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SUPERVISOR

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Brussels, 23 May 2007  
PH/SLx/ktl D(2007)761 C 2004-0302

Dear Mr Minnaert,

On 11 October 2006 you notified data-processing operations involving storage of the communications data for fixed telephony of the European Investment Bank to us for prior checking. Following an exchange of information with you and the person in charge of the data-processing operations, and after extensive scrutiny of the data-processing operation in question, we must conclude that in the present circumstances such data-processing as notified is not subject to prior checking by the European Data Protection Supervisor.

The data-processing operation was notified to us for prior checking under Article 27 of Regulation (EC) 45/2001, paragraphs 1 and 2(a) and (b).

In a previous opinion<sup>1</sup>, the EDPS noted in a similar context that prior checking should be carried out under Article 27(1) where there was a violation of the confidentiality of communications, which is not the case here.

Prior checking would be justified under Article 27(2)(a) where data relating to suspicions, offences, criminal sentences or security measures were to be processed. This is not the case of the operation concerned here, because if disciplinary or other measures were adopted this would be as a result of a disciplinary procedure, which itself is subject to separate prior checking.<sup>2</sup> Furthermore, prior checking would be justified under Article 27(b) where the data processing is carried out for the purpose of evaluating aspects of the personality such as an individual's behaviour or conduct. This is not however the case, as the purpose of the data-processing operation is the invoicing of private and official calls. It is therefore carried out for

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<sup>1</sup> "Telephony", Economic and Social Committee and Committee of the Regions (EDPS 2006-508).

<sup>2</sup> Opinion of the EDPS of 25 July 2005 on data-processing in connection with the disciplinary procedure (2005-0102).

technical and budgetary purposes, not in order to evaluate the conduct of staff members, and does not in itself represent any specific risk which would justify prior checking.

Apart from this, any consultation of data relating to telephone communications by the hierarchical superior takes place via the "Manager Desktop" application, which has already been subjected to prior checking by the EDPS<sup>3</sup>.

In the light of the above, we have taken the view that the data-processing operation does not need prior checking. However, if you believe that despite this there are factors which nevertheless justify prior checking, we are prepared to review our position. In addition, if the data-processing operation should subsequently be made use of for other than budgetary purposes, in particular to assess the use made of fixed telephones, the EDPS would then wish to carry out prior checking.

Without prejudice to the foregoing, on the basis of the notification received we have examined certain aspects of the notification and we wish to make the following recommendations.

- The EIB did not set a time-limit for storage of the data held (a) since January 2003 and (b) since April 2004. The EDPS recommends that the EIB should immediately comply with the Regulation by setting as short a storage period as possible of not more than six months after collecting the data. In addition, some of the data required for approving private calls by staff is no longer needed for verification of the budget once the approval has been given, e.g. the numbers dialled. The EDPS therefore recommends that these data be deleted as soon as approval of private calls has been given.
- The EDPS raises a doubt as to the need for transferring the data to the FM Division and the management of the Human Resources department where the purpose of the data-processing operation is financial management of the fixed telephone system. Article 37.3 states that the processing of data on traffic and invoicing can only be carried out by the persons responsible for managing invoicing, traffic and the budget. The EDPS therefore recommends that the EIB reorganise the data processing required for invoicing in the light of this.
- The information provided to the person concerned is incomplete. A number of items in Article 12 have no specific explanation. This applies in particular to the purposes of the data processing, the recipients of the data, the categories of data processed, the data storage period and the right of referral to the European Data Protection Supervisor at any time. The EDPS accordingly requests that appropriate information - i.e. in accordance with all the headings of Article 12 - should be provided to the person concerned.

Please keep us informed of your subsequent action.

Yours sincerely,

Peter HUSTINX

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<sup>3</sup> Opinion of the EDPS of 12 July 2005 on the "Manager Desktop" dossier (CEPD 2004-307).