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correspondence

**Subject: Prior-checking notification case 2013-0429 on the video-surveillance system
at the European Food Safety Authority (EFSA)**

Dear Ms Geslain-Lanéelle,

On 18 April 2013, the European Data Protection Supervisor (EDPS) received documents from EFSA's Data Protection Officer concerning the notification for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to the video-surveillance system at the EFSA as laid down in EFSA's Video-surveillance Policy ("the Policy") adopted on 11 March 2013. Additional information was received on 27 May 2013.

The EDPS has issued Video-Surveillance Guidelines¹ (henceforth: "Guidelines") in March 2010, requesting the EU institutions and bodies to bring their existing practices in compliance with these Guidelines by 1 January 2011. In the present case, in the light of the notification of 18 April 2013, the EDPS will highlight only those EFSA practices which do not seem to be in conformity with the principles of the Regulation and with the Guidelines and will restrict his legal analysis to those practices. In the light of the accountability principle guiding his work, the EDPS would nonetheless want to highlight that *all* relevant recommendations made in the Guidelines apply to the processing operations put in place in the frame of the video-surveillance system at the EFSA.

¹http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-03-17_Video-surveillance_Guidelines_EN.pdf.

Section 4.3 of the Guidelines outlines the situations in which the EDPS considers that a prior checking notification under Article 27 of the Regulation is required to assist the relevant institution in establishing additional data protection safeguards in cases where its activities go beyond the standard operations for which the Guidelines already provide sufficient safeguards. The situations referred to in Section 4.3 of the Guidelines include inter alia the use of high-tech or intelligent video-surveillance. As noted in the notification submitted and in Section 7.1 of the Policy, the video-surveillance system at EFSA encompasses infra-red illumination. Annex 1 of the Policy ("Data Protection Audit of EFSA video-surveillance system" with fieldwork date 22 June 2012) clarifies that at EFSA, infra-red technology does not merely trigger recording, but notes on page 4 that cameras with infra-red application *serve to enable* "viewing dark areas and overnight". Such features qualify as "high-tech" under Section 6.9 of the Guidelines, which refers inter alia to "*infra-red or near-infrared cameras... that can capture images in the dark or under low-light conditions...*".

The processing operations under examination are thus subject to ex-post prior-checking in conformity with Article 27 of the Regulation.

However, as has been highlighted by the EDPS upon publication of the Guidelines², only in exceptional cases will the prior-checking be comprehensive and cover *all* aspects of a video-surveillance system. In most cases, the EDPS will *not* comprehensively review all aspects of the institution's video-surveillance practices. Instead, as in the case at hand, the EDPS will usually focus his recommendations on those aspects of video-surveillance which differ from, or are in addition to, the common practices and standard safeguards set forth in the Guidelines.

1. Proceedings

The procedure was notified for prior checking under Article 27 of the Regulation on 18 April 2013. It was suspended by a request for additional information of 19 April 2013. Additional information was received on 27 May 2013.

2. Use of high-tech video-surveillance (infra-red cameras)

Facts: According to the notification and Section 1 of Annex 1 of the Policy, "*Some of the cameras are equipped with infra-red illumination, enabling viewing in dark areas and overnight. The use of infra-red is specified in the overview further in this document*".

A document entitled "*EFSA Video-surveillance System (VSS) technical description*" was provided on 27 May 2013 ("updated May 2013"). It replaces Annex 3 of the notification³ and notes that "*51 cameras are equipped with infra-red (IR) illumination, enabling viewing in dark areas and overnight. It should be noted that infra-red illumination is a feature built-in in the cameras which cannot be deactivated. The reason why EFSA decided to install cameras with Infra Red illumination in dedicated areas is the need to ensure security in situations of darkness overnight and to confront the increased risk for intrusion accordingly (e.g. external EFSA building perimeter, underground parking) without using the central light system. It*

² See "Frequently asked questions on video-surveillance: prior checking", Section 5, available under http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-03-17_FAQ_videosurveillance_EN.pdf.

³ Which referred to "some" cameras equipped with infra-red illumination and listed 63 of them.

should be noted that the central light system of EFSA is switched-off overnight for energy saving reasons". Page 67 of this document lists the 51 infra-red equipped cameras.

