

EDPS - Incoming mail
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[FRA - Directorate, A-1060 Wien, Rahlgasse 3]

Mr Joaquin BAYO DELGADO
 EDPS
 Assistant Supervisor
 Rue Wiertz 60
 B-1047 BRUSSELS

Vienna, 18 December 2008

Private and Confidential

Dear Mr. Bayo Delgado,

I refer to your letter dated 19 November 2008 which relates to a complaint of received by the EDPS subject to investigation under Article 46 of the Regulation 45/2001. According to your letter, raised issues of personal data transfers to a number of recipients within the European institutions and bodies as well as to external third parties that took place in the course of 2007 in the context of an investigation concerning

European Union Agency for Fundamental Rights

Agence des droits fondamentaux de l'Union Européenne

Agentur der Europäischen Union für Grundrechte

FRA
 Director
 Morten KJAERUM
 Schwarzenbergplatz 11
 A-1040 Vienna
 Austria

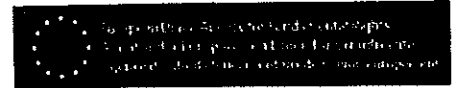
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The complainant claims that personal data relating to him were transferred to, at least, the following recipients:

- The FRA Task Force
- DG Admin
- DG JLS
- IAS
- The Court of Auditors
- Maitre (lawyer)
- (external media consultancy)

I attach copies of all communications (emails, notes to the file, letters etc.) which could be found in the files of the FRA on this matter (attached as annex 1). It emerges that personal data of from the personal file of were transferred to:

1. the FRA Task Force as an internal body of the FRA advising and supervising the interim director of FRA set up by the Management Board of the FRA consisting of members of the Management Board of the FRA in the transition period from EUMC to FRA;
2. DG Admin, DG JLS, IAS, the Court of Auditors as European institutions;



3. Maitre and as external consultants of FRA. PAGE 2/3

1) FRA Task Force

Data transfers to the FRA Task Force do not qualify as data transfers external to the FRA in our view because the FRA Task Force was an internal body of the FRA set up by the Management Board of the FRA advising and supervising the interim director of FRA. Data transferred from the interim director of the FRA to the FRA Task Force still remain within the FRA. DG JLS was represented at the Management Board and at the FRA Task Force. Data transfers from the interim director to the FRA Task Force were necessary and legitimate for the FRA Task Force to fulfill the purpose for which it was set up.

2) Community Institutions or bodies

Data transfers to DG Admin, DG JLS, IAS, the Court of Auditors as Community institutions were based on Article 7 of Regulation 45/2001 because these data transfers were necessary for a legitimate performance of tasks covered by the competence of the recipient. FRA had been asked by the Court of Auditors to check all personal files for correctness. During this process, problems were identified, amongst other cases, concerning

Doubt was raised regarding

The data transfers to DG Admin, IAS and the Court of Auditors served the purpose to obtain expertise on the interpretation of and in order to avoid mistakes by FRA. The data transfer to DG JLS served the purpose to keep the "DG de tutelle" informed about communication of FRA with departments of the European Commission, which is customary for all agencies when communicating with departments of the European Commission. Thus, all these data transfers were legitimate and necessary for the performance of tasks covered by the competence of the recipients as required by Article 7 of Regulation 45/2001.

3) External recipients

Data transfers to the external consultants of FRA, Maitre and FRA, were based on Article 8 of Regulation 45/2001 because the FRA has a duty and a public interest to avoid legal liability and negative media coverage. The data transfer to the attorney of FRA, Maitre was necessary to obtain legal expertise and to make sure that legal

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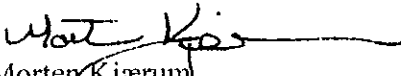
liability is avoided in this matter. The data transfer to the media consultant of FRA, _____ was necessary because a negative newspaper article had appeared regarding efficiency of FRA (copy of this article is attached as annex 2) and the matter concerning _____

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_____ of FRA could have negative media consequences. FRA had a legitimate interest and a duty to defend its reputation and its good standing in the media, further because this might also affect the public image of the EU institutions in a wider sense. Thus, it was necessary and legitimate for FRA to obtain legal advice and media consultancy services in this matter.

Please do not hesitate to contact me, should you need further information.

Yours sincerely,


Morten Kjaerum
Director

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