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Subject: Access Control at JRC-IPTS in Sevilla

Dear Mr Renaudière,

I refer to the prior checking notification on the processing operations on personal data concerning "access control at JRC-IPTS in Sevilla" received from the Joint Research Centre (2007-375).

Article 27(1) of the Regulation subjects to prior checking by the EDPS processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. Article 27(2) of the Regulation contains a list of processing operations likely to present specific risks in the above sense.

Notification

In the notification submitted to the EDPS, the access control in the IPTS is described as a collection of sub-processes, whose main purpose is to secure the IPTS building and its staff. It was underlined in the notification that this treatment was considered as falling under article 27 (2)(a) in relation to security measures.

However, the notification was submitted on the basis of Article 27 (2)(b) : Processing operations intended to evaluate personal aspects relating to the data subject rather than 27(2)(a)

EDPS analysis of the processing operations

Article 27(2)(a) establishes that processing operations relating to "*health and to suspected offences, offences, criminal convictions or security measures*" shall be subject to prior checking by the EDPS.

Contrary to the wording of the notification, the EDPS interprets the notion of "security measures" in article 27(2)(a) as not relating to the physical protection and security of buildings and staff, but rather as the measures taken as regards individuals in the context of a criminal (or administrative) procedure (in French 'mesures de sûreté').

Moreover, the prior checking notification has been submitted under Article 27(2)(b) of the Regulation. Article 27(2)(b) of the Regulation applies when a specific risk is present in processing operations which intend to evaluate personal aspects related to the data subject, including his or her ability, efficiency and conduct. This is not the case here. The processing aims at establishing the list of persons admitted to enter the buildings of the Sevilla site of JRC. Personal data are processed for the decision to grant access to the buildings or not. This decision does not concern evaluation of personal aspects. The establishment of the list is rather a technical operation depending on formal criteria rather than an assessment of personal aspects.

Follow-up

However, the EDPS would like to draw attention to the following aspects:

- The purpose of the processing is clearly established in the notification: "access control of JRC-IPTS". This purpose is strictly limited. Should the controller decide to change the purpose of the processing operations or add other purposes, the EDPS would have to be consulted again in due course for compliance with Regulation 45/2001.
- Moreover, the notification is vague about the possible implementation of biometrics in the processing operations. Indeed, the EDPS notes that the notification contains the following statement: "The use of biometrics (fingerprints) or key codes is foreseen." This statement is unclear.

The EDPS has already mentioned in a previous opinion that "the specific nature of biometric data raises a risk according to Article 27.1 and any processing operation containing biometric data should be subject to prior checking"¹. Therefore, the EDPS would like to underline that the project of implementing biometrics will have consequences in terms of prior-checking and deserves careful consideration by the controller. The EDPS considers that if the use of biometrics (fingerprints) were to be used in the future, the processing operation would qualify under article 27(1). Therefore, if JRC-IPTS intends to implement biometrics in the access control processing, the EDPS will have to be notified again in due course and all the technical aspects of the processing regarding the biometric implementation would have to be made available in the notification for prior-checking. As the term prior checking implies, the checking by the EDPS would have to be carried out before the start of the processing operation.

Conclusion

¹ See point 4 of Opinion on "Laissez-passer communautaire" EDPS case number: 2006-111. However, the sole processing of the photo (not combined with other biometric data) in itself does not present specific risks which would justify prior checking under Article 27(1) safe other circumstances of the processing lead to specific risks.

After careful analysis of the available information, the EDPS concludes that the present processing operation is not subject to prior checking under Article 27 of Regulation (EC) No 45/2001. The EDPS has decided to close the case, unless it is provided with specific grounds to reconsider.

That said, a change of processing operation in a subsequent phase of the project which is not covered by the current notification – namely the decision to modify the current purpose of the processing or to implement biometrics (fingerprints) – cannot be ruled out. In such an event, the EDPS would have to be notified again in due course.

The EDPS would appreciate if you could share this consideration with the controller and inform us of the follow-up.

We, of course, remain available for any further consultation on the matter.

Yours sincerely,

Joaquín BAYO DELGADO