Under Section 6.9 of the Guidelines, the introduction of high-tech video-surveillance tools is permissible only subject to an **impact assessment**. Together with the notification and as Annex 2 of the Policy, EFSA provided a document entitled "*Privacy impact analysis and recommendations*". This document is not dated, but predates Annex 1 of the policy ("*Data Protection Audit of EFSA video-surveillance system*") which reflects the situation at EFSA as of 22 June 2012 (fieldwork date). Annex 2 of the Policy was replaced by an updated version ("updated May 2013") on 27 May 2013.

Both versions of the document identify five areas for which, based on the impact assessed, recommendations are made⁴, but neither version of the document refers to the use of infra-red cameras.

Recommendation: As required under Section 6.9 of the Guidelines, the EDPS invites the EFSA to conduct an impact assessment focussing specifically on the use of infra-red cameras as foreseen by the Policy and the document entitled "*EFSA Video-surveillance System (VSS) technical description*".

Such an impact assessment will subsequently allow the EDPS to assess the permissibility of the technique used and to impose, as necessary, specific data protection safeguards as stipulated in Section 6.9 of the Guidelines.

3. Reminders regarding other aspects of the EFSA Video-surveillance Policy

a) Scope of the video-surveillance system: Italian territory

Section 2.1 of the Policy stipulates that "*EFSA uses its VSS for the sole purpose of security and access control. The video-surveillance system helps to control the access to EFSA premises, ensuring the security and safety of premises, individuals and things*" (emphasis added) and Section 2.2 of the Policy explicitly notes that "*The system is not used for any other purposes than those described under chapter 2.1*". Section 6 of the Policy (only in the confidential / non-public version) notes that "*The EFSA video-surveillance system covers all the access points to EFSA premises, the internal perimeter of the main seat, restricted areas accesses, access to floors from emergency exits, external emergency exits and other particular interest areas (e.g.: car parkings)*". In contrast, Section 3.2 of the Policy refers to "*the limited monitoring of public space at the entrances and in direct vicinity of EFSA premises*".

aa) Contradiction between Policy and documented reality

Section 3 of Annex 1 to the Policy as subsequently updated on 27 May 2013 includes pictures illustrating the coverage of each camera operating at EFSA. Nine of the cameras for which the coverage is illustrated there clearly include views of Italian territory⁵, i.e. territory *not* covered by the above description of the scope of EFSA's video-surveillance system as contained in Sections 2.1, 2.2 and 6 the Policy.

The EDPS invites EFSA to revise the wording of the Policy (including its public version) so as to reflect in all of its Sections the actual scope of the EFSA video-surveillance system.

⁴ Data protection awareness; CCTV coverage of certain areas, which refers (a) to areas with increased privacy expectations and (b) to the coverage of private spaces / Italian territory; The number of cameras installed; The retention period of footage; and the installation of on-the-spot notices.

⁵ Cameras "NVR3 3006 + 3010 + 3013 + 3014" and "NVR4 4001 + 4002 + 4008 + 4011 + 4014".

bb) No demonstrated security needs

Under Section 6.5 of the Guidelines, *"In case of demonstrated security needs, an Institution may monitor the areas immediately adjacent to its buildings on the territory of Member States. However, it must be ensured that such monitoring is kept to the absolute minimum that is necessary to meet the Institution's security needs. This may include entry and exit points, including emergency exits and fire exits, as well as walls or fences surrounding the building or property"*. For the nine pictures referred to above, no specific security needs have been demonstrated in the documentation provided by the notification.

The EDPS invites EFSA to provide such demonstration and, thus, a justification for the scope of the EFSA video-surveillance system in the light of the Guidelines.

cc) Partly no justification based on security needs seems possible

The coverage as illustrated by the nine pictures referred to above also goes beyond the above limits stipulated in the Guidelines, as they display public street views and long-distance view of what seem to be apartments. This is confirmed by the findings of Annex 2 to the Policy: *"Some external cameras are viewing public spaces and private buildings adjacent to the EFSA premises"*.

Under Section 6.1 of the Guidelines, *"Camera locations should be chosen to minimise viewing areas that are not relevant for the intended purposes"*; examples used to illustrate this include the following: *"When a camera is installed on a rooftop to monitor an emergency fire exit, care should be taken to ensure that the camera is not positioned so as to also incidentally record the terrace of a neighbouring private building"*.

