



EDPS case 2011-0471
OLAF
Date 14 and 15 July 2011

MINUTES

EDPS - Incoming mail

Members of the EDPS
PEREZ ASINARI Maria Veronica
BESLAY Laurent
CHATELIER Isabelle
ROSSI Dario

03. 11. 2011
DR: A- 3503
CR: 2011-0471
U/EO: DR/IC/MVPA

Carried out an inspection at the premises of the EU body mentioned above. They held meetings, asked oral explanations as to the subject matter of the EDPS decision on the inspection and accessed the relevant electronic databases and files.

These minutes record the procedure followed and serves as a transcript of the conversations with the OLAF staff during the inspection. Following this cover page the document pages are numbered 2 to 28.

Privacy policy: The European Data Protection Supervisor will process all personal data accessed and obtained during the inspection in accordance with *Regulation (EC) No 45/2001* of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Personal data will only be used for documenting the EDPS findings made during the inspection and draw appropriate conclusions in relation to the activities of the inspected institution in processing personal data. *The personal data involved are:* name and function of staff members and/or manager of the institution, their statements and personal data contained in the accessed and obtained documents. The categories of data contained in documents may vary depending on the nature of an inspection. The EDPS will not transfer any personal data further, save the case when the Court of Justice of the European Communities or the European Ombudsman would require so. Any refusal to respond to the questions of EDPS inspectors will be specifically recorded in the inspection minutes (transcript). Data subjects have a *right to access* to the data concerning them. The *right to rectification* can apply in limited cases (for example, change of administrative status). The *processing operation is based* on Articles 30, 41(2), 46(c) and 47(2) of Regulation 45/2001. In the case of complaints Articles 46 (a) and (b) constitute additional legal basis. Personal data will be stored for a five year long period, unless legal proceedings would require keeping them for longer period as evidence. The starting day of the five year term is computed from the closing date of the inspection file. You can make your queries at the functional mailbox of the EDPS: edps@edps.europa.eu.

EDPS Members

PEREZ ASINARI
Maria Veronica

BESLAY Laurent

CHATELIER Isabelle

ROSSI Dario

OLAF representative(s) (Acknowledging receipt of the minutes)

G. KESSLER
Director General - OLAF

These minutes were prepared and signed in two original copies.

14 July 2011

- External investigation

Meeting: 9h15-9h44

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF: L

Identification of data subjects

In the case no DS were identified.

MVPA: We checked that there is no DS. We would like to see the reports you did on mission.

MVPA asked to see the assessment report. At the time of the assessment no names were known.

MVPA asked to see the mission report.

The reports were shown to the inspection team.

MVPA: Did you interview this person?

MVPA checked the report to find out data subjects.

MVPA: You meet this people on site?

MVPA asked to print out 4 pages (evidence 1) of the report and informed that names will be blacked out.

Also for the second mission report, MVPA asked to print out 3 pages (evidence 2).

MVPA asked confirmation that no privacy statement was provided to people interviewed.

MVPA asked if the people interviewed signed the report.

MVPA got confirmation that in this case there was no on-the-spot check.

She asked about any transfers of personal data.

MVPA asked for printout of the page that describes that there is no DS1-2-3 (evidence 3).

External investigation

Meeting: 9h45- 10h05

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

A data protection privacy statement was shown to the inspection team.
Copy of the document was collected (evidence 4).

The mission report was not written, it is under construction. A mission justification was shown to the inspection team.

MVPA asked to see the assessment report. The document was shown to the inspection team. There was no data of natural person. The EDPS asked the case handler if he had received guidance on identification of natural persons in respect of legal persons.

MVPA explained that in some cases info on legal person can conduct to natural person.

MVPA asked if there were on the spot checks and asked for any on the spot reports. MVPA asked for interview reports.

MVPA asked for copy of these paper documents (evidence 5).

MVPA asked for the printout of the CMS showing that there is no DSs (evidence 6).

MVPA asked why people who received privacy statement DSs are not recorded.

MVPA:

- External investigations

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Director General. She explained that the interview will focus on following three areas:

1. Identification of DS
2. Provision of information
3. Data transfer(s)

Identification of data subjects

MVPA: Could you show us the identification of DS on the CMS?

What requested was shown to the inspection team. In the CMS, there is DS not mentioned on the EDPS list. MVPA asked a printout of the page (evidence 7).

