



EUROPEAN DATA  
PROTECTION SUPERVISOR

PETER HUSTINX  
SUPERVISOR

Head of Unit  
European Commission  
DG INFSO  
B-1049 Brussels

Brussels, 13 May 2009  
PH/HK/ab D(2009)683 C2008-0622

**CONFIDENTIAL**

Dear

On 14 April 2009, we received your letter of 7 April 2009 in which you request the EDPS for a revision of his decision of 9 March 2009 in complaint 2008-622. After a careful examination of the arguments you have put forward in your letter, we would like to inform you as follows.

**Request for revision**

In your letter you challenge the part of the conclusion in which the EDPS establishes that the transfer of the minutes of the interview held with Mrs. [redacted] in the context of an on-the-spot audit performed on [redacted] from [redacted] 2008 to [redacted] 2008, to the Internal Audit Department of [redacted] was not in conformity with Article 4(1)(c) of Regulation (EC) No 45/2001.

You indicate that some information included in the minutes was either already contained in the two contracts, which were also sent to the Internal Audit Department of [redacted], or could reasonably be supposed to be already known by the recipient in its quality of employer of the complainant's husband. You furthermore argue that other information in the minutes was relevant and necessary for the Internal Audit Department of [redacted] to limit the scope of its audit in terms of period to be covered and to identify the activities where potential conflicts of interest could have been raised, in addition to the contractual situation itself, because the minutes (1) provided a clear and detailed summary of the exact activities performed by Mrs. [redacted] as well as of the context of these activities, (2) contained information about the existence of various contractual agreements of Mrs. [redacted] in particular the existence of another regular employment contract, the maternity leave and its renewal and (3) provided many important details on the practical organisation of the work of Mrs. [redacted]. You finally pointed out that the Internal Audit

---

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : [cdps@cdps.europa.eu](mailto:cdps@cdps.europa.eu) - Website: [www.cdps.europa.eu](http://www.cdps.europa.eu)

Tel.: 02-283 19 00 - Fax : 02-283 19 50

Department of [redacted] had requested for supporting information and that it only concerned certified information.

### **Analysis of the request**

As becomes clear from the letter you sent to us on 29 January 2009, the purpose of the transfer of the information to the Internal Audit Department of [redacted] was to validate the audit hypothesis that Mr. [redacted] intervened in the name of [redacted] to maintain the contract flow from the Commission to [redacted] at a 100% funding rate in exchange of payments for a fictitious contract in the name of his wife, thereby prejudicing the financial interests of the Community.

The Internal Audit Department of [redacted] was therefore basically asked to start an internal investigation to control whether Mr. [redacted] had a conflict of interests. The object of that internal investigation was therefore Mr. [redacted] and not Mrs. [redacted]. The minutes of the phone call between the Commission and the Internal Audit Department of [redacted] of 4 November 2008 show that the internal investigation of [redacted] had as a starting point for discussion with Mr. [redacted] the sole fact that Mrs. [redacted] was working for [redacted]. The contracts between Mrs. [redacted] and [redacted] were evidence of that fact. The minutes of the phone call of 4 November 2008 do not show that further information has been necessary for commencing or performing the internal investigation. The EDPS therefore is not convinced that there was a need to provide the Internal Audit Department of [redacted] with further details relating to Mrs. [redacted].

The minutes of the phone call between the Commission and the Internal Audit Department of [redacted] of 25 June 2008 furthermore do not indicate that the Internal Audit Department requested for supporting information, such as the minutes of the interview which the Commission held with Mrs. [redacted]. The only information asked for was the list of audited contracts concerned by the issue. The Commission agreed to send that information.

On the basis of these considerations, the EDPS upholds his conclusion that the transfer of the minutes to the Internal Audit Department of [redacted] was excessive and therefore in breach of Article 4(1)(c) of Regulation (EC) No 45/2001. The decision of 9 March 2009 must therefore be confirmed, with inclusion of the preceding additional considerations.

### **Confidentiality**

Another issue raised in your letter of 7 April 2009 concerns the confidentiality of the information contained in that letter as well as in your letter of 29 January 2009. You more specifically indicate that revealing the audit hypothesis to the complainant herself could be harmful to the Commission.

The EDPS wishes to inform you that his decision of 9 March 2009 has already been sent to the complainant, as clearly indicated in the accompanying letter to you. As you might have noticed, the audit hypothesis which constituted the basis for transferring the personal information of Mrs. [redacted] to the Internal Audit Department of [redacted] has been cited in that decision twice.

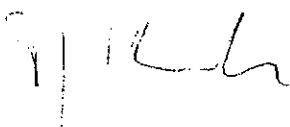
In your letter of 29 January 2009, you asked us to treat the annexes 1-4 and 6-8 as confidential as well as all information in the letter itself which was not contained in the letter sent to [redacted] on 16 December 2008 (Annex 5). Since the content of the hypothesis

becomes clear from the substance of the former letter, as well as from the Draft Audit Report which was sent to the EDPS as an attachment to the original complaint, the EDPS saw no reasons for not disclosing the audit hypothesis to the complainant. Any additional information contained in your letter of 7 April 2009, not mentioned in other parts of the present letter, will not be communicated to the complainant.

#### **Final remarks**

As a final remark we would like to inform you that this letter must be treated as confidential. We would furthermore like to inform you that, except for the part on confidentiality, the content of this letter will be communicated to the complainant. A copy of the entire letter will be sent to the European Ombudsman.

Yours sincerely,



Peter HUSTINX

(Cc. Partly: Mrs. the complainant  
Mr P.N. DIAMANDOUROS, European Ombudsman