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Dear Mr Hilbert,

We acknowledge the receipt of the notification of the system "Vote électronique - Elections au Comité du personel" and have duly considered whether the case should be the object of a prior check by the EDPS under Article 27§1. In this respect we would like to make the following considerations.

The fact that data protected by Article 10 notably trade-union membership data, is included in the processing does not necessarily imply that a prior checking should be carried out. Article 27§1 is not automatically applied in the event of the presence of sensitive data in terms of Article 10.

Furthermore, Article 10§2 b is formulated as follows: paragraph 1 shall not apply where "processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or, if necessary, insofar as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards". The agreement of the EDPS is not however mandatory in this case as other grounds can be found in Article 10 to justify the processing of data revealing trade union membership of candidates, such as the fact that he/she has given his/her consent (Article 10§2 a) or that the data has been manifestly made public (Article 10§2 d).

The fact that trade-union membership or allegiance can be revealed in the voting preferences of the voters, should not be an issue *a priori* since this will only be apparent should the system be defective. The possibility of a defecting system should not however be a hypothesis of departure.

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Neither does authentication as such qualify the case for prior checking under Article 27§1 and failures cannot be presumed. Indeed, it seems that a priori adequate security measures have been integrated into the system under Article 22 of the Regulation.

For these reasons we have not submitted the case for a prior checking analysis, but have nevertheless gone into a thorough examination of the notification and information provided.

On the basis of this analysis, we would like to make the following considerations and recommendations:

- What is the purpose of knowing the time frame ("plage horaire") of the vote? These data might permit identification of the data subjects and yet, since it is extremely vague it cannot serve in the event of the questioning of the voting procedure. The same goes to say as concerns the IP address: what is the purpose of processing the IP address of a computer if a person is entitled to vote from any computer?

- This exercise is presented as a pilot project. Further guarantees must therefore be put into place such as information of the data subjects on the nature of the exercise.

- In order to lower the risk of misuse and increase the protection of the remote voter, the ECAS option of "single sign on" should be suspended during the election process.

- According to the annexed document (R1.10) Admin DS has forecast an audit of the systems used. The results of this audit must demonstrate that the e-voting procedure complies with Regulation 45/2001.

- Finally, ECAS has not been subject to prior checking by the EDPS.

I would appreciate if you could forward these considerations and recommendations to the controller and inform us of the possible developments.

Yours sincerely,

Joaquín BAYO DELGADO

Follow-up Note   24 August 2006

All acting measures have been taken by the Commission on 19 May 2006.

The European Data Protection Supervisor