The EDPS invites EFSA to avoid monitoring of spaces for which no justification in terms of EFSA security needs can be envisaged under the Guidelines. The EDPS draws the attention of EFSA to the recommendation contained in Section 6.5 of the Guidelines, according to which *"...monitoring the windows of an apartment building opposite should be avoided. The location or direction of the cameras should be modified, the images should be masked or scrambled, or other similar measures should be taken"*.

b) Scope of the video-surveillance system: Areas with increased privacy expectations

Section 2.1 of the Policy stipulates that *"EFSA uses its VSS for the sole purpose of security and access control. The video-surveillance system helps to control the access to EFSA premises, ensuring the security and safety of premises, individuals and things"* (emphasis added) and Section 2.2 of the Policy explicitly notes that *"The system is not used for any other purposes than those described under chapter 2.1. Therefore, it is not used to monitor the work of individuals or their attendance..."*.

As noted above, Section 3 of Annex 1 to the Policy includes pictures illustrating the coverage of each camera operating at EFSA. One covers parts of the canteen⁶. This is confirmed by the findings of Annex 2 to the Policy: *"one camera covering the canteen space and several cameras covering the smokers' place"*; *"Cameras (3!) pointing to the smokers place on the grass yard behind the EFSA building"*.

Under Section 6.8 of the Guidelines, *"Areas under heightened expectations of privacy should not be monitored. These include ... leisure areas (canteens, cafeterias, bars, kitchenettes, lunchrooms, lounge areas, waiting rooms, etc)... An impact assessment must be carried out in*

⁶ Camera "NVR5 CAM 00 TC51.

case the Institution wishes to derogate from these rules. A prior checking by the EDPS will also be required."

The notification mentions in this respect that *"On the occasion of the privacy impact assessment, adjustments were made concerning the coverage of public areas adjacent to EFSA premises and the coverage of areas with increased privacy expectation, namely the EFSA canteen, cafeteria and smokers corner. For these areas, the VSS system was adjusted to focus on the security purpose and to limit as possible the privacy impact. This aspect is further detailed in the Privacy and Data Protection Impact Assessment..."*.

In the light of the auditee's reaction regarding the "smokers' place" as documented in Annex 2 to the Policy⁷, the EDPS would like to highlight that putting up on-the-spot notices does not as such reduce the privacy impact of video-surveillance cameras.

The EDPS draws EFSA's attention to the recommendations made as reflected in Annex 2 to the Policy ("Privacy impact analysis and recommendations") and invites EFSA to implement them. Insofar as EFSA continues to monitor areas under heightened expectations of privacy, the EDPS invites EFSA to justify such derogation from the Guidelines, to clearly stipulate any such derogation in the wording of the Policy, including in its public version, to conduct an impact assessment covering this particular situation and to, subsequently, submit a respective prior-checking notification.

c) Scope of the video-surveillance system: location of cameras

The Data Protection Audit (Annex 1 of the Policy) contains pictures and a justification pertaining to each camera operated at EFSA. The EDPS welcomes this level of documentation. The EDPS is, however, concerned that the level of documented justification for many cameras does not meet the standards defined in Section 6.1 of the Guidelines.

aa) Formulaic justification for 47 cameras

The justification brought forward for 47 out of the 110 cameras operated seems formulaic:

- For a total of 17 cameras, the justification is limited to *"This camera is intended for keeping under surveillance this sensitive area"*, with the area being the underground parking. No justification for the particular "sensitivity" of this area is provided;
- For 29 further cameras, the above statement (*"This camera is intended for keeping under surveillance this sensitive area"*) is complemented with a reference to *"...and discern authorised access"* (25 cameras) and to *"...and discern authorised use"* (4 cameras). Again, no justification for the particular "sensitivity" of this area is provided;

Should EFSA want to rely on the "sensitivity" of certain areas, the EDPS invites EFSA to justify the need for and proportionality of such additional monitoring and to discuss such plans specifically in the Policy as foreseen by Section 6.1 of the Guidelines.

