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Mr Thierry VINOIS
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Secretariat General
B-1049 Brussels

Brussels, 24 May 2012
GB/RDGB/mk D(2012)1044 C 2011-0987

Re: **Notification for prior checking concerning the ‘Recording of the telephone line used for security guard service reports and calls concerning actions connected with the system for controlling access to Commission buildings (Brussels)’**

Dear Sir,

We are writing to you in response to the notification for prior checking received by the European Data Protection Supervisor (EDPS) on 25 October 2011 with regard to the processing of personal data concerning the ‘Recording of the telephone line used for security guard service reports and calls concerning actions connected with the system for controlling access to Commission buildings (88777)’.

In accordance with Article 27(4), the present opinion must be delivered within two months following receipt of the notification. The period for delivering the opinion was suspended from 9 December 2011 to 11 April 2012 and from 20 to 25 April by a request for further information. The period was also suspended from 2 to 23 May in order to allow the controller to submit his comments on the draft opinion. The EDPS will therefore deliver his opinion no later than 24 May 2012.

The notification concerns the processing of personal data in the recording of the telephone line used for security guard service reports and calls concerning actions connected with systems for controlling access to Commission buildings (88777) and associated numbers (55165, 55129, 98522, 99950). Those reports essentially concern the notification of failures/faults on installations connected to the security system or the description of abnormal situations concerning the tasks and/or responsibilities of the security guard service. The users of that line, and therefore the data subjects are, principally, the staff of the security guard service sub-contractor, making calls to their supervisors (for example, for incident reports, requests for instructions, reporting technical problems) and, in certain cases, the occupants of Commission buildings (requests to open a building outside opening hours, requests for information on physical security).

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The EDPS has already given its opinion several times on notifications for prior checking concerning the recording of service telephone lines, which, at least in part, have similar characteristics to the present notification. For example, on 22 May 2006, the EDPS adopted an opinion on recording the line reserved for emergency and security calls in Brussels (88888) (2006-2). In addition, on 19 November 2008, it adopted an opinion on recording the line reserved for calls to the dispatch centre for technical services in European Commission buildings in Brussels (2008-491). Given the similarity between these procedures, the majority of the comments and recommendations apply, by analogy, to the present case. Therefore, rather than reiterating those comments and recommendations in their entirety, in this letter we will merely highlight the main differences which could affect the processing of personal data. Copies of those opinions are annexed for your information.

- **Purpose of the processing**

The calls to 88777 concern notifications connected with the system for controlling access to Commission buildings. In this context, recordings may be listened to *a posteriori* by the recording operators (staff of Unit HR DS 4 of the Commission) to ensure that they were properly understood. The recording also enables operational events to be checked *a posteriori* and information or evidence to be adduced in connection with investigation files. The objective of such *a posteriori* checks is not to evaluate the work of the security staff. In that regard it would be a good idea to specify that restriction explicitly in the privacy statement.

The EDPS, therefore, recommends that it is specified explicitly in the privacy statement that the objective of recordings is not to evaluate the work of managers or guards.

- **Legal basis**

Article 5(a) of Regulation (EC) No 45/2001 (the 'Regulation') stipulates that personal data may be processed only if processing is 'necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof'. The notification states that this procedure is necessary for the accomplishment of tasks assigned to the Security Directorate, in particular those to guarantee secure conditions for persons and Commission assets in its buildings. In so far as they respond to real and unavoidable requirements in the context of the Commission's security procedures, recordings may be considered to be necessary within the meaning of Article 5(a) of the Regulation.

However, processing must be necessary not only for the performance of a task carried out in the public interest, but must also be based on the Treaty or a legal basis adopted on the basis thereof. Yet, the notification identifies as its legal basis the Commission Decision of 8 September 1994 establishing the Security Directorate and Commission Decision 2007/65/EC of 15 December 2006 establishing the Commission's standard security measures and alert status and amending its Rules of Procedure as regards operational procedures for management of crisis situations. Even though those decisions define the mission and specific tasks of the Directorate with regard to security, no mention at all is made of the Directorate's authority to record the calls to and from telephone lines for those purposes. Accordingly, for the recordings to be compatible with Article 5(a), they must be authorised by a specific legal instrument, such as a sufficiently well-publicised administrative act of normative value, for example an official decision at the appropriate administrative level. Alternatively, the revision of the Commission Decision of 8 September 1994 could be the opportunity to include in the

new text a paragraph on recording calls, provided that that amendment would be made in the near future.

We therefore request that you provide a legal basis of that kind.

- **Transfer of data**

Security guard staff are responsible for responding to calls, acting on incidents as specified by defined procedures. They have no access to the recordings made. The files containing the recordings are managed and maintained by Unit HR DS 4 (recording operators). In exceptional cases, if there is a justified need to enable recorded requests to be clarified and after authorisation by the controller, the operator is authorised to listen to the recording. In addition to recording operators, only those responsible for investigations, HR DS RA staff, can access data, also after authorisation from the controller. The controller has also clarified that the system administrators may have access to recordings in exceptional circumstances if necessary for reasons of business continuity.

Article 7 of the Regulation provides, *inter alia*, that personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient. In the present case, that condition seems to have been observed. However, we recommend that the recipient is informed that, in accordance with Article 7(3), personal data are to be processed only for the purposes for which they were transmitted.

- **Information to be given to the data subject**

The information set out in Article 11 of Regulation No 45/2001 is supplied to the data subject by many channels. In particular, the controller notified the EDPS of a draft privacy statement. In order to ensure full conformity with the Regulation, additional information on the legal basis of the processing is necessary.

The notification specifies that the draft privacy statement is published on the Security Directorate's intranet site. In order to foster effective knowledge by all interested parties, it would be worth advertising the privacy statement effectively amongst security guard staff (for example, by e-mail) since they do not have access to, or find it difficult to access, the Commission's intranet.

Accordingly, the EDPS recommends that additional information on the legal basis is incorporated into the privacy statement and that the statement is advertised effectively using appropriate means (e.g. e-mail) amongst security guard staff.

Conclusion

The EDPS recommends that the Commission adopts specific and tangible measures aimed at applying the recommendations concerning the processing under analysis. In particular, the EDPS recommends that the controller:

- specifies explicitly in the privacy statement that the objective of recordings is not to evaluate the work of managers or guards;
- provides a specific legal basis for the processing in question, such as a sufficiently well-publicised administrative act of normative value;

- informs all persons with access to recordings that, in accordance with Article 7(3), personal data are to be processed only for the purposes for which they were transmitted;
- incorporates additional information on the legal basis into the privacy statement and advertises that statement effectively using appropriate means (e.g. e-mail) amongst security guard staff.

We would be grateful if you could provide the EDPS with all the relevant documents within three months of the date of this letter to check that the recommendations have been implemented.

Yours sincerely

(signed)

Giovanni BUTTARELLI

Cc: Philippe RENAUDIÈRE, Data Protection Officer

Annexes

- Opinion of 22 May 2006 on recording the line reserved for emergency and security calls in Brussels (88888) (2006-2)
- Opinion of 19 November 2008 on the notification for prior checking in relation to the dossier on recording the line reserved for calls to the dispatch centre for technical services in European Commission buildings in Brussels (Case 2008-491)