



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Claus REUNIS
Data protection officer
European Food Safety Authority
Largo N. Palli 5/a I-43121
Parma
Italy

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GB/RDG/et/D(2012)457 C 2011-1124

Subject: Your consultation concerning EFSA policy for billing individual users of fixed phone calls made for non-work related purposes

Dear Mr Reunis,

Thank you for your consultation under Article 46 of Regulation (EC) 45/2001 (hereinafter the "Regulation") concerning the European Food Safety Agency (EFSA) policy for billing individual users of fixed phone calls made for non-work related purposes ("private calls").

Facts

EFSA intends to introduce a system for billing individual users of fixed office phones for the calls made for non-work related purposes. This policy is described in a draft-document (the "User Policy") which you transmitted to the EDPS along with the request for consultation. The User Policy states that EFSA provides fixed phones to staff for the purpose of assisting them in the performance of their job-related duties. However, the residual use of phones for private purposes is permitted. Staff must identify private calls by pressing the "#0" keys before dialling the external telephone number. Private numbers are thus displayed on the invoice and the cost of the calls will be deducted from the staff salary. For the purpose of billing, users receive invoices and lists of calls made, containing the following data: 1) each call marked as private and identified by the called number, hiding the last three digits; 2) the cost of the call; 3) the date, time and duration of the call.

Legal Analysis

Concerning first the **lawfulness** of the processing, the EDPS considers that the processing at stake can be based on Article 5.a and Recital 27 of the Regulation. Indeed, it can be considered as necessary for controlling costs and for budget management and to this extent it can be considered as necessary for the management and functioning of the EFSA as established by Regulation (EC) No 178/2002.¹

Concerning the **prior-checking** of processing operations relating to telecommunication data, a distinction must be drawn between the processing of data solely for billing and traffic management without any assessment of the individual conduct, on the one hand, and the processing of data with a view to monitoring and assessing individual conduct on the other hand (for instance for detecting excessive or illegal use of telephone by staff). While the former type of processing is not as such subject to prior checking, the latter type of processing is.

The EDPS finds that the User Policy is unclear on this point as it states that "*data related to phone traffic is not used to monitor the conduct or personal aspects of individual phone users, but only for billing and invoicing purposes and for the verification of authorised use of the telecommunication systems of EFSA*" (emphasis supplied). The EDPS notes in this respect that the expression "*for the verification of authorised use of the telecommunication systems*" may actually imply the verification by the controller of the use of such systems by staff members and therefore an evaluation of their individual conduct. From this perspective, the processing operations would fall under Article 27 of the Regulation and should therefore be notified to the EDPS.

However, when questioned on that point, you clarified that the sole purpose of the processing operations in question is billing and budget management and proposed to remove entirely the reference to the "verification of authorised use". In this respect, the EDPS would like to specify that in the event that the Agency would process traffic data for the purpose of verification of the correct use of telecommunication systems this procedure should be notified to the EDPS for prior checking. This is particularly the case for the particular processing carried out in the framework of administrative inquiries and/or disciplinary proceedings (AI&DP). It should be noted that EFSA notification concerning AI&DP, as prior-checked by the EDPS in the context of case 2011-0163, did not include a specific procedure for the verification of authorised use of telecommunication systems. Should EFSA decide to include such a procedure, this notification would need to be modified and staff adequately informed.

With regard to the **data quality** principle, the User Policy states that users receive non-itemised invoices containing the following data: 1) each call marked as personal and identified by the called number, hiding the last three digits; 2) the cost of the call; 3) the date and time and duration of the call. The template submitted to us however contains also other data, which the EDPS does not consider in principle as necessary for the purposes of billing private phone calls. In particular, we refer to the identity of the persons called and the list of unanswered calls. The EDPS recommends therefore removing these data fields from the invoice template.

¹ See, e.g., EDPS Opinion on a notification for prior checking received from the DPO of the European Central Bank on investigation procedures regarding the use of office telephones, 13 February 2007 (Case 2004-0271); EDPS Opinion on a notification for prior checking received from the DPO of the European Ombudsman on verification of telephone bills, 14 May 2007 (Case 2007-0137).

Having regard to your specific request under Article 37(2) of the Regulation, it should be noted that the EDPS is currently working on e-monitoring guidelines, which will be finalised in few months. These Guidelines will also include a general list of traffic data which can be processed for the purposes of Article 37(2) of the Regulation. As regards the conservation of data, the time limit for storing the data under the User Policy is fixed in one month. The EDPS considers this period as adequate for the purpose of Article 37(2).

Concerning the **transfer of data**, we recommend specifying or clarifying in the User Policy that *only* authorised persons from the competent department (IT or budget as the case may be) shall have access to the bills containing details of private phone calls and for the sole purpose of billing and traffic management. All authorised persons should be reminded that the personal data in question shall be used only for the specific purposes for which they were collected.

Finally, as regards **information** to the data subjects, EFSA must provide the required information to the staff pursuant to Article 11 and 12 of the Regulation. In this regard, it should be noted that the User Policy does not contain all the information required under those Articles. In particular, the following information should be added: 1) the identity of the controller, 2) the recipients or categories of recipients of the data, 3) the existence of the right to access and rectify the data, including procedures for exercising such rights (for example in case of disagreement about the calls listed as personal), 4) the right to have recourse at any time to the EDPS. With a view to ensuring that such information effectively reaches the data subject, the EDPS recommends sending the document to current staff by e-mail and publishing it on the EFSA intranet site, providing copy of this document directly to any new staff member and discussing the User Policy in any induction seminar organised by EFSA.

Conclusions

In light of the above observations, the EDPS concludes that the processing is compatible with the Regulation as long as the following recommendations are complied with:

- EFSA should remove in the User Policy the reference to the verification of authorised use of the telecommunication systems of EFSA, as the purpose of the policy is not to monitor or evaluate individual conduct;
- EFSA should remove from the invoices received from the telecommunications company the data fields relating to the identification of the called persons and unanswered calls;
- EFSA should specify that only the authorised persons from the competent department (IT or budget as the case may be) shall have access to the bills containing details of private phone calls and for the sole purpose of billing and budget management. All authorised persons should be reminded that the personal data in question shall be used only for the specific purposes for which they were collected;
- EFSA should provide the current and future staff with adequate information pursuant to Articles 11 or 12 of the Regulation as described above.

We appreciate to be informed of the follow-up to these recommendations within three months from receipt of the present letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI