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WW/DHo/sn/D(2017)1615 C 2017-0338  
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**Subject: Prior-checking Opinion regarding management of service mobile telephone invoices, EDPS Case 2017-0338**

Dear Mr (...),

On 1 September 2016, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001<sup>1</sup> ("the Regulation") regarding the management of service mobile phone invoices from the Data Protection Officer ("DPO") of the European Defence Agency ("EDA").<sup>2</sup>

On 2 May 2017 the EDPS sent a request for further information about the received notification to EDA's DPO. On 19 May 2017, EDA's DPO provided clarifications over the phone and sent a revised version of the notification. She explained that after reassessment of the file the notification may not require prior checking under Article 27 of the Regulation.

Having analysed the revised notification and its supporting privacy statement, the EDPS considers that the data processing activity mentioned above is **not subject to prior checking** (see section 1. Need for prior checking). However, the EDPS issues **two recommendations** in order to ensure compliance with the Regulation (see section 2. Recommendations).

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

<sup>2</sup> As this is an ex-post case, the deadline of two months does not apply. This case has been dealt with on a best-effort basis.

## **1. Need for prior checking**

Article 27 of the Regulation subjects a number of processing operations "likely to present specific risks" to prior checking by the EDPS. Paragraph 2 of that Article lists processing operations likely to do so.

### ***a) Regarding Article 27(2)(a) of the Regulation***

This Article refers to processing of certain special categories of data, e.g. health and (suspected) offences. The purpose of the processing operation is to verify the invoices in order to ensure that the use of the mobile phones by each staff member do not exceed the "flat rate". There are no indications that health data is processed or that the personal relates to any (suspected) offences. Therefore the processing operation is not subject to prior check under Article 27(2)(a) of the Regulation.

### ***b) Regarding Article 27(2)(b) of the Regulation***

This Article refers to processing operations *intended* to evaluate personal aspects of the data subject, including ability, efficiency and conduct. In this case, it appears that the personal data in question are processed only to ensure that the use of the mobile phones by each staff member do not exceed the "flat rate". Nothing in the notification indicates that the processing is aimed at processing data concerning the evaluation of staff members' conduct or efficiency. The processing is therefore not subject to prior checking under article 27(2) (b) of the Regulation.

### ***c) Necessity of prior checking if different purpose***

However, if in the future EDA were to process the billing data be processed for other than budgetary purposes, in particular for the purpose to evaluate staff conduct with respect to the inappropriate or excessive use of the service phones, the EDPS would need to carry out prior checking on the basis of Article 27 (2) (b) of the Regulation.

## **2. Recommendations**

That being said, in order to ensure that the "*management of service mobile phone invoices*" will comply with the Regulation, the EDPS nonetheless decided to issue **two recommendations**. The analysis below does not cover all aspects of the Regulation, but only those which require improvements or otherwise give rise to comments.

### **a) Data subjects' right to information**

Concerning the information to be given to data subjects (Article 11 of the Regulation), the notification mentions that staff members are informed through the "Statement of Use" under Annex II of Decision N°16/16 and that this Statement has to be signed by the staff members. The EDPS notes that not all information required under Article 11 is mentioned under Point 7 of Annex II of the EDA policy on the allocation of service mobile phones and SIM cards to EDA staff contains the privacy statement. The following information is missing in the privacy statement: the purpose of the processing (Article 11(b) of the Regulation), the data recipients (Article 11(c) of the Regulation), the legal basis for processing (Article 11(f)(i) of the Regulation and the data retention period (Article 11(f)(ii) of the Regulation).

Besides, the EDPS welcomes the fact that the right to access, rectify, block and request the erasure of the personal data of the data subject is mentioned in the privacy statement. However, regarding to these rights, the EDPS **suggests** as a good practice to include information on in

which time limit a reaction from the controller or DPO of EDA can be expected (e.g. 3 months for access request, without delay for rectification, etc.) in the privacy statement under point 7.<sup>3</sup>

#### **b) Security Measures**

Under point 16 of the notification is stated that the invoices contain the phone numbers called by the data subject. In the light of the data minimization principle (Article 4 (1)(c) of the Regulation), the EDPS **recommends** EDA to instruct the telecommunications provider (as far as possible) to restrict the categories of data transmitted periodically together with the related invoices. For example, the last three digits of any numbers called may be edited to ensure privacy.<sup>4</sup>

In the light of the accountability principle, the EDPS expects EDA to **implement the above recommendations accordingly, but does not require documentary evidence** and has therefore decided to **close case 2017-0338**.

For questions or requests for further clarifications, please do not hesitate to contact us.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

Cc.: Ms (...), DPO - EDA

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<sup>3</sup> EDPS Opinion of 12 June 2014 concerning “The processing operations related to renewal of contracts for temporary and contract agents in the Innovation and Networks Executive Agency”, case 2013-1288, page 2, available at: [https://edps.europa.eu/sites/edp/files/publication/14-06-12\\_letter\\_contract\\_agents\\_inea\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/14-06-12_letter_contract_agents_inea_en.pdf).

<sup>4</sup> EDPS Opinion of 31 October 2013 concerning “ENISA staff mobile phone bill payment”, case 2013-1156, available at: [https://edps.europa.eu/sites/edp/files/publication/13-10-31\\_letter\\_enisa\\_mobile\\_phone\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/13-10-31_letter_enisa_mobile_phone_en.pdf).