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Mr Philippe RENAUDIÈRE
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European Commission
BRU BERL 08/180
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GB/SP/kl/ D(2009)1272 C 2008-0771

Dear Mr Renaudière,

I refer to the prior checking notification on the processing operation on personal data concerning "Presence registration of staff at JRC-IRMM in GEEL" which you notified to the EDPS on 16 December 2008 (2008-771).

This notification was sent for mini-prior checking alongside the processing "SYSPER 2 - Time Management module¹ (TIM)" which has already been analysed (case 2007-63), and was also linked to another notification about "Access control at JRC IRMM in GEEL" dealt with by the EDPS².

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

The purpose of the processing is to facilitate the flexitime registration for IRMM staff by taking from the local access control system (access control at JRC) the personal number, entrance data and exit data and pre-loading the entrance/exit data in flexitime (Sysper 2 TIM) using the personal number. The notification underlined that the processing operation falls under article 27.2.b: processing operations intended to evaluate personal aspects relating to data subject.

TIM, in which flexitime is included, was subject to prior checking because the whole system, structurally, deals with health-related data in some modules of TIM (27.2.a). In addition, some aspects of evaluation are present insofar as the system evaluates the time and attendance at work as well as leave (27.2.b).

¹ Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on "SYSPER 2: module Time management" (case 2007-0063).

² Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on "Access control at JRC IRMM in GEEL" (case 2008-0721).

The information system loads presence data, by reading a list from the access control system. The list contains entries for IRMM staff who want their data to be loaded into Sysper2/TIM. The data subject gives his unambiguous consent by completing a form. If data are already present in Sysper2/TIM, they are not overwritten. The data loaded can be modified as if they were entered manually, according to the rules applicable in Sysper2/TIM. Neither data nor logs or files are stored by the information system during the process.

This means that there is no evaluation as such during this processing.

Moreover, in the framework of his analyses related to the flexitime processing operations, the EDPS has established that besides specific conditions to be respected, a flexitime system is not subject to prior checking. The EDPS recognises that technologies such as RFID represent a specific risk, for which Article 27.1 applies, and which makes the system prior checkable. However, in this case, the controller has confirmed that no such technologies are applied since the JRC badges have no RFID chips and are not programmable.

For all these reasons, 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) 45/2001.

Although within the context of this processing, the JRC has complied with many aspects of Regulation (EC) No 45/2001 some improvements can be made and the EDPS recommends that the JRC implements the following:

1/ the privacy statement should be modified in the last paragraph. A complaint can not only be lodged with the EDPS in the context of a dispute - data subjects can have recourse to him at any time. The language of the actual paragraph 8 of the privacy statement should reflect the regulation (see Article 11.1.f.).

2/ in the comments of the notification, it is stated that a simplified version of the software of DG INFSO is used for doing the pre-load. The EDPS reminds the JRC to put in place the recommended and according security measures outlined in his opinion on the DG INFSO flexitime³.

Should you provide us with new elements regarding this processing of flexitime, the EDPS remains at your disposal. I ask you to kindly inform the controller of this opinion and inform us of the follow-up given to the above recommendations within three months of receipt of this letter.

Yours sincerely,

(signé)

Giovanni BUTTARELLI

³ Opinion on a notification for Prior Checking received from the Data Protection Officer of the European Commission on " Flexitime - specific to DG INFSO" (case 2007-0218) of 19 October 2007.