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Ms Laraine LAUDATI
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European Anti-Fraud Office (OLAF)
B - 1049 BRUXELLES

Brussels, 25 April 2007
JBD/EZ/ktl D(2007) 616 C 2007-204

Subject : "INVOICING FOR PRIVATE USE OF SERVICES GSMs" (OLAF)

Dear Ms Laudati,

After having reviewed the notification on invoicing for private use of service mobile phones (your reference: DPO-40; EDPS case ref.: 2007-204), we have concluded that **the case is not subject to prior checking** by the EDPS.

The processing was submitted under Article 27(1) of Regulation (EC) No 45/2001 ("the Regulation). In an earlier case¹ the EDPS pointed out that in this context a prior check shall be carried out under Article 27(1) if there is a breach of confidentiality of communication. Prior checking would be justified under Article 27(2)(a) if the processing is relating to suspected offences or offences or security measures. It would be justified under Article 27(2)(b) if the operations are intended to evaluate personal aspects relating to the data subject. This is, however, not the case concerning the processing at issue since it solely aims at invoicing certain amounts for use of mobile phones for private purposes. The system is designed to monitor the records of mobile telephone calls but not the communication itself. The procedure does not imply processing of data on suspected offences or offences or security measures. It does not aim at evaluating personal aspects of data subjects. In fact, the processing presents operations which are rather technical in nature and imply no specific risks which would justify prior checking under Article 27(1) or 27(2). Even though the notification indicated that the prior checking is desirable to ensure that all data protection requirements have been satisfied, the processing is not subject to prior checking under the Regulation.

¹ "Telephony" of the European Economic and Social Committee and the Committee of the Regions (EDPS case number: 2006-508)

Due to the above considerations **we have decided to close the case**. However, if you believe that there are other factors justifying prior checking of the notified processing, we are prepared to review our position.

Without prejudice to the above considerations, based upon the notification **we scrutinised certain aspects of the processing operation**. The EDPS finds that the information made available to data subjects contains all details as foreseen in Article 11 and 12 of the Regulation. Furthermore, data processed in the analysed context are only transferred to recipients who need it to perform duties in the public interest in the meaning of Article 5(a) of the Regulation. The EDPS also considers the retention policy to be adequate and in compliance with the provisions of the Regulation.

Based on the description of the processing in the notification and the annex to it, the EDPS came to the conclusion that the arrangements in place appear to satisfy the requirements of the Regulation. He also concludes that the processing in general seems to ensure that the rights of data subjects are respected.

Yours sincerely,

Joaquín BAYO DELGADO