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Dear Mrs Arsène,

Following the meeting of 22 January 2007 between the controller and some EDPS staff members and after receiving further information by e-mail of 22 March 2007 on the issue, the EDPS has concluded that the processing operations related to the "Telephony" at the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) (EDPS case ref: 2006-508) are not subject to prior checking by the EDPS and we close the case.

The notification was submitted under Article 27(1) of the Regulation (EC) No 45/2001 ("the Regulation") noting that the case involves e-monitoring.

In our letter dated 23 November 2006 we pointed out that we consider electronic communications to be subject to prior checking by the EDPS under two main scenarios: if there is a breach of confidentiality of communication or the processing relates to suspected offences, offences or security measures or it is intended to evaluate personal aspects relating to the data subject. This means that not all electronic communication systems are necessarily subject to prior checking.

In the present case, the EDPS examined four aspects in detail. First, it had to be examined as to whether billing data are used for any evaluation of staff members; second, the effect of technically possible recording of telephone conversations; third, the access to messages kept on the voice mailbox; and fourth the recording of requests by the IT helpdesk.

The first issue requires close attention. The sending of billing data to the directors of administrations of both Committees may imply *prima facie* the element of evaluation. Nevertheless, the controller has confirmed that telephone costs are monitored only for 'budgetary purposes'. Even though the administrations of both Committees will be informed if expenditure is above 150 Euros linked to specific service codes in the given month, the controller laid down guarantees that this information can not be used for evaluating the

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officials' or agents' personal aspects. Furthermore, reports sent to the administrations do not include any details on specific calls.

As to the second point, the controller informed the EDPS that it is only a theoretical technical possibility to record telephone conversations. The making use of this option is neither encouraged nor facilitated by the Committees. Since it is only a technical possibility to make a record of telephone conversations, as in most systems, the EDPS considered that there is no breach of confidentiality of communication.

Similarly, regarding the third aspect the controller provides appropriate guarantees in order to ensure full confidentiality of the messages stored on the voice mailbox. Only users can have access to the voice mailbox, using their personal code. The messages are kept until the user deletes them. No back-up exists. Messages can be accessed by the IT Unit only if they reinitialise the user code. The EDPS thus believes that the confidentiality of the communication is ensured.

The controller informed the EDPS that requests addressed to the IT helpdesk (fourth aspect) are registered but telephone conversations are not recorded. The registration system of the requests complies with the requirements of the Regulation (EC) No 45/2001.

Having reviewed all aspects, the EDPS came to the conclusion that there is no specific risk to the rights and freedoms of data subjects as described above and the processing subsequently is not subject to prior checking by the EDPS according to Article 27 of Regulation (EC) No 45/2001.

**As a separate note**, answering the same e-mail of 22 March 2207 as regards another issue (EDPS case ref.: 2006-507), the EDPS finds that the arrangements introduced by the controller concerning the Spam check of the Email system are appropriate and also closes the case.

I would appreciate it if you could share these considerations with the controller. We remain available for any further consultation on these matters.

Yours sincerely,

J. BAYO DELGADO