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GB/DG/sn/D-2014)0448 C 2014-0141
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correspondence

Subject: Consultation on the need to prior check processing operations concerning public consultations organised by the BEREC Office on behalf of BEREC (Case 2014-0141)

Dear Mr Chiodi,

I refer to your e-mail of 30 January 2014 in which you submitted to the European Data Protection Supervisor ("EDPS") a consultation pursuant to Article 27(3) of Regulation (EC) No 45/2001 ("the Regulation"). This queried the need to prior check data processing operations in the framework of public consultations organised by the BEREC Office on behalf of BEREC.

According to the notification under Article 25 of the Regulation attached to your e-mail, the processing aims to obtain contributions from the general public on various topics, which are defined in the BEREC Work Programme adopted yearly by the BEREC Board of Regulators. Any interested stakeholders can send the BEREC Office their contributions, which are then published on the website. These stakeholders may include individuals, companies, associations, public administration bodies, and local government authorities. Data typically provided by stakeholders together with their views are full name, profession and contact details.

Having studied the information provided, the EDPS is of the opinion that the BEREC Office's data processing operation relating to public consultations is **not subject to prior checking** under Article 27(1) of the Regulation.

As you know, Article 27(1) of the Regulation subjects to prior-checking all processing operations which are likely to present *specific* risks to the rights and freedoms of data subjects by virtue of their nature, scope or their purposes. These risks are listed under Article 27(2).

The EDPS has analysed whether the processing operations could fall under any of these listed grounds, and concludes that this is not the case. Therefore, there is no basis under Article 27 of the Regulation to subject the processing operations at stake to prior checking.

There may (hypothetically) be some situations in which special categories of data are submitted by stakeholders voluntarily. The EDPS considers that if data related to health or criminal offences for example, are incidentally processed in the public consultation procedure, such incidental processing is not a sufficient basis for submitting the processing operation for prior checking by the EDPS. Only a structural processing of health or criminal offence related data would justify prior checking by the EDPS. Therefore, the conclusion remains that the processing is not subject to prior checking under article 27(2)(a).

That said, if you believe that there are other factors justifying prior checking, we are of course prepared to review our position. Similarly, in the event of any modifications to this data processing, we would kindly ask you to reassess the need for submitting this processing to the EDPS for prior checking.

Despite the fact that this processing activity is not subject to prior check, the EDPS would like to remind the BEREC Office that all relevant obligations described in the Regulation must be respected. In particular, controllers have to comply with Article 11 (information to the data subject).

Recommendation

Although the privacy statement appears to be comprehensive, it should clarify exactly what personal data will be published on the BEREC Office website. Data subjects are currently advised that their identity will be published unless they object. However, it is not explicitly clear from the privacy statement whether there are any cases in which their profession and/or contact details may also be made public. As such, the privacy statement should be amended to provide this clarification.

Please update the EDPS on the implementation of this recommendation within a period of three months from the date of this letter.

We remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI