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JBD/DH/ktl D(2008)1837 C 2008-721

Subject: Access Management System JRC-IE in Petten

Dear Mr Renaudière,

I refer to the prior checking notification on the processing operations on personal data concerning "Access Management System JRC-IE in Petten" received from the Joint Research Centre (2008-721).

Article 27(1) of the Regulation subjects to prior checking by the EDPS 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. Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks in the above sense.

Notification

In the notification submitted to the EDPS, the access control in the IE Petten is described as a collection of sub-processes, whose main purpose is to restrict the IE access to facilities and sensitive areas for non-authorized individuals for security and safety reasons. The notification underlined that the processing operation fell under article 27 (2)(a): processing of data relating to security measures.

EDPS analysis of the processing operations

As it is not the first time that a similar processing operation on access control is notified by the JRC¹ the EDPS would like to draw attention to the following aspects:

Article 27(2)(a) establishes that processing operations relating to "*health and to suspected offences, offences, criminal convictions or security measures*" shall be subject to prior checking by the EDPS.

Contrary to the wording of the notification, the EDPS has been interpreting constantly the notion of "security measures" in article 27(2)(a) as not relating to the physical protection and security of buildings and staff, but rather as the measures taken as regards individuals in the context of a criminal (or administrative) procedure (in French 'mesures de sûreté'). Indeed security measures are related to the "suspected offences, offences, criminal convictions" quoted in the same Article.

The "security measures" described in Article 10 of Regulation 45/2001 have to be interpreted in the same way. Security measures are related to the "offences, criminal convictions" quoted in the same Article and refer to measures taken as regards individuals in the context of a criminal (or administrative) procedure.

The EDPS considers that processing operations about "access control management" are subject to prior checking only when they present specific risks to the right and freedoms of data subjects by virtue of their nature, their scope or their purposes according to Article 27.1. This is the case, for instance, when the processing operations uses biometric matching systems to manage access control. The EDPS views are mainly based on the nature of biometric data which are highly sensitive, due to some inherent characteristics of this type of data. For example, biometric data change irrevocably the relation between body and identity, in that they make the characteristics of the human body 'machine-readable' and subject to further use. In addition to the highly sensitive nature of the data, the EDPS also notes that possibilities of inter-linkages and the state of play of technical tools may produce unexpected and/or undesirable results for data subjects.

Therefore, if JRC-IE intends to implement biometric matching systems in the access management processing, the EDPS will have to be notified in due course and all the technical aspects of the processing regarding the biometric implementation should be clearly explained in the notification for prior-checking. As the term prior checking implies, the checking by the EDPS has to be carried out before the start of the processing operation.

Finally, the EDPS would like to insist on the fact that, regardless of the need or not for a prior check, the processing operation should be in compliance with Regulation 45/2001. This means for instance that the conservation period should be revised in compliance with Article 4.1.e.: "*Data should 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 (...)*". In similar cases, the EDPS has considered that the necessary retention period was of three months at a maximum.

¹ "Access control at JRC-IPTS in Sevilla", case number 2007-375, published on 17 July 2007, "Access control at IRMM in Geel", case number 2007-376, published on 16 July 2007, see EDPS website : <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/pid/72#2007>

Conclusion

After careful analysis of the available information, the EDPS concludes that the present processing operation as described in the notification is not subject to prior checking under Article 27 of Regulation (EC) No 45/2001.

The EDPS would appreciate if you could share this consideration with the controller and inform us of the follow-up given to the recommendation on data conservation within three months of receipt of this letter.

We, of course, remain available for any further consultation on the matter.

Yours sincerely,

(signed)

Joaquín BAYO DELGADO