



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mrs Liia KAARLOP
Data Protection Officer
European Training Foundation (ETF)
Villa Gualino - Viale Settimio Severo 65
10133 Torino
Italy

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GB/MV/ktl/ D(2009)348 **C 2009-0036**

Subject: Site management and security at ETF

Dear Mrs Kaarlop,

I refer to the prior checking notification on the processing operations on personal data concerning "Site management and security" received from the European Training Foundation (ETF) (case 2009-0036).

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 purposes of the "site management and security" at ETF are described as follows:

- to ensure that ETF staff, information, buildings and equipment are adequately protected against threats to their security;
- to maintain the level of security at an acceptable level for the management and staff;
- to ensure that ETF management fulfils its obligations of "Duty of Care" to staff on site.

Moreover, site management aims at providing support to the whole of ETF in the fields of: building maintenance and repairs, management of conference rooms, office space allocation, inventories, cleaning, recycling and waste, mailing, vending machines, while respecting the priorities set on health, safety and ergonomics as well on budget issues.

The notification underlined that the processing operation falls under article 27 (2)(a) of Regulation 45/2001 as it relates to security measures.

EDPS analysis of the processing operations

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.

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 particular 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(5) of Regulation 45/2001 have to be interpreted in the same perspective. 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 related to administrative) procedure.

Regardless of the above position, I would like to point out that all other provisions of Regulation (EC) No 45/2001 are incumbent upon the data controller.

This means, for instance that the conservation period (currently under definition) should be established 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 (...)*". Therefore, such conservation should not exceed what is necessary for the purpose of the processing by ETF.

Moreover, information should be provided to the persons concerned under Article 12 of Regulation (EC) No 45/2001 as to the identity of the controller, purposes of the processing operation, categories of personal data concerned, recipients of personal data, right of access and rectification. For reason of fairness towards data subjects it is advisable to supply information to the persons concerned on the legal basis, the time limits for storing the personal data and the right to have recourse to the EDPS. The EDPS accordingly requests that appropriate information should be provided to the persons concerned.

Conclusion

In the light of the available information, the EDPS finds no reason to believe that the processing operation presents a specific risk to the rights and freedoms of the data subjects in the sense of Article 27 of Regulation 45/2001.

In conclusion we believe that the processing operation does not qualify for a prior checking and the EDPS decided to close the case, unless you can give us specific grounds to reconsider this position.

The EDPS would appreciate if you could share this consideration with the controller and inform us of the suggested data conservation period and of supplying the adequate information to the data subjects within three months of receipt of this letter.

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

Yours sincerely,

(signed)

Giovanni BUTTARELLI

