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Mr Marc SEGUINOT
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Brussels, 7 June 2012
GB/RDG/mk D(2011)1199 C 2011-0986

Re: **Notification for prior checking concerning the ‘Recording of the telephone line reserved for calls to the dispatch centre for technical services used in the European Commission buildings in Luxembourg (12 or 32220)’**

Dear Sir,

We are writing to you in response to the notification for prior checking received by the European Data Protection Supervisor (EDPS) on 25 October 2011 with regard to the processing of personal data concerning the ‘Recording of the telephone line reserved for calls to the dispatch centre for technical services in the European Commission buildings in Luxembourg (12 or 32220)’ (2011-0986).

In accordance with Article 27(4), the opinion of the EDPS shall be delivered within two months following receipt of the notification. The period for delivering the opinion was suspended from 9 December 2011 to 9 January 2012 and from 19 January to 24 May by requests for further information. The period was also suspended from 30 May to 6 June 2012 in order to allow the controller to submit his comments on the draft opinion. The EDPS will therefore deliver his opinion no later than 7 June 2012.

The procedure in question concerns the recording by the Office for Infrastructure and Logistics in Luxembourg (OIL) of telephone calls made on line 12 or 32220. In the event of problems relating to safety or technical matters, Commission staff may call the number in question to request services in the buildings located in Luxembourg. For problems relating to the safety of property and persons (illness, discovery of a fire or theft), staff may call 12. For problems relating to technical faults, they may call 32220. These calls are automatically recorded by the OIL in order *inter alia* to carry out *a posteriori* checks on the content of the calls and operational events.

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The EDPS has already given its opinion several times on notifications for prior checking concerning the recording of service telephone lines, which, at least in part, have similar characteristics to the present notification. For example, on 22 May 2006, the EDPS adopted an opinion on recording the line reserved for emergency and security calls in Brussels (88888) (2006-0002). In addition, on 19 November 2008, it adopted an opinion on recording the line reserved for calls to the dispatch centre for technical services in European Commission buildings in Brussels (2008-0491). Given the similarity between these procedures, the majority of the comments and recommendations apply, by analogy, to the present case. Therefore, rather than reiterating those comments and recommendations in their entirety, in this letter we will merely highlight the main differences which could affect the processing of personal data. Copies of those opinions are annexed for your information.

- **Purpose of the processing**

This notification concerns the recording of calls to lines 12 (safety of property and persons) and 32220 (technical faults). In this context, recordings may be listened to *a posteriori* by the recording operators (staff of the Security Directorate and the Health and Safety at Work section of the OIL) to ensure that they were properly understood. Recordings also enable operational events to be checked *a posteriori* and information or evidence to be adduced in connection with the files which relate to health and safety issues and related investigation files. The objective of such *a posteriori* checks is not to evaluate the work of the staff concerned.

- **Legal basis**

Article 5(a) of Regulation (EC) No 45/2001 (the ‘Regulation’) stipulates that personal data may be processed only if processing is ‘necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof’. The notification states that this procedure is necessary for the accomplishment of tasks assigned to the OIL, in particular those which guarantee secure conditions for the persons, information and assets of the Commission in its buildings in Luxembourg. In so far as they respond to real and unavoidable requirements in the context of the Commission’s security procedures, the recordings may be considered to be necessary within the meaning of Article 5(a) of the Regulation.

The notification identifies as its legal basis the Commission Decision of 6 November 2002 establishing the Office for infrastructure and logistics in Luxembourg C(2002)4369. Even though these recordings may generally be considered to be covered by that Decision as measures necessary for the purpose of implementing rules relating to security, it would be preferable to reinforce that general legal basis by means of a specific legal basis, such as a sufficiently well-publicised administrative act of normative value, for example an official decision at the appropriate administrative level¹.

¹ See for example in this regard the Opinion of the EDPS on the recording of the line reserved for emergency and security calls in Brussels (88888) (2006-0002), p. 4, which, in support of the lawfulness of the processing, refers to the decision by the Security Committee authorising a system for the permanent recording of calls to the Security Office and to the technical unit in the event of an emergency.

- **Transfer of data**

The notification states that only staff from the Security Directorate and the Health and Safety at Work section of the OIL may have access to the data in the event of an investigation. More specifically, the following may have access to the data: the OIL Head of Service, the Heads of Units Oil.02 (Health and Safety at Work), OIL.03 (General Maintenance and Facility Management) and HR DS.01 and also any person designated by the Appointing Authority or the Head of Service in connection with an administrative enquiry. These are therefore solely staff covered by the Staff Regulations, excluding external service providers and sub-contractors.

In connection with this, the EDPS wishes to point out that Article 7 of Regulation No 45/2001 provides, *inter alia*, that personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient. In the present case, that condition seems in principle to have been observed, even though a precise evaluation should be carried out on a case-by-case basis. For the purposes of Article 7(3), we also recommend that recipients be informed that personal data are to be processed only for the purposes for which they were transmitted.

- **Retention of data**

Whilst Opinions 2006-0002 and 2008-0491 stated that data may be retained for three months, the present notification refers to a period of six months. In connection with this, it should be emphasised that the notification relating to Case 2008-0491 itself considered a period of six months as 'excessive compared with other similar services'. In the light of the above and in the absence of any specific differences between the two procedures which might justify this longer period, in this case the EDPS recommends that data be retained for three months (provided that the data in question are not the subject of legal proceedings currently in progress).

- **Conclusion**

The EDPS recommends that the Commission adopts specific measures aimed at applying the recommendations concerning the processing under examination. In particular, the EDPS recommends that the controller:

- informs persons having access to recordings that, pursuant to Article 7(3), personal data are to be processed only for the purposes for which they were transmitted;
- retains data for three months (provided that the data in question are not the subject of legal proceedings still pending).

We would be grateful if you could provide the EDPS with all the relevant documents within three months of the date of this letter to check that the recommendations have been duly implemented.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Philippe RENAUDIÈRE, Data Protection Officer, European Commission

Annexes

- Opinion of 22 May 2006 on the notification for prior checking received from the Data Protection Officer of the European Commission concerning recording of calls on the line reserved for emergency and security calls in Brussels (88888)

- Opinion of 19 November 2008 on the notification for prior checking concerning 'Recording the line reserved for calls to the dispatch centre for technical services in European Commission buildings in Brussels' (Case 2008-491)