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ASSISTANT SUPERVISOR

Mr Udo HELMBRECHT
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correspondence

Dear Mr Helmbrecht,

On 14 October 2013 we were notified of a personal data processing operation relating to ENISA staff mobile phone bill payment (personal calls). Having examined your notification, we are of the view that the present processing is not subject to prior checking by the European Data Protection Supervisor ("EDPS").

The EDPS considers electronic communications (and in particular the processing of telephone records) to be subject to prior checking under three main cases: if there is a breach of confidentiality of communication; if the processing relates to suspected offences, offences or security measures; or if the processing is intended to evaluate personal aspects relating to the data subject. This means that not all electronic communication systems are necessarily subject to prior checking. Indeed, it is noted that access to e-communications data for the purposes of administrative enquiries and disciplinary proceedings has already been notified by ENISA under case reference 2013-0715, with the EDPS Opinion issued on 1 October 2013.

In the present case, it appears that the personal data in question are processed only to ensure the payment of private phone calls, i.e. for billing purposes. Nothing in the notification indicates that the processing is aimed at processing data relating to offences or evaluation. At the same time, the processing does not appear to violate the confidentiality of communications, as certain traffic data are solely processed in order to allow data subjects to identify their private calls with no interference with the content of the communications. In other words, the purpose of the notified processing is budgetary, and does not relate to the evaluation of staff conduct. This corresponds to an established line of EDPS decisions.¹

¹ See, e.g., EDPS non prior-check letters 11 December 2012, C2012-0917 (ETF Telephone Use); 29 March 2007, C2006 0507 (ECSC Telephony); 25 April 2007, C2007-0204 (OLAF Service GSMs); 23 May 2007, C2004-0302 (EIB Fixed

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It is for the above reasons that the EDPS has concluded the present processing is not subject to prior checking. Should you have any doubts, we remain at your disposal for further consultation on these matters.

Without prejudice to this decision, we have examined some aspects of the processing on the basis of the notification received, and would like to comment on the following points:

- 1) The notification specifies that data subjects are provided with a data protection notice informing them of their rights, although it is not clear how this is communicated to them. The EDPS advises ENISA to notify staff individually, for instance by e-mail, with the information required in Articles 11 and 12 of the Regulation. The privacy statement should also be published on the Intranet.
- 2) ENISA has previously confirmed (in case 2013-0715) that e-communications data will be erased or made anonymous as soon as possible, and no later than six months after collection, unless for legal claims pending before a court, in accordance with Article 37 of the Regulation. In the current case, ENISA has stated that data processed under the billing procedure will be retained for a maximum period of seven years for financial audit purposes. However, ENISA should only retain the information that is strictly necessary for audit purposes, to ensure compliance with Article 37 of the Regulation². All other data should be deleted as soon as possible.
- 3) ENISA could instruct the telecommunications provider (as far as possible) to restrict the categories of data transmitted periodically together with the related invoices. For example, the last three digits of any numbers called may be edited to ensure privacy.

In the context of the follow-up procedure, please inform the EDPS of the concrete measures adopted based on the specific recommendations of this note within a period of three months.

Should you have any questions or requests for clarifications, please do not hesitate to contact us.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Ms Ulrike LECHNER, *Data Protection Officer - ENISA*
Mr Kostas MOULINOS, *Deputy Data Protection Officer - ENISA*

Telephony)28 June 2007, C2007-0357 (Commission Gestel, e-Gestel).

² See Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union. Article 48 on the “Keeping of supporting documents by authorising officers” states: “...Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data”.