bb) 37 permanently functioning cameras in stair cases

For 37 cameras, the justification is that they allow for the *"detection of users stuck in the area during an emergency"*⁸; the area referred to for all cameras are stair cases. However,

⁷ *"EFSA is a non smoking organisation. The smoking area is a benefit offered to some of the staff which must not jeopardize the security of all staff and infrastructure. Therefore it is recommended to make the smokers aware that the area is under cameras surveillance putting visible warning notices"* for the initial version of the document, *"the auditee so far partially followed up on the audit recommendations by...installing additional well-visible warning notices"* for the revised version.

according to Section 7.1 of the Policy, "*All cameras operate 24 hours a day, seven days a week*", i.e. not limited to emergency situations (e.g. fire).

According to Section 3 of the Privacy Impact Analysis (Annex 2 to the Policy), "*Cameras in stair cases and lift areas at each floor of the EFSA office tower: permanent functioning of this group of cameras, including live monitoring & recording of footage, is considered to impact rather substantially on the privacy of staff, in a way which is disproportionate to the building security purpose. ...These cameras only become crucial in emergency situations, i.e. to ensure and control complete and speedy building evacuation.*". Following an update of the privacy impact assessment in May 2013 the functioning of cameras placed in the lift area was adjusted to live monitoring from 7am to 8pm during working days (thus without footage recording); overnight and during the weekend, cameras are switched back to standard recording mode.

In the light of the above, the EDPS invites EFSA to reconsider video-surveillance as a means to detect staff getting lost in stair cases outside emergency situations. Given the possibility to exit at ground floor level, it should be sufficient to put up signs drawing the attention of anyone stuck to this exit possibility.

d) Number of cameras not mentioned in Policy

Under Section 6.2 of the Guidelines, the number of cameras must be included in the video-surveillance policy. The Policy fails to mention this information.

The EDPS invites the EFSA to include the number of cameras in the Policy.

e) Disposal of no longer useable media

Under Section 7.1.1 of the Guidelines, the Policy should further regulate what happens once the media is no longer useable to ensure that it is safely disposed of in such a manner that the remaining data on it is permanently and irreversibly deleted.

The EDPS invites the EFSA to regulate the disposal of no longer useable media in the Policy.

f) Identifying and justifying diverging practices in the Policy

Section 3.1 of the Policy notes that "*EFSA processes the images in accordance with both the Video Surveillance Guidelines issued by the European Data Protection Supervisor... and Regulation (EC) No 45/2001.*" Whilst e.g. Section 7.1 and Section 10 of the Policy clearly state practices derogating from the Guidelines, they fail to identify them as such derogations.

In line with the recommendation contained in Section 2.2 of Appendix 1 of the Guidelines, the EDPS invites EFSA to clearly state any derogation from the practices recommended in the Guidelines as such and to justify such derogation in the Policy itself.

g) Publication of the Policy on the internet

Section 5 of the Policy notes that a (limited) public version of the Policy is "*available and posted on the EFSA Intranet Portal*".

Under Section 11 of the Guidelines, "*Information must be provided to the public about the video-surveillance in an effective and comprehensive manner*", which includes the recommendation to post a "*detailed data protection notice on the Institution's intranet and*

⁸ For one camera, this is supplemented by the following statement: "*This camera is efficient and does not have alternative solution*".

internet sites for those who wish to know more (to avoid duplication of efforts, the Institution may post the public version of its video-surveillance policy online instead of preparing a separate data protection notice)" (emphasis added).

According to additional information provided by EFSA on 27 May 2013, "*...the public version of the EFSA video-surveillance policy has not been published on the EFSA internet website despite the recommendation in that sense in the relevant EDPS guidelines. EFSA from its part is not convinced that regarding video surveillance, the website publication of the policy is an appropriate way to reach the data subjects in view of the information to be given to them pursuant to Regulation 45/2001 (in contrast to e.g. candidates in staff recruitment or tenderers in public procurement). The public version of the policy indeed is available on the EFSA Intranet Portal*".

The EDPS notes that EFSA has not brought forward any argument of substance to justify why a website publication of the Policy is considered by EFSA as an inappropriate way to reach the data subjects in view of the information to be given to them.

