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Dear Mr Hilbert,

We have concluded from our examination of Case 2005-243 relating to "Management of personal files" that the processing of personal data in the management of digitised personal files is not subject to prior checking by the European Data Processing Supervisor under Article 27 of Regulation (EC) No 45/2001.

The grounds given in the notification for subjecting data processing to prior checking are based on the fact that *"personal files contain, inter alia, a copy of staff reports and data relating to incompetence and any disciplinary measures imposed"*.

Pursuant to Article 27(2)(a), the "processing of data relating to health and to suspected offences, offences, criminal convictions or security measures" is subject to prior checking.

According to our information, the personal files of staff do not contain medical data in the strict sense.

They do, however, contain data "relating to health", such as references to a staff member's incompetence or medical fitness for work.

Personal files contain data relating to suspected offences, offences, criminal convictions or security measures to the extent that decisions may have been taken concerning possible disciplinary measures (*"disciplinary matters"*).

All such data are produced in the course of separate independent procedures which will doubtless be subject to prior checking in their own right.

Article 27(2)(a) primarily concerns processing operations whose main purpose is to process the data under scrutiny here (i.e. data relating to health and to suspected offences, offences, criminal

convictions or security measures). Although the prime purpose of personal files is not to process data relating to health, such data are included as a matter of routine. Therefore, strictly speaking, Article 27(2) ought to apply. That said, Article 27(2) relates to processing operations involving such data that are "likely" to present risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. It is, therefore, a matter of presumption of risk, but in this case there can be no risk, as the data are generated by a previous data processing operation which has itself undergone prior checking.

Under Article 27(2)(b), "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct" are also subject to prior checking.

A personal file contains not only documents relating to the data subject's administrative situation, but also reports on his or her ability and efficiency (staff reports and CDRs, for instance). Nonetheless, the personal file is not in itself designed to assess the data subject's ability or efficiency and only takes stock of the outcome of separate procedures subject to their own prior checks. It follows, therefore, that this provision does not cover personal files.

As for Article 27(2)(c) – "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes" – the computerisation of personal files as provided for in the first phase of the project precludes linkages. This might change as the second phase of the project takes its course, but then the situation would have to be examined. You should therefore inform us, at the relevant time, that the second phase of the project is in place, so that we can review the situation.

Lastly, Article 27(2)(d) makes "processing operations for the purpose of excluding individuals from a right, benefit or contract" subject to prior checking. This provision covers processing operations aimed at excluding individuals from a right, benefit or contract (this typically refers to blacklists). That is not the purpose of managing personal files.

As regards the application of Article 27(1), and bearing in mind the aforementioned aspects, as matters stand it would not appear that processing presents specific risks to the rights and freedoms of data subjects by virtue of its nature, scope or purposes. That said, a change in the situation in a subsequent phase of the project which is not covered by the current notification – namely remote consultation by the data subjects and departments concerned – cannot be ruled out. In such an event, the EDPS would have to be consulted in due time.

We therefore consider that, as matters stand, the management of personal files is not subject to prior checking. However, if you believe there to be other factors warranting prior checking, we are of course prepared to review our position.

Thank you for your cooperation.

Yours sincerely,

Joaquín BAYO DELGADO