



JOAQUIN BAYO DELGADO  
ASSISTANT SUPERVISOR

Mr Philippe RENAUDIÈRE  
Data Protection Officer  
European Commission  
BRU BERL 08/180  
B - 1049 BRUSSELS

Brussels, 28 June 2007  
JBD/SLx/ktl D(2007) 1051 C 2007-357

Dear Mr Renaudière,

On 1 June 2007 you notified personal data processing operations relating to the "Gestel" and "e-Gestel" procedures to us for prior checking. Having looked at this in depth, we must conclude that as things stand at present, and considering the processing as notified to us, it is not subject to prior checking by the European Data Protection Supervisor.

The processing was submitted to us for prior checking on the basis of Article 27(1) and (2)(b) of Regulation (EC) No 45/2001.

In an earlier opinion <sup>1</sup> the EDPS stated that, in this context, prior checking should be carried out under Article 27(1) if there is a breach of confidentiality of communications, which is not the case here. As the information note on e-Gestel states, "ADMIN/Security Directorate staff of course do not have access to the content of conversations".

Furthermore, prior checking would be justified under Article 27(2)(b) if the processing operations were intended to evaluate personal aspects such as behaviour or conduct. However, that is not the case for the processing operations under consideration here. In fact, as stated in the notification, human resources staff ("assistants") have access to communications data from which data of a personal nature have been removed, and the DG staff who act as "payers" receive communications summaries for the extensions for which they are responsible, not for evaluation purposes but for payment purposes (budget). The purpose of the processing is therefore technical and budgetary, not the evaluation of the conduct of members of staff, and so it does not in itself present any specific risks justifying prior checking.

The data is only evaluated if a procedure is launched to look into abuse of the telephone system and, where necessary, in a subsequent administrative investigation. However, that

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

procedure is not the subject of this notification. Nor was it mentioned in the notification on internal administrative inquiries and disciplinary procedures within the European Commission, which did give rise to an EDPS opinion<sup>2</sup>.

We therefore find that the processing operation as described in your notification does not require prior checking. However, if you feel that there are nevertheless factors justifying prior checking, we are prepared to review our position. Moreover, should the processing be used for purposes other than for budgetary purposes, in particular to assess the use made of fixed line telephones, the EDPS would then like to carry out prior checking on the basis of additional information received to that effect.

Without prejudice to the above, on the basis of the notification received, we have examined some aspects of the notification and would like to comment on the period for which data will be retained.

Regarding data retention, the notification mentions an "on line" storage period of six months + the days in the current month to date. This retention period complies with Article 37(2) of Regulation (EC) No 45/2001. However, the notification mentions the retention of data for one year in the Data Centre's servers for reasons related to the proper management of the telephone network: the production of statistics, checking of invoices, searches in the history for technical reasons, and for any investigations requested by the authorised departments. Data is also kept for two years for technical and financial reasons, only being available to the staff of unit DIGIT C3 for statistics, studies of the development of the network, and the verification of invoices.

The EDPS would recall the principles of the retention of traffic data as set out in Article 37 of Regulation (EC) No 45/2001: Article 37(1) states that traffic data relating to users should be erased or made anonymous upon termination of the call or connection. Article 37(2) allows the traffic data appearing on a list agreed by the EDPS to be retained for up to six months for the purpose of telecommunications budget and traffic management, including the verification of authorised use of the telecommunications systems. The data may only be kept beyond that six-month period if such retention is necessary to establish, exercise or defend a right in a legal claim pending before a court. Moreover, Article 20 of Regulation (EC) No 45/2001 provides for exemptions from the principle of immediate erasure in certain specific cases, such as where necessary to safeguard the prevention, investigation, detection and prosecution of criminal offences or to safeguard an important economic or financial interest of a Member State or of the European Communities. However, these exemptions are to be regarded as exceptional.

Data may therefore only be retained beyond the end of the six month period for statistical purposes or for studies of the development of the network if that data has been rendered anonymous. Moreover, retention for the purpose of verifying invoices based on the Financial Regulation must also take account of the maximum retention period of six months. This was also incorporated in the Regulation implementing the Financial Regulation<sup>3</sup>, which states that "Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as

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<sup>2</sup> See the EDPS Opinion of 20 April 2005 on the notification for prior checking relating to internal administrative inquiries and disciplinary procedures within the European Commission (Case 2004-187).

<sup>3</sup> Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply". The EDPS therefore considers that the policy on retaining data in the context of e-Gestel must be reviewed.

Finally, Article 37(2) of Regulation (EC) No 45/2001 refers to a list of traffic data agreed by the EDPS. The EDPS will decide on the list of traffic data as mentioned in the notification at a later date.

Yours sincerely,

Joaquín BAYO DELGADO