



JOAQUIN BAYO DELGADO  
ASSISTANT SUPERVISOR

Mr Vincenzo SALVATORE  
Data Protection Officer  
European Medicines Agency (EMA)  
7 Westferry Circus  
Canary Wharf  
UK - London E14 4HB  
UNITED KINGDOM

Brussels, 31 August 2007  
JBD/SM/ktl D(2007)1304 C 2007-0499

**Subject:** Notification for prior checking of the processing of personal data for the purposes of administering the Foreign and Commonwealth Office (FCO) card

**Your ref:** EMEA/361372/2007

Dear Mr Salvatore,

Thank you for your notification for prior checking of the FCO card. Having studied the information provided in the notification, the EDPS is of the opinion that the administration of FCO cards does not fall to be prior checked under Article 27 of Regulation 45/2001.

Article 27(1) provides that "*Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data Protection Supervisor*". Article 27(2) provides some examples of processing operations which are likely to present such risks. As this list is not exhaustive, the EDPS has included some specific cases falling under Article 27(1) and not mentioned in 27(2), such as biometrics and breach of confidentiality.

The notification of the FCO card states that the specific risk is in the fact that a photo of the data subject will reveal ethnic origin and there may be other information about the data subject's career which may present a risk to his/her rights and freedoms.

The EDPS is of the opinion that the processing of a photograph for the purposes of administering the FCO card is not, in itself, a specific risk to the rights or freedoms of the data subject which would necessitate a prior check. Indeed, although photographs are biometric data, when used by themselves without other data of that category, do not pose specific risks. As to the fact that they reveal ethnic origin and thus come under Article 10 of the Regulation,

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Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : [edps@edps.europa.eu](mailto:edps@edps.europa.eu) - Website : [www.edps.europa.eu](http://www.edps.europa.eu)

Tel.: 02-283 19 00 - Fax : 02-283 19 50

it should be borne in mind that not all sensitive data as defined in Article 10 are taken as a criterion in Article 27(2)(a)

In addition, the processing of information concerning the data subject's prior career is not, according to the notification, used for evaluation of any personal aspects of the data subject, which would fall under Article 27(2)(b). As such, and in the absence of further information to the contrary, the EDPS is of the opinion that the processing of information relating to the data subject's career does not present either a specific risk which would necessitate a prior check.

However, there is one issue which is raised in the notification which you may wish to address. It is stated that all data are held until after the data subject is deceased. Article 4(1) of Regulation 45/2001 states that personal data "*must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*". In this case, while this operation does not fall to be prior checked, I would recommend that EMEA examine the retention period in relation to the FCO card to see how long the data will actually need to be retained for, and review the policy on retention accordingly. I would appreciate if you could inform us of the outcome.

Should you have any further questions about any issue raised in this letter, please do not hesitate to contact me.

Yours sincerely,

Joaquín BAYO DELGADO