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Brussels, 17 juillet 2007  
JBD/JL/ktl D(2007)1150  
C 2007-0439

**Subject: Mobile telephony**

Dear Sir,

After having reviewed the notification on invoicing for private use of service mobile phones (your reference: DPO/MS/07-18; EDPS case number: 2007-439), we have concluded that **the case is not subject to prior checking** by the EDPS.

The processing was submitted under Article 27 of Regulation (EC) No 45/2001 (hereinafter "the Regulation"). In earlier cases <sup>1</sup> the EDPS pointed out that in this context a prior check should be carried out under Article 27(1) if there has been a breach of confidentiality of communication, which is not the case here. The system is designed to monitor the records of mobile telephone calls but not to record communications.

Prior checking would be justified under Article 27(2)(a) if the processing were related to suspected offences, offences, criminal convictions or security measures. That is not the case of the processing in question since if disciplinary or other measures were adopted further to inadequate or excessive use of the telephone they would be so on the conclusion of disciplinary proceedings, which would themselves be subject to separate prior checking <sup>2</sup>. The possible checking of abusive use of the telephone system and any subsequent administrative enquiry are not, however, the subject of this notification. Nor was any such

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<sup>1</sup> "Invoicing for private use of service GSMs" (OLAF) (EDPS case number: 2007-204); "Telephony" of the European Economic and Social Committee and the Committee of the Regions (EDPS case number: 2006-508).

<sup>2</sup> EDPS opinion of 8 June 2006 (EDPS case number: 2006-99).

checking mentioned in the notification of the Court of Justice disciplinary procedures that was the subject of the aforementioned prior checking.

Prior checking would, however, be justified under Article 27(2)(b) if the operations were intended to evaluate personal aspects relating to the data subjects. That is not, however, the case of the processing at issue since it covers the allocation of mobile telephones, the administration of communications and the invoicing of certain amounts for the use of mobile phones for private purposes.

In fact, the processing consists in operations which are technical or budgetary in nature and in itself involves no specific risks which would justify prior checking under Article 27(1) or (2).

In the light of the foregoing considerations **we have decided to close the case**. However, if you believe that there are other factors that justify prior checking of the processing that is the subject of the notification, we are prepared to review our position. Furthermore, if the processing were subsequently to serve purposes other than budgetary, and in particular assessment of the use made of mobile telephones, the EDPS would wish to carry out prior checking on the basis of the additional information received in that connection.

In addition, the EDPS would point out that he will shortly rule on the list of traffic data provided for in Article 37(2) of the Regulation.

**Without prejudice to the foregoing considerations**, on the basis of the notification and the annex thereto **we have scrutinised certain aspects of the processing operation**. The EDPS finds that the information made available to the data subjects contains all the particulars stipulated in Articles 11 and 12 of the Regulation. Furthermore, data processed in the context analysed are communicated only to recipients who need them to perform tasks carried out in the public interest within the meaning of Article 5(a) of the Regulation. The EDPS also considers the retention policy adequate and in accordance with the provisions of the Regulation.

Yours faithfully,

Joaquín BAYO DELGADO