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ASSISTANT SUPERVISOR

Mr Jonathan STEELE
Data Protection Officer
European Parliament
LUX - KAD 02D021

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Dear Mr Steele,

You asked us whether the processing operation "Tachograph records from digital and analogue tachographs" should be prior checked under Article 27.2(b) of Regulation (EC) N° 45/2001. After examining the available information, the European Data Protection Supervisor ('EDPS') concludes that the case is not subject to prior checking under Article 27 of Regulation (EC) N° 45/2001. Accordingly, the EDPS closes the case.

Under Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ('Council Regulation'), employers and drivers of vehicles for the carriage of passengers or goods must install recording equipment (i.e. tachograph). This equipment must record speed and distance covered. This information must be available for national enforcement authorities and must be kept for one year. Besides this obligation, pursuant to the Council Regulation, the employer and drivers are responsible for seeing that the equipment functions correctly.

In accordance with the Council Regulation, we understand that the European Parliament ('EP') has installed tachographs equipment in certain vehicles operated by the EP. We understand that the EP keeps this record for one year, for possible request by national enforcement authorities. No further data processing is carried out.

Article 27(1) of Regulation (EC) N° 45/2001 submits for prior checking, 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. There are no specific risks present in this case. Article 27(2) of the Regulation contains a list of 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. One must examine to what extent the grounds on which the notification for prior check has been made are relevant.

Article 27(2)a of Regulation (EC) N° 45/2001 subjects to prior checking the "processing relating to health and to suspected offences, offences, criminal convictions or security

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measures". Pursuant to the Council Regulation the EP keeps the tachograph records of its drivers for possible request by national enforcement authorities for one year. This information could be provided to national enforcement authorities and be used by such authorities in connection with the imposition of fines and penalties, civil and criminal. If this happens and only then the information could be deemed to be related to "suspected offences, offences, criminal convictions or security measures.

Article 27(2)a is aimed essentially at processing operations which primarily seek to process of data relating to health and to suspected offences, offences, criminal convictions or security measures. The mere possibility of the presence of such data as it is the case it does not automatically make it a case for prior checking. In the notified processing operation, the presence of such data is neither systematic nor necessary in every case. Nevertheless, the presence of sensitive data such as data relating to offences does entail that particular attention should be given to the adoption of security measures in conformity with Article 22 of the Regulation and this seems to be the case in the analysed operation.

As concerns Article 27(2)b: "Processing operations intended to evaluate personal aspects relating to the data subject", it seems that the processing operation itself is aimed at responding to requests for copies of the record submitted by the national enforcement authorities. This information could possibly be used to evaluate the conduct of an individual (exceeding a speedlimit, for example). However the main purpose of the processing carried out by the EP which is limited to keeping the records for a possible request, is not the evaluation of the data subject.

We therefore believe that the processing operation does not qualify for prior checking and have decided to close the case, unless you can give us specific grounds to reconsider.

Yours sincerely,

Giovanni BUTTARELLI