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Ms Cecile MARTEL
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JBD/GH/ktl D(2007)1607 C 2007-561

Subject: Notification for prior checking of the processing of personal data of EMCDDA Staff in order to grant education allowance

Dear Ms Martel,

Thank you for the notification for prior checking submitted on 13 September 2007 concerning the processing of personal data of EMCDDA Staff. These data are collected to ensure that EMCDDA Staff is granted education allowance(s) in accordance with the provisions set forth in the Staff Regulation.

Article 27(1) of the Regulation (EC) 45/2001 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 the purposes shall be subject to prior checking by the European Data Protection Supervisor*". Article 27(2) of the same Regulation contains a list of processing operations which are likely to present specific risks. It is necessary to determine whether the processing operation concerning the education allowance falls within the purview of these provisions.

Article 27(2)(d) subjects to prior checking any "processing operation for the purpose of excluding individuals from right, benefit or contract". The notification refers to the above provision as the legal basis of prior checking.

This provision is aimed at processing operations whose specific and sole purpose is to exclude persons from a right, benefit or contact, such as black lists. We are of the opinion that this is not the case here even if the processing operation could possibly result in excluding an individual from a right.

The purpose of the processing is to ensure that an individual is granted the education allowance in accordance with the applicable rules, but not to exclude him/her by the controller from any right, benefit, or contract. Certainly the rules may cause - if the individual's situation does not meet the criteria required - the eventual possibility of the exclusion from receiving the education allowance.

The entitlement to this allowance is based on objective criteria set in the Staff Regulations (as indicated in the application form for education allowances) and the controller exercises discretion neither on the entitlement nor on the exclusion and merely applies the law as it is set forth.

We have also examined Article 27(2)(a),(b),(c) and have reached the conclusion that these provisions do not apply either and no other specific risk can be identified.

Therefore, after analysing the processing operation described in the notification, we came to the conclusion that it is not subject to prior checking by the EDPS. However, if you believe there are other factors justifying prior checking of the above data processing, we are of course prepared to review our position.

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

Thank you for your cooperation,

Yours sincerely,

Joaquín BAYO DELGADO