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ASSISTANT SUPERVISOR

Ms Verena ROSS
Executive Director
European Securities and Markets
Authority (ESMA)
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correspondence

Object: EDPS prior-check Opinion on "*the selection of confidential counsellors and of the informal procedure for cases of alleged harassment*" at the European Securities and Markets Authority

Dear Ms Ross,

We have analysed your notification sent on 24 November 2015 for prior-checking under Articles 27(2)(a) and 27(2)(b) of Regulation 45/2001 (the Regulation) in the context of the selection of confidential counsellors and of the informal procedure for cases of alleged harassment at the European Securities and Markets Authority (**ESMA**).

Under Article 27(4) of the Regulation, the deadline of two months for the EDPS to issue his Opinion applies. The EDPS should therefore issue his Opinion no later than the 25 January 2016.

On 18 February 2011, the EDPS issued Guidelines on the selection of confidential counsellors and the informal procedures for cases of harassment in EU institutions and bodies (the EDPS Guidelines). The EDPS is satisfied that ESMA has taken into account our Guidelines in view of setting up its own procedures reinforcing them with data protection rules.

The ESMA notification is supported with a copy of:

- ESMA Policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment adopted by the Management Board on 18 June 2012,
- copies of forms on the opening and closing of an informal procedure,
- a copy of a form on the anonymous statistical record of an informal procedure,

- copies of privacy notices on both processing operations and
- a copy of ESMA's procedure on the classified documents handling.

The EDPS notes that ESMA makes reference to the possible application of Articles 20(3) and 20(5) of the Regulation in the case of an informal procedure. The EDPS highlights that in cases where ESMA decides to apply a restriction of information, access, rectification etc. under Article 20(1) of the Regulation, or to defer the application of Article 20(3) and 20(4)¹, such decision should be taken strictly on a case by case basis. In all circumstances, ESMA should be able to provide evidence demonstrating detailed reasons for taking such decision (i.e motivated decision). These reasons should prove that they cause actual harm to the informal procedure or undermine the rights and freedoms of the others and they should be documented before the decision to apply any restriction or deferral is taken. ESMA should ensure that the documented reasons are made available to the EDPS if requested in the context of a supervision and enforcement action.

In light of the above, the EDPS considers that ESMA seems to have adopted adequate data protection safeguards in conformity with the Regulation.

We have therefore decided to close the case.

Should you have further doubts, please do not hesitate to contact us.

Kind regards,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc : Mr Andrea LORENZET, HR Team leader.
Ms Sophie VUARLOT-DIGNAC, Acting Data Protection Officer.
Mr Panagiotis PAPAPASCHALIS, Deputy Data Protection Officer.
Mr Enrico GAGLIARDI, Assistant Data Protection Officer.

¹ under Article 20(5) of the Regulation.