



PETER HUSTINX
SUPERVISOR - LE CONTRÔLEUR

Mr Alessandro DEL BON
Data Protection Officer
European Ombudsman
1, avenue du Président Robert Schuman
F - 67001 STRASBOURG

Brussels, 27 May 2005
JBD/SLx/ktl/D(2005)325 C 2004-0268

Dear Mr Del Bon,

We have received the notification for prior checking of the cases 2004-268 and 2004-269 and thank you for this.

As concerns case 2004-0268 we would like to clarify the situation.

Initially this case was listed by you as concerning "personal files of recruited staff". See inventory and letter of 15.09.04.

You now notify it to us for prior checking under the qualification of "Staff appraisal" (see your cover letter dated 19.05.05). However we would like to make two remarks:

- the notification form in itself concerns personal files and not staff appraisals as such. Article 27(2)b subjects to prior checking "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency or conduct". The personal files may contain the result of an evaluation procedure, but as such are not a processing operation intended to evaluate the data subject and therefore are not, a priori, subject to prior checking on this basis.
- the initial notification form of the Register of Data processing operations of the Office of the European Ombudsman you sent a copy of to us, includes absences for medical reasons. On the basis of article 27(2)a ("data related to health") we had classified the personal files of your institution as subject to prior checking. However seeing as we are prior checking the record of sick leave of staff and trainees which contains this

same information (case 2004-0269) we see no necessity in prior checking personal files as well.

If you should see other grounds on the basis of which we should nevertheless prior check personal files, please let us know.

Yours sincerely,

(Signed)

Joaquín BAYO DELGADO