



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

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

Brussels, 27 October 2009
GB/JL/kt/ D(2009)1492 C 2009-0565

Subject: Notification for prior checking concerning "ex post controls".

Dear Mr Renaudiere,

Having examined the notification concerning the management of *ex post* controls (ref. EDPS: 2009-565), we have come to the conclusion that the case **is not subject to prior checking by the EDPS**.

The processing operation was notified pursuant to Article 27(2)(a) of Regulation (EC) No 45/2001 (hereinafter referred to as "the Regulation").

Article 27(1) of the Regulation makes 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*" subject to prior checking.

Specifically, Article 27(2) of the Regulation contains a non-exhaustive list of processing likely to present such risks, notably "*the processing of data relating to health*" (point a).

The EDPS notes that the processing operation described in the notification is an *ex post* control procedure put in place to enable implementation of the checks required by Article 47(3) of the Regulation laying down detailed rules for the implementation of the Financial Regulation to issue an opinion on the regularity and legality of the transactions verified and the quality of financial management. The operational units of Directorate K, DG RELEX and the Commission delegations at the level of authorising officers by subdelegation, persons making financial transactions or their beneficiaries are subject to *ex post* controls. In that context, transactions relating to the remuneration of persons and the payment of individual entitlements may be verified. That implies consulting and checking personnel files to ensure the accuracy of entitlements and calculations. Anyone who has received a payment or reimbursement falling under the administration's budgetary headings may be the subject of an *ex post* control. *Ex post* controls may concern, in particular, outgoing payments related to medical check-ups, invalidity, etc. In that scenario, the auditors would have access to health-related data within the meaning of Regulation (EC) No 45/2001 i.e. medical certificates, proof of medical expenditure, invalidity certificates, absence sheets and other documents resulting in reimbursement of expenditure generated in the framework of the arrangements for medical cover.

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

Article 27(2) of the Regulation primarily concerns processing operations whose main purpose is to process data relating to health and to suspected offences, offences, criminal convictions or security measures. The purpose of these *ex post* controls is not the processing of that data. In fact, the auditors' familiarisation with this type of data is accidental rather than systematic. The main aim of *ex post* controls is to curtail the risks related to the quality of management and control systems, provide recommendations to improve the situation and promote sound financial management.

Moreover, if, following an *ex post* control, investigations can be conducted by the Investigation and Disciplinary Office (IDOC), the European Anti-Fraud Office or the national authorities, these procedures constitute a particular risk which would justify prior checking by the EDPS pursuant to Article 27 of the Regulation. Nevertheless, the risk is created by the investigative procedures themselves and not by the *ex post* control which is the subject of this notification. The *ex post* control procedure is general and may not be considered a specific investigative task because it does not set out to investigate certain persons or certain behaviour. Instead, its purpose is to examine the systems and the associated risks in general.

If you feel there are other reasons that warrant prior checking by the EDPS we are prepared to reconsider our position. Similarly, should there be any change in this processing operation we would ask you to consider whether the operation needs to be submitted to the EDPS for prior checking.

Yours sincerely,

(Signed)

Giovanni BUTTARELLI