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Dear Ms López Ruiz,

Thank you for your letter of 20 May 2014 regarding the publication of photographs of administrative staff on the intranet site of the General Secretariat of the Council (GSC). In your letter, you ask whether the proposed changes present any risks within the meaning of Article 27 of Regulation (EC) No 45/2001 ('the Regulation') and should therefore be subject to prior checking. We have treated this question as a consultation under Article 27(3) of the Regulation.

Facts

Currently, it is not obligatory for staff photographs to be published on the Council's intranet site ('DOMUS'). It is up to each member of staff to choose whether or not they wish their photograph to be published on that site, which can be viewed by anyone who has access to the Council's intranet.

It has been proposed to make the publication of photographs of administrative staff obligatory. The reason given by the GSC is that the administration is a 'customer service' and, for the purposes of providing a better service, it is important that other members of staff can put a face to the name of the person responsible for processing their file.

Legal analysis

Article 27(2) lists the specific risks which are subject to prior checking.

Article 27(2)(a) refers to the processing of certain categories of sensitive data. The processing operation in question does not appear to involve such categories of data.¹

¹ Data which reveal racial or ethnic origins, in particular, are not included in that list. In any event, the EDPS does not consider photographs to be that category of data; see the letter from the EDPS in response to a consultation on a similar processing operation in Case 2013-0717 and the Opinion of Working Party 29 on facial recognition, available at: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2012/wp192_en.pdf, p. 5.

Furthermore, the data are not intended to evaluate personal aspects relating to the data subjects (Article 27(2)(b)).

The processing in question does not allow linkages which are not provided for in legislation, (Article 27(2)(c)), nor is it aimed at excluding individuals from a right, benefit or contract (Article 27(2)(d)).

Therefore, **the processing operation described is not subject to prior checking.**

Nevertheless, the EDPS points out that it is important to have a **solid basis for the lawfulness of the processing** and that the Regulation's other provisions must be complied with.

The grounds for lawfulness are those laid down in Article 5 of the Regulation. The grounds in Article 5(b) to (e) are clearly not applicable. Therefore, the only possible ground for lawfulness is that provided for in Article 5(a).

Under Article 5(a), the controller must prove that the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the institution or in a third party to whom the data are disclosed. In accordance with Article 27 of the Regulation, that ground for lawfulness also covers the processing of personal data necessary for the management and functioning of those institutions.

In the present case, although a staff directory which is accessible on DOMUS could be considered as necessary for the functioning of the GSC, the controller has not provided sufficient evidence of the need for the obligatory publication of staff photos in order to fulfil that purpose. The argument put forward by the GSC to justify the obligatory publication of photos (improvement of the service) does not prove that such a need exists. Indeed, according to the information we have received, the GSC has not provided evidence of any issue in relation to its functioning which, in order to be resolved, would require the publication of photographs of its staff on its intranet site. In addition, Article 38(1) of the Regulation provides that '[p]ersonal data contained in printed or electronic directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory'. The obligatory publication of photographs of administrative staff does not appear to satisfy that condition.

Conclusion

In the light of the information provided, the EDPS does not consider that the processing should be subject to prior checking. However, the controller has not proved that there is a need for the obligatory publication of staff photos on DOMUS. Therefore, any such publication cannot be grounded on the basis of Article 5(a) of the Regulation.

Yours sincerely,

(signed)

Giovanni BUTTARELLI