Article 27 of Regulation (EC) No 45/2001 ("the Regulation").

Article 27(1) of the Regulation subjects to prior checking by the European Data Protection Supervisor ('EDPS'), 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. Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks in the above sense. The Notification has been submitted under Article 27(2)(a) of the Regulation which states that processing operations relating to *"health and to suspected offences, offences, criminal convictions or security measures"* shall be subject to prior checking by the EDPS.

We understand from the Notification that the Security Access System ("SAS" or "system") intends (i) to protect the security (building and staff) of FRA and (ii) to control the access to its premises. To do so, the system includes a stand alone software and CCTV cameras. As far as the second goal is concerned (ii), to control access, we note that the system helps to manage and control staff access to FRA's premises. Regarding the first goal, to ensure the security of FRA's premises, we understand that the access control system serves to prevent and deter incidents. Also, if incidents occur, the data recorded in the system and the footages of CCTV cameras may be used for the purpose of the investigating such incidents.

Although the documents attached to the notification mention the use of CCTV cameras, FRA also submitted a separate CCTV notification to the EDPS on 20 May 2009. On 11 June, the prior check of FRA's CCTV system was suspended pending adoption of the final version of the EDPS Video-surveillance Guidelines. Therefore, considering this separate notification, and also the ongoing consultation procedure with regard the Video-surveillance Guidelines, this non-prior-check letter does not cover FRA's CCTV system, and does not express a view on whether the CCTV system itself should or should not be subject to prior checking. In this context, you should consult the EDPS Video-surveillance Guidelines, a consultation version of which has already been published on 7 July 2009¹ and follow the substantive and procedural recommendations contained therein. These will help you assess, among others, whether a prior checking of your CCTV system will be necessary.

As regards the other elements of your access control system, considering the stated purposes of the system, we understand that you may have deemed FRA's Security and Access System as a "*security measure*" as referred to under Article 27(2)(a), thus triggering the need for prior checking.

However, the EDPS interprets the term "security measures" referred in Article 27(2)(a) of the Regulation as measures not relating to physical protection and security of buildings and staff. Instead, the EDPS considers that this term refers to the measures taken as regards individuals in the context of a criminal (or administrative) procedure (in French "*mesures de sûreté*"). This interpretation is in line with the type of information referred to under the same Article 27(2)(a), which includes, information regarding *suspected offences, offences, criminal convictions*. Accordingly, in this context, the processing of personal data that takes place in the context of operating the Security and Access System is not prior-checkable under Article 27(2)(a).

In addition to the above, we note that the system could have been prior-checkable under Article 27(2)(b) if it had been designed for staff evaluation purposes. However, this is not the case. The processing aims at managing and controlling the entrance to FRA's building and guaranteeing the security. Personal data are processed for the decision of granting access to the buildings or not. This decision does not concern a full evaluation of personal aspects but rather checking that individuals have the badges that enable them to enter FRA's premises.

In the light of the above we have considered that the processing **is not subject to prior checking** and **we have decided to close the case**. Should the processing have other purposes, the EDPS may have to do a prior checking of the system.

Independently of the above, please be aware that the remaining articles and obligations of Regulation are fully applicable.

We, of course, remain available for any further consultation on the matter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

¹ The guidelines are up for consultation in the EDPS Web site at: <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/pid/377>