The EDPS invites EFSA to additionally publish the public version of the Policy on EFSA's internet sites (for the recommendation to include a link to the Policy in the on-the-spot notice, see below Section 3 m) bb)).

h) Training

Under Section 8.2 of the Guidelines, training should be held inter alia when a new person takes up his/her duties, as well as periodically afterwards at regular intervals.

The EFSA is invited to specify in the Policy at which intervals the "*periodic workshops on data protection issues for individuals with access rights to VSS*" under Section 8.3 of the Policy take place.

i) Transfers and disclosures

Under Section 10.4 of the Guidelines, national authorities may, in some cases, be given access to footage.

Section 8.5 of the Policy notes that "*Copies of video footage and/or camera screenshots can be provided to the police authorities to investigate or prosecute criminal offences*". According to the additional information provided on 27 May 2013, "*EFSA so far has no formalised procedure. It can be added that the point is briefly referred to in the updated 'EFSA Video Surveillance System (VSS) technical description', namely in the introductory part 1.1 of this document*". The referenced document reads as follows: "*Images and video footage can be exported and used for transfer to police authorities only after the permission of the EFSA Security Officer (SO) upon written request to CORSER Site Management Team Security and as needed after the consultation with the Data Protection Officer (DPO)*".

The EDPS invites the EFSA to formalise a procedure as part of the Policy, including all aspects outlined in Section 10.4 of the Guidelines, which refer inter alia to the need to require a court order, a written request signed by a police officer having a sufficiently high rank, or a similar formal request, which should specify the reason why the video-surveillance footage is needed as well as the location, date and time of the requested footage.

j) Retention period

Section 10 of the Policy stipulates a conservation period for footage of external cameras of five working days.

Under Section 7.1.3 of the Guidelines, where "...the surveillance covers any area outside the buildings on Member State... territory (typically those near entrance and exit areas) and it is not possible to avoid that passers-by or passing cars are caught on the cameras, the EDPS recommends reducing the retention period to 48 hours...".

As outlined above (Section 3 a)), nine of the cameras for which the coverage is illustrated in Annex 1 to the Policy clearly include views of Italian territory⁹.

The EDPS consequently invites the EFSA to reduce the retention period of respective footage to 48 hours.

k) On-the-spot notice

Section 5.1.2 of the Guidelines foresees that the purposes of the system must be communicated to the public on-the-spot in a summary form.

aa) Language versions "outdoor" on-the-spot notices

Section 11.1 of the Policy refers to the existence of on-the-spot notices, but does not contain information as to the content or language of the standard on-the-spot notices; these were only provided as additional information on 27 May 2013. According to the notification, on-the-spot notices at non-specified "outdoors spaces" (see above Section 3 a)), have been put up in Italian only.

Under Section 11.2 of the Guidelines, "*The signs within the buildings must be in the language (or languages) generally understood by staff members and most frequent visitors. Signs outside the buildings (if any areas outside are monitored) must also be posted in the local language (or languages)*" (emphasis added).

The EDPS invites EFSA to ensure that on-the-spot notices at non-specified "outdoors spaces" are available at least in the languages that are used for on-the-spot notices placed indoors.

bb) Content of the on-the-spot notice

The on-the-spot notices mentioned in Section 11.1 of the Policy provided as additional information on 27 May 2013 do not contain a link to the on-line version of the Policy as stipulated in Section 11.2 of the Guidelines.

The EDPS invites the EFSA to include a link in the on-the-spot notices to the on-line version of the Policy (see also above, Section 3 g)).

4. Conclusions

The EDPS recommends that EFSA adopts specific and concrete measures to implement the above recommendations regarding the video-surveillance system.

As concerns the matters mentioned in this note, the EDPS would like to be informed about the situation regarding the compliance with the Guidelines and receive the requested information. The EDPS invites EFSA to attach this Opinion to its Policy and to include a reference to it in Section 3.2 of the Policy.

⁹ Cameras "NVR3 3006 + 3010 + 3013 + 3014" and "NVR4 4001 + 4002 + 4008 + 4011 + 4014".

To facilitate our follow-up, it would be appreciated if you could provide the EDPS with all relevant documents within three months of the date of this letter which prove that all recommendations and reminders have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

cc.: Mr Claus REUNIS, Data Protection Officer - EFSA