Provision of information

MVPA: Could you explain to which data subjects () the information was provided? Could you show us evidence of this?

Different documents were shown to the inspection team.

- A privacy statement in : was shown. It is contained in a "letter" (evidence 8) sent to DS .
- MVPA asked also a copy of the first page and the page of the privacy statement of the document (evidence 9) containing a privacy statement sent to DS .
- Copy of a document (evidence 10) showing the privacy statement sent to DS .
- Extract from the on the spot report referring to DS . and DS . (evidence 11).
- privacy notice for DS . (two persons DS . and DS .) (evidences 12 and 13)
- Information provided right away that was not deferral (acknowledgement of receipt plus privacy statement for DS .)

Transfers

MVPA: We would like to know whether there were transfers. It was shown, via the CMS, that there was no transfer.

Audit trail of activities on file was taken (evidence 14).

External investigation

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for his availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of data subject

MVPA: Could you show us in the CMS?

There are 2 DS'.

MVPA asked for a printout which was taken (evidence 15)

MVPA: We have seen DS4. What are the criteria to classify DS4?

It was confirmed that the case is still under investigation.

MVPA: can you reclassify?

F-

MVPA asked:

MVPA asked what person concerned means for the case handler.

MVPA asked what the criteria to identify natural persons from data of legal persons are.

MVPA: "In summary,

MVPA - If you know that there is a judicial investigation at national level on the person you have identified and that he is convicted, do you change the classification to DS1?

Information to data subjects

MVPA asked printout (evidence 16) of information to data subjects which were provided to the inspection team.

Case handler:

The "Verbale di controllo e verifica sul posto" was showed to the inspection team to evidence provision of the privacy statement. Extract of the document (evidence 17) was collected by the inspection team. Document (evidence 18) showing the reasons for deferral in one case have been collected by the inspection team.

Information contained in the CMS showed that the same person has been mentioned twice. This was highlighted by MVPA.

Case handler:

Document (evidence 19) on transfer of data was collected by the inspection team.

Letter announcing a meeting to exchange information was collected by the inspection team (evidence 20).

Document (evidence 21) audit trail of the case was collected by the inspection team.

MVPA asked if the case handlers want to add something.

Lunch Break: 13.00 – 14.00

Meeting: 14h00–14h55

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

- Internal investigation

Meeting: 15h05-15h15

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked . for the availability. She reminded that the exercise consists of a fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Director General. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of data subjects

Identification of DS in the CMS module.

Veronica asked to print a copy and collected (evidence 22).

Collected by the inspection team also copy of the "Compte rendu écrit de l'audition" (evidence 23) referring to the DS.

Collected by the inspection team also copy of the "Compte rendu écrit de l'audition" (evidence 24) referring to the DS.

Transfer of data

EDPS collected document showing transfer of data (evidence 25). The document is in the CMS but is not attached in the right place (transfer tab) due to a click mistake.

- External investigation

Meeting: 15h05–15h15

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

We have seen there are DS.).

MVPA: In this case, you are investigating

MVPA asked what for the interviewee the definition of DS1 is.

Provision of info

MVPA asked for the list of data subjects to which the privacy statement was sent and to see the privacy statement. Copy of the three documents was collected (evidences 27, 28 and 29).

Transfer

MVPA asked for transfer of data.

- External investigation

Meeting: 15h20–16h40

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (CI), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DSs

MVPA highlighted that in the case in object no DS1, 2 and 3 has been identified. She explained that the case will be checked deeper. Printouts from the CMS containing the data subjects list was collected (evidence 30) by the inspection team.

MVPA asked to see the assessment report and the mission report.

Mission report was analysed. There is one person working for MVPA asked the role of the others in connection with the case.

3.

LB asked: how do you identify the person you interview?

MVPA asked about the procedure to interview witnesses in the EU.

LB asked:

MVPA: "What is DS1 for you?"

MVPA: "

MVPA: "What is a witness for you?"

LB questioned about the security measures to access CBIS.

LB asked

Information to data subjects

Veronica asked about the ANNEX 1 to the mission report, which is not included in the CMS.

Veronica asked for a copy of a document

External investigation

Meeting: 17h10 - 17h30

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

No DS identified in the CMS. No mission. All information was received from

MVPA:

No report have been done apart from the assessment report, the case is at its very beginning. Assessment report collected (evidence 33), it mentions Other actions might be conducted which might lead to identification of DS.

Data transfer

There is a statement of a data transfer to the supervisory committee, article 7 statement, but no personal data were concerned so transfer was not registered (Information to the OLAF Supervisory Committee, evidence 34).

- Internal investigation

Meeting: 17h30 – 17h50

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

MVPA: There are DS identified in the CMS (cf list of data subjects - evidence 35)

Provision of information

Status of provision of information showed in evidence 36.

For DS, information was provided with written record of interview (evidence 37).

Data protection notice provided to DS in email acknowledgement of receipt (evidence 38).

DS information was provided in email correspondence (evidence 39).

Deferral was noted because interview was postponed but then OLAF conducted interview and information was then provided.

Forensic examination was done and hard drive was copied and data stored in CMS.

Transfer

Transfer related to DS was done. transfers were recorded related to DS (evidence 40).

EDPS takes copy of the note to the file where reason for deferral explained (evidence 41).

- Internal investigation

Meeting: 17h50 – 18h10

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

DS are identified in the CMS (evidence 42).

Provision of info

Information has been provided to all DS (evidence 43). Information is provided before and during interview, at the end ask to comment. A report of interview

is done where data subjects know all information collected about them. EDPS collected all information notices given to all DS (evidence 49 to evidence 50).

This was an internal investigation, non case. OLAF did not investigate the

Transfer

List of data transfers was taken (evidence 51), which evidences the necessity of transfers.

Data protection statements concerning transfers were collected (evidence 52).

The DPO provided to EPDS the Guidelines for OLAF staff regarding practical implementation of data protection requirements of October 2010 and of October 2008 (evidence 53).

Friday 15 July 2011

External investigation

Meeting: 9h10 - 9h45

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

List of data subjects was printed (evidence 54).

LB: How do you identify DS1?

Provision of info

List showing provision of information to DS was printed (evidence 55).

Note to the file regarding referral of information was printed (evidence 56).

How does deferral of information works? When do you consider that deferral is no longer needed?

Reply:

ε

Information was provided to DS. when they interviewed
they provided a privacy statement (evidence 57).

Transfer

List of transfers and transfer information was printed (evidences 58, 59, 60, 61).

External investigation

Meeting: 9h50–10h50

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB), Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

MVPA: What kind of information did you receive about the EDPS inspection?

Reply:

Identification of DS

List of data subjects: No DS (evidence 62).

e

MVPA asks to check the assessment report; she noted that there is no name of company and no data subjects.

MVPA checks the mission reports, no data subjects.

MVPA: in case of investigation of a company, how would you proceed to identify a person in a company that would be relevant for the case?

Reply:

How would you classify this person, as a DS1?

Reply:

MVPA: Imagine you find relevant information, you close the case and send information to national authority. This might affect a natural person, who might be prosecuted.

Reply:

MVPA:

Reply:

MVPA: Is it correct to say that you consider a person as DS1 only when he/she is declared guilty by a judge?

Reply:

presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

identified (DS. . List of data subjects was printed (evidence 77).

Provision of info

MVPA asked which are the cases where the relevant person is registered as DS

Transfer

No transfer, copy of CMS extract was taken (evidence 80).

MVPA: Does CMS allow to check that cases are connected because same data subjects or because same facts?

Connected case investigation

Identification of data subjects

Data subjects have been identified (evidence 81).

Provision of info

N/A

Transfer

N/A

Meeting: 11h25 – 11h35

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

In connection with case discussed with yesterday, provided the EDPS
with an Agreement on classification of information (evidence 63), extract of
OLAF manual p 166 (evidence 64), Note to the Secretary General template on
Opening of an internal investigation (evidence 65).

Identification of DS

No DS identified, DS (evidence 66).

Provision of info

Information was provided to DS, see written records of interview DS
(evidence to evidence).

Transfer

N/A

Meeting: 11h40 – 11h53

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked [redacted] for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

DS identified (evidence 72).

Provision of info

Information was provided (evidence 73). Copy of the privacy statement provided was taken (evidence 74).

Transfer

Extract of CMS showing transfers was taken (evidence 75).

Transfer was done to [redacted], letter was sent containing Article 7 privacy statement (evidence 76). The document is not classified.

External investigation

Meeting: 11h57 - 12h52

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF:

MVPA thanked [redacted] for the availability. She reminded that this is fact finding inspection, not an investigation. Notes are taken and minutes will be

presented to the Directors. She explained that the interview will focus on following three areas:

- Identification of DS
- Provision of information
- Data transfer(s)

Identification of DS

identified (DS. . List of data subjects was printed (evidence 77).

Provision of info

MVPA asked which are the cases where the relevant person is registered as DS

Transfer

No transfer, copy of CMS extract was taken (evidence 80).

MVPA: Does CMS allow to check that cases are connected because same data subjects or because same facts?

Connected case **investigation**

Identification of data subjects

Data subjects have been identified (evidence 81).

DS

List of persons (evidence 82).

Information to data subjects

Information provided to DS (evidence 83) and DS (evidence 84).

Connected case - investigation

Identification of data subjects

Data subjects have been identified (evidence 86 and evidence 87).

Information was provided to DS or all 3 cases (evidence 85).

MVPA: if data protection module is updated it allows to check that information was actually provided to data subjects in this case. DPM is a tool for compliance, it facilitates work of investigators. If it is correctly updated it allows investigators to check that information has already been provided in another related case.

MVPA: we note that we verified that Information was actually provided to DS in case although it was not registered in DPM.

Data protection status report was printed (evidence 88).

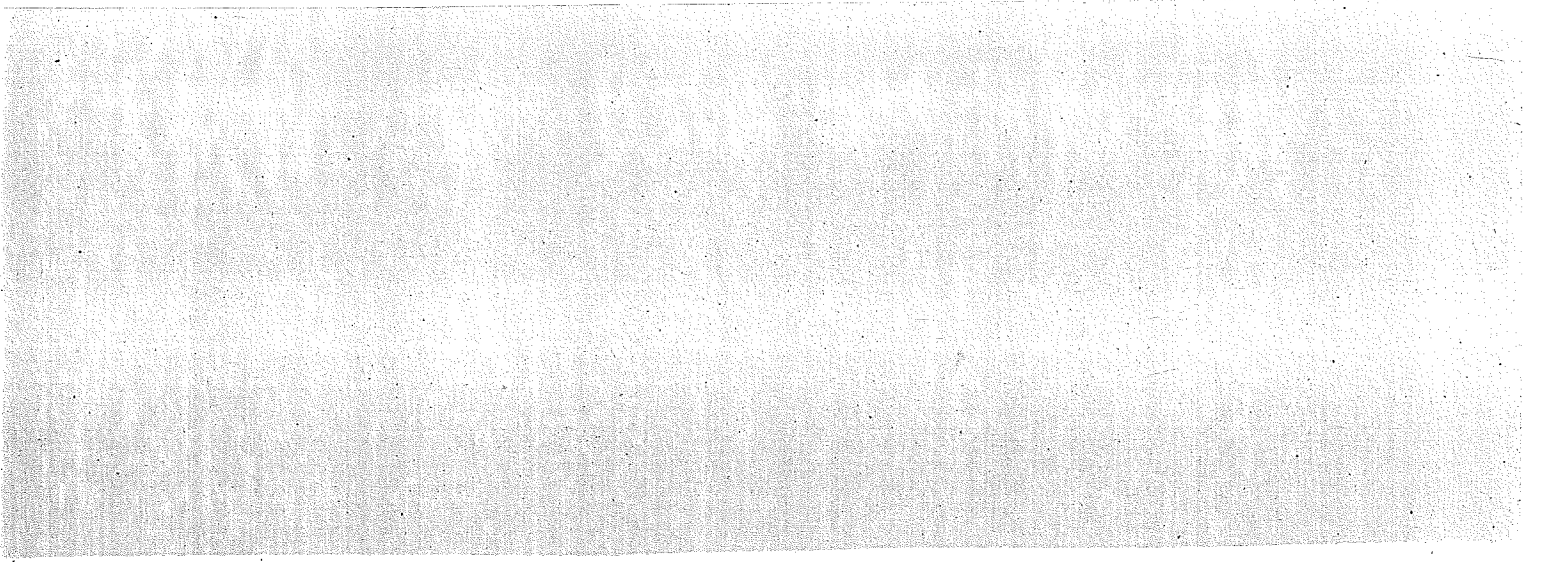
Meeting: 14h15–14h40

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF: , ,

Procedure to issue badges



Meeting: 14h45–15h50

Participants:

EDPS: Maria Veronica PEREZ ASINARI (MVPA), Laurent BESLAY (LB),
Isabelle CHATELIER (IC), Dario ROSSI (DR)

OLAF: