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Dear Mrs Ribeiro,

I am contacting you regarding the notification on the "Local Time Accounting System" at JRC-ITU (2010-0292).

After examining the data processing operations described in the prior checking notification and after receiving the requested additional information from the data controller, the EDPS has reached the conclusion that this dossier is not subject to its prior checking.

On 22 August 2008, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Commission a notification for a prior checking relating to the processing operation of "ZEUS - Flexitime at JRC-ITU Karlsruhe" (case 2008-0486) on the basis of article 27.1 of Regulation (EC) No 45/2001 (hereinafter "The Regulation").

In a letter of 12 November 2008, based on the elements of the notification and further information received, the EDPS concluded that the processing operation was not subject to prior-checking. Indeed, the EDPS considered that the purpose of the SYSPER 2 Time Management Module (2007-0063) applicable to Commission services was not changed with this specific processing operation. Moreover, as foreseen in the notification which was submitted, the sole purpose of the system was to record work time (the Flexitime data was used by the direct superior or head of unit as a reference for validating a request for recuperation).

However, the EDPS made some recommendations in the light of the implementation of the processing operation. The recommendations related to the conservation period and the processing of data of external staff. The EDPS also underlined that should new elements arise, he would be available to re-examine the case.

On 16 April 2010, the DPO of the Commission submitted for prior-check a new notification on the "Local Time Accounting System" at JRC-ITU. The DPO presented it as a

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complementary prior-checking notification of the above mentioned case. The reasons presented by the DPO were that, in the respect of Article 27.2.b. of the Regulation, there were further purposes of processing foreseen and there were also consequences attached to those new purposes, especially in terms of retention of data. On 2 June 2010, the EDPS sent a request for further information on the case. The data controller replied on 15 July 2010.

Change of purposes

According to the notification, the Local Time Accounting System (hereinafter "LAS") is a management system for the recording of work time at ITU which facilitates the differentiation of absences/presences, not explicitly covered in SYSPER 2, but which need detailed recording for their financial implications on compensations due (such as special leave and special allowances) in the following cases:

1. Accident insurance [Unfallversicherung] within the grantholder scheme
2. Allowances for arduous working conditions
3. Documentation of absences/presences with regard to:
 - a) Staff on mission in a controlled area in other nuclear plants
 - b) Head of Emergency Response [Einsatzleiter]
 - c) Radiation protection staff on Stand-by duty [AGS Bereitschaftsdienst]
 - d) Fire & Rescue Team
4. Flexi-time
5. Time management for external companies.

On the basis of the information submitted, the EDPS analysed the grounds for prior-checking. Article 27.2 contains a list of processing operations likely to present such risks including, in Article 27.2.(a) processing of data "*relating to health*" and Article 27.2.(b) "*Processing operations intended to evaluate personal aspects relating to the data subject*". The Commission submitted the notification under these two provisions.

- As regards Article 27.2.b, the EDPS has analysed the procedure in the Local Accounting System and does not consider that an evaluation would be conducted under the current processing operations. Moreover, the data controller confirmed that it was not the intention to evaluate personal aspects relating to the data subjects with the implementation of the Local Accounting System.

- As regards Article 27.2.a, processing of data relating to health, the EDPS received clarifications that the processing operations need the health data only in the case of one of the data subjects concerned, i.e. regarding data subjects participating in the grantholder scheme. The data are necessary to comply with the German social security system which pays sickness times in the context of the grantholder scheme. The data regarding absences due to sickness/accidents are required for this purpose.

It was also clarified by the data controller that in all the other cases relating to Officials, Temporary staff, Contract agents, Auxiliary agents, Seconded national experts and External contract staff (on demand by the contractor), the absences do not need to be specified. As for the Flexitime, it relates only to working time as such (as already analysed in case 2008-0486).

As a consequence, in the context of the Local Accounting System, there is no processing of health data, except in the case of the grantholder scheme in view of respecting the German law.

Therefore, the EDPS does not consider that the processing operation is subject to its prior checking.

Retention of data

The notification also states the consequences of the modified purposes, as regards the retention of data. These consequences are the following:

- Time recording data of ITU-JRC data subjects, with financial implications, has to be stored for 5 years (or longer in the case of appeals) and
- Time recording data of ITU-JRC data subjects, who underlie the "Deutsches Sozialgesetzbuch", has to be stored for 5 years as well (or longer in the case of appeals).

The EDPS recalls his earlier position that there should be a short period of retention for the purpose of auditing the records of hours worked, which would take account of the system being used (see case 2009-0248). In the case under analysis, the EDPS understands the reasons and justifications behind the longer retention of data. However, he wants to stress that only the data necessary for calculating the financial implications or to comply with the German law should be kept. Therefore, only the administrative data should be subject to this longer retention period.

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 general processing operations remain subject to the general system put in place under Tim/SYSPER 2 management system for most of its parts and therefore needs to comply with the analysis of the EDPS on this system.

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.

(signed)

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Cc : Mr Philippe RENAUDIÈRE, Data Protection Officer of the European Commission
Mr Yves CRUTZEN, Data Protection Coordinator of the Joint